



Sen. Carney, Rep. Moonen, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am the editor of the Sun Journal in Lewiston, the Kennebec Journal and the Morning Sentinel, and I have served on the Right to Know Advisory Committee for the past 20 years.

I am here today on behalf of both the Maine Freedom of Information Coalition and the New England First Amendment Coalition, on whose boards I serve, to enthusiastically urge this committee to pass LD 1397, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Records of Disciplinary Actions Against Public Employees.

* * *

In 2020, both the Portland Press Herald and the Bangor Daily News filed Freedom of Access Act requests with the Department of Public Safety for access to certain State Police disciplinary records.

The newspapers found that “under a union contract, some public records of discipline are destroyed. Troopers have been arrested but lack a public discipline history. And DPS has revoked the licenses of troopers who resigned from the State Police with no public record documenting why.” (*PPH/BDN report attached*)

That report prompted the Maine Freedom of Information Coalition to wonder how other police agencies manage disciplinary records and how they would respond to similar FOAA requests. So, in January 2021 the MFOIC filed FOAA requests for access to disciplinary records with 135 law enforcement agencies in Maine and documented the response. The results revealed widespread discrepancies in the public’s ability to access documents that members of the public are legally entitled to view, widespread redaction of those records and, in 30 cases, no response at all. (*MFOIC press release and Sun Journal report on audit attached*)

In response to that audit and the PPH/BDN reporting, New England First Amendment Coalition Executive Director Justin Silverman wrote an opinion piece for the Sun Journal in which he highlighted the excessively redacted misconduct records produced by the State Police and the need for transparency within that department (*attached*). Referring to the PH report, he wrote: “Public awareness of whether law enforcement agencies are engaged in effective oversight and discipline of officers serves as a vital check on public corruption and misconduct.”

The PH and BDN filed suit against the Department of Public Safety and, in May last year, a judge ordered State Police to produce the requested records. (*PH report attached*)

It took a lawsuit to wrest these public records away from this state agency. During the two years of newspaper reporting along with the MFOIC audit, we learned that not only are some police

agencies reluctant to provide public records, they actively remove disciplinary records from personnel files within a few short years, sometimes at an officer's request.

This is not the norm for other state agencies, or for county and municipal agencies where there is greater retention of disciplinary records and their availability to the public is more accessible.

A police officer who is disciplined should not have any greater privilege of confidentiality than a school teacher, a county administrator, or any other public employee. Given the inherent power of law enforcement and the greater consequences of its abuse, even more transparency is needed relative to other public servants.

As Maria Haberfeld, an expert on police training and discipline at the John Jay College of Criminal Justice in New York, told the PH, transparency into misconduct isn't solely for the public's benefit to "see what kind of misconduct is tolerated by the given police organization and why," there is matching public interest in knowing whether "there is an equal distribution of the discipline" within and across agencies.

Through this bill, the Legislature requires much needed public access to the disciplinary records of all public employees. It prevents those records from being destroyed or deemed confidential based on collective bargaining agreements. The bill also requires agencies to provide enough written detail in disciplinary records for the public to understand the underlying behavior and ensures that all disciplinary records are retained for a reasonable period of time to be determined by the State Archivist, not individual agencies that might otherwise favor secrecy.

These are sound measures to preserve transparency and protect public trust.

* * *

To review MFOIC's audit results, including disciplinary records provided by Maine's police departments, go to: <http://www.tinyurl.com/mfoicaudit>

The password for access is Mainenews1!; click "my drive" on left to access documents.

* * *

The **Maine Freedom of Information Coalition** is a broad coalition of public access advocates who strive to educate Maine citizens and legislators about the rights and responsibilities of citizens in accessing information so they may participate more fully in our democracy. MFOIC supports open access to government information, supports those who exercise their rights to access government information under Maine's Freedom of Access Act, and periodically conducts audits of government agency practices in making government information available according to the spirit and letter of FOAA.

The **New England First Amendment Coalition** is the region's leading advocate for First Amendment freedoms and the public's right to know about government. The coalition is a non-partisan non-profit organization that believes in the power of transparency in a democratic society. Its members include lawyers, journalists, historians, academics, and other private citizens. Learn more about NEFAC at nefac.org.

Inside the Maine State Police, officer misdeeds are kept secret

pressherald.com/2021/04/18/inside-the-maine-state-police-officer-misdeeds-are-kept-secret/

By Callie Ferguson, Matt Byrne and Erin Rhoda

April 18, 2021



This is the first of three stories jointly investigated and written by the Portland Press Herald/Maine Sunday Telegram and Bangor Daily News about how the Maine State Police conceals officer wrongdoing. The project is funded by the Pulitzer Center.

For the final month of 2019, Maine State Police Sgt. Elisha Fowlie wasn't allowed to work.

Starting Nov. 29, 2019, Fowlie began serving a 30-day suspension for violating two of the agency's policies that summer, leaving the state police troop that patrols midcoast Maine short a supervisor as the year drew to a close.

What did Fowlie do to warrant the punishment? It's a secret.

In discipline records that provide one of the only public windows into officer malfeasance, the state police includes so few details about its troopers' misbehavior that the public cannot know what the officers did wrong by reading them. The practice defies the intent of the state

law that makes discipline records public, according to those who helped craft the statute 30 years ago.

Related

Read the Maine State Police discipline records

The lack of information in the records illustrates one way Maine's largest police force exhibits a pattern of secrecy that blocks it from public scrutiny.

In addition to keeping records with minimal information, they are incomplete. Under a union contract, some public records of discipline are destroyed. Troopers have been arrested but lack a public discipline history. And the state agency that oversees Maine law enforcement has revoked the licenses of troopers who resigned from the state police with no public record documenting why, according to a joint investigation by the state's two largest newspapers, the Portland Press Herald/Maine Sunday Telegram and the Bangor Daily News.

