



MAINE STATE POLICE OPERATIONS GENERAL ORDER

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SUBJECT: MAINE STATE POLICE POLICY REGARDING PUBLIC ACCESS TO MAINE STATE POLICE RECORDS | **NUMBER:** M-8

EFFECTIVE DATE: 01.05.2017 | **RECENT HISTORY:** AMENDED (01.05.2017); AMENDED (08.11.2015); AMENDED (10.31.2013); AMENDED (10.31.2011); AMENDS MSP GO M-8 (02.06.2009); RESCINDS AND REPLACES G.O. 54B (09.16.2008)

DISTRIBUTION CODE: 2

SIGNATURE OF COLONEL:

I. PURPOSE

The purpose of this General Order is to establish the Maine State Police policy regarding public access to Maine State Police records.

II. POLICY

The policy of the Maine State Police is to ensure that --

1. In accordance with the Maine *Intelligence and Investigative Record Information Act, 16 MRSA .c 9*, and other applicable law, records that are confidential by law remain protected and are not publicly accessed or disseminated; and
2. 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 State Police within a reasonable period of time after making a request for access to the record.

III. DEFINITIONS

1. For the purposes of this General Order, the terms included in this section are defined as follows, unless otherwise indicated in the order.
 - A. Access. "Access," when used as a verb, means inspect or obtain copies of any record. "Access," when used as a noun, means an opportunity to inspect or obtain copies of any record.
 - B. Administration of criminal justice. "Administration of criminal justice" means activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible crimes. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of criminal justice. See *16 MRSA sec. 803(2)*.
 - C. 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. See *16 MRSA sec. 803(4)*.

- D. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to orally, in writing or electronically, by or to anyone outside the criminal justice agency that maintains the information. See 16 MRSA sec. 803(5).
- E. Investigative record . "Investigative record " means any record (including, but not limited to, any record maintained in paper, electronic, video, or audio format) prepared by, prepared at the direction of, or kept in the custody of the Maine State Police that includes or itself constitutes "intelligence and investigative record information," as that term is defined at 16 MRSA sec. 803(7). For the purpose of this Order, "investigative records" includes, but is not limited to, records containing or themselves constituting intelligence information.
- F. Public record. "Public record" has the same meaning as the term "public records" at sub-§ 3 of 1 MRSA sec. 402. The term "public record" specifically does **NOT** include "[r]ecords that have been designated confidential by statute." 1 MRSA sec. 402(3)(A).

IV. PROCEDURE

1. GENERAL RIGHT OF THE PUBLIC TO ACCESS MAINE STATE POLICE RECORDS
 - A. Except as otherwise provided by statute, every person has the right to access any public record in the custody of the Maine State Police during the regular business hours of the agency or Maine State Police 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 State Police record is presumed to be a request made pursuant to the Maine Freedom of Access Act, regardless of whether the person expressly cites that law in making the request.
 - C. The Maine State Police does not maintain "standing" records/FOAA requests -- that is, records/FOAA requests that would require production of records on a "rolling" or ongoing basis after the date a given request was received by the agency. Said differently, only records existing and in the custody of the Maine State Police as of the date any given records/FOAA request is received by the agency shall be considered to be subject to production in response to such a request.
 1. The fact that the Maine State Police does not maintain "standing" records/FOAA requests does not preclude any individual from making other records/FOAA requests at a subsequent time, including, but not limited to, requests made previously for a certain record or type of record.
2. FREEDOM OF ACCESS ACT/RECORDS REQUEST CONTACT FOR THE MAINE STATE POLICE
 - A. The Colonel shall designate an employee of the Maine State Police to serve as the agency's contact for persons wanting to request access to Maine State Police records.
 - B. The person so-designated by the Colonel shall be generally knowledgeable of the Maine Freedom of Access Act, and, except as otherwise provided in this policy, the person shall coordinate, facilitate, and/or respond to requests for access to Maine State Police records.
3. PERMISSIBLE RELEASE OF INVESTIGATIVE REPORTS BY SWORN MEMBERS OF THE MAINE STATE POLICE
 - A. **Release to Prosecutor Offices.** A sworn member may release a copy of the member's complete investigative report to the office responsible for the criminal prosecution of that report.
 1. Prosecutor offices include Offices of Maine District Attorneys, the Maine Office of the Attorney General, the United States Attorney's Office for the District of Maine, Juvenile Corrections, and Probation & Parole.
 - B. **Release to Another Law Enforcement Agency.** A sworn member may release a copy of the member's investigative report to a sworn member of another law enforcement agency for purposes of assisting in an ongoing investigation by that

