OFFICE OF STATE FIRE MARSHAL
GENERAL ORDER

Subject: Public Access to Records		**Number:** FMOM 11
Effective Date: August 2009	**Rescinds:**	
Reference:		
Distribution: Sworn Personnel	**Review Date:** Annually	
Standard (s):		

I. POLICY

It is the policy of this law enforcement agency, in accordance with the Maine Freedom of Access Law[1], to provide public access to the public records of this criminal justice agency. It is also the policy of this criminal justice agency to protect the integrity of confidential records. Among such confidential records are those declared confidential by the Freedom of Access Law[2], the Criminal History Information Act[3], certain personnel records of municipal, county, and state agencies[4], certain E-911 records[5], intelligence information[6], and such other confidential records that may come into possession of this criminal justice agency.

II. PURPOSE

It is the purpose of this policy to establish guidelines for the inspection and copying of public records.

III. DEFINITIONS

A. Administration of Criminal Justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

B. Confidential Records. "Confidential Records" mean records exempt from public access. They are not public records.

C. Conviction Data. "Conviction Data" means criminal history record information other than nonconviction data.[7] Conviction data generally constitute public records.

[1] 1 M.R.S.A. §§ 401-410
[2] 1 M.R.S.A. § 402(3)
[3] 16 M.R.S.A. §S 611-623
[4] 30-A M.R.S.A. §§ 2702 and 503, and 5 M.R.S.A. § 7070, respectively
[5] 25 M.R.S.A. § 2929
[6] 29 CFR, part 23
[7] 16 M.R.S.A. § 611(2)

D. Criminal History Record Information. "Criminal History Record Information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.[8]

E. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

F. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency that maintains the information.[9]

G. Intelligence and Investigative Information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and Investigative Information" does not include information that is criminal history record information.[10]

H. Nonconviction Data. "Nonconviction Data" means criminal history record information of the following types: (1) arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial; (2) information disclosing that the police have elected not to refer a matter to a prosecutor; (3) information disclosing that a prosecutor has elected not to commence criminal proceedings; (4) information disclosing that criminal proceedings have been indefinitely postponed, e.g., a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial; (5) a dismissal; (6) an acquittal, excepting an acquittal by reason of mental disease or defect; and (7) information disclosing that a person has been granted a full and free pardon or amnesty.[11] Nonconviction data is generally confidential, i.e., not subject to public access.[12]

[8] 16 M.R.S.A. § 611(3)
[9] 16 M.R.S.A. § 611(6)
[10] 16 M.R.S.A. § 611(8)
[11] 16 M.R.S.A. § 611(9)
[12] 16 M.R.S.A. § 613

I. Public. "Public" means that *every person* shall have the right to inspect and copy any public record.[13]

J. Public Records. "Public Records" means that generally, with certain exceptions as indicated below under Section IV, any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business.[14]

K. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.[15]

IV. PROCEDURE

A. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record.[16] Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.[17]

B. Generally, while perhaps desirable for the purpose of recordkeeping, a person requesting to inspect or copy a public record is not required to provide identification or otherwise disclose to the agency or custodian of the public record the person's identity or affiliation, or the reason for the request. Refusal to allow inspection or copying of a public record may not be based upon a person's declination to provide identification or to disclose the reason for the request. *(See Section E, subsection 14, below for an exception to the general prohibition of requiring identification of a person requesting to inspect certain records.)*

C. Generally, while perhaps desirable for purposes of recordkeeping, a person requesting to inspect or copy a public record is not required to put the request in writing.

[13] 1 M.R.S.A. § 408
[14] 1 M.R.S.A. § 402(3)
[15] 16 M.R.S.A. § 611(12)
[16] 1 M.R.S.A. § 408(1)
[17] 1 M.R.S.A. § 408(2)

D. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows:

1. The agency or official may charge a reasonable fee to cover the cost of copying.
2. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.
3. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.
4. An agency or official may not charge for inspection.[18]

E. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding.[19] If the estimate of the total cost is greater than $100 or if the requester has previously failed to pay a properly assessed fee in a timely manner, the agency may require payment in advance of estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record.[20] The agency may waive part or all of the total fee if the requester is indigent or release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.[21]

F. If the agency or custodian refuses public access to a record or records, the denial and the reason for the denial must be provided *in writing* to the person making the request *within five (5) working days of the request*. Failing to grant or deny the request within five (5) working days of the request constitutes a denial to permit inspection or copying of the public record. A person denied access may appeal the denial to the Superior Court within five (5) working days of the denial.[22]

G. Records that are *confidential* records and that may not be disseminated include, *but are not limited to* (with such exceptions as noted):

Freedom of Access Law

a. *Records that have been designated confidential by statute*;[23]

[18] 1 M.R.S.A. § 408(3)
[19] 1 M.R.S.A. § 408(4)
[20] 1 M.R.S.A. § 408(5)
[21] 1 M.R.S.A. § 408(6)
[22] 1 M.R.S.A. § 409(1)
[23] 1 M.R.S.A. § 402(3)(A)

b. *Records that would be within the scope of a privilege* against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;[24]

c. *Material prepared for and used specifically and exclusively in preparation for negotiations*, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;[25]

d. *Medical records* and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;[26]

e. *Juvenile records* and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;[27]

[Juvenile records are unique and their release is principally governed by the Maine Juvenile Code.]

f. *Records describing security plans, security procedures or risk assessments* prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;[28]

g. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure, and[29]

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[24] 1 M.R.S.A. § 402(3)(B)
[25] 1 M.R.S.A. § 402(3)(D)
[26] 1 M.R.S.A. § 402(3)(H)
[27] 1 M.R.S.A. § 402(3)(I)
[28] 1 M.R.S.A. § 402(3)(L)
[29] 1 M.R.S.A. § 402(3)(M)

h. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife.[30]

E-911 Confidentiality

i. *E-911 confidential information* is information listed below as contained in any database, report, audio recording or other record of a Public Safety Answering Point (PSAP):[31]

i. The names, addresses and telephone numbers of persons listed in E-9-1-1 databases;[32]

ii. Customer information, described in Title 35-A, section 7501, subsection 1, that is omitted from a telephone utility directory list at the request of a customer;[33]

iii. The name, address and telephone number of a caller to a public safety answering point;[34] or

iv. The name, address and telephone number of and any medical information about a person receiving emergency services through the E-9-1-1 system.[35]

j. E-911 confidential information may not be disclosed in any manner except:[36]

i. A PSAP may disclose confidential information to public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services;[37]

ii. A PSAP may disclose confidential information to a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;[38]

iii. A PSAP may disclose confidential information to the Emergency Services Communications Bureau (ESCB) for the purpose of system maintenance and quality control;[39] and