The lack of transparency means lawmakers, officers and the public can't fully assess how the agency holds its officers accountable, making it more challenging for police overseers to make policy changes and maintain the public's faith in law enforcement, lawmakers and experts said.

State laws address access to discipline records differently, but Maine is one of about 15 states where officer discipline records are public documents. More states are considering similar laws amid a national examination of law enforcement and demands that officers be held publicly accountable for misconduct. New York and California each made discipline records public in the last two years.

However, the Maine State Police's practices show how law enforcement agencies can skirt transparency even in a state that makes the records public.

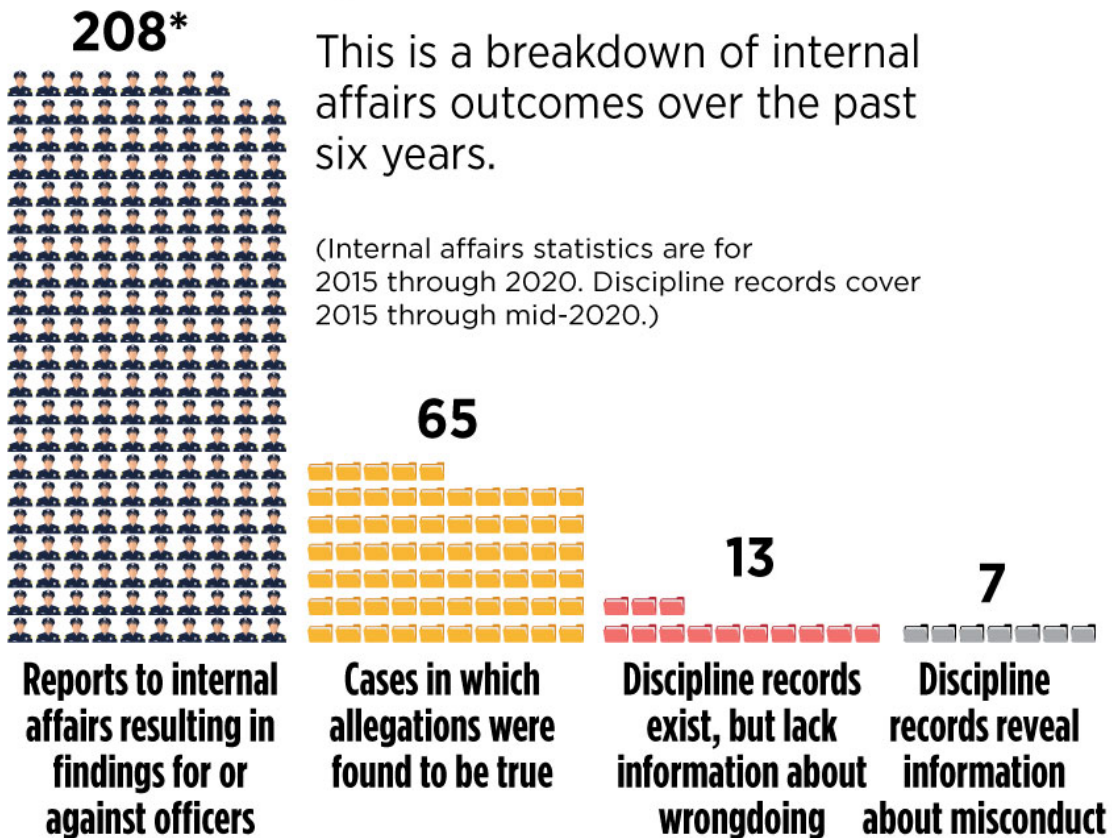
"I wish that they would be coming out and saying, 'Yes, there are issues that need to be fixed, and we care so much about our profession that we're going to lead the charge on fixing them because we know that trust is our currency,'" said Rep. Charlotte Warren, D-Hallowell. As House chairwoman of the Legislature's public safety committee, she is largely responsible for oversight of police. "There's trust to be rebuilt for sure."

Transparency into misconduct is important so officers and the public can see whether discipline is fairly applied, said Maria Haberfeld, an expert on police training and discipline at the John Jay College of Criminal Justice in New York.

"The public has all the right to see what kind of misconduct is tolerated by the given police organization and why, and whether or not there is an equal distribution of the discipline," she said.

The newspapers obtained more than five years of state police discipline records. Of the 19 officers punished for misbehavior from 2015 through half of 2020 for whom there are public records, it was not possible to discern with any certainty what 12 of them got in trouble for. One of those officers was disciplined twice, and records were vague in both cases.

Here's how little the public is told about state police misconduct



***Note:** In the remaining 143 investigations, officers were exonerated, complaints were unfounded or there was insufficient evidence.

SOURCE: Maine State Police

STAFF GRAPHIC | MICHAEL FISHER

So the newspapers investigated the misconduct that the records kept hidden, discovering how one trooper failed to report when his former fiancée committed a hit and run. Another kept secret that he saw a fellow officer punch a handcuffed man in the face.

Of the 12 officers whose records were vague, the newspapers' investigation revealed details of misconduct for seven of them. For the remaining five officers – who received among the harshest punishments – it was not possible for the newspapers to confirm what happened. All disciplined officers declined interviews or did not respond to requests for comment.

The disciplined officers represent only a portion of the 65 internal affairs cases where allegations against officers were found to be true over the last six years. Whether the remaining officers had their discipline destroyed, or were not disciplined at all, is not known. There are about 300 sworn officers on the force.

