FOA section by section

Updated 8/31/2011

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
TITLE 1 **GENERAL PROVISIONS** **CHAPTER 13** **PUBLIC RECORDS AND PROCEEDINGS** **SUBCHAPTER 1** **FREEDOM OF ACCESS**		
§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.	Declaration of public policy • Reason for public proceedings is to aid in the people's business • Actions be taken openly • Records open • Deliberations open • Clandestine meetings on private property without notice not be used to defeat purposes	• Party alleging violation of FOA has burden of producing evidence that Act violated[1] • The Act's underlying purposes and policies favor disclosure[2]
This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.		• New 2011
This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.	Liberally construe and apply to promote underlying purposes and policies	• Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo[3]
§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] Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.
[2] Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.
[3] Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

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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.	*Legislative subcommittee* must consist of at least 3 members and be 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:	*Public proceeding*: transactions of any functions affecting any or all citizens of the State by listed entities	
A. The Legislature of Maine and its committees and subcommittees;	• Legislature and 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;	• Any board or commission of any state agency or authority • Boards of trustees of state educational institutions and their committees and subcommittees	• Hospital Administrative District subject to FOA laws[4] • "Special civil service study committee" of municipality subject to FOA laws[5] • Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action[6]
C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;	• Board, commission agency, authority of political or administrative subdivision	• Local school boards subject to FOA laws[7] • Indian tribes when acting in their municipal capacities are subject state laws affecting municipal governments, including

[4] Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.
[5] Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).
[6] Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.
[7] Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

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		FOA laws[8] • A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement. [9]
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;	• Full membership meetings of associations of political or administrative subdivisions	
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;	• Maine Public Broadcasting Corporation	
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; and	• Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws	
G. The committee meetings, subcommittee meetings and full membership meetings of any association that: (1) Promotes, organizes or regulates	• Statewide interscholastic organizations that receive funding from public or private	

[8] Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.
[9] Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

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statewide interscholastic activities in public schools or in both public and private schools; and (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities. This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.	schools and are meeting in regard to interscholastic activities. • It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility.	
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:	Public records defined • Written, printed, graphic, mechanical or electronic • In possession or custody of agency, official or association • Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or governmental business • EXCEPTIONS:	• Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure[10] • The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or individual, individually or collectively, qualifies as "an agency or public official."[11]
A. Records that have been designated confidential by statute;	• Designated confidential by statute (see other statutes)	• The plain language of the corporation statute does not provide that specific document is confidential,

[10] Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).
[11] Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

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		nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential[12] • The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).[13]
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;	• Within scope of a privilege against discovery or use in civil or criminal trials	• Compensation records of hospital district's management employees not "trade secrets"[14] • "Work product" • Privilege against self-incrimination • Record subject to a court-issued protective order[15] • Compensation records of insurer's board of directors and senior management not "trade secrets"[16]
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;	• Legislative papers during the legislative session until signed and publicly distributed • Working papers of legislators and staff for the session or sessions	• The attorney-client privilege does not protect communications in litigation between adverse parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.[17]
C-1. Information contained in a		• New 2011

[12] Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.
[13] S. Portland Police Patrol Ass'n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.
[14] Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.
[15] Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).
[16] Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.
[17] Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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communication between a constituent and an elected official if the information: (1) Is of a personal nature, consisting of: (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; (b) Credit or financial information; (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family; (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or (e) An individual's social security number; or (2) Would be confidential if it were in the possession of another public agency or official;		
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;	• Public employer labor negotiation materials	
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;	• Faculty and administrative records of state educational institutions, other than boards of trustees	
F. Records that would be confidential if	• Otherwise confidential	

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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;	but in the hands of association	
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;	• Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State	
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;	• Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations	
I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;	• Juvenile fire starter records	
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;	• Advisory/study commission working papers	
K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory	• Personally identifying information concerning minors collected/maintained by	• Sections of an independent report of a school employment controversy must be redacted if they

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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;	municipality for recreational and nonmandatory educational services and programs IF ordinance adopted	touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)).[18]
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;	• Security plans, security procedures, risk assessments to prepare/ prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure	
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;	• Information technology infrastructure information	
N. Social security numbers;	• Social Security Numbers	• Amended 2011 - see also new ¶R (was limited to SSNs in possession of IF&W)

[18] Cyr v. Madawaska School Dept., 2007 ME 26, 916 A.2d 967.

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O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph: (1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and (2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;	• Personal contact information for certain public employees	
P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;	• Geographical information of recreational trails located on private land, unless landowner authorizes release	
Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; and	• Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties.	