[30] 1 M.R.S.A. § 402(3)(N)
[31] 25 M.R.S.A. § 2929(1)
[32] 25 M.R.S.A. § 2929(1)(A)
[33] 25 M.R.S.A. § 2929(1)(B)
[34] 25 M.R.S.A. § 2929(1)(C)
[35] 25 M.R.S.A. § 2929(1)(D)
[36] 25 M.R.S.A. § 2929(2)
[37] 25 M.R.S.A. § 2929(2)(A)
[38] 25 M.R.S.A. § 2929(2)(B)
[39] 25 M.R.S.A. § 2929(2)(C)

iv. The ESCB bureau director may disclose confidential information to PSAP's, public or private safety agencies, emergency responders or others within the E-911 system to the extent necessary to implement and manage the E-911 system.[40]

Criminal History Record Information – Nonconviction Data

k. Except as noted below in section (10), dissemination of *nonconviction data* is limited to:[41]

i. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;[42]

ii. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;[43]

iii. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and[44]

iv. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.[45]

v. Nonconviction data disseminated to a noncriminal justice agency shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.[46]

[40] 25 M.R.S.A. § 2929(2)(D)
[41] 16 M.R.S.A. § 613
[42] 16 M.R.S.A. § 613(1)
[43] 16 M.R.S.A. § 613(2)
[44] 16 M.R.S.A. § 613(3)
[45] 16 M.R.S.A. § 613(4)
[46] 16 M.R.S.A. § 617

l. Nonconviction data contained in the following is *not confidential* and, thus, the record or records are subject to public access or dissemination:[47]

i. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;[48]

ii. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;[49]

Names of complainants, witnesses, and victims – as well as personally identifying information – are confidential.[50]

Names of complainants – as well as personally identifying information – reporting alleged violations of law are confidential.[51]

iii. Criminal history record information related to an offense for which a person is currently within the criminal justice system.[52]

iv. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession that indicates the disposition of the arrest, detention or formal charges.[53]

v. Record or persons detained. Every criminal justice agency that maintains a facility for pretrial detention shall record[54] the identity of the arrested person, including name, age, residence and occupation, if any;[55] offenses charged, including the time, place and nature of the offense;[56] time and place of arrest;[57] and circumstances of arrest, including force, resistance, pursuit and weapon, if any.[58]

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[47] 16 M.R.S.A. § 612(2)
[48] 16 M.R.S.A. § 612(2)(A)
[49] 16 M.R.S.A. § 612(2)(B)
[50] See Lewiston Sun v. Sheriff Herrick, Appendix 5
[51] See Rule 509, Maine Rules of Evidence, Appendix 6
[52] 16 M.R.S.A. § 612(3)(A)
[53] 16 M.R.S.A. § 612(3)(B)
[54] 16 M.R.S.A. § 612-A(1)
[55] 16 M.R.S.A. § 612-A(1)(A)
[56] 16 M.R.S.A. § 612-A(1)(B)
[57] 16 M.R.S.A. § 612-A(1)(C)
[58] 16 M.R.S.A. § 612-A(1)(D)

[Note that this record, if it concerns the detention of a juvenile is not a public record.[59]] Every sheriff shall keep a true and exact calendar containing the names of all prisoners committed to the jail under the sheriff's charge, their residences, additions, time of their commitments, for what cause and by what authority, and a particular description of the persons of those committed for offenses. The sheriff shall register the name and description, the time when and the authority by which any prisoner was discharged, and the time and manner of any prisoner's escape. The information required by this section must be kept in a suitable, permanent record at the office of the sheriff.[60]

Criminal History Record Information – Conviction Data

m. *Conviction data* may be disseminated to any person for any purpose.[61] However, an agency shall query the State Bureau of Identification (SBI) prior to dissemination of any criminal history record information for *noncriminal justice purposes* to assure that the most up-to-date disposition data is being used.[62]

n. *Right to Access and Review*. Any person or his attorney may inspect the criminal history record information concerning that person maintained by this agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. This agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to that person on request and payment of a reasonable fee.[63]

o. *Review*. A person or his attorney may request amendment or correction of such criminal history record information by addressing, either in person or by mail, that person's request to this agency. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction. On receipt of a request, this agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

[59] 15 M.R.S.A. § 3003(14)
[60] 30-A M.R.S.A. § 1505
[61] 16 M.R.S.A. § 615
[62] 16 M.R.S.A. § 616
[63] 16 M.R.S.A. § 620(1)

Not later than 15 working days after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.[64]

p. *Administrative appeal.* If there is a request for review, the Chief Law Enforcement Officer (CLEO) shall, not later than 30 working days from the date of the request complete the review and either make the requested amendment or correction or refuse to do so. If the CLEO refuses to make the requested amendment or correction, the CLEO shall permit the requesting person to file with the agency a concise statement setting forth the reasons for that person's disagreement with the refusal. The CLEO shall also notify the person of the provisions for judicial review of the reviewing official's determination, as outlined below. Dissemination of the disputed criminal history record information by this agency shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.[65]

q. *Judicial review.* If the CLEO denies an administrative appeal, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the CLEO, seek relief in the Superior Court.[66]

r. *Notification.* When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided above or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.[67]

[64] 16 M.R.S.A. § 620(2)
[65] 16 M.R.S.A. § 620(3)
[66] 16 M.R.S.A. § 620(4)
[67] 16 M.R.S.A. § 620(5)

Intelligence and Investigative Information

s. Reports or records that contain *intelligence and investigative information* are confidential and may not be disseminated if there is a reasonable possibility[68] that public release or inspection of the reports or records would[69]:

i. Interfere with law enforcement proceedings;[70]

ii. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;[71]

iii. Constitute an unwarranted invasion of personal privacy;[72]

Names of complainants, witnesses, and victims – as well as personally identifying information – are confidential.[73]

Names of complainants – as well as personally identifying information – reporting alleged violations of law are confidential.[74]

iv. Disclose the identity of a confidential source;[75]

v. Disclose confidential information furnished only by the confidential source;[76]

vi. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;[77]

vii. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;[78]