Bare of description, records for Fowlie, the sergeant, say he was suspended for 30 days because of “the July/August 2019 incidents,” during which he violated the “code of conduct and chain of command policy.” He currently works in the state police unit that protects the governor.

It’s not clear what part of the pages-long policies he violated, let alone what he did. That’s partly because the state police also blacked out part of the public record that appears to detail Fowlie’s misconduct.

In addition to having vague references to misconduct, the state police redacted what appear to be more descriptive accounts of misbehavior in several cases.

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Newspapers join forces in lawsuit, investigation

The agency declined requests to lift the redactions, saying the information is confidential and exempt from the state’s open records law. Its staff attorney, Christopher Parr, also declined to cite the statutory reason for each redaction, saying to do so would reveal confidential information.

The newspapers jointly sued the state police to lift the redactions under the Maine Freedom of Access Act. The lawsuit is ongoing.

Col. John Cote, the chief of the state police, said his agency is following requirements set out by Maine law.

“We ensure the records honor the law and protect privacy as established under personnel law,” he wrote in an emailed response to questions. “I believe it is important for the public to have an awareness of the agency’s complaint and discipline process for officers and have information about the corrective actions of the agency if warranted.”

Putting aside legal questions about the redactions, whether public agencies should generally include more information about misconduct in discipline records is a policy question for lawmakers, Parr said.

“Based on the language of the statute, such a record seemingly only must identify the employee who is subject to disciplinary action and, presumably, must state what the discipline imposed is,” Parr said.

'That almost makes no sense'

Thirty years ago, Maine lawmakers debated how much the public deserved to know about state employees accused of wrongdoing. Sen. Beverly Bustin, D-Augusta, sponsored a bill to ensure complaints and internal investigations of misconduct would stay confidential. It was backed mainly by unions who sought to prevent the publication of unfounded accusations.



Pictured are some of the Maine State Police officers who were disciplined over the last five years or who did not have discipline records but whose misconduct was documented elsewhere. Top left: Former Trooper Justin Cooley, Cpl. Tom Fiske, Trooper Christopher Rogers, and Sgt. Elisha Fowlie. Bottom left: Cpl. Scott Quintero, Cpl. Michael Lane, Trooper Tyler Maloon and Trooper Andre Paradis. *Photos courtesy of the Maine State Police and Portland Press Herald. Graphic by Coralie Cross, Bangor Daily News*

But a key provision of the proposal allowed the public to know about confirmed misconduct. If an agency disciplined an employee, the records of that discipline would be public. Lawmakers never weighed in on how detailed the records should be, but no one appears to have intended for the law to hide substantiated malfeasance.

"I don't think any one of us ever envisioned that something that was ultimately deemed public after the fact would be incomplete to the extent that you couldn't figure out what the person had done," Richard Trahey, a former lobbyist for the then-Maine State Employees Association who helped craft the law 30 years ago, said in an interview. "That almost makes no sense."

The Legislature's Judiciary Committee passed the bill believing it struck a balance between privacy and transparency. Today, the state police routinely defy the spirit of that compromise.

For example, the state police punished Cpl. Scott Quintero after a July 4, 2020, "incident" where he "communicated with a female subject while on duty in an inappropriate manner," according to a discipline agreement reached between the state police and the Maine State Troopers Association.

Quintero's punishment was relatively severe: a demotion from sergeant to corporal, in addition to no longer being able to teach leadership at the training academy or apply for a promotion for five years. If he committed "similar or other significant misconduct" again, he would be fired.

But there is no description of whom Quintero "communicated" with, such as whether it was a state police employee, a defendant in a case or another civilian. There is no record of how his communication was inappropriate, no description of why his actions were considered major misconduct, and no mention of what "communication" means, such as whether it was electronic or verbal.

In another instance, the state police demoted Christopher Rogers to corporal, transferred him to a different unit and prohibited him from applying for a promotion for three years because he "engaged in conduct unbecoming" of a state police sergeant while on duty in June or July of 2016, according to his discipline record. It's unclear why the state police did not pinpoint which month. There is no description of what Rogers did or the effect of his actions.

Similarly, the state police suspended Cpl. Kyle Pelletier for 20 days and required him to pay back the state \$108 "on account of the July 2019 incident."

Pelletier's record appears to contain a description of his misconduct, but that sentence is redacted, followed by another that states: "This is a violation of our Code of Conduct policy (E-24) and Vehicle Use policy (E-80)."

In other parts of the country, some police chiefs actively publicize major discipline.

Luther T. Reynolds, the chief of police in Charleston, South Carolina, said he has held press conferences after firing an officer. The audience is twofold, he said. Answering questions about misconduct helps build trust among the public. It also demonstrates to other officers the consequences for misbehavior.

The state police's argument that descriptions are optional "is a discretionary interpretation used to conceal police misconduct from the public," said Rep. Jeff Evangelos, I-Friendship, who sits on the Judiciary Committee and has been a frequent critic of law enforcement policies. "They could do a lot better job at transparency if they wanted to."

'Under the hood of government'

The state police is not an outlier in failing to include details about officer misconduct in its discipline records. When the BDN previously examined hundreds of discipline records kept by the state's 16 county sheriff's offices, the newspaper found that many left out specific descriptions of what police and corrections officers did wrong, especially when the punishments were more severe.



The Maine State Police Troop C barracks in Skowhegan. *Callie Ferguson/Bangor Daily News*

Still, the county records ranged in their specificity, illustrating how law enforcement agencies interpret their responsibility to document discipline differently and that they can be more forthcoming about their mistakes when they choose to.

The Cumberland County Sheriff's Office, for instance, suspended a corrections officer in 2017 for 20 days – the same length of time as Pelletier – for showing favoritism, making sexual comments toward a female inmate and then lying about it to supervisors when she complained.

