



MAINE STATE POLICE GENERAL ORDER

M-8

SUBJECT: MAINE STATE POLICE POLICY REGARDING PUBLIC ACCESS TO MAINE STATE POLICE RECORDS

EFFECTIVE DATE: 09.24.2021

EXPIRATION DATE: 09.24.2028

RECENT HISTORY: AMENDED (09.24.2021); AMENDED (08.01.2020); AMENDED (09.03.2019); AMENDED (07.11.2018); AMENDED (08.18.2017); AMENDED (01.05.2017); AMENDED (08.11.2015); AMENDED (10.31.2013); AMENDED (10.31.2011); AMENDS MSP GO M-8 (02.06.2009); RESCINDS AND REPLACES G.O. 54B (09.16.2008) | **TECHNICAL CORRECTIONS:** WORD CORRECTED IN IV(6)(C) OF ORDER AS AMENDED AND BECOMING EFFECTIVE 08.18.2017 (08.15.2017)

DISTRIBUTION CODE: 2 (MAY BE PUBLICLY DISCLOSED)

APPLICABILITY CODE: C, S, Z

MLEAP: 5.03

NOTE: Although this is a mandatory policy, there are no minimum policy standards that have been established by the Maine Criminal Justice Academy Board of Trustees.

SIGNATURE OF COLONEL:

A handwritten signature in blue ink, appearing to read "John Cote", written over a light blue background.

I. PURPOSE

1. The purpose of this General Order is to establish the Maine State Police policy regarding public access to Maine State Police records.

II. POLICY MLEAP 5.03

1. The policy of the Maine State Police is to ensure that –
 - A. In accordance with the Maine Intelligence and Investigative Record Information Act (*see generally* 16 M.R.S.A. c. 9, “Intelligence and Investigative Record Information Act”) and other applicable laws, records that by law are confidential or otherwise not publicly accessible remain protected and are not publicly accessed or disseminated; and
 - B. In accordance with the Maine Freedom of Access Act (*see generally* 1 M.R.S.A. c. 13, “Public Records and Proceedings”), individuals shall be provided access to any public record in the custody of the Maine State Police within a reasonable period of time after making a request for access to the record.

III. DEFINITIONS

1. For the purposes of this General Order, the terms included in this section are defined as follows, unless otherwise indicated in the order.
 - A. Access. "Access" means:
 1. When used as a verb, to inspect or to obtain copies of;
 2. When used as a noun, an opportunity to inspect or obtain copies of any record.
 - B. Administration of criminal justice. "Administration of criminal justice" means “activities relating to the anticipation, prevention, detection, monitoring or investigation of known, suspected or possible civil violations and prospective and pending civil actions. It includes the collection, storage and dissemination of intelligence and investigative record information relating to the administration of civil justice. ‘Administration of civil justice’ does not include known, suspected or possible traffic infractions.” 16 M.R.S.A. § 803(2).
 - C. Criminal justice agency. "Criminal justice agency" means “a federal, state or State of Maine government agency or any subunit of a government agency at any governmental level that performs the administration of criminal justice pursuant to a statute or executive order. ‘Criminal justice agency’ includes the Department of the Attorney General, district attorneys’ offices and the equivalent departments or offices in any federal or state jurisdiction. ‘Criminal justice agency’ also includes any equivalent agency at any level of Canadian government and the government of any federally recognized Indian tribe.” 16 M.R.S.A. § 803(4).
 - D. Dissemination. "Dissemination" means “the transmission of information by any means, including but not limited to orally, in

writing or electronically, by or to anyone outside the criminal justice agency that maintains the information.” 16 M.R.S.A. § 803(5).

