

LINCOLN COUNTY SHERIFF'S OFFICE RULES AND REGULATIONS

SUBJECT: PUBLIC ACCESS TO RECORDS

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AMENDS/SUPERSEDES: 10/13/1999
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APPROVED


Sheriff Todd B. Brackett

I. POLICY:

It is the policy of the Lincoln County Sheriff's Office, in accordance with the Freedom of Access Act¹, to provide public access to the public records of this agency. It is also the policy of this agency to protect the integrity of confidential records. Among such confidential records are those declared confidential by the Freedom of Access Act, the Criminal History Information Act², certain personnel records of municipal, county, and state agencies³, certain E-911 records⁴, intelligence information⁵, and such other confidential records that may come into possession of this agency.

II. PURPOSE:

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

III. DEFINITIONS:

- A. **Confidential Records.** "Confidential Records" are records exempt from public access. They are not public records.
- B. **Conviction Data.** "Conviction Data" means criminal history record information other than nonconviction data.⁶ Conviction data generally constitutes public records.
- C. **Criminal History Record Information.** "Criminal History Record Information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.⁷

¹ 1 M.R.S.A. § 401 et seq.

² 16 M.R.S.A. § 611 et seq.

³ 30-A M.R.S.A. §§ 2702 and 503, and 5 M.R.S.A. § 7070, respectively

⁴ 25 M.R.S.A. § 2929

⁵ 29 CFR, part 23

⁶ 16 M.R.S.A. § 611(2)

⁷ 16 M.R.S.A. § 611(3)

- D. Dissemination.** "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency that maintains the information.⁸
- E. Intelligence and Investigative Information.** Information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and Investigative Information" does not include information that is criminal history record information.⁹
- F. Nonconviction Data.** "Nonconviction Data" means criminal history record information of the following types: (1) arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial; (2) information disclosing that the police have elected not to refer a matter to a prosecutor; (3) information disclosing that a prosecutor has elected not to commence criminal proceedings; (4) information disclosing that criminal proceedings have been indefinitely postponed, e.g., a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial; (5) a dismissal; (6) an acquittal, excepting an acquittal by reason of mental disease or defect; and (7) information disclosing that a person has been granted a full and free pardon or amnesty.¹⁰ Nonconviction Data is generally confidential, i.e., not subject to public access.
- G. Public.** *Every person* shall have the right to inspect and copy any public record.¹¹
- H. Public Records.** Generally, with certain exceptions as indicated below under Section IV, any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business.¹²
- I. Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.¹³

⁸ 16 M.R.S.A. § 611(6)

⁹ 16 M.R.S.A. § 611(8)

¹⁰ 16 M.R.S.A. § 611(9)

¹¹ 1 M.R.S.A. § 408

¹² 1 M.R.S.A. § 402(3)

¹³ 16 M.R.S.A. § 611(12)

IV. PROCEDURE:

- A. Every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay in advance the cost of translation and both translation and inspection 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 record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.¹⁴
- B. Generally, while perhaps desirable for the purpose of recordkeeping, a person requesting to inspect or copy a public record is not required to provide identification or otherwise disclose to the agency or custodian of the public record the person's identity or affiliation, or the reason for the request. Refusal to allow inspection or copying of a public record may not be based upon a person's declination to provide identification or to disclose the reason for the request. *(See Section E, subsection 14, below for an exception to the general prohibition of requiring identification of a person requesting to inspect certain records.)*
- C. Generally, while perhaps desirable for purposes of recordkeeping, a person requesting to inspect or copy a public record is not required to put the request in writing.
- D. If the agency or custodian refuses public access to a record or records, the denial and the reason for the denial must be provided in writing to the person making the request within five (5) working days of the request. Failing to grant or deny the request within five (5) working days of the request constitutes a denial to permit inspection or copying of the public record. A person denied access may appeal the denial to the Superior Court within five (5) working days of the denial.¹⁵
- E. Records that are *confidential* records and that may not be disseminated include, but are not limited to (with such exceptions as noted):

Freedom of Access Act

(1) *Records that have been designated confidential by statute;*¹⁶

(2) *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;*¹⁷

¹⁴ 1 M.R.S.A. § 408

¹⁵ 1 M.R.S.A. § 409

¹⁶ 1 M.R.S.A. §402(3)(A)

¹⁷ 1 M.R.S.A. §402(3)(B)

- (3) *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;¹⁸
- (4) *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;¹⁹
- (5) *Juvenile records* and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;²⁰
- (6) *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.²¹

E-911 Confidentiality

- (7) *E-911 confidential information* is information listed below as contained in any database, report, audio recording or other record of a Public Safety Answering Point (PSAP):²²
- (a) The names, addresses and telephone numbers of persons listed in E-9-1-1 databases;²³
- (b) Customer information, described in Title 35-A, section 7501, subsection 1, that is omitted from a telephone utility directory list at the request of a customer;²⁴