The sheriff documented the incident in a seven-page record that detailed the findings of an internal investigation. It also noted the specific sections of policy that the corrections officer violated, and a bulleted list of the officer's objections and defense of his behavior.

It is important to show "that due process was provided, and there exists just cause for the discipline meted out," Cumberland County Sheriff Kevin Joyce said when he provided the records last year.

While it's not uncommon for Maine police agencies to have vague discipline records, it appears to be unusual for them to black out entire portions of them. The BDN examined more than 1,000 pages of discipline records from county sheriff's offices. Two counties redacted some portions of the records but agreed to unredact them when asked. The Portland Police Department provided five years of records to the Press Herald, with no redactions.

There should be consistency in public access across the state, one lawmaker said.

"I think if you're finding different sets of rules and procedures in the different counties in Maine, or in the hundreds of different municipalities we have, that means that people in certain communities are getting less information than in other communities," said Rep. Thom Harnett, D-Gardiner, who is a former assistant attorney general. "Openness and transparency protects the good actors. We should not sacrifice the character of the good actors by hiding the conduct of the bad ones."

Lawmakers such as Harnett, Warren, Evangelos and Sen. Lisa Keim, R-Dixfield, all said they want to consider requiring law enforcement agencies to add descriptions of misconduct to the public records. Some also talked about the possibility of requiring the state police to submit an annual report to the Legislature with statistics on officer misconduct and the agency's response.

"The whole point of freedom of access laws is to allow us to see under the hood of government," said Keim, who sits on the Legislature's Judiciary Committee.

"They are completely sidestepping that if they're keeping records that are so inadequate."

Cote, who leads the state police, said he was unable to comment on legislation that has not been drafted.

"We support transparency in all aspects of our work and remain committed to abiding by and enforcing State of Maine laws," Cote wrote, adding that the state police annually reports broad agency information, such as statistics on allegations of excessive force, to the Maine Criminal Justice Academy, the licensing body for law enforcement.

It does not report annual discipline matters, however.

Officer misconduct is not the only type of information concealed by the state police but not by other agencies. For example, the state police refused to disclose policies and practices related to the use of digital surveillance tools, such as facial recognition technology, something other police agencies have revealed. And while the state police relied on a specific law to keep such information secret, some lawmakers want to eliminate that law to force more public disclosure.



Col. John Cote, chief of the Maine State Police, addresses reporters during a press conference in Norridgewock on April 27, 2018. *Michael G. Seamans/Morning Sentinel*

‘He’s the boss’

Then there are the cases of trooper misconduct with no corresponding public discipline records.

In the last five years, at least three troopers allegedly broke the law, but the state police had no internal public records documenting the circumstances.

One example is Trooper Justin “Jay” Cooley, who resigned from the state police in January 2020, five months after being charged with domestic violence assault.

Another is Michael Lane. Saco police arrested the trooper for criminal mischief in 2016, but York County District Attorney Kathryn Slattery decided not to prosecute after finding insufficient evidence to prove the case beyond a reasonable doubt. What happened remains unclear. The prosecutor declined to comment on the facts of the case. But Lane received a letter of guidance from the criminal justice academy that provides general clues: The academy reminded him to comply with the law at all times, maintain his composure in “difficult and frustrating situations” and recognize how the use of alcohol could cloud his judgment.

Lane remains with Alfred-based Troop A and was promoted to corporal last month.

The third involved Trooper Ethan Doody, who resigned in March 2015 shortly before the criminal justice academy found he had committed theft by deception and revoked his law enforcement license.

The investigation into Doody stemmed from the night of Dec. 26, 2014, when he responded to a pickup truck that crashed into a bull moose in Aroostook County’s Cyr Plantation. The driver, Brian Dufour, and his passenger were not injured, but the moose was killed, and the

truck was too damaged to drive.

When the driver's father, Joel Dufour of Madawaska, arrived on scene to help, he noticed the moose's antlers had been cut off, he said. His son told him the trooper, Doody, had done it, even though he'd asked to keep the moose. Joel Dufour found it odd and didn't get a clear answer from Doody as to why he took the antlers from the family, he said.

"I was not in a position to argue. He's the boss," Joel Dufour said.

More than two months later, the academy found the trooper had committed theft by deception when he used a hack saw to claim the antlers for himself and falsely said they had to be removed "to prevent people from just taking the antlers and discarding the carcass," according to the academy's paperwork documenting Doody's license revocation.

The Maine Attorney General's Office also looked into Doody's conduct, according to the academy, but he didn't face criminal charges.

Staff attorney Parr said there were no discipline records for Doody.

But the agency did reach an agreement with Doody to resign. The document shows Doody was investigated and quit. In return, the state police agreed to only verify his employment to his future employers. Other parts of the agreement were redacted without explanation. There was no mention of the moose antlers.

The only way to know why Doody resigned would be to ask a different agency than the one that employed him.

This is how the process works, Cote said: If the state police can't complete an internal investigation, it is closed. The agency has no control over an officer's decision to resign, Cote said.

Police in other states complete internal investigations even after officers resign, however.

And while the criminal justice academy, which handles police licensing in Maine, may pick up a complaint regardless of the officer's employment status, it only reviews a limited number of cases, nearly all of which involve allegations of criminal behavior. The police force also does not assist the academy by handing over internal investigative reports into its officers. Rather, under its union contract, the agency only sends a synopsis. The union contract is approved by a number of officers and officials, including the governor.

When law enforcement agencies don't document or disclose misconduct, it makes it easier for officers to get policing jobs elsewhere, including in other states.