- E. FOAA. “FOAA” is the acronym for the Maine Freedom of Access Act. *See generally* 1 M.R.S.A. c. 13, Public Records and Proceedings.
- F. FOAA request. “FOAA request” means a request for records, regardless of whether the person making the request expressly cites the Maine Freedom of Access Act when making the request.
- G. Intelligence and investigative record information. “Intelligence and investigative record information” means “information of record collected by or prepared by or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency while performing the administration of criminal justice or, exclusively for the Department of the Attorney General and district attorneys’ offices, the administration of civil justice. ‘Intelligence and investigative record information’ includes information of record concerning investigative techniques and procedures and security plans and procedures prepared or collected by a criminal justice agency or other agency. ‘Intelligence and investigative record information’ does not include criminal history record information as defined in section 703, subsection 3 and does not include information of record collected or kept while performing the administration of juvenile justice.” 16 M.R.S.A. § 803(7).
- H. Investigative record. “Investigative record ” means any record (including, but not limited to, any record maintained in paper, electronic, video, or audio format) prepared by, prepared at the direction of, or kept in the custody of the Maine State Police that includes or itself constitutes “intelligence and investigative record information,” as that term is defined at 16 M.R.S.A. § 803(7) and in this policy.
 - 1. For the purposes of this policy, “investigative records” includes, but is not limited to, records containing or themselves constituting intelligence information.
- I. Public record. “Public record” has the same meaning as the term “public records” at sub-§ 3 of 1 M.R.S.A. § 402.
 - 1. The term “public record” does **NOT** include “[r]ecords that have been designated confidential by statute.” 1 M.R.S.A. § 402(3)(A).
- J. Records Management Section. “Records Management Section” means the Maine State Police Records Management Section.
- K. Staff Attorney. “Staff Attorney” means the Maine State Police Staff Attorney.
- L. Traffic Safety Unit. “Traffic Safety Unit” means the Maine State Police Traffic Safety Unit.

IV. PROCEDURE

1. GENERAL RIGHT OF THE PUBLIC TO ACCESS MAINE STATE POLICE RECORDS
 - A. Except as otherwise provided by law, every person has the right to access any public record in the custody of the Maine State Police during the regular business hours of the agency or Maine State Police employee having custody of the public record, within a reasonable period of time after making a request to access the record.
 - B. A written or spoken request made by a person to access a Maine State Police record is presumed to be a request made pursuant to the Maine Freedom of Access Act, regardless of whether the person expressly cites that law in making the request.
 - C. The Maine State Police does not maintain "standing" FOAA requests – that is, FOAA requests that would require production of records on a "rolling" or ongoing basis after the date a given request was received by the agency. **MLEAP 5.03**
 1. Said differently, only records existing and in the custody of the Maine State Police as of the date a given FOAA request is received by the agency shall be considered to be subject to production in response to such a request.
 2. The fact that the Maine State Police does not maintain "standing" FOAA requests does not prevent any individual from making other FOAA requests at a subsequent time, including, but not limited to, requests made previously for a certain record or type of record.
2. FREEDOM OF ACCESS ACT CONTACT FOR THE MAINE STATE POLICE
 - A. The Colonel shall designate an employee of the Maine State Police to serve as the agency's contact for persons wanting to request access to Maine State Police records.
 1. Unless otherwise stated in this policy, the designee is the Maine State Police Staff Attorney.
 - B. The person designated by the Colonel shall be generally knowledgeable of the Maine Freedom of Access Act, and, except as otherwise provided in this policy, the person shall, when necessary, coordinate, facilitate, and/or respond to requests for access to Maine State Police records.
3. PERMISSIBLE DISCLOSURE OF INVESTIGATIVE RECORDS BY SWORN MEMBERS OF THE MAINE STATE POLICE

- A. **Disclosure to Prosecutor Offices.** A copy of an investigative record may be disclosed to the office responsible for the criminal prosecution of the incident to which that record relates.
1. Prosecutor offices include Offices of Maine District Attorneys, the Maine Office of the Attorney General, and the United States Attorney's Office for the District of Maine.
- B. **Disclosure to Another Law Enforcement Agency.** Through the Records Management Section, a copy of an investigative record may be disclosed to a member of another law enforcement agency.
- C. **Disclosure to a Maine Court.** A copy of an investigative record may be disclosed to a federal court, the District Court, Superior Court or Supreme Judicial Court or an equivalent court in another state. *See* 16 M.R.S.A. § 805(4).
- D. **Disclosure of Mandated Reporting Information.** Investigation information must be disclosed to the Department of Health and Human Services (“DHHS”) to the fullest extent necessary to ensure that a report mandated by law is made to DHHS regarding the actual or suspected abuse, neglect, or exploitation of an incapacitated or dependent adult or a child. *See generally* [22 M.R.S.A. § 3477, “Persons mandated to report suspected abuse, neglect or exploitation”](#) and [22 M.R.S.A. § 4011-A, “Reporting of suspected abuse and neglect”](#).
1. Requests from DHHS, however, for a copy of an investigative record made after an initial mandated report was made must be directed to the Records Management Section or Staff Attorney.
- E. **Disclosure of investigative information and related documentation to a sexual assault counselor or a domestic violence victim's advocate.** Investigative information and related documentation (such as, e.g., affidavits and "ODARA Item Summary" forms, and unofficial, preliminary notes or synopses, if available) may be disclosed to a sexual assault counselor, as defined in [16 M.R.S.A. § 53-A\(1\)\(B\)](#), or an advocate, as defined in section [16 M.R.S.A. § 53-B\(1\)\(A\)](#), when such information and documentation is needed to plan for the safety of a victim involved in an incident that is (or was) the subject of an investigation and “time is of the essence.”
1. For the purposes of this subsection “time is of the essence” is to be determined by the exigency of the need for the information for the timely safety planning for a victim.