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[68] "A reasonable possibility" requires an assessment of possibilities in particular factual contexts. It excludes unreasonable possibilities. A possibility is something that may or may not occur. Or stated somewhat differently, "a reasonable possibility" is not a frivolous, imaginary, irrational or whimsical possibility; but rather a possibility based upon reason – a reasonable hypothesis.
[69] 16 M.R.S.A. § 614(1)
[70] 16 M.R.S.A. § 614(1)(A)
[71] 16 M.R.S.A. § 614(1)(B)
[72] 16 M.R.S.A. § 614(1)(C)
[73] See Lewiston Sun v. Sheriff Herrick, Appendix 5
[74] See Rule 509, Maine Rules of Evidence, Appendix 6
[75] 16 M.R.S.A. § 614(1)(D)
[76] 16 M.R.S.A. § 614(1)(E)
[77] 16 M.R.S.A. § 614(1)(F)
[78] 16 M.R.S.A. § 614(1)(G)

viii. Endanger the life or physical safety of any individual, including law enforcement personnel;[79]

ix. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;[80]

x. Disclose information designated confidential by some other statute;[81] or

xi. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.[82]

Dissemination Permitted

t. Dissemination of intelligence and investigative information *is not precluded*[83] to another criminal justice agency;[84] a state agency responsible for investigating abuse, neglect or exploitation of children or incapacitated or dependent adults for use in the investigation of suspected abuse, neglect or exploitation;[85] an accused person or that person's agent or attorney if authorized by the district attorney for the district in which that accused person is to be tried, a rule or ruling of a court of this State or of the United States, or the Attorney General,[86] or a victim or victim's agent or attorney, subject to reasonable limitations.[87]

Concealed Weapons Applications

u. All *applications for a permit to carry concealed firearms* and documents made a part of the application, refusals, and any information of record collected by the issuing agency during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements for the issuance of a permit, are confidential and may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. However, the issuing authority shall make a permanent record of each permit to carry concealed firearms in a suitable book or file kept for that purpose. The record shall include the information contained in the permit itself and shall be available for public inspection.[88]

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[79] 16 M.R.S.A. § 614(1)(H)
[80] 16 M.R.S.A. § 614(1)(I)
[81] 16 M.R.S.A. § 614(1)(J)
[82] 16 M.R.S.A. § 614(1)(K)
[83] 16 M.R.S.A. § 614(3)
[84] 16 M.R.S.A. § 614(3)(A)
[85] 16 M.R.S.A. § 614(3)(B)
[86] 16 M.R.S.A. § 614(3)(C)
[87] 16 M.R.S.A. § 614(3)(D)
[88] 25 M.R.S.A. § 2006

Personnel Records

v. Personnel records pertaining to municipal, county, and state employees are for the most part confidential.[89] For example, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action are confidential. However, if disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public. Final written decision "means (1) the final written administrative decision that is not appealed pursuant to a grievance arbitration procedure, or (2) if the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator. A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days."

For a full discussion of the confidentiality of personnel records of municipal, county, and state employees, see Appendix 4.

WARNING

This directive is for Bureau use only and does not apply in any criminal or civil proceeding. The Bureau policy should not be construed as a creation of higher legal standard of safety and care in an evidentiary sense with respect to third party claims. Violations of this directive will only for the basis for Bureau administrative sanctions.

By Order Of:_____ Date:_____

Bureau Director

[89] 30-A M.R.S.A. §§ 2702 and 503, and 5 M.R.S.A. § 7070, respectively

APPENDIX 1

Title 1

FREEDOM OF ACCESS ACT

(Selected sections)

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees;

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; and

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise

covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter.

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute;

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; ~~and~~

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure, and;

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife.

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.

§408. Public records available for public inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record.

2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.

3. 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 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 of not more than $10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.
C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.
D. An agency or official may not charge for inspection.

4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than $20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than $100, subsection 5 applies.

5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:

A. The estimated total cost exceeds $100; or
B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or
B. Release of the public record requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

§409. Appeals

1. Records. If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

3. Proceedings not exclusive. The proceedings authorized by this section shall not be exclusive of any other civil remedy provided by law.

§410. Violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged.

APPENDIX 2

Title 16
CRIMINAL HISTORY INFORMATION ACT

§611. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetence, continuance due to mental incompetence, guilty plea, nolo contendre plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;

B. Information disclosing that the police have elected not to refer a matter to a prosecutor;

C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;

D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;

E. A dismissal;

F. An acquittal, excepting an acquittal by reason of mental disease or defect; and

G. Information disclosing that a person has been granted a full and free pardon or amnesty

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

§612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;

C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;

D. Court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic offenses retained at and by the Secretary of State; and

G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;

B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

§612-A. Record of persons detained

1. Requirement of record. Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

A. Identity of the arrested person, including name, age, residence and occupation, if any;

B. Offenses charged, including the time, place and nature of the offense;

C. Time and place of arrest; and

D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any.

2. Time and method of recording. The record required by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and must be part of the permanent records of the agency making it. The record required by this section may be combined with the record required by Title 30-A, section 1505.

3. Records public. The record required by this section shall be a public record, except for records of the detention of juveniles, as defined in Title 15, section 3003, subsection 14.

§613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

1. Criminal justice agencies. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall

mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

3. Under specific agreements. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information. Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

A. Interfere with law enforcement proceedings;

B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

C. Constitute an unwarranted invasion of personal privacy;

D. Disclose the identity of a confidential source;

E. Disclose confidential information furnished only by the confidential source;

F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;

H. Endanger the life or physical safety of any individual, including law enforcement personnel;

I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;

J. Disclose information designated confidential by some other statute; or

K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

2. Exception to this limitation.

3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:

A. Another criminal justice agency;

B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;

C. An accused person or that person's agent or attorney if authorized by:

(1) The district attorney for the district in which that accused person is to be tried;

(2) A rule or ruling of a court of this State or of the United States; or

(3) The Attorney General.

D. A victim or victim’s agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1.

§615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.

§617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

§618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

§619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal, and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

APPENDIX 3

Title 25, Chapter 352
EMERGENCY SERVICES COMMUNICATION
(Selected sections)

§2921. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Automatic location identification. "Automatic location identification" means an enhanced 9-1-1 service capability that enables the automatic display of information defining the geographical location of the telephone used to place a 9-1-1 call.

2. Automatic number identification. "Automatic number identification" means an enhanced 9-1-1 service capability that enables the automatic display of the 7-digit number used to place a 9-1-1 call.

2-A. Bureau. "Bureau" means the Emergency Services Communication Bureau in the Department of Public Safety, which is responsible for the statewide implementation and management of E-9-1-1.

