

## MRS Title 1, Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

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Subchapter 1: FREEDOM OF ACCESS HEADING: PL 1975, c. 758 (rpr)

**1 §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. [1975, c. 758, (RPR).]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [1975, c. 758, (RPR).]

SECTION HISTORY

1975, c. 483, §1 (AMD). 1975, c. 758, (RPR).

**1 §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.

[ 1975, c. 758, (NEW) .]

**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.

[ 1991, c. 773, §1 (NEW) .]

**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; [1975, c. 758, (NEW).]

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 Community College System and any of its committees and subcommittees; [1989, c. 358, §1 (AMD); 1989, c. 443, §1 (AMD); 1989, c. 878, Pt. A, §1 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [1991, c. 848, §1 (AMD).]

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; [1995, c. 608, §1 (AMD).]

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 [1995, c. 608, §2 (AMD).]

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. [1995, c. 608, §3 (NEW).]

[1995, c. 608, §§1-3 (AMD); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

**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; [1975, c. 758, (NEW).]

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; [1975, c. 758, (NEW).]

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; [1991, c. 773, §2 (AMD).]

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; [1989, c. 358, §4 (AMD).]

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community 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; [1989, c. 358, §4 (AMD); 1989, c. 443, §2 (AMD); 1989, c. 878, Pt. A, §2 (RPR); 2003, c. 20, Pt. OO, §2 (AMD); 2003, c. 20, Pt. OO, §4 (AFF).]

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; [1991, c. 448, §1 (AMD).]

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; [1991, c. 448, §1 (AMD).]

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; [1995, c. 608, §4 (AMD).]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [1999, c. 96, §1 (AMD).]

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; [2001, c. 675, §1 (AMD).]

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; [2003, c. 392, §1 (AMD).]

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; [2003, c. 614, §1 (AMD).]

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; [2005, c. 381, §1 (AMD).]

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and [2005, c. 381, §2 (AMD).]

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 of a governmental entity, as defined in Title 14, section 8102, subsection 2, except that "public employee" does not include elected officials. [2005, c. 381, §3 (NEW).]

[2005, c. 381, §§1-3 (AMD).]

**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; [1997, c. 714, §1 (NEW).]

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 [2001, c. 477, §1 (AMD).]

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. [2001, c. 477, §1 (AMD).]

[2001, c. 477, §1 (AMD).]

SECTION HISTORY

1973, c. 433, §1 (AMD). 1975, c. 483, §2 (AMD). 1975, c. 243, (RPR). 1975, c. 758, (RPR). 1977, c. 164, §§1,2 (AMD). 1977, c. 696, §9 (AMD). 1985, c. 695, §§1,2 (AMD). 1985, c. 779, §§1,2 (AMD). 1987, c. 20, §1 (AMD). 1987, c. 402, §A1 (AMD). 1987, c. 477, §1 (AMD). 1989, c. 358, §§1-4 (AMD). 1989, c. 443, §§1,2 (AMD). 1989, c. 878, §§A1,2 (AMD). 1991, c. 448, §§1,2 (AMD). 1991, c. 773, §§1,2 (AMD). 1991, c. 848, §1 (AMD). 1995, c. 608, §§1-5 (AMD). 1997, c. 714, §1 (AMD). 1999, c. 96, §§1-3 (AMD). 2001, c. 477, §1 (AMD). 2001, c. 675, §§1-3 (AMD). 2003, c. 20, §002 (AMD). 2003, c. 392, §§1-3 (AMD). 2003, c. 614, §§1-3 (AMD). 2003, c. 20, §004 (AFF). 2005, c. 381, §§1-3 (AMD).

## **1 §402-A. Public records defined**

*(REPEALED)*

### SECTION HISTORY

1975, c. 483, §3 (NEW). 1975, c. 758, (RP). 1975, c. 623, §1 (RPR).

## **1 §403. Meetings to be open to public**

Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall be made promptly and shall be open to public inspection. [1975, c. 758, (RPR).]

### SECTION HISTORY

1969, c. 293, (AMD). 1975, c. 422, §1 (AMD). 1975, c. 758, (RPR).

## **1 §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 activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [1975, c. 758, (RPR).]

### SECTION HISTORY

1975, c. 483, §4 (AMD). 1975, c. 422, §2 (RPR). 1975, c. 758, (RPR).

## **1 §404-A. Decisions**

*(REPEALED)*

### SECTION HISTORY

1973, c. 433, §2 (NEW). 1973, c. 704, §§1,2 (AMD). 1975, c. 758, (RP).

## **1 §405. Executive sessions**

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW).]

**1. Not to defeat purposes of subchapter.** These sessions shall not be used to defeat the purposes of this subchapter as stated in section 401.