agency.

- C. **Release to a Maine Court.** A sworn member may release a copy of of the member's investigative report to a Maine Court, **if** prior authorization to do so is given in writing by that Court **and** the written Order requires the immediate production of the report to the Court.
1. The report is to be released in the manner authorized by the Court in each particular instance.
 2. If the sworn member receives a written Court Order or a subpoena to produce an investigative report at a future time and date, the Order or subpoena is to be forwarded **as soon as possible** to the FOAA contact for the Maine State Police or the Maine State Police Records Management Services Unit, for response.
- D. **Release of Mandated Reporting Information.** A sworn member may provide initial incident information as part of the mandated reporting required in certain situations (i.e., to the DHHS Adult and Child Protective hotline), so that appropriate assistance can be provided to those in immediate need. However, requests for the completed investigative case report made after that initial immediate response window need to be referred to the Maine State Police Records Management Services Unit.
- E. **Release of investigative information and related documentation to a sexual assault counselor or a domestic violence victim's advocate.** A sworn member may disclose investigation-related information and related documentation (such as, e.g., affidavits and "Odara Item Summary" forms, unofficial, preliminary notes or synopses, if available) to a sexual assault counselor, as defined in 16 M.R.S. sec 53-A(1)(B), or an advocate, as defined in section 16 M.R.S. sec. 53-B(1)(A), when such information and documentation is needed to plan for the safety of a victim involved in an incident that is (or was) the subject of an investigation and "time is of the essence." For the purpose of this section "time is of the essence" is to be determined by the exigency of the need for the information for the timely safety planning for a victim.
1. If a case report has been completed and time is *not* of the essence, counselors and advocates will need to request **copies** of approved, official Maine State Police reports, and attachments thereto, by contacting the Maine State Police Records Management Services Unit, which may release some or all such documentation pursuant to 16 M.R.S. sec. 806(3).
4. SPECIFIC TYPES OF REQUESTS TO ACCESS RECORDS THAT MAY BE IN THE CUSTODY OF THE BUREAU
- 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 District Attorney's Office having jurisdiction over the case to which the discovery request relates, or to the Office of the Attorney General in instances in which that office has jurisdiction over the case.
1. If the District Attorney's Office or Office of the Attorney General requests that a Maine State Police employee provide records to a person making the discovery request, the employee shall do so by providing the requested records directly to the DA's office or AG Office making the request, so that that DA's office or AG Office may then disseminate the records to the person making the discovery request.
 - a. If the District Attorney's Office or Office of the Attorney General provides written authorization for a Maine State Police employee to provide records directly to a person making a discovery request, then the employee may do so.