3. Commissioner. "Commissioner" means the Commissioner of Public Safety.

4. Department. "Department" means the Department of Public Safety.

5. Emergency services. "Emergency services" includes fire, police, ambulance, rescue services and other services of an emergency nature identified by the commissioner.

6. Enhanced 9-1-1 services. "Enhanced 9-1-1 services" or "E-9-1-1" means a system consisting of selective routing with the capability of automatic number and location identification and public safety answering points, which enables users of the public telecommunications' system to request emergency services by dialing the digits 9-1-1.

6-A. Private safety agency. "Private safety agency" means a private entity that provides fire, emergency medical or security services.

6-B. Public safety agency. "Public safety agency" means a state, county or municipal government entity that provides or has the authority to provide fire, emergency medical or police services.

7. Public safety answering point. "Public safety answering point" means a facility with enhanced 9-1-1 capability, operated on a 24-hour basis, assigned the responsibility of receiving 9-1-1 calls and, as appropriate, directly dispatching emergency services or, through transfer routing or relay routing, passing 9-1-1 calls to public or private safety agencies.

7-A. Relay routing. "Relay routing" means the method of responding to a 9-1-1 call whereby a public safety answering point notes pertinent information and relays it by telephone to the appropriate public or private safety agency that dispatches the needed service.

8. Selective routing. "Selective routing" means the method employed to direct 9-1-1 calls to the appropriate public safety answering point based on the geographical location from which

the call originated.

9. Transfer routing. "Transfer routing" means the method of responding to a 9-1-1 call whereby a public safety answering point transfers the call, including the automatic location and number information, to the appropriate public or private safety agency that dispatches the needed service.

10. Local exchange carrier. "Local exchange carrier" means any person that is engagedin:

A. Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, that is covered by the exchange service charge;

B. Service comparable to that described in paragraph A provided through a system or combination of switches or transmission equipment or other facilities by which a subscriber can originate and terminate a telecommunications service; or

C. The offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

11. Public switched telephone network. "Public switched telephone network" means the network of equipment, lines and controls assembled to establish communication paths between calling and called parties in North America.

§2929. Confidentiality of system information

1. Definition. As used in this section, "confidential information" means the following information as contained in any database, report, audio recording or other record of the bureau or a public safety answering point:

A. The names, addresses and telephone numbers of persons listed in E-9-1-1 databases;

B. Customer information, described in Title 35-A, section 7501, subsection 1, that is omitted from a telephone utility directory list at the request of a customer;

C. The name, address and telephone number of a caller to a public safety answering point; or

D. The name, address and telephone number of and any medical information about a person receiving emergency services through the E-9-1-1 system.

2. Confidentiality. Confidential information may not be utilized for commercial purposes and may not be disclosed in any manner except as follows:

A. A public safety answering point may disclose confidential information to public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services;

B. A public safety answering point may disclose confidential information to a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;

C. A public safety answering point may disclose confidential information to designees of the bureau director for the purpose of system maintenance and quality control; and

D. The bureau director may disclose confidential information to public safety answering points, public or private safety agencies, emergency responders or others within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system.

3. Disclosure required. The restrictions on disclosure provided under subsection 2 apply only to those portions of databases, reports, audio recordings or other records of the bureau or a public safety answering point that contain confidential information. Other information that appears in those records and other records, except information or records declared to be confidential under other law, is subject to disclosure pursuant to Title 1, section 408. The bureau shall develop procedures to ensure protection of confidential records and information and public access to other records and information. Procedures may involve developing edited copies of records containing confidential information or the production of official summaries of those records that contain the substance of all nonconfidential information.

4. Audio recordings of E-9-1-1 calls; confidential. Audio recordings of emergency calls made to the E-9-1-1 system are confidential and may not be disclosed except as provided in this subsection. Except as provided in subsection 2, information contained in the audio recordings is public information and must be disclosed in transcript form in accordance with subsection 3. Subject to all the requirements of subsection 2, the bureau or a public safety answering point may disclose audio recordings of emergency calls made to the E-9-1-1 system in the following circumstances:

A. To persons within the E-9-1-1 system to the extent necessary to implement and manage the E-9-1-1 system;

B. To a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;

C. To designees of the bureau director for the purpose of system maintenance and quality control; and

D. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction.

5. Unlisted telephone numbers. The name and address associated with the number of a telephone company customer with an unlisted telephone number may be furnished to the E-9-1-1 system for processing a request for E-9-1-1 services from that number and for the provision of emergency services resulting from the request.

6. Penalty for disseminating information. Disclosing confidential information in violation of subsection 2 or disclosing audio recordings of emergency calls to the E-9-1-1 system in violation of subsection 4 is a Class E crime

APPENDIX 4

Title 5, section 7070

Confidentiality of Personnel Records of State Employees

§7070. Personnel records

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments shall be reported to the director at such time, in such form and together with such supportive or pertinent information as he shall by rule prescribe.

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data as he and the board deem pertinent.

Records of the Bureau of Human Resources shall be public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the director may provide.

The following records shall be confidential and not open to public inspection, and shall not be "public records," as defined in Title 1, section 402, subsection 3:

1. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the State for use in the examination or evaluation of applicants for positions as state employees.

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

2. Personal information. Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:

A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

B. Performance evaluations and personal references submitted in confidence;

C. Information pertaining to the credit worthiness of a named employee;

D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;

D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; home telephone number and home address; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this paragraph, "final written decision" means:

(1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

3. Other information. Other information to which access by the general public is prohibited by law.

4. Disclosure of certain information for grievance and other proceedings. The Director of Human Resources may release to the Director of Employee Relations specific information designated confidential by this section which has been requested by the Director of Employee Relations to be used in negotiations, mediation, fact-finding, arbitration, grievance proceedings and other proceedings in which the Director of Employee Relations represents the State as defined in this subsection. For the purpose of this subsection, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights

proceedings and labor relations proceedings.

Confidential information provided under this subsection to the Bureau of Employee Relations shall be governed by the following.

A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the Director of Human Resources.

B. The Director of Employee Relations shall specify in writing the confidential information required in the proceedings and the reasons explaining the need for the information, and shall provide a copy of the written request to the employee or employees.

C. The proceeding for which the confidential information is provided shall be private and not open to the public; or, if the proceeding is open to the public, the confidential information shall not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record, and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information.

The Director of Employee Relations may use this information in grievance proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Employee Relations shall not be open to public inspection and shall not be "public records," as defined in Title 1, section 402, subsection 3.

