

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. WAL-25-431

STEPHEN BENNETT AND ERIN BENNETT-WADE

Plaintiffs-Appellants

v.

WALDO COUNTY SHERIFF'S OFFICE

Defendant-Appellee

and

TOWN OF FREEDOM

Party-In-Interest

ON APPEAL FROM THE SUPERIOR COURT
DOCKET NO. BELSC-CV-2025-00015

BRIEF OF APPELLEE

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

In January 2025, Plaintiff/Appellant, Stephen Bennett and Erin Bennett-Wade, filed a report about cutting of trees on a property near their property. See Appendix at page 19 (herein after “A. #”). Defendant/Appellee, Waldo County Sheriff’s Office, sent a deputy to investigate. On February 12, 2025, Appellant filed a request for public records with Waldo County seeking the investigative report prepared by the Sheriff’s Office regarding the previous month’s call. Id. Appellant sought the records to try to determine the identity of the people who were present when the Sheriff’s Office investigated. A. 21. The Superior Court found that the report related to a complaint about a possible trespass and a call from an individual about an ongoing civil matter, during which three individuals were interviewed. The Superior Court noted that two of the three individuals “did not come forward voluntarily but were contacted by the investigator by his own initiative. Furthermore, although one of these individuals spoke freely with the investigator, they were clear that they wanted ‘to stay out of it the most [they] can.’” A. 43.

Waldo County denied the request as confidential under 16 M.R.S. § 804. A. 8. Waldo County subsequently released a redacted version of the documents on March 25, 2025. A. 25-32. Plaintiff filed a timely appeal to Superior Court in accordance with 1 M.R.S. § 409 on April 1, 2025, and the County filed its

Statement of Position of Basis for Denial on April 10, 2025. A. 18-23, 33-35. Plaintiff filed a response soon thereafter and Waldo County provided a confidential copy of the documents in question to the Superior Court for in-camera review. A. 36-40. The Superior Court held an oral argument on August 20, 2025, and issued a decision upholding Waldo County's denial by order dated September 8, 2025. A. 7-17.

In its decision, the Superior Court balanced the privacy interests of the witnesses' privacy with the public interest in disclosure, finding that the privacy interest outweighed the public interest in release in under the facts of this case. A. 16. The Superior Court noted that people identified in criminal investigation reports have a substantial interest in keeping their identities private, acknowledging that the interest may be diminished to the extent information is voluntarily reported. A. 11. The Superior Court found that-

the substance of the record submitted for in camera review details a law enforcement response to a call from an individual about an ongoing civil dispute involving a possible trespass and the unauthorized cutting of trees. During the investigation, three individuals were interviewed, the complainant and two others. The two others did not come forward voluntarily but were contacted by the investigator by his own initiative. Furthermore, although one of these individuals spoke freely with the investigator, they were clear they wanted 'to stay out of it the most [they] can.

A. 12.

The Superior Court then noted there is little public interest in Appellant's civil case, stating that there is no allegation that the Town of Freedom cut the trees

or that there was any misconduct in the investigation. A. 15. Finally, the Superior Court balanced the interests and concluded that there is a reasonable possibility that disclosure would be an unwarranted invasion of personal privacy. *Id.* This appeal followed.

STATEMENT OF THE ISSUE

Whether Appellee Waldo County had just and proper cause to deny production of, or provide redacted copies of, an incident report under Section 804(3) of the Intelligence and Investigative Record Information Act to avoid an unwarranted invasion of personal privacy.

ARGUMENT

I. Standard of Review

In reviewing a Superior Court decision in a Freedom of Access Act (hereinafter “FOAA”) appeal, the Law Court reviews findings of facts for clear error and interpretations of law de novo. See *Human Rights Def. Ctr. v. Me. Cty. Comm’rs Ass’n Self-Funded Risk Mgmt. Pool*, 2023 ME 56, ¶ 14, 301 A.3d 782.

The burden is on the agency to establish that there is just and proper cause for the denial. See *Fairfield v. State Police*, 2023 ME 12, ¶ 9, 288 A.3d 1220. Maine Courts look to the federal Freedom of Information Act for guidance in interpreting the FOAA. *Id.*

II. The Superior Court Did Not Err in Finding that the Waldo County Sheriff’s Office Had Just and Proper Cause to Deny or Redact the Requested Documents under 16 M.R.S. § 804(3)

The FOAA provides that members of the public have a right to inspect public records, subject to certain exceptions. See 1 M.R.S. § 408-A (LEXIS Dec. 30, 2025). If a document falls within an exception, it is not a public record. Exceptions to FOAA’s disclosure requirement are strictly construed to promote the FOAA’s underlying policies and purposes. See *Fairfield*, 2023 ME 12 at ¶9. Nevertheless, “even though the exceptions to FOAA disclosure should be construed narrowly, ‘when a document objectively viewed describes expressly or by clear implication’ information exempted from disclosure, it is properly exempted from public disclosure.” *Anastos v. Town of Brunswick*, 2011 ME 41,

¶20, 15 A.3d 1279 (quoting *Guy Gannett Publ'g Co. v. Univ. of Me.*, 555 A.2d 470, 471 (Me. 1989)). A document that contains some confidential information may be disclosed upon redaction of the confidential information. See *Doyle v. Town of Falmouth*, 2014 ME 151, ¶ 9, 106 A.3d 1145.