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R. Social security numbers in the possession of the Secretary of State.		• New 2011 - see ¶N
3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:	• More public 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;	• Public	
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	• Public	
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.	• Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose	
4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.		
§402-A. Public records defined (REPEALED)	(now part of §402)	
§403. Meetings to be open to public; record of meetings		
1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.	Public proceedings open to public unless • Otherwise provided by statute • Authorized executive session pursuant to §405 Required record/minutes open to public inspection	
2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made		• New 2011

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within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include: A. The date, time and place of the public proceeding; B. The members of the body holding the public proceeding recorded as either present or absent; and C. All motions and votes taken, by individual member, if there is a roll call.		
3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.		• New 2011
4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.		• New 2011
5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.		• New 2011
6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.		• New 2011

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these	Writing, taping, filming, live broadcasts authorized if does not interfere with orderly conduct of proceedings	• Unemployment Insurance Commission proceedings not open to the public so no right to independently record proceeding[19]

[19] Martin v. Unemployment Insurance Commission, 1998 ME 271, 723 A.2d 412.

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activities, so long as these rules or regulations do not defeat the purpose of this subchapter.		
§404-A. Decisions (REPEALED)	(see now §407)	
§405. Executive sessions		
Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.	Executive sessions may be held subject to the following:	
1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.	• Not to defeat purposes of FOA	
2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at executive session.	• Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action	• Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel[20]
3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.	• Must have 3/5s of the vote of the members present and voting	
4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.	• The precise nature of the business to be conducted in executive session must be part of the motion	• Record clearly established that Board of Selectmen, before going into executive session to discuss pending litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law[21]

[20] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[21] Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).

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5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.	• Motions not contained in the motion are prohibited	
6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:	Only the following deliberations may be conducted during an executive session:	• Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws[22] • Any statutory exceptions to the requirement that deliberations be public must be narrowly construed[23]
A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or person or persons subject to the following conditions:	• Discussion of employment issues, subject to the following limitations	
(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;	• Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy	• The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.[24]
(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;	• The individual can choose to be present	
(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints	• If the individual requests in writing that the proceeding be open to the public, the	

[22] Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).
[23] Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).
[24] Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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against him be conducted in open session. A request, if made to the agency, must be honored; and	agency must open the proceeding; and	
(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.	• The person filing the complaint may choose to be present	
This paragraph does not apply to discussion of a budget or budget proposal;	• This paragraph cannot be used to discuss budget issues in executive session.	• Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.[25]
B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:	A school board's discussion of the suspension or expulsion of a student, with the following restriction	
(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire.	• The student, parents/guardians, legal counsel may choose to be present	
C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;	Discussion of property issues that would prejudice the competitive or bargaining position of the public body	
D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives	Negotiations between a public employer and public employees	

[25] Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;		
E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	• The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception[26]
F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;	Discussion of records made confidential by statute	
G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and	Discussions of professional licensing decisions	
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E without the requirement that CEO be an attorney	
§405-A. Recorded or live broadcasts authorized (REPEALED)	(see now §404)	

[26] Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

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§405-B. Appeals (REPEALED)	(see now §409)	
§ 405-C. Appeals from actions (REPEALED)	(see now §409)	
§406. Public notice		
Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.	• Notice required if agency or body consists of at least 3 persons • Timing: ample time to allow public attendance • Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body • Emergency meeting: notify representatives of local media whenever practical. By same or faster means	• One day notice of planning board's additional meeting sufficient under the circumstances[27]
§407. Decisions		

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.	• Written record of conditional approval or denial
	  • Reason/reasons
	  • Findings of fact
		• FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the decision[28]
		• When local agency conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review[29]

[27] Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.
[28] Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.
[29] Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.

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2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.	• Written record of dismissal or refusal to renew a contract of official, employee, appointee • Reason/reasons • Findings of fact	• The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.[30]
§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. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.	• Every person • Right to inspect and copy • During regular business hours • Within a reasonable period of time after request	• When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy" the information sought[31]
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.	• Translation, inspection and copying scheduled to not delay or inconvenience regular activities • Cost of copying paid by requestor	
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	• Reasonable fee • Actual cost of searching for, retrieving and compiling of max of $10/hour after first hour • "Compiling" includes	

[30] Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.
[31] Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

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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.	reviewing and redacting	
	• Pay State costs to translate	
C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.	• No fee for inspection	
	• Estimate of costs	
D. An agency or official may not charge for inspection.	• Notify requestor if greater than $20	
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.	• If greater than $100, see subsection 5	
	• Payment in advance	
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.	• Waiver of fees	
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 doing so 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		

FOA section by section

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1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must 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, 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 are 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.	• Refusal of inspection or copying must be
	  • In writing
	  • Within 5 working days of request
	• Appeal from denial within 5 working days of denial to Superior Court
	• Court may issue order of disclosure
	• Expedited
		• Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request[32]
		• In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling Marxsen v. Board of Directors, 591 A.2d 867).[33]

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 is illegal and the officials responsible are 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 are 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.	• Approval of official action in executive session is illegal; officials subject to penalties • Superior Court shall declare action null and void if action taken illegally • Expedited	• Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)[34] • Burden of proof on agency to establish "just and proper cause" for denial of a FOA request[35] • Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.[36]
3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.	• Other civil remedies available	
4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable	• Reasonable attorney's fees and litigation expenses	