“This is one of the biggest problems in American policing because it’s so seriously decentralized. I’ve seen it over and over and over ... that officers were allowed to resign agencies, and then they joined another agency, and there was no record really of any type of misconduct in the previous agency,” said Haberfeld, with the John Jay College of Criminal Justice.

There are other ways troopers can avoid public documentation of their discipline. Under their union agreement, troopers can request that the state police remove corrective memorandums, reprimands and suspensions from their personnel files after varying periods of time. Unlike other law enforcement agencies in Maine with similar contracts, they are then destroyed.

Cote pointed out that removal is not allowed if the officer has received subsequent, similar discipline.

Wiping clean an officer’s disciplinary history hinders the ability of supervisors to discipline officers in the future, said experts who study police accountability. The practice can also threaten the constitutional rights of defendants who are entitled to know if the officer testifying against them has a history of dishonesty, violence or criminal behavior.



Maine State Troopers Association Executive Director Craig Poulin, left, speaks with Sen. William Diamond, D-Windham, in 2009 in Augusta. *Andy Molloy/Kennebec Journal*

Click on the image below to read the Maine State Police discipline records.

Andre Paradis Ten-day suspension Near 2018	Bryan Creamer One-day suspension Near 2018	Christopher Rogers Dismissed Near 2017	Scott Haskies Ten-day suspension Near 2017
Christopher Harriman Ten-day suspension Near 2017	Tyler Maloon One-day suspension Near 2018	Bryan Creamer One-day suspension Near 2018	Kyle Pelletier 20-day suspension Near 2018
Elioka Fowlie 20-day suspension Near 2018	Daniel Murray Four-day suspension Near 2018	Tom Fiske Written Reprimand Near 2018	David Coffesky 60-day suspension Near 2018
Scott Quintero Dismissed Near 2018	Daniel Ryan Ten-day suspension Near 2017	Dezarae Filmyer Corrective Memorandum Near 2018	Christopher Tupper Written Reprimand Near 2018
Richard Spicer Corrective Memorandum Near 2018	David Musiec Written Warning Near 2018	Christopher Gay Written Reprimand Near 2018	William Baker Corrective Memorandum Near 2018

“It’s about fairness, about giving us the information we need to present to the jury that this witness may or may not be credible, may or may not have his own biases or histories that would make him less than heroic in the eyes of the jury,” said Tina Nadeau, executive director of the Maine Association of Criminal Defense Lawyers.

Craig Poulin, executive director of the Maine State Troopers Association and a former chief of the state police, did not respond to three interview requests.

The state police does not track how many discipline records it destroys, Parr said.

But it’s clear that cases resulting in discipline with a corresponding public record make up a small percentage of total complaints.

Most reports to the state police’s internal affairs division – 477 out of 685 over the last six years – are inquiries deemed informational only, according to statistics provided by the agency. Of the 208 internal affairs cases that resulted in findings for or against officers in 2015 through 2020, 65 were sustained, meaning the allegations against officers were found to be true.

It’s not known how many of the 65 cases resulted in discipline, but the newspapers received 20 records of discipline for 19 officers through the first half of 2020.

‘Where the problem starts and ends’

Political leaders who oversee police departments are ultimately responsible for ensuring agencies release more information about misconduct, said Haberfeld, with the John Jay College of Criminal Justice.

“There’s too much focus on what police organizations can or cannot do,” she said, “and not enough focus on the fact that it’s the politicians that can tell or not tell them to do certain things.”

The overseers of the state police include lawmakers and the governor – a former attorney general who has worked closely with law enforcement throughout her career.

Gov. Janet Mills’ office didn’t respond directly to questions about whether the governor believes a lack of detail in misconduct records is a problem and, if so, what she wants to do about it. Mills believes the records “must strike the appropriate balance between providing transparency into matters of police misconduct while adhering to state laws involving personnel matters – and that these must be the only considerations when creating these records,” spokesperson Lindsay Crete said.

In addition to guarding transparency, politicians are also responsible for picking the leader of the state police, who, per state law, must be chosen from within the ranks of the organization.

Lawmakers and experts were split on the requirement that the colonel come from within the state police. Some said they believe it could be a good motivator for the rank and file, and picking from within the organization ensures the leader knows the operations thoroughly. Others questioned why it was a requirement and said only being allowed to pick from within the state police could create a culture that rejects outside oversight.

Haberfeld said the practice is not common, but she's not opposed to it. "The question becomes: Who is picking the person? If it's a local politician, this is where the problem starts and ends," she said.

Within the last two decades, no one has been sworn in as leader of the state police with less than 20 years of experience in the agency. Over that period, the Legislature's criminal justice committee didn't turn down any of the five colonels' nominations. They were confirmed with zero opposition in the Maine Senate.

Have more information to share? Contact us at [\[email protected\]](#), [\[email protected\]](#) and [\[email protected\]](#).

Coming Monday: Misconduct kept secret by the Maine State Police is revealed, and some details raise doubts about accountability.

Coming Tuesday: A woman who was married to a state trooper says it took weeks for the agency to take seriously her reports of domestic violence.

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PRESS RELEASE

From: Maine Freedom of Information Coalition
Embargoed: Until 4 a.m. Friday Morning January 7, 2022
Further Information: mfoic@earthlink.net, 207 930-2400

Only Half of Maine Law Enforcement Agencies Offer Insight into Complaints and Discipline

A nearly year-long investigation from the Maine Freedom of Information Coalition into 135 law enforcement agencies highlights inconsistencies in record keeping and access to information.

The Maine Freedom of Information Coalition (MFOIC) is a 501(c)(3) non-profit, non-partisan statewide membership organization that exists to broaden knowledge and awareness of public access to Maine government proceedings and government records.