[ 1975, c. 758, (NEW) . ]

**2. Final approval of certain items prohibited.** No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved at executive sessions.

[ 1975, c. 758, (NEW) . ]

**3. Procedure for calling of executive sessions.** Executive sessions may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[ 1975, c. 758, (NEW) . ]

**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.

[ 2003, c. 709, §1 (AMD) . ]

**5. Matters not contained in motion prohibited.** No other matters may be considered in that particular executive session.

[ 1975, c. 758, (NEW) . ]

**6. Permitted deliberation.** Deliberations may be conducted in executive sessions on the following matters and no others:

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 persons subject to the following conditions:

- (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;
- (2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;
- (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and
- (4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion shall be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [1987, c. 769, Pt. A, §1 (RPR) . ]

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, provided that:

- (1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire. [1979, c. 541, Pt. A, §3 (AMD) . ]

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; [1987, c. 477, §3 (AMD).]

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 of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR).]

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 counsel to his 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. [1975, c. 758, (NEW).]

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; [1999, c. 180, §1 (AMD).]

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 [1999, c. 180, §2 (AMD).]

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. [1999, c. 180, §3 (NEW).]

[ 1999, c. 144, §1 (AMD); 1999, c. 180, §§1-3 (AMD) .]

#### SECTION HISTORY

1975, c. 758, (RPR). 1979, c. 541, §A3 (AMD). 1987, c. 477, §§2,3 (AMD). 1987, c. 769, §A1 (AMD). 1999, c. 40, §§1,2 (AMD). 1999, c. 144, §1 (AMD). 1999, c. 180, §§1-3 (AMD). 2003, c. 709, §1 (AMD).

### **1 §405-A. Recorded or live broadcasts authorized**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

### **1 §405-B. Appeals**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

### **1 §405-C. Appeals from actions**

*(REPEALED)*

#### SECTION HISTORY

1975, c. 483, §5 (NEW). 1975, c. 758, (RP).

## 1 §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. [1987, c. 477, §4 (AMD).]

### SECTION HISTORY

1975, c. 483, §6 (AMD). 1975, c. 758, (RPR). 1987, c. 477, §4 (AMD).

## 1 §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 appraise 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.

[ 1975, c. 758, (NEW) .]

**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 appraise 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.

[ 1975, c. 758, (NEW) .]

### SECTION HISTORY

1975, c. 758, (NEW).

## 1 §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.

[ 2003, c. 709, §2 (NEW) .]

**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.

[ 2003, c. 709, §2 (NEW) .]

**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. [2003, c. 709, §2 (NEW).]

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. [2003, c. 709, §2 (NEW).]

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation. [2003, c. 709, §2 (NEW).]

D. An agency or official may not charge for inspection. [2003, c. 709, §2 (NEW).]

[2003, c. 709, §2 (NEW) .]

**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.

[2003, c. 709, §2 (NEW) .]

**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 [2003, c. 709, §2 (NEW) .]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [2003, c. 709, §2 (NEW) .]

[2003, c. 709, §2 (NEW) .]

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

A. The requester is indigent; or [2003, c. 709, §2 (NEW) .]

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. [2003, c. 709, §2 (NEW) .]

[2003, c. 709, §2 (NEW) .]

#### SECTION HISTORY

1975, c. 758, (NEW). 2003, c. 709, §2 (RPR).

## 1 §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.

[1987, c. 477, §5 (AMD) .]

**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.

[ 1975, c. 758, (NEW) .]

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

[ 1975, c. 758, (NEW) .]

#### SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §5 (AMD).

### 1 §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. [1987, c. 477, §6 (RPR).]

#### SECTION HISTORY

1975, c. 758, (NEW). 1987, c. 477, §6 (RPR).

### 1 §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.

[ 2005, c. 631, §1 (NEW) .]

**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 judiciary matters, appointed by the President of the Senate; [2005, c. 631, §1 (NEW) .]

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; [2005, c. 631, §1 (NEW) .]

C. One representative of municipal interests, appointed by the Governor; [2005, c. 631, §1 (NEW) .]

D. One representative of county or regional interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW) .]

E. One representative of school interests, appointed by the Governor; [2005, c. 631, §1 (NEW) .]

F. One representative of law enforcement interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW) .]

G. One representative of the interests of State Government, appointed by the Governor; [ 2005, c. 631, §1 (NEW). ]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [ 2005, c. 631, §1 (NEW). ]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [ 2005, c. 631, §1 (NEW). ]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [ 2005, c. 631, §1 (NEW). ]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [ 2005, c. 631, §1 (NEW). ]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and [ 2005, c. 631, §1 (NEW). ]

M. The Attorney General or the Attorney General's designee. [ 2005, c. 631, §1 (NEW). ]

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.