§7070-A. Personnel records; deadly force or physical force by law enforcement officer

The name of a law enforcement officer is not confidential under section 7070, subsection 2, paragraph E in cases involving:

1. **Deadly force.** The use of deadly force by a law enforcement officer; or

2. **Physical force.** The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in subsections 1 and 2, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

Title 30-A, section 503

Confidentiality of Personnel Records of County Employees

§503. Personnel records

1. **Confidential records.** The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the

county for use in the examination or evaluation of applicants for positions as county employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

B. County records containing the following:

(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

C. Other information to which access by the general public is prohibited by law.

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

2. Employee right to review. On written request from an employee or former employee, a county official with custody of the records shall provide that employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the county official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained.

A. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits of which the county official has possession.

B. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

Title 30-A, section 2702

Confidentiality of Personnel Records of Municipal Employees

§2702. Personnel records

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection;

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

C. Other information to which access by the general public is prohibited by law.

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

APPENDIX 5

LEWISTON DAILY SUN, Plaintiff v. LLOYD C. HERRICK, SHERIFF OF OXFORD COUNTY, Defendant

CIVIL ACTION DOCKET NO. CV-95-36
SUPERIOR COURT OF MAINE, ANDROSCOGGIN COUNTY
1996 Me. Super. LEXIS 220
July 12, 1996, Decided
July 15, 1996, Filed

DECISION and JUDGMENT

This case involves the Freedom of Access Act and the Criminal History Records Information Act.[90] The plaintiff, Lewiston Daily Sun, which publishes the Lewiston Sun Journal, seeks to compel the defendant, Lloyd Herrick, the Sheriff of Oxford County, to provide it access to certain documents. The Sun Journal believes that the Freedom of Access Act requires the disclosure of the documents, and the sheriff argues that the disclosure is not required. The parties have filed an agreed upon record in lieu of a trial.[91]

I. Facts

The sheriff is a public official who has under his control the Oxford County Sheriff's Office, which includes a dispatch center. The dispatch center receives calls, both routine and emergency. The dispatcher enters each call into the computer system. A computer assisted dispatch program is used by the Oxford County Sheriff's Office to record, communicate and store the data from the incoming calls.[92]

The sheriff's office has been using the present version of the computer program since January 1995. For five or six years prior to that a different version of the program was utilized. Before computerization, the Sheriff's office had several types of handwritten or typed logs.

The present computer program has the capacity to print reports and compilations, as did the previous program. One such compilation is entitled "Daily Activity Log with Narrative." This is a report listing calls received in each 24-hour period, midnight to midnight, by the dispatch center. This report was printed on a daily basis from mid-1993 to January 1995. Each report usually consisted of twelve to fifteen pages.[93] It was provided to deputies and other personnel of the office. Access to this report was also provided to a Sun Journal reporter until January 1995, when the Sheriff's office stopped printing it routinely. Although the sheriff's office started using a new computer program in January 1995, it still has the capacity to print the "Daily Activity Log with Narrative."

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[90] *1 M.R.S.A. § 401 et seq.* and *16 M.R.S.A. § 611 et seq.*
[91] *1 M.R.S.A. § 409(1)* provides for a trial de novo before the Superior Court when a person has been denied access to public records and seeks a review of that denial.
[92] Spellman Public Safety Software is the program utilized by the Sheriff's office.
[93] Deposition of Judith Meyer at 7. The only example of "Daily Activity Log with Narrative" furnished to the court consists of two pages which are numbered page 1 and page 3.

The "Daily Activity Log with Narrative" contains a brief description of the calls received by the dispatch center, such as "family fight," "citizen dispute," "fire" or "lockout." The calls are listed in chronological order. The report includes the name and address of the person making the call; the address of the incident; the name of the deputy responding to the call; the time of the call; the time of the dispatch of the deputy; the time of arrival and of completion; and the disposition. In addition, a narrative can be filled in for each call, giving further detail about the incident. All of the items of information are not completed for each call. Often the narrative field is left blank. Each call is assigned an incident number by the computer.

In January 1995, the sheriff's office stopped printing the "Daily Activity Log with Narrative" report routinely. Instead, the only report it printed on a daily basis is the one entitled "Law Incident Summary Report, by Responsible Officer." The sheriff's office has printed this latter report since 1989 or 1990.

The "Law Incident Summary Report" is a report of each call received during a 24-hour period by the dispatch center. The calls are not listed in chronological order. Each call is listed under the name of the deputy to whom the call was assigned. The report does not have as much information as the "Daily Activity Log with Narrative." The primary differences between the two reports are the following: (1) the "Law Incident Summary Report" does not contain the name and address of the complainant or caller, but the other report does; (2) the "Law Incident Summary Report" does not contain a narrative description; and (3) the "Daily Activity Log with Narrative" is arranged in chronological order and the other is organized under the name of the officer responsible for the call. Both reports give a two or three word description of the call such as "family fight" or "fire." Because the "Law Incident Summary Report" has less information in it, the daily report consists of two or three pages rather than the twelve to fifteen pages of the other report.[94]

The decision to stop printing the "Daily Activity Log with Narrative" on a daily basis was made by James Davis, the Chief Deputy, with the approval of the sheriff. Several reasons are given by the chief deputy and the sheriff for this change. The primary reason is the concern that the chief deputy and the sheriff had regarding the appearance of the names of complainants, who are often witnesses or victims of crimes, in the newspaper. They felt this created the potential of jeopardizing an investigation.[95] Not giving reporters the names of the complainants makes it more difficult for those names to be reported in the press. Another reason for stopping the daily printing of the "Daily Activity Log with Narrative" report was that the chief deputy and the sheriff decided that the "Law Incident Summary Report" was sufficient for the needs of the office and the deputies. They also felt that there were some cost savings by printing only the shorter report.

A freelance reporter, Judith Meyer, who had been reporting on police matters in Oxford County for the Sun Journal since September 1993, was accustomed to viewing the "Daily Activity Log with Narrative" twice a week at the sheriff's office. Starting in mid-January, 1995,

[94] The court was furnished two examples of "Law Incident Summary Report;" one consists of one page and the other of two pages.
[95] Deposition of Sheriff Herrick at 122-126.

Meyer was handed the "Law Incident Summary Report" to look at instead of the other report. Although Meyer asked to look at the other report, she was not allowed to do so.[96]

By letter dated January 18, 1995, the Sun Journal, through its attorney, requested that the sheriff's office make available for inspection, "all original records of entry such as police logs, data bases, and entries of dispatch traffic and complaints, that are maintained by the Oxford County Sheriff's Office and are compiled and organized chronologically." This letter did not identify a particular report by name or by date. However, it is obvious that the Sun Journal was requesting access to the "Daily Activity Log with Narrative." Presumably, it was requesting all "Daily Activity Log with Narrative" reports up to the date of its request,[97] and it is requesting a judgment that it be allowed access to the "Daily Activity Log with Narrative" reports for the future. By letter dated January 25, 1995, Chief Deputy Davis responded, "we are already providing this information," and he noted that *16 M.R.S.A. § 614* limits the dissemination of investigative information.