In a recent project, using Maine's Freedom Of Access Act (FOAA), MFOIC requested information from 135 Maine law enforcement agencies regarding citizen complaints and police disciplinary action and record keeping. The results revealed widespread discrepancies in the public's ability to access documents members of the public are legally entitled to view.

Beginning in January of 2021, the Maine Freedom of Information Coalition requested police departments in Maine provide all records concerning the total number of complaints filed against law enforcement officers from January 2016 to present. The coalition asked agencies to provide the total number of complaints received, their type, time period from the initial complaint to determination made, and any disciplinary action that resulted from the complaints.

The coalition's findings demonstrate Maine has no uniform system of tracking and maintaining records on police discipline. Some records were redacted. Those that were not redacted revealed a wide-ranging approach to accessing police records.

- 52% of agencies provided an aggregate number of complaints against officers.
- 32% demonstrated disciplinary action having been taken against at least one officer.
- Portland Police reported the most complaints with 116, with data from 2020 still unavailable. Augusta Police reported 71 complaints with 18 incidents resulting in discipline.

- Kennebunk Police reported 55 complaints with none of the events resulting in discipline.

- Maine State Police said the agency does not maintain an aggregate number of complaints but reported 17 disciplinary incidents.

Beyond the basic information of number of complaints and their resolution, information about disciplinary action also varied widely.

- Incidents resulting in disciplinary action included a written reprimand from Pittsfield's Town Manager to Police Chief Pete Bickmore for failing to follow CDC COVID-19 guidance while ill.

- Documents released by the Waterville Police Department revealed Officer Brian Gardiner was demoted for allegedly having a "sexual in nature" extramarital affair while on duty.

- Internal documents from the Skowhegan Police Department show officer Alex Burns was assigned to write a 500 word essay, with citations, on "the importance of following orders" over accusations of being insubordinate.

While most departments agreed to waive fees to produce the requested records, 9 departments requested payment for the time needed to collate documents. In several cases, the MFOIC chose to withdraw requests due to payments deemed excessive. The Cumberland County Sheriff's Office asked for \$353 to produce records, citing 16 hours of research. Sanford Police provided a cost estimate of at least \$225 for 10 hours of research.

Access to detailed findings, including MFOIC's initial FOAA request, a spreadsheet containing police department responses, and the full text of disciplinary records that were provided by police agencies are open to the public and are available at <https://drive.google.com/drive/folders/1hAS4pvP2uL9ja2MUffWxH4QTHio8M9E?usp=sharing>

*using the following sign-in information:
Email: Mainefreedomofinfo@gmail.com
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#END#

Maine Freedom of Information Coalition audits Maine law enforcement agencies

cm centralmaine.com/2022/01/07/maine-freedom-of-information-coalition-audits-maine-law-enforcement-agencies/

By Vanessa Paoella

January 7, 2022



ANNIVERSARY OF JAN. 6 INSURRECTION



Public record details law enforcement disciplining

One in five agencies did not respond to nonprofit group's Freedom of Access Act request

By VANESSA PAOLELLA
SUN JOURNAL

The Maine Freedom of Information Coalition sent Freedom of Access Act requests to 135 law enforcement agencies across Maine last year, seeking records of people's complaints and disciplinary letters over five years.

After receiving the request for records, some departments presented the coalition with an abundance of disciplinary records, while others offered only basic information that lacked identifiable details.

One in five did not respond, despite be-

The Maine Freedom of Information Coalition sent Freedom of Access Act requests to 135 law enforcement agencies across Maine last year, seeking records of people's complaints and disciplinary letters over five years.

After receiving the request for records, some departments presented the coalition with an abundance of disciplinary records, while others offered only basic information that lacked identifiable details.

Find It

Detailed findings, including Maine Freedom of Information Coalition's Freedom of Access Act request, a spreadsheet containing police department responses, hundreds of email and voice messages exchanged with members of law enforcement over the last year, and the full text of disciplinary records that were provided by police agencies, are available [here](#).

Email:

[(#)]

Password: Mainenews1!

Click “my drive” on left to access the documents.

One in five did not respond, despite being required to do so under Maine’s public access law.

Among the disciplinary actions reported by law enforcement agencies, an Auburn police officer was admonished after leaving headquarters with his loaded service pistol in plain sight inside his open locker. The officer received a verbal reprimand, according to one of the disciplinary records provided by the Auburn Police Department.

Other Auburn police records show multiple officers received oral or written warnings when they failed to show up at court hearings or for their scheduled shifts, and three officers were disciplined for more serious infractions.

In Mexico, the Police Department did not create written disciplinary records for two sustained complaints of rudeness and conduct unbecoming an officer. It is unclear whether any public records detailing the incidents exist because they were not provided to the coalition.

Similarly, a three-sentence disciplinary letter issued to a Windham police officer stated he was suspended for 40 hours, but provided no information as to why, beyond referencing Article 17 of “the contract.”

Many departments, including Augusta, Monmouth and Rumford, supplied registers with the most basic details, but did not provide the actual disciplinary letters.

Thirty agencies did not respond to the Freedom on Access Act request, including sheriff’s offices in Aroostook, Washington and York counties.

In January 2021, the nonprofit coalition submitted public records requests to law enforcement agencies related to people’s complaints and police disciplinary records, including all municipal police departments, all of Maine’s county sheriffs’ offices, and a few state agencies.

The requests sought access to the total number of complaints received, their type, time period from the initial complaint to determination of discipline, and copies of all final written disciplinary letters from January 2016 to January 2021.

All correspondence and the records obtained by the coalition, which is made up of representatives of Maine’s news media, librarians and other public access advocates, were made public this week.