¹⁸ 1 M.R.S.A. §402(3)(D)

¹⁹ 1 M.R.S.A. §402(3)(H)

²⁰ 1 M.R.S.A. §402(3)(I)

²¹ 1 M.R.S.A. § 402(3)(L)

²² 25 M.R.S.A. § 2929(1)

²³ 25 M.R.S.A. § 2929(1)(A)

²⁴ 25 M.R.S.A. § 2929(1)(B)

- (c) The name, address and telephone number of a caller to a public safety answering point;²⁵ or
- (d) The name, address and telephone number of and any medical information about a person receiving emergency services through the E-9-1-1 system.²⁶

(8) E-911 confidential information may not be disclosed in any manner except:²⁷

- (a) A PSAP may disclose confidential information to public or private safety agencies and emergency responders for purposes of processing emergency calls and providing emergency services;²⁸
- (b) A PSAP may disclose confidential information to a law enforcement officer or law enforcement agency for the purpose of criminal investigations related to an E-9-1-1 call;²⁹
- (c) A PSAP may disclose confidential information to the Emergency Services Communications Bureau (ESCB) for the purpose of system maintenance and quality control;³⁰ and
- (d) The ESCB bureau director may disclose confidential information to PSAP's, public or private safety agencies, emergency responders or others within the E-911 system to the extent necessary to implement and manage the E-911 system.³¹

Criminal History Record Information – Nonconviction Data

(9) Except as noted below in section (10), dissemination of *nonconviction data* is limited to:³²

- (a) Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;³³

²⁵ 25 M.R.S.A. § 2929(1)(C)

²⁶ 25 M.R.S.A. § 2929(1)(D)

²⁷ 25 M.R.S.A. § 2929(2)

²⁸ 25 M.R.S.A. § 2929(2)(A)

²⁹ 25 M.R.S.A. § 2929(2)(B)

³⁰ 25 M.R.S.A. § 2929(2)(C)

³¹ 25 M.R.S.A. § 2929(2)(D)

³² 16 M.R.S.A. § 613

³³ 16 M.R.S.A. § 613(1)

- (b) Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;³⁴
 - (c) Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and³⁵
 - (d) Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.³⁶
 - (e) Criminal history record information disseminated to a noncriminal justice agency shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.³⁷
- (10) Criminal history record information or nonconviction data contained in the following is *not confidential* and, thus, the record or records are subject to public access or dissemination.³⁸
- (a) Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;³⁹
 - (b) Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;⁴⁰

³⁴ 16 M.R.S.A. § 613(2)

³⁵ 16 M.R.S.A. § 613(3)

³⁶ 16 M.R.S.A. § 613(4)

³⁷ 16 M.R.S.A. § 617

³⁸ 16 M.R.S.A. § 612(2)

³⁹ 16 M.R.S.A. § 612(2)(A)

⁴⁰ 16 M.R.S.A. § 612(2)(B)

*Names of complainants, witnesses, and victims – as well as personally identifying information – are confidential.*⁴¹

*Names of complainants – as well as personally identifying information – reporting alleged violations of law are confidential.*⁴²

- (c) Criminal history record information related to an offense for which a person is currently within the criminal justice system.⁴³
- (d) Record or persons detained. Every criminal justice agency that maintains a facility for pretrial detention shall record⁴⁴ the identity of the arrested person, including name, age, residence and occupation, if any;⁴⁵ offenses charged, including the time, place and nature of the offense;⁴⁶ time and place of arrest;⁴⁷ and circumstances of arrest, including force, resistance, pursuit and weapon, if any.⁴⁸

Intelligence and Investigative Information

(11) Reports or records that contain *intelligence and investigative information* are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would⁴⁹:

- (a) Interfere with law enforcement proceedings;⁵⁰
- (b) Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury,⁵¹

⁴¹ See *Lewiston Sun v. Sheriff Herrick*, Appendix 5

⁴² See Rule 509, Maine Rules of Evidence, Appendix 6

⁴³ 16 M.R.S.A. § 612(3)(A)

⁴⁴ 16 M.R.S.A. § 612-A(1)

⁴⁵ 16 M.R.S.A. § 612-A(1)(A)

⁴⁶ 16 M.R.S.A. § 612-A(1)(B)

⁴⁷ 16 M.R.S.A. § 612-A(1)(C)

⁴⁸ 16 M.R.S.A. § 612-A(1)(D)

⁴⁹ 16 M.R.S.A. 614(1)

⁵⁰ 16 M.R.S.A. 614(1)(A)

⁵¹ 16 M.R.S.A. 614(1)(B)

- (c) Constitute an unwarranted invasion of personal privacy;⁵²

*Names of complainants, witnesses, and victims – as well as personally identifying information – are confidential.*⁵³