[32] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).
[33] Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.
[34] Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).
[35] Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.
[36] Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe. This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.	maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith	
§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.	• Willful = intentional or knowing • Agency or entity liable for civil violation; fine of up to $500	• Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative[37] • Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine[38] • If a requesting party has undertaken successful appeal of denial, that party is entitled to costs[39]
§411. Right To Know Advisory Committee **1. Advisory committee established.** The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business. **2. Membership.** The advisory committee consists of the following members: A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over		

[37] Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.
[38] Scola v. Town of Sanford,1987 ME 119, 695 A.2d 1194.
[39] Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

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judiciary matters, appointed by the President of the Senate; B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; C. One representative of municipal interests, appointed by the Governor; D. One representative of county or regional interests, appointed by the President of the Senate; E. One representative of school interests, appointed by the Governor; F. One representative of law enforcement interests, appointed by the President of the Senate; G. One representative of the interests of State Government, appointed by the Governor; H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; I. One representative of newspaper and other press interests, appointed by the President of the Senate; J. One representative of newspaper publishers, appointed by the Speaker of the House; K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and M. The Attorney General or the Attorney General's designee.		

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The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about

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the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making the information publicly available; E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which		

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that information may appropriately be released; G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and K. May undertake other activities consistent with its listed responsibilities. **7. Outside funding for advisory committee activities.** The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative		

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Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.		
8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.		
9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.		
10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.		
§412 Public records and proceedings training for certain elected officials		
1. Training required. Beginning July		

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1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008. **2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in: **A.** The general legal requirements of this chapter regarding public records and public proceedings; **B.** Procedures and requirements regarding complying with this chapter; **C.** Penalties and other consequences for failure to comply with this chapter. An elected official meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information. **3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. **4. Application.** This section applies to the following elected officials:		

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A. The Governor;		
B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;		
C. Members of the Legislature elected after November 1, 2008;		
D. Deleted. Laws 2007, c. 576, §2.		
E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;		
F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;		
G. Officials of school units and school boards; and		
H. Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.		
SUBCHAPTER 1-A		(headnote revised 2011)
PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY		
§431. Definitions		
As used in this subchapter, unless the context otherwise indicates, the following terms		

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have the following meanings. **1. Public records exception.** "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1. **2. Review committee.** "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters. **3. Advisory committee.** "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411. **§432. Exceptions to public records; review** **1. Recommendations.** During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions. **2. Process of evaluation.** According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged: **A.** Whether a record protected by the exception still needs to be collected and maintained; **B.** The value to the agency or official or to the public in maintaining a record		• Amended 2011

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protected by the exception; **C.** Whether federal law requires a record to be confidential; **D.** Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records; **E.** Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records; **F.** Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records; **G.** Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; **H.** Whether the exception is as narrowly tailored as possible; and **I.** Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception. **2-A. Accountability review of agency or official.** In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		

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2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.		
2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		• New 2011
3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.		
§433. Schedule for review of exceptions to public records		
1. Scheduling guidelines. (repealed)		
2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.		
A. Exceptions codified in the following Titles are scheduled for review in 2008:		
(1) Title 1;		
(2) Title 2;		
(3) Title 3;		
(4) Title 4;		
(5) Title 5;		
(6) Title 6;		
(7) Title 7;		
(8) Title 8;		

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(9) Title 9-A; and

(10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

(1) Title 10;

(2) Title 11;

(3) Title 12;

(4) Title 13;

(5) Title 13-B;

(6) Title 13-C;

(7) Title 14;

(8) Title 15;

(9) Title 16;

(10) Title 17;

(11) Title 17-A;

(12) Title 18-A;

(13) Title 18-B;

(14) Title 19-A;

(15) Title 20-A; and

(16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

(1) Title 22;

(2) Title 23;

(3) Title 24;

(4) Title 24-A; and

(5) Title 25.

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D. Exceptions codified in the following Titles are scheduled for review in 2014: (1) Title 26; (2) Title 27; (3) Title 28-A; (4) Title 29-A; (5) Title 30; (6) Title 30-A; (7) Title 31; (8) Title 32; (9) Title 33; (10) Title 34-A; (11) Title 34-B; (12) Title 35-A; (13) Title 36; (14) Title 37-B; (15) Title 38; and (16) Title 39-A.		
3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.		
§434. Review of proposed exceptions to public records		
1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal		• Amended 2011

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among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.		
2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:		
A. Whether a record protected by the proposed exception needs to be collected and maintained;		
B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;		
C. Whether federal law requires a record covered by the proposed exception to be confidential;		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially		

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outweighs the public interest in the disclosure of records;		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;		
H. Whether the proposed exception is as narrowly tailored as possible; and		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.		
2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		• New 2011
3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.		• Amended 2011

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