The coalition board members say the informal audit demonstrated a need to standardize the creation and maintenance of complaints and disciplinary records in law enforcement agencies.

“In this particular case, it makes sense if complaints are filed, to have a system for determining how they are handled that is consistent across the state,” coalition President Jim Campbell said. “What’s the process of generating and maintaining the records? That is the question. That, as far as I know, is not mandated in any way and is not consistent across different departments or different levels of policing.”

Disciplinary action, too, was highly variable. When an officer failed to pay the Skowhegan Police Department the balance of \$9.95 he owed for the purchase of an external vest, he was ordered to pay that balance and to write an original 500-word essay on the importance of following orders. When writing, he was ordered to use Times New Roman size 12 font, single spaced, with 1 inch margins and citations.

In Waterville, two officers were disciplined for holding down a 12-year-old boy by his wrists and ankles in 2018 as the child’s mother spanked him. One of the officers was suspended without pay for three days. The second officer was suspended for two days.

The purpose of the project was not necessarily to compile a database of complaints and disciplinary records, said coalition Vice President Judith Meyer, who is also executive editor of the Sun Journal, Kennebec Journal and Morning Sentinel. Rather, the organization sought to gauge how agencies respond to Freedom of Access Act requests, as well as the availability and thoroughness of complaint and disciplinary records.

“The problem, I think, is that having records is not perceived to be a core responsibility for a lot of agencies,” Campbell said. “To their mind, dealing with the everyday things they have to deal with, it’s just one more dumb thing that they have to pay attention to. Except it isn’t a dumb thing.”

In one notable instance, the South Portland police chief promised to remove a reprimand from an officer’s personnel file six months after the reprimand if the behavior were not repeated. The removal date was set at Nov. 14, 2020. However, the department provided that record to the coalition as part of its response to the records request in January 2021, months after the officer was told the document would be removed.

Under state law — Title 30-A for municipalities and counties and Title 5 for state employees — final written decisions of discipline taken against public employees are not confidential, and the decisions are required to contain enough information about the details of the conduct for the public to understand the basis on which the disciplinary action was imposed, and what that action was.

There is no allowance for removal of disciplinary records from personnel files.

Rep. Jeffrey Evangelos, I-Friendship, serves on the Judiciary Committee in the state Legislature, where he is a strong advocates for law enforcement reform. He said he has found it difficult and, at times, impossible to obtain clear disciplinary records for serious wrongdoing.

“The police (should) be held accountable to the same laws that you and I have to follow,” Evangelos said. “And if they break them, they (should) be held to the same standards, and it should be public information.”

The Maine Freedom of Information Coalition board members were inspired to pursue the unofficial audit after learning about the joint investigation by the Portland Press Herald and Bangor Daily News into the redaction of information in Maine State Police disciplinary records.

“If we had done this as a journalistic project, I would have hammered every one of those police chiefs to get me a response within 30 days, or something like that, and then written back to them again, and again, and again until we got it,” Meyer said. “This was more of a point-in-time survey. We’re going to send it out, see what we get, and let the public know what we found.”

All but 10 of the departments that responded waived search and copying fees, under the provision in the Freedom of Access Act that fees may be waived in the public interest “because doing so is likely to contribute significantly to public understanding of the operations or activities of government.” The coalition withdrew requests from five agencies which requested more than \$200 in fees.

Those five departments were the Maine Warden Service, the police departments in Sanford, Brewer and Belfast, and the Cumberland County Sheriff’s Office.

At least 10 of the agencies that responded redacted information, including the Maine State Police; the sheriff’s offices in Oxford, Waldo and Piscataquis counties; and police departments in Cumberland, Scarborough, Farmington, Fairfield, Pittsfield and Kittery.

State law allows disciplinary records to be redacted only if an employee who has been disciplined appeals the decision and wins, according to Meyer.

If a decision is overturned, the employee’s name may be redacted from the otherwise public document, unless the employee publicly discloses the discipline on their own.

“The statute is really clear that a final disciplinary letter is a public document,” Meyer said. “It doesn’t say ‘except for.’ It says the whole record is a public record, so when we strike the content out of what is supposed to be a public record, it just raises questions and, for some people, it may raise suspicions.”

The Pittsfield Police Department redacted one of three final written decisions made available to the coalition. It was dated Feb. 24, 2020, involving a sergeant. The letter concludes the officer engaged in conduct that discredited the department. He was issued a written reprimand, but there is no detail of that conduct.

Two other disciplinary letters were not redacted, including one very detailed decision issued to police Pittsfield Chief Pete Bickmore in March 2020 by Town Manager Kathryn Ruth for violating COVID-19 protocols, violating a directive to leave the office when he was sick and joking about the pandemic in early 2020.

The chief was instructed to read state Center for Disease Control & Prevention guidance and the governor's directives on COVID-19 protocols, follow the instructions of Emergency Management Director Bernard Williams, provide medical clearance to return to work and apologize to all of his co-workers.

Standardizing the type of information disciplinary records should and should not contain could lead to fewer redactions and increased public trust, Meyer said.

"It was clear from Auburn, because we've got dozens of (disciplinary letters), that that's a high priority for them, that officers are held accountable," Meyer said. "The public should know that, for the good, as well as when officers misbehave, that the department itself is upholding its standards in a very regular, consistent way."

The issues are not only with law enforcement agencies. Other public service sectors struggle to maintain records, too.

According to data from the Office of State Fire Marshal, 61% of fire departments in Maine submitted at least one report to the state in 2020, despite being mandated to do so for every response under the law.

From 2016 to 2020, Maine Public Access Ombudsman Brenda Kielty received 429 inquiries and complaints related to municipalities, compared to 85 for law enforcement, according to annual reports from the Office of Attorney General.

