

Maine Freedom of Access Act
Government Employee Personnel Records

Confidential

- A. Applications resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, are confidential *until the applicant is hired*, at which point they become public records.
- B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.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. 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;
 - (5) 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;
 - (6) 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
 - (7) 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.
- D. A public employee's personal contact information – home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number – is confidential. 1 M.R.S.A. § 402(3)(O).
- E. Other information to which access is prohibited by law.
- F. Most school employee information, except for public "record of directory information" containing:
 - (1) Name;
 - (2) Dates of employment;

- (3) Regular and extracurricular duties, including all courses taught in that school administrative unit;
- (4) Post-secondary educational institutions attended;
- (5) Major and minor fields of study recognized by the post-secondary institutions attended; and
- (6) Degrees received and dates awarded.

Public

For "personnel records" confidentiality restrictions apply only to an "identifiable employee" ... do the records concern an independent contractor? A volunteer? An elected official (who is not an employee)? If so, *none* of the confidentiality restrictions apply.

- A. Employment agreement
- B. Separation agreement, termination or resignation letters, except to the extent they contain medical information, or other information specifically identified as confidential, above.
- C. Public employee salaries and benefits.
- D. Expense reports
- E. Title or position
- F. Work schedule
- G. Applications and resumes *after* the employee is hired, subject to redaction of home address and personal (non-work) contact information, as mentioned above.
- H. Performance evaluations and personal references *not* submitted in confidence
- I. If disciplinary action is taken against the employee, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. A "final written decision" means a written administrative decision that is not appealed pursuant to a grievance arbitration procedure. 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.
- J. If no disciplinary action is taken, then 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 remains confidential.
- K. 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. 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;

- L. **Investigation of deadly force or physical force by law enforcement officer.** The name of a law enforcement officer is not confidential in cases involving:

- (1) The use of deadly force by a law enforcement officer; or
- (2) The use of physical force by a law enforcement officer resulting in death or serious bodily injury.

In cases specified in paragraphs 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.

- F. Any *other* information / record to which access is *not* prohibited by law.

Sources: 5 M.R.S. § 7070 (state)
 30-A M.R.S. § 2702 (municipal)
 30-A M.R.S. § 503 (county)
 20-A M.R.S. § 6101 (schools)
 Guy Gannett Pub. Co. v. Univ. of Maine, 555 A.2d 470 (1989)