II. Statutes and their application to this case

A. Freedom of Access Act

Pursuant to the Freedom of Access Act, this court must order the sheriff to produce the requested information unless the sheriff has just and proper cause for denying access to the information. *1 M.R.S.A. § 409*. The Act states that "every person shall have the right to inspect and copy any public record" unless otherwise provided by statute. *1 M.R.S.A. § 408*. The Act is to be liberally construed. *1 M.R.S.A. § 401*. "Public records" include:

> . . . electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official . . . and has been received or prepared for use in connection with the transaction of public or governmental business . . ..

1 M.R.S.A. § 402(3).

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[96] In her deposition, Judith Meyer said that she was first denied the report on a Wednesday in the second week of January 1995. Even though she was denied the "Daily Activity Log with Narrative" for the preceding 24-hour period, on that same day she was given the requested reports for the five previous days. Two days later, a Friday, she requested the "Daily Activity Log with Narrative" and was given it. The following Wednesday she was denied access to the "Daily Activity Log with Narrative." Deposition of Judith Meyer at 10-12.

[96] In Plaintiff's Proposed Findings of Fact and Conclusions of Law, P U, the Sun Journal asks for a finding that its request to the sheriff was for renewed access to the "Daily Activity Log with Narrative."

[96] The Law Court has stated that a corollary to the liberal construction of the Freedom of Access Act is strict construction of any exceptions to it. *Moffett v. City of Portland, 400 A.2d 340, 348 (Me. 1979).* Two days later, a Friday, she requested the "Daily Activity Log with Narrative" and was given it. The following Wednesday she was denied access to the "Daily Activity Log with Narrative." Deposition of Judith Meyer at 10-12.

[97] In Plaintiff's Proposed Findings of Fact and Conclusions of Law, P U, the Sun Journal asks for a finding that its request to the sheriff was for renewed access to the "Daily Activity Log with Narrative."

The records sought by the Sun Journal are contained within an electronic data compilation. They can be translated into written form. They are in the custody of the office of the sheriff. The sheriff's office is a public agency, and the sheriff is a public official. The data has been received for use in connection with the business of the sheriff's office. The requested records meet the requirements of the Act and be provided unless another statute exempts those records from disclosure.

B. Criminal History Information Act

The second statutory scheme involved in this case is the Criminal History Information Act [CHRIA]. *16 M.R.S.A. § 611 et seq.* The sheriff argues that CHRIA exempts the "Daily Activity Log with Narrative" from disclosure to the public.[98]

CHRIA applies to criminal justice agencies, and the Oxford County Sheriff's Office meets the definition of a criminal justice agency. *16 M.R.S.A. § 611(4).* CHRIA defines "criminal history record information" as notations of the arrest, detention or formal charge relating to a person, including the description of the person and the disposition of the charge. *16 M.R.S.A. § 611(3).* "Criminal history record information" includes "conviction data" and "nonconviction data" which are both defined in the statute. *16 M.R.S.A. § 611.* CHRIA allows conviction data to be disclosed to anyone. *16 M.R.S.A. § 615.* On the other hand, CHRIA places strict limits on the dissemination of nonconviction data by criminal justice agencies. *16 M.R.S.A. § 613.*

Another provision of CHRIA defines "intelligence and investigative information." Such investigative information is declared confidential and criminal justice agencies are prohibited from disclosing it. *16 M.R.S.A. § 614(1)* (Supp. 1995).

C. Police blotter exception

Police blotters are an exception to CHRIA. The pertinent subsection reads: "[CHRIA] shall not apply to criminal history record information contained in: (B) Original records of entry such as police blotters that are maintained by criminal justice agencies and that are compiled and organized chronologically." *16 M.R.S.A. § 612(2)(B).*

The Sun Journal argues that the "Daily Activity Log with Narrative" meets the definition of police blotter.[99] "Police blotter" is not defined in the Maine statutes.

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[98] The Law Court has stated that a corollary to the liberal construction of the Freedom of Access Act is strict construction of any exceptions to it. *Moffett v. City of Portland, 400 A.2d 340, 348 (Me. 1979).*

[99] The term "police blotter" is not unique to CHRIA. The Code of Federal Regulations provides that criminal history record regulations do not apply to criminal history record information contained in . . . (2) "Original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically . . .." *28 C.F.R. § 20.20(b)(2).* The term is not defined in either the United States Code or the Code of Federal Regulations.

One court discussed the meaning of "police blotter" as follows:

> Though not defined by statute, police blotter is defined as 'a book in which entries (as of transactions or occurrences) are made temporarily, pending their transfer to a permanent record book' (Webster's Third New International Dictionary) and as 'a police record, kept at the station, of arrests' (Ballantine's Law Dictionary). The record before us indicates that the Committee on Public Access to Records 'has consistently advised that a blotter is in the nature of a log or diary in which any event reported by or to a police department is recorded. It contains no investigative information but merely summarizes an occurrence.'

In the matter of Sheehan v. City of Binghamton, 398 N.Y.S.2d 905, 906, 59 A.D.2d 808, 809 (N.Y. App. Div. 1977). The court went on to say that reports which may include hearsay, suspicions, rumors, reports or names of confidential informants do not come within the definition of "police blotter." *398 N.Y.S.2d at 907.*

The "Daily Activity Log with Narrative" is similar to a police blotter in that it contains basic information about a contact with a police agency, and it is in chronological order. It is also more than a traditional police blotter because it contains more information with respect to some calls. This court concludes that the "Daily Activity Log with Narrative" partially fits the definition of police blotter.

However, not everything in a police blotter is criminal history record information and therefore exempt from CHRIA. The statute clearly provides that it is only the *criminal history record information* in police blotters that is exempt from the provision of CHRIA. *16 M.R.S.A. § 612(2).*

CHRIA defines "criminal history record information" as notations of the arrest, detention or formal charge relating to a person, including the description of the person and the disposition of the charge. *16 M.R.S.A. § 611(3).* To the extent that the "Daily Activity Log with Narrative" contains information about an arrest, detention or charge of a person, the person's description or disposition of the charge, it is not confidential and it is not an exception to the Freedom of Access Act. In other words, the portions of the "Daily Activity Log with Narrative" which resemble a traditional police blotter and which come within the definition of "criminal history record information" must be made accessible by the sheriff to the Sun Journal.