One of the enumerated exceptions is records that are designated confidential by statute. See 1 M.R.S. § 402(3)(A) (LEXIS Dec. 30, 2025). In this case, the relevant statute is the Intelligence and Investigative Record Information Act (hereinafter the “Investigative Record Act”). The Investigative Record Act “applies to a record that is or contains intelligence and investigative record information and that is collected by or prepared at the direction of or kept in the custody of any Maine criminal justice agency.” 16 M.R.S. § 802 (LEXIS Dec. 30, 2025). The Investigative Record Act defines “intelligence and investigative record information” as:

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. § 803 (LEXIS Dec. 30, 2025). As relevant here, the Investigative Record Act provides that:

a record that is or contains intelligence and investigative record information is confidential and may not be disseminated by a Maine criminal justice agency to any person or public or private entity if there is a reasonable possibility that public release or inspection of the record would: ... (3) Constitute an unwanted invasion of personal privacy.

16 M.R.S. § 804 (LEXIS Dec. 30, 2025). The Law Court has stated that “a reasonable possibility is different, and less burdensome to prove, than a reasonable *probability*; it is synonymous with a ‘reasonable likelihood,’ and is a lower standard than a preponderance of the evidence.” *Mainetoday Media, Inc. v. State*, 2013 ME 100, ¶ 27, 82 A.3d 104.

Intentionally disseminating intelligence and investigative record information that is confidential under section 804 while knowing it to be confidential is a Class E crime. See 16 M.R.S. § 809 (LEXIS Dec. 30, 2025).

The Law Court has previously addressed how the invasion of personal privacy exception is to be applied, adopting a balancing test developed by the United States Supreme Court for applying the FOIA’s privacy exception. This test “requires courts to identify and then balance the private and public interests at play to determine whether disclosure will constitute an unwarranted invasion of personal privacy.” *Blethen Me. Newspapers, Inc.*, 2005 ME 56, ¶ 14, 871 A.2d 523. Specifically, the test requires the Court to consider “(1) the personal privacy interests of the alleged victims, witnesses, and [other related parties] in maintaining the confidentiality of the records sought ... ; (2) the public interest supporting

disclosure of the records; and (3) the balancing of the private and public interests.” *Id.* at 14.

With regard to privacy interests, “[t]he personal privacy interests protected by the privacy exception are twofold. First, an individual has an interest in avoiding disclosure of personal matters, second, an individual has an interest in controlling the dissemination of personal information.” *Id.* at 15 (citation omitted). Part of the reason that intelligence and investigative information is designated confidential is that “such information often involves sensitive personal information that may or may not have been verified by public officials. Few people wish to be publicly associated with investigations of alleged criminal conduct, whether as a perpetrator, witness, or victim.” *Id.* Accordingly, “[p]eople who are identified in criminal investigation reports have a substantial interest in keeping their identities closed to the public, regardless of how they are characterized in the record.” *Id.* Thus, “when the subject of a law enforcement record is a private individual, the privacy interest protected by the privacy exception is at its apex.” *Id.* In short, “individuals referenced in intelligence and investigative records have a significant interest in keeping their identities private.” *Fairfield*, 2023 ME 12 at ¶ 16.

“With respect to the [FOAA], a possible invasion of privacy is warranted only if disclosure will advance its central purpose.” *Blethen*, 2005 ME 56 at ¶ 28.

“Maine’s FOAA ... is intended to address the public’s right to hold the government accountable.” *Id.* at ¶ 31. The Law Court noted that--

In *Reporters Committee*, the United States Supreme Court held that the public interest in disclosure of the criminal records of an organized crime figure did not warrant the invasion of privacy that would result. ... The focus is “on the citizens’ right to be informed about “what their government is up to.” ... “That purpose ... is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency’s own conduct.” ... The Court concluded that, because “the basic purpose ... is to open agency action to the light of public scrutiny,” a request that is directed at information about the persons who are the subjects of files rather than at information about the government’s “own conduct” is not within the sphere of the public interest protected by the FOIA.

Id. at ¶ 29, quoting *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 772 (1989) (emphasis added).