- a. If time is **not** of the essence, counselors and advocates must direct requests for copies of investigative records to the Records Management Section.
4. SPECIFIC TYPES OF REQUESTS TO ACCESS RECORDS THAT MAY BE IN THE CUSTODY OF THE MAINE STATE POLICE
 - A. **Requests to Access Records Made via a Motion for Discovery in a Criminal Case.** Requests to access records pursuant to a motion for discovery relating to a pending criminal case must be directed to the District Attorney's Office having jurisdiction over the case to which the request relates, or to the Office of the Attorney General in instances in which that office has jurisdiction over the case.
 1. If the District Attorney's Office or Office of the Attorney General requests that a Maine State Police employee provide records to a person making the discovery request, the employee shall do so by providing the requested records directly to the District Attorney's Office (or, if applicable, directly to the Office of the Attorney General), so that that District Attorney's Office or the Office of the Attorney General may then provide the records to the person making the discovery request.
 - a. If the District Attorney's Office or Office of the Attorney General provides **prior, written authorization** for a Maine State Police employee to provide records directly to a person making a discovery request in a criminal case, then the employee may do so.
 - B. **Requests to Access Records Pursuant to a Motion for Discovery in a Civil Case.** Requests to access records pursuant to a motion for discovery relating to a pending civil case must be directed to the Staff Attorney.
 - C. **Requests to Access Records Pursuant to a Motion for Discovery in a Traffic Court Case.** Requests to access records – including, but not limited to, cruiser camera video recordings – pursuant to a motion for discovery relating to a pending Traffic Court case must be directed to the Staff Attorney.
 1. Written discovery motions relating to pending Traffic Court cases must be forwarded by email, fax, or postal mail to the Staff Attorney.
 - D. **Requests to Access Records Pursuant to Subpoena to Inspect or Copy Records.** Requests to access records pursuant to

a subpoena (whether related to a civil or criminal case) for the inspection or copying of records must be directed to the Staff Attorney.

- E. **Requests to Access Maine State Police Investigative Records.** Under Maine law, Maine State Police investigative records (and all attachments to such records) typically contain or themselves constitute confidential "intelligence and investigative record information," the public dissemination of which is restricted by law.

1. **Accordingly, investigative records may only be accessed by or disseminated to a member of the public if, and to the extent, permitted by law.**

- a. **When public access to or dissemination of an investigative record is permitted by law, such dissemination must be through or by the Records Management Section, Traffic Safety Unit, or the Staff Attorney, as applicable.**

- E. **Requests to Access Criminal History Records.** Requests to access public criminal history record information must be directed to the Maine State Police, State Bureau of Identification.

1. A person also may request a copy of such information via the Internet at the following website:
<http://www5.informe.org/online/pcr/>.

- F. **Requests to Access Motor Vehicle Crash Reports.** Requests to access motor vehicle crash reports must be directed to the Traffic Safety Unit.

1. A person also may request a copy of such a report via the Internet at the following website:
<https://www1.maine.gov/online/mcrs/>.

- G. **Requests to Access Traffic Summonses.** Requests to access Uniform Summons and Complaints ("USACs") or Violations Summons and Complaints ("VSACs") must be directed to the Staff Attorney.

- H. **Requests to Access E-9-1-1 system records.** Requests to access E-9-1-1 system records must directed to the Department of Public Safety, Bureau of Consolidated Emergency Communications.

1. Access to E-9-1-1 system records is governed by 25 M.R.S.A. § 2929, "Confidentiality of system information".

I. **Requests to Access Records of Crimes Alleged or Proven to have been Committed by Juveniles.** Except as otherwise provided in this policy, requests to access records relating to a crime alleged or proven to have been committed by a juvenile must be directed to the Records Management Section or Staff Attorney.