D. Intelligence and investigative information

CHRIA declares that intelligence and investigative information is confidential "if there is a reasonable possibility" that the disclosure would:

> A. Interfere with law enforcement proceedings;
> B. Result in public dissemination of prejudicial information . . . that will interfere with the ability of a court to impanel an impartial jury;
> C. Constitute an unwarranted invasion of personal privacy;

> D. Disclose the identity of a confidential source; . . .
> H. Endanger the life or physical safety of any individual, including law enforcement personnel;

16 M.R.S.A. § 614(1) (Supp. 1995).[100]

CHRIA defines "intelligence and investigative information" as information collected by agencies "in an effort to anticipate, prevent or monitor possible criminal activity, . . . or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions." *16 M.R.S.A. § 611(8)* (Supp. 1995). Such investigative information does not include information that is criminal history record information. *Id.*

The sheriff argues that the name and address of the caller that is included in the "Daily Activity Log with Narrative" is investigative information and that there is a reasonable possibility that disclosure of the information would interfere with law enforcement proceedings.

With respect to this issue it must first be determined whether the names and addresses of the complainants meet the definition of "intelligence and investigative information" and, if so, whether the sheriff has shown that they come within this exemption.

The definition of "intelligence and investigative information" is so broad that it is difficult to imagine any information collected by a criminal justice agency that does not come within it. This court cannot say that the information collected by the sheriff's office of the name and address of a complainant is not done "in an effort to anticipate, prevent or monitor possible criminal activity." The names and addresses of complainants are investigative information.

The next question is whether there is a reasonable possibility that their disclosure would interfere with law enforcement proceedings or come within one of the other enumerated situations in *16 M.R.S.A. § 614(1) (A)* through (K) (Supp. 1995). The Sun Journal argues that the sheriff has not made a specific showing that any of the information in the "Daily Activity Log with Narrative" comes within the investigative information exemption. It is correct that the Sheriff has not pointed to any specific entry within any specific report and shown that the particular information is investigative information that would interfere with law enforcement proceedings or constitute an unwarranted invasion of personal privacy or endanger the safety of someone. Instead, the sheriff seems to argue that, as a category, the names and address of complainants are within this exemption. Because the sheriff has not shown how the release of any particular complainant's name meets the statutory provisions, if the sheriff's refusal to disclose the information is to be upheld, it must be on the basis that *as a category* the names and addresses of complainants are not subject to disclosure.

Support for this proposition can be found in federal cases. The federal Freedom of Information Act [FOIA] contains exemptions that are nearly identical to the exemptions in *16 M.R.S.A. § 614*. The Law Court recognizes the similarity and indicates that federal cases interpreting FOIA are useful. *Campbell v. Town of Machias, 661 A.2d 1133, 1136 (Me. 1995).*

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[100] The statute also prohibits disclosure in several other situations. *16 M.R.S.A. § 614(1)(A)* through (K) (Supp. 1995).

Exemption 7(C) in FOIA is the same as the exemption in *16 M.R.S.A. § 614(C)* which exempts investigation information if there is a reasonable possibility that its disclosure will result in the unwarranted invasion of privacy. In a case involving this exemption the Supreme Court allowed a categorical withholding of information which identifies third parties. In *United States Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749, 103 L. Ed. 2d 774, 109 S. Ct. 1468 (1989),* a CBS reporter sought the release of arrest "rap sheets" from the FBI on several Mafia members. In reversing the Court of Appeals,[101] the Court noted that the basic policy behind the disclosure requirements of FOIA "focuses on the citizens' right to be informed about 'what their government is up to.'" *103 L. Ed. 2d at 796.* The Court remarked that information which sheds light on an agency's performance fulfills that policy, but information about private citizens that is accumulated in the agency's records does not reveal anything about the agency's own conduct. For that reason, disclosure about the private citizen was not contemplated by FOIA. The Court concluded:

> We hold as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no 'official information' about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted.'"

103 L. Ed. 2d at 800.

Although the Court in *Department of Justice v. Reporters Committee* was specifically dealing with the unwarranted invasion of privacy exemption, it reached its holding by relying on *NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 57 L. Ed. 2d 159, 98 S. Ct. 2311 (1978)* which held that such categorical determinations could also be made for FOIA Exemption 7(A), which is the exemption for interference with law enforcement proceedings, identical to *16 M.R.S.A. § 614(1)(A).*

In the *NLRB v. Robbins Tire* case the Supreme Court held that witness statements obtained for enforcement proceedings by governmental agencies were *as a category* not subject to disclosure. The Court concluded that the disclosure of witness statements generally could be expected to interfere with enforcement proceedings.

In this case the sheriff has not argued that the disclosure of names and addresses would constitute an unwarranted invasion of privacy. The sheriff argues that releasing the names "creates the possibility of harassment or intimidation of witnesses" citing *Campbell v. Town of Machias, 661 A.2d 1133, 1136 (Me. 1995).* In that case the Law Court upheld the refusal of the town police to provide to a potential defendant in a criminal case all of the records that it had regarding the potential prosecution. The Court held that the records were investigative information and confidential because their release could interfere with law enforcement proceedings. The Court cited *NLRB v. Robbins Tire*. The same possibility of harassment or

[101] Although the FBI released some of the requested information, it refused to disclose certain portions of the records. The District Court upheld the denial of the information and the Court of Appeals reversed. *United States Department of Justice v. Reporters Committee for Freedom of Press, 259 U.S. App. D.C. 426, 816 F.2d 730 (D.C. Cir. 1987)* and *265 U.S. App. D.C. 365, 831 F.2d 1124 (D.C. Cir. 1987)* (after remand to the District Court).

intimidation of witnesses that the Court was concerned with in *Campbell* is present whenever names and addresses of potential witnesses are released to the public. The disclosure of names of potential witnesses is both an unwarranted invasion of privacy and an interference with law enforcement proceedings.

In this case viewing the names of complainants as a category is particularly appropriate because the request for disclosure was made of the category and not of a particular name. This court concludes that as a category the names and addresses of complainants to the Oxford County Sheriff's Office come within the investigative information exemption of *16 M.R.S.A. § 614(1)(A)* and (C).