*Names of complainants – as well as personally identifying information – reporting alleged violations of law are confidential.*⁵⁴

- (d) Disclose the identity of a confidential source;⁵⁵
- (e) Disclose confidential information furnished only by the confidential source;⁵⁶
- (f) Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;⁵⁷
- (g) Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;⁵⁸
- (h) Endanger the life or physical safety of any individual, including law enforcement personnel;⁵⁹
- (i) Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;⁶⁰
- (j) Disclose information designated confidential by some other statute;⁶¹ or
- (k) Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.⁶²

⁵² 16 M.R.S.A. 614(1)(C)

⁵³ See *Lewiston Sun v. Sheriff Herrick*, Appendix 5

⁵⁴ See Rule 509, Maine Rules of Evidence, Appendix 6

⁵⁵ 16 M.R.S.A. 614(1)(D)

⁵⁶ 16 M.R.S.A. 614(1)(E)

⁵⁷ 16 M.R.S.A. 614(1)(F)

⁵⁸ 16 M.R.S.A. 614(1)(G)

⁵⁹ 16 M.R.S.A. 614(1)(H)

⁶⁰ 16 M.R.S.A. 614(1)(I)

⁶¹ 16 M.R.S.A. 614(1)(J)

⁶² 16 M.R.S.A. § 614(1)(K)

Dissemination Permitted

- (12) Dissemination of intelligence and investigative information *is not precluded*⁶³ to another criminal justice agency;⁶⁴ a state agency responsible for investigating abuse, neglect or exploitation of children or incapacitated or dependent adults for use in the investigation of suspected abuse, neglect or exploitation;⁶⁵ or an accused person or that person's agent or attorney if authorized by the district attorney for the district in which that accused person is to be tried, a rule or ruling of a court of this State or of the United States, or the Attorney General.⁶⁶

Criminal History Record Information – Conviction Data

- (13) *Conviction data* may be disseminated to any person for any purpose.⁶⁷ However, an agency shall query the State Bureau of Identification (SBI) prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.⁶⁸
- (14) *Right to Access and Review.* Any person or his attorney may inspect the criminal history record information concerning that person maintained by this agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. This agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to that person on request and payment of a reasonable fee.⁶⁹
- (15) *Review.* A person or his attorney may request amendment or correction of such criminal history record information by addressing, either in person or by mail, that person's request to this agency. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction. On receipt of a request, this agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and

⁶³ 16 M.R.S.A. § 614(3)

⁶⁴ 16 M.R.S.A. § 614(3)(A)

⁶⁵ 16 M.R.S.A. § 614(3)(B)

⁶⁶ 16 M.R.S.A. § 614(3)(C)

⁶⁷ 16 M.R.S.A. § 615

⁶⁸ 16 M.R.S.A. § 616

⁶⁹ 16 M.R.S.A. § 620(1)

advise the requesting person that the correction or amendment has been made. Not later than 15 working days after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.⁷⁰

- (16) *Administrative appeal.* If there is a request for review, the Chief Law Enforcement Officer (CLEO) shall, not later than 30 working days from the date of the request complete the review and either make the requested amendment or correction or refuse to do so. If the CLEO refuses to make the requested amendment or correction, the CLEO shall permit the requesting person to file with the agency a concise statement setting forth the reasons for that person's disagreement with the refusal. The CLEO shall also notify the person of the provisions for judicial review of the reviewing official's determination, as outlined below. Dissemination of the disputed criminal history record information by this agency shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.⁷¹
- (17) *Judicial review.* If the CLEO denies an administrative appeal, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the CLEO, seek relief in the Superior Court.⁷²
- (18) *Notification.* When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided above or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.⁷³

⁷⁰ 16 M.R.S.A. § 620(2)

⁷¹ 16 M.R.S.A. § 620(3)

⁷² 16 M.R.S.A. § 620(4)

⁷³ 16 M.R.S.A. § 620(5)

Concealed Weapons Applications

(19) All *applications for a permit to carry concealed firearms* and documents made a part of the application, refusals, and any information of record collected by the issuing agency during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements for the issuance of a permit, are confidential and may not be made available for public inspection or copying. The applicant may waive this confidentiality by written notice to the issuing authority. However, the issuing authority shall make a permanent record of each permit to carry concealed firearms in a suitable book or file kept for that purpose. The record shall include the information contained in the permit itself and shall be available for public inspection.⁷⁴

Personnel Records

(20) Personnel records pertaining to municipal, county, and state employees are for the most part confidential.⁷⁵ For example, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action are confidential. However, if disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public. Final written decision "means (1) the final written administrative decision that is not appealed pursuant to a grievance arbitration procedure, or (2) if the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator. A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days."

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

⁷⁴ 25 M.R.S.A. § 2006

⁷⁵ 30-A M.R.S.A. §§ 2702 and 503, and 5 M.R.S.A. § 7070, respectively