Most members of the public are not familiar with navigating Freedom of Access Act laws, so it is important that requesting records be as simple as possible, Meyer said. When people encounter barriers, they may feel their only option is to give up.

"I've seen it happen too many times," Meyer said. "I wish it would never happen. But you know, people don't necessarily have the perseverance to just, you know, push and push and push until they get a record."

Oftentimes, when people meet resistance, they contact the Maine Freedom of Information Coalition, journalists or the state public records ombudsman for help, according to Meyer.

“Everybody’s willing to help,” she said, “but the best help would be if the records are available and accessible to the public when they ask for it.”

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Justin Silverman: Without more transparency requirements, potential for police secrecy is staggering

SJ sunjournal.com/2022/03/13/justin-silverman-without-more-transparency-requirements-potential-for-police-secrecy-is-staggering/

March 13, 2022

A judge in Bangor heard arguments in January about whether Maine State Police must release details about the discipline of its officers. The case — brought by the Portland Press Herald and the Bangor Daily News — involves excessively redacted misconduct records and has spotlighted the need for transparency within the department.

The newspapers explained in their lawsuit that: “Public awareness of whether law enforcement agencies are engaged in effective oversight and discipline of officers serves as a vital check on police corruption and misconduct.”

Such misconduct, however, often goes unchecked in Maine. As a recent survey of more than 100 local law enforcement agencies suggests, there’s a blue wall of silence that extends far beyond the state police headquarters in Augusta.

Fortunately, there is a common-sense solution that can help increase public awareness and allow citizens to better oversee their police departments. But first, it’s important to understand the breadth of the problem and how police misconduct secrecy is pervasive throughout the state.

The Maine Freedom of Information Coalition (MFOIC) earlier this year released a survey of 135 law enforcement agencies that were asked to provide the number of citizen complaints against their respective officers since 2016. The coalition also asked for the details of any disciplinary actions taken.

Despite being required to release this information under the state’s Freedom of Access Act, nearly half of all agencies (48%) declined to release any information or failed to respond at all. Of those agencies that did respond, some demanded hundreds of dollars to release the data.



Justin Silverman

Several agencies that did comply with the law — such as Pittsfield, Waterville and Skowhegan — underscored the need for transparency by revealing instances of misconduct that citizens have a right to know. Without this knowledge, after all, there can be no public oversight and accountability.

Instances of misconduct and disciplinary actions included:

- A police chief not following Centers for Disease Control and Prevention COVID-19 guidance while ill.
- An officer allegedly having a “sexual in nature” extramarital affair while on duty.
- An officer being required to write a 500-word essay with citations on “the importance of following orders” after accusations of being insubordinate.

When questioned by WMTW about the agencies that did not respond to the requests, Maine Chiefs of Police President Jared Mills blamed a lack of resources and inconsistent internal policies on how the information should be maintained.

Granted, some agencies are understaffed. Without a uniform policy on how misconduct records should be maintained and released, it can also be difficult to comply with the state’s public records law. But while these may be valid explanations in some cases, we should not accept them as excuses for any.

The Freedom of Access Act requires that agencies respond to requests within five days and produce records within a reasonable period of time. Compared to public record laws in other states, these are very lenient requirements. There is no excuse for not responding. There is no excuse for not taking the time — especially when broadly defined as “reasonable” — to gather records. There is no excuse for the secrecy.

Still, it’s incumbent on all of us to look for solutions and to create, whenever possible, a better system. Considering the comments of Mills and the challenges he said police departments encounter when receiving requests for instances of misconduct, there is a very simple way we can guarantee transparency, at least in respect to citizen complaints:

Require by statute that all law enforcement agencies not only maintain but also publicly and regularly post the number of citizen complaints against their officers and the disciplinary action taken.

Legislating such a requirement will make the expectation of transparency explicitly clear. It will force agencies to maintain data on police misconduct in a way that it can be easily managed and made accessible. It will remove the burden of making public record requests — requests that are often ignored. This required transparency will also encourage citizens to come forward with complaints and to help deter misconduct in the future.

A longer-term consideration is to comprehensively reform the Freedom of Access Act. A goal of the MFOIC survey was to show how difficult it is for citizens to get access to basic law enforcement data. Under the current law, there is little recourse when that data is denied other than to pursue litigation. Most citizens (and most newsrooms) lack the time and money needed to sue agencies for records they are entitled to under FOAA. Whether we grant the state's public records ombudsman powers to enforce the law or provide statutory incentives such as mandatory attorney fees for prevailing plaintiffs, we need to create more avenues for enforcement.

Prior to commencing their lawsuit against the Maine State Police, the Portland Press Herald and the Bangor Daily News requested about five years of disciplinary records. But because not all the information requested was provided, the newsrooms couldn't determine the misconduct of a majority of officers disciplined during that time.

Now take that one experience and multiply it by the 100-plus law enforcement agencies throughout the state. That is what's at stake. The opportunity for secrecy is staggering.

Justin Silverman is executive director of the New England First Amendment Coalition. Learn more about the coalition's work at nefac.org.

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Court orders state police to reveal more details about misconduct by troopers

SJ sunjournal.com/2022/05/31/court-orders-state-police-to-reveal-more-details-about-misconduct-by-troopers/

By Penelope Overton

May 31, 2022



A Superior Court judge has ordered the Maine State Police to provide the state’s two biggest newspapers with previously concealed parts of disciplinary records detailing misconduct and rule-breaking by its troopers.

In a May 26 ruling, Judge William R. Anderson of Penobscot Superior Court also ordered the Maine State Police to search for and turn over missing disciplinary records the state failed to