- 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 either the FOAA Contact for the Maine State Police or the Maine State Police Records Management Services Unit ("MSP Records Unit") 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 either the FOAA Contact for the Maine State Police or the MSP Records Unit to request such access.
- D. Requests to Access Maine State Police Investigative Records.** Under Maine law, Maine State Police investigative records (and any and all attachments to such records) typically contain or themselves constitute "intelligence and investigative record information," the public dissemination of which is restricted by law. **Accordingly, investigative records may only be accessed by or disseminated to a member of the public 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 MSP Records Unit or the Office of the Maine State Police Staff Attorney, except as otherwise provided in this Order.**
- 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, or request a copy of such information via the Internet at the following web site:
<http://www5.informe.org/online/pcr/>.
- F. Requests to Access Motor Vehicle Accident Report.** A person requesting access to a Motor Vehicle Accident Report must directly contact the Maine State Police Traffic Division, or request a copy of such a record via the Internet at the following web site: <https://www1.maine.gov/online/mcrs/>.
- G. Requests to Access Traffic Summonses.** A person requesting access to Uniform Summons and Complaint (USAC) or a Violations Summons and Complaint (VSAC) must directly contact either the FOAA Contact for the Maine State Police or the MSP Records Unit to request such access.
- H. 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.
1. Access to E-9-1-1 system records/information is governed by 25 MRSA sec. 2929.
- I. Requests to Access Records of Crimes Alleged or Proven to have been Committed by Juveniles.** Except as otherwise provided in this Order, 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 either the FOAA Contact for the Maine State Police or the MSP Records Unit to request such access.
1. Generally speaking, public access to and dissemination of such records is **HIGHLY RESTRICTED**.
 2. Relevant sections of the Maine Juvenile Code to consult with respect to public accessibility to such records include:
 - a. 15 MRSA sec. 3009: Information related to reintegration of juvenile into school;
 - b. 15 MRSA sec. 3301: Preliminary investigation, informal adjustment and petition initiation;
 - c. 15 MRSA sec. 3307: Publicity and record;
 - d. 15 MRSA sec. 3308: Court records; inspection;

- e. 15 MRSA sec. 3308-A: Dissemination of juvenile intelligence and investigative record information by a Maine criminal justice agency; and
 - f. 15 MRSA sec. 3316: Commitment to the Department of Corrections or the Department of Health and Human Services.
- J. **Requests to Access Personnel records.** A person requesting access to a Maine State Police employee's personnel record must contact the FOAA Contact for the Maine State Police.
- 1. **MANY TYPES OF RECORDS IN MAINE STATE EMPLOYEES' PERSONNEL FILES ARE CONFIDENTIAL PURSUANT TO STATE OF MAINE CIVIL SERVICE LAWS. SEE 5 MRSA §§ 7070 & 7070-A.**
- K. **Requests to Access Personnel Records - "Giglio" requests.** Requests for so-called "Giglio information" must be forwarded to, and responded to by, the the Office of the Maine State Police Staff Attorney.
5. EXPECTATION OF PRIVACY OF PERSONAL INFORMATION INCLUDED IN EMPLOYEE COMMUNICATIONS SUCH AS E-MAIL
- A. **Employees of the Maine State Police should have no expectation of privacy with regard to any personal information they include in records prepared or created using any State-owned information technology system (including, but not limited to, the State of Maine e-mail system) or related communications equipment (including, but not limited to, cellular telephones) or resources.**
6. USE OF PERSONAL COMMUNICATION SYSTEMS AND EQUIPMENT TO CONDUCT OFFICIAL STATE OF MAINE BUSINESS
- A. The intent of the Freedom of Access Act shall not be frustrated through the use by employees of personal communications systems (for example, personal e-mail accounts) or personal equipment (e.g., personal computers or cellular telephones) to conduct official State of Maine business.
 - B. **Employees should presume that records resulting from the use of personal communication systems or equipment to conduct official State of Maine business are public records, subject to production if they fall within the scope of a request for records that has been made by a member of the public.**
 - 1. For example, an e-mail sent or received by an employee through the employee's personal e-mail account should be presumed by the employee to be a public record -- subject to production under the Freedom of Access Act -- if the e-mail is sent or received in the course of, or for the purpose of, conducting official State of Maine business.

NOTICE: THIS GENERAL ORDER IS FOR USE OF THE MAINE STATE POLICE AND NOT FOR ANY OTHER AGENCY. THE GENERAL ORDER IS NOT INTENDED TO BE RELIED UPON BY ANY OTHER INDIVIDUAL OR PRIVATE OR PUBLIC AGENCY. THE GENERAL ORDER EXPRESSLY DOES NOT 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 STATE POLICE.