1. Generally speaking, access to and dissemination of such records is **HIGHLY RESTRICTED**.
2. Relevant sections of the Maine Juvenile Code to consult regarding disclosure of such records include: **MLEAP 5.03**
 - a. 15 M.R.S.A. § 3009, “Information related to reintegration of juvenile into school”;
 - b. 15 M.R.S.A. § 3301, “Preliminary investigation, informal adjustment and petition initiation”;
 - c. 15 M.R.S.A. § 3307, “Publicity and record”;
 - d. 15 M.R.S.A. § 3308, “Court records; inspection”;
 - e. 15 M.R.S.A. § 3308-A, “Dissemination of juvenile intelligence and investigative record information by a Maine criminal justice agency”; and
 - f. 15 M.R.S.A. § 3316, “Commitment to the Department of Corrections or the Department of Health and Human Services”.

J. **Requests to Access Personnel files.** Requests to access a Maine State Police employees’ personnel files must be directed to the Staff Attorney.

1. MANY TYPES OF RECORDS IN MAINE STATE POLICE EMPLOYEES' PERSONNEL FILES ARE CONFIDENTIAL BY LAW. See 5 M.R.S.A. §§ 7070 & 7070-A.

K. **Giglio Inquiries.** *Giglio* inquiries must be directed to the Staff Attorney.

5. EXPECTATION OF PRIVACY OF PERSONAL INFORMATION INCLUDED IN EMPLOYEE COMMUNICATIONS SUCH AS E-MAIL AND TEXT MESSAGES

A. **Maine State Police personnel should have *no* expectation of privacy regarding any personal information they include in records prepared or created using any State-owned information technology system (including, but not limited to, the State of Maine e-mail system) or State-owned communications equipment (including, but not limited to, cell phones) or resources.**

6. USE OF PERSONAL COMMUNICATION SYSTEMS AND EQUIPMENT TO CONDUCT OFFICIAL STATE OF MAINE BUSINESS

- A. The intent of the FOAA cannot be frustrated through the use by personnel of personal communications systems (for example, personal e-mail accounts) or personal equipment (e.g., personal computers or personal cellular telephones) to conduct official State of Maine business.
- B. **Employees must presume that records resulting from the use of personal communication systems or personal equipment to conduct official State of Maine business are public records – subject to production pursuant to the FOAA – if they fall within the scope of a request for records that has been made by a member of the public.**
 - 1. EXAMPLE: An e-mail sent or received by an employee through the employee's personal e-mail account must be presumed by the employee to be a public record – subject to production pursuant to the FOAA – if the content of the e-mail relates in whole or part to official State of Maine business.
 - 2. EXAMPLE: A text message sent or received by an employee through use of the employee's personal cell phone must be presumed by the employee to be a public record – subject to production pursuant to the FOAA – if the content of the text message relates in whole or part to official State of Maine business.

IMPORTANT NOTE>> THE USE OF A PERSONAL DEVICE (SUCH AS, AS EXAMPLES, A PERSONAL CELL PHONE OR PERSONAL COMPUTER) TO CONDUCT OFFICIAL STATE OF MAINE BUSINESS POTENTIALLY COULD RESULT IN THE DEVICE ITSELF BEING SUBJECT TO SUBPOENA OR COURT ORDER, INCLUDING, BUT NOT LIMITED TO, FOR THE PURPOSES OF BEING FORENSICALLY ANALYZED OR SEARCHED.

NOTICE

THIS GENERAL ORDER IS FOR USE OF THE MAINE STATE POLICE AND NOT FOR ANY OTHER AGENCY. THE GENERAL ORDER IS NOT INTENDED TO BE RELIED UPON BY ANY OTHER INDIVIDUAL OR PRIVATE OR PUBLIC AGENCY. THE GENERAL ORDER EXPRESSLY DOES NOT CREATE, AND IS NOT INTENDED TO CREATE, A HIGHER LEGAL STANDARD OF SAFETY OR CARE IN AN EVIDENTIARY SENSE WITH RESPECT TO THIRD-PARTY CLAIMS. VIOLATIONS OF THIS ORDER ONLY MAY FORM THE BASIS FOR ADMINISTRATIVE SANCTIONS BY THE MAINE STATE POLICE.