III. Summary

The sheriff does not have to provide access to the "Daily Activity Log with Narrative" to the Sun Journal because that report contains names of complainants and their addresses. The sheriff's office does not have to release the names and addresses of complainants. Such names and addresses are investigative information under CHRIA and exempt from the requirements of the Freedom of Access Act. The sheriff has not violated the provisions of the Freedom of Access Act. The sheriff does have to provide access to any report, in existence, which fits the definition of police blotter and does not contain intelligence and investigative information.

The Sun Journal's complaint includes a claim for violation of its civil rights. Because the court concludes that the Sun Journal's statutory rights under the Freedom of Access Act have not been violated by Sheriff Herrick, there is no statutory civil rights violation.[102]

Judgment is granted to the defendant.
Dated: July 12, 1996 Susan Calkins, Superior Court Justice

[102] The court does not understand the Sun Journal to be arguing that the applicable statutes in this case, if interpreted in the manner in which the court has interpreted them, constitute a violation of the freedom of press provisions of the United States and Maine Constitutions.

APPENDIX 6

STATE OF MAINE

DATE: September 29, 1975

TO: All State Departments

FROM: Joseph E. Brennan, Attorney General

SUBJECT: Disclosure of names of persons making complaints

Our office has received several inquiries posing the question: when and under what circumstances, if any, may written records of complaints from citizens alleging violations of law be kept confidential? The questions are in reference to 1 M.R.S.A. § 405 requiring disclosure of public records and the new definition of public records, 1 M.R.S.A. § 402-A adopted by P.L. 1975 chap. 623.

The answer is that generally the written records of such complaints should be made available, however, they may be made available in a way which does not disclose the source of the complaint.

Discussion

The revised definition of public records expresses a clear legislative intent that all records maintained by State Departments except those specified in the three exceptions should be made public. In the spirit of this provision, all reports relating to alleged violations should be public.

This general interpretation favoring disclosures, should, however, be read in light of Rule 509 of the Maine Rules of Evidence published in June of 1975 and to be effective February 2, 1976. This rule provides:

> "The United States, a state or subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting an investigation or a possible violation of a law to a law enforcement officer or member of the a legislative committee or its staff conducting an investigation."

Rule 509 also provides: "The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished." The privilege extends to staff members of the various State Departments who are, pursuant to this rule, law enforcement officers for the purpose of enforcing the laws under the responsibility of their Department.

Rule 509 has two exceptions:

1. Once the name of an informer has been disclosed to a person who would be adversely affected by the informer's communication, it is no longer privileged.

2. If the informer may be used as a witness, the informer's name may be disclosed. However, this determination may be made at a later date and need not be made at the first point when a person requests disclosure of the name of an informant.

This rule recognizes the law in Maine as it presently exists. The advisory committee notes to the rules on evidence provide:

"The privilege of the state to refuse to disclose the identity of an informer is well established in Maine as elsewhere. State v. Fortin, 106 Me. 382, 76 A. 896 (1910). It reflects a recognition that effective use of informers in law enforcement compels protection of their anonymity."

The advisory committee notes on the rules of evidence also provide:

> "It is only the identity of the informer that need not be revealed. The content of what he says is not privileged except to the extent necessary to conceal his identity." Thus documents which have been prepared by the Department subsequent to a complaint from an individual or documents received from that individual should be considered public records but those documents, or copies of the documents which are made public, may be altered in such a manner that they give no indication of the identity of the informant.
>
> Pursuant to the provisions of 4 M.R.S.A. § 9-A the Rules of Evidence have the full force and effect of law and preempt laws with which they conflict. No conflict, however, is suggested in this case between the rules of evidence and the revised definition of public records.
>
> The second exception to the public documents definition, & 402-A exempts: "Records that would be within the scope of a privilege against discovery or use as evidence as recognized by the courts of this State in civil or criminal trials, if the records or inspection thereof were sought in the course of a court proceeding." This exception protects all materials which, if they were involved in a court proceeding, would be privileged against discovery. It protects these materials now under existing court decisions. It protects them in the future under Rule 509. Thus, it is the view of this office that State Departments may, pursuant to section 402-A, decline to disclose the names of persons who have presented complaints of violations of law.
>
> s/Joseph E. Brennan
> Joseph E. Brennan
> Attorney General

RULE 509. IDENTITY OF INFORMER

(a) Rule of privilege. The United States, a state or subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(b) Who may claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

(c) Exceptions.

(1) Voluntary Disclosure; Informer a Witness. No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the government.

(2) Testimony on Relevant Issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a civil or criminal case to which a public entity is a party, and the informed public entity invokes the privilege, the court may give the public entity an opportunity to show in camera and on the record facts relevant to determining whether the informer can, in fact, supply that testimony. The showing may be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give relevant testimony, the court on motion of a party or on its own motion may enter a conditional order for appropriate relief, to be granted if the public entity elects not to disclose within the time specified the identity of such informer. In a criminal case such relief may include one or more of the following: granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges. In a civil case the court may provide any relief that the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and a docket entry shall be made specifying the form of such evidence but not its content or the identity of any declarant. The contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except at a showing in camera at which only counsel for the public entity shall be permitted to be present.

ADVISERS' NOTE

The privilege of the state to refuse to disclose the identity of an informer is well settled in Maine as elsewhere. State v. Fortin, 106 Me. 382, 76 A. 896 (1910). It reflects a recognition that effective use of informers in law enforcement compels protection of their anonymity. It is only the identity of the informer that need not be revealed. The content of what he says is not privileged except to the extent necessary to conceal his identity. The reference to "any foreign country" is designed especially to preserve the privilege of Canadian police officials not to disclose the identity of an informer.

The exceptions to the privilege set forth in subdivision (c) seem entirely reasonable although there is no Maine case law dealing with them. When the informer's identity has been disclosed to "those who would have cause to resent the communication", a phrase from Roviaro v. United States, 353 U.S. 53, 60, 77 S.Ct. 623, 627 (1957), there is no longer a reason for the privilege. The same is true if the informer appears as a witness. Subsection (c)(2) is built chiefly from the teachings of Roviaro v. United States, supra, the leading case. The informer privilege cannot be used to suppress the identity of a witness when the right of the accused to prepare his defense outweighs the public interest in protecting the flow of information. The ruse lays out a procedure for determining whether the informer can supply relevant testimony, including proceedings in camera at the state's request, with a provision for sealing and preserving evidence so as to make it available in event of an appeal. An appeal in which the appellant cannot know what the sealed evidence is poses obvious practical difficulties, but there is at least some possibility of effective review. The rule further prescribes what happens when the state elects not to disclose the informer's identity. The usual result in a criminal case would be a dismissal of the charges, but there are other options open to the court.