[ 2005, c. 631, §1 (NEW) . ]

**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. [ 2005, c. 631, §1 (NEW). ]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [ 2005, c. 631, §1 (NEW). ]

C. Members may serve beyond their designated terms until their successors are appointed. [ 2005, c. 631, §1 (NEW). ]

[ 2005, c. 631, §1 (NEW) . ]

**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.

[ 2005, c. 631, §1 (NEW) . ]

**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.

[ 2005, c. 631, §1 (NEW) . ]

**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; [ 2005, c. 631, §1 (NEW). ]

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 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; [ 2005, c. 2, §1 (COR). ]

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; [2005, c. 2, §1 (COR).]

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; [2005, c. 631, §1 (NEW).]

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; [2005, c. 631, §1 (NEW).]

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 that information may appropriately be released; [2005, c. 631, §1 (NEW).]

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; [2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [2005, c. 631, §1 (NEW).]

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; [2005, c. 631, §1 (NEW).]

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 [2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [2005, c. 631, §1 (NEW).]

[ 2005, c. 2, §1 (COR) .]

**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 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.

[ 2005, c. 631, §1 (NEW) .]

**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.

[ 2005, c. 631, §1 (NEW) .]

**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.

[ 2005, c. 631, §1 (NEW) .]

**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.

[ 2005, c. 631, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 631, §1 (NEW). RR 2005, c. 2, §1 (COR).

## **1 §412. Public records and proceedings training for certain elected officials**

**1. Training required.** Beginning July 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.

[ 2007, c. 349, §1 (NEW) .]

**2. Approval by advisory committee; minimum requirements.** The training course under subsection 1 must be approved by the advisory committee. The training 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;

[2007, c. 349, §1 (NEW).]

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and [2007, c. 349, §1 (NEW).]

C. Penalties and other consequences for failure to comply with this chapter. [2007, c. 349, §1 (NEW) .]

[ 2007, c. 349, §1 (NEW) .]

**3. Certification of completion.** Upon completion of the training course under subsection 1, the elected official shall send a written or an electronic notification to the advisory committee attesting to the fact that the training has been completed. The advisory committee shall maintain a record of those elected officials who have completed the training required by this section and make that record available to the public in accordance with the requirements of this chapter.

[ 2007, c. 349, §1 (NEW) .]

**4. Application.** This section applies to:

A. The Governor; [2007, c. 349, §1 (NEW).]

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; [2007, c. 349, §1 (NEW).]

C. Members of the Legislature; and [2007, c. 349, §1 (NEW).]

D. An elected official of a county, municipality, school district or school board or any regional or other political subdivision who, as part of the duties of the office, exercises executive or legislative powers. [2007, c. 349, §1 (NEW).]

[ 2007, c. 349, §1 (NEW) .]

#### SECTION HISTORY

2007, c. 349, §1 (NEW).

Subchapter 1-A: EXCEPTIONS TO PUBLIC RECORDS HEADING: PL 2003, c. 709, §3 (new)

### 1 §431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 709, §3 (NEW).]

**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.

[ 2003, c. 709, §3 (NEW) .]

**2. Review committee.** "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

[ 2003, c. 709, §3 (NEW) .]

**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.

[ 2005, c. 631, §2 (NEW) .]

#### SECTION HISTORY

2003, c. 709, §3 (NEW). 2005, c. 631, §2 (AMD).

### 1 §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. 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.

[ 2005, c. 631, §3 (AMD) .]

**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; [ 2003, c. 709, §3 (NEW). ]
- B. The value to the agency or official or to the public in maintaining a record protected by the exception; [ 2003, c. 709, §3 (NEW). ]
- C. Whether federal law requires a record to be confidential; [ 2003, c. 709, §3 (NEW). ]
- 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; [ 2003, c. 709, §3 (NEW). ]
- 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; [ 2003, c. 709, §3 (NEW). ]
- 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; [ 2003, c. 709, §3 (NEW). ]
- 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; [ 2003, c. 709, §3 (NEW). ]
- H. Whether the exception is as narrowly tailored as possible; and [ 2003, c. 709, §3 (NEW). ]
- 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. [ 2003, c. 709, §3 (NEW). ]

[ 2005, c. 631, §3 (AMD) . ]

**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.

[ 2005, c. 631, §3 (NEW) . ]

**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.

[ 2005, c. 631, §3 (NEW) . ]

**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.

[ 2005, c. 631, §3 (AMD) . ]

#### SECTION HISTORY

2003, c. 709, §3 (NEW). 2005, c. 631, §3 (AMD).