In this case, the Incident Report falls within the definition of intelligence and investigative record information: it was prepared and kept by a Maine criminal justice agency, the Waldo County Sheriff’s Office, while performing the administration of criminal justice. As the report involved a variety of individuals, the Sheriff’s Office denied the FOAA request based on 16 M.R.S. § 804(3), finding that there is a reasonable possibility that public release or inspection of the record would constitute an unwanted invasion of personal privacy. The Sheriff’s Office later issued a redacted copy of the document without the names of the individuals involved.

Appellant did not request the document to review the conduct of the Sheriff’s Office, but rather to ascertain the identity of people present when the

deputy investigated Appellant's complaint. Appellant contends that members of the Freedom Select Board may have been present and acting in their capacities as town officials. The fact that some of the individuals present may (or may not) have been Freedom town officials does not have any bearing the conduct of official Town of Freedom business. The FOAA's focus is on the agency's own conduct, not other individuals that may happen to be involved in an incident. The Sheriff's Office should not be required to identify local public officials involved in an incident report and determine whether they are acting in their private capacity or official capacity. The Superior Court found that the report related to a complaint about a possible trespass and a call from an individual about an ongoing civil matter, during which three individuals were interviewed and that two of the three individuals did not come forward voluntarily. These individuals have a significant interest in their privacy while Appellants seek the document for a civil lawsuit.

Appellant quotes caselaw stating that "high-level public officials have a diminished privacy interest, citing *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984), *Perlman v. Dep't of Justice*, 312 F.3d 100 (2nd Cir. 2002), and *Quinon v. FBI*, 86 F.3d 1222 (D.C. Cir. 1996). In *Stern*, an FOIA request sought the names of three FBI agents. The Court found that two of the names were properly withheld but the name of a "higher level official" could be disclosed. The "higher level official" was the Special Agent in Charge of the FBI's New York Office. See *Stern*, 737

F.2d at 91. In *Quinon*, the high level official was the Chief Judge. *Quinon*, 86 F.3d at 1230. The Court noted that:

the relevant question in determining whether there is a public interest in disclosure is whether the FBI, not Chief Judge Tjoflat, has engaged in wrongdoing ... the public interest to be taken into the balance is that in ‘official information that sheds light on an agency’s performance of its statutory duties.’ Disclosure of information that ‘reveals little or nothing about an agency’s own conduct’ does not further the public interest envisaged by FOIA.

Id. at 1231, quoting *United States DOJ v. Reporters Comm. For Freedom of Press*, 489 US 749, 773 (1989).

Finally, in *Perman*, the public official in question was the former INS General Counsel. *Perlman*, 312 F.3d at 103. The Court noted that the “public’s interest in learning the identity of witnesses and other third parties is minimal because that information tells little or nothing about either the administration of the INS program or the Inspector General’s conduct of its investigation. The strong public interest in encouraging witnesses to participate in future government investigations offsets the weak public interest in learning witness and third party identities.” *Id.* at 106.

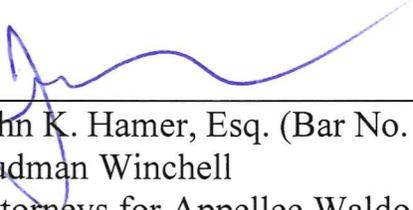
Unlike the high-level public officials in the cases cited, this case involves, individuals who may have been local Select Board members. Appellant has clearly stated that the purpose of the request is simply to learn the identity of the parties involved for purposes of a civil dispute. This is a minimal public interest.

The Superior Court properly reviewed the document in camera and balanced the substantial privacy interest with the minimal public interest in disclosure, finding that there is a reasonable possibility that disclosing the document would constitute an unwarranted invasion of personal privacy. The Superior Court made no clear factual errors and correctly applied the applicable law. Waldo County had just and proper cause for redacting the document; therefore, Appellant's appeal should be denied.

CONCLUSION

WHEREFORE, Waldo County Sheriff's Office respectfully requests that the Superior Court's Decision finding that there was just and proper cause for redacting the requested records be affirmed.

Respectfully submitted, dated at Bangor, Maine this 30th day of January, 2026.



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CERTIFICATE OF SERVICE

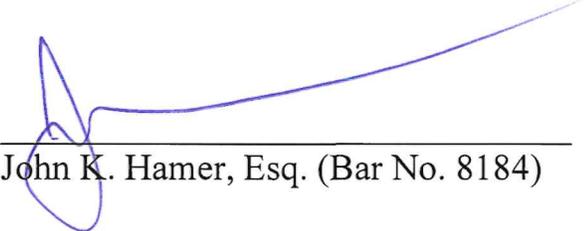
I, John K. Hamer, Esq., certify that I served two copies of this Brief of Appellee upon the other parties in this matter by regular U.S. mail, postage paid, with a copy by email, at the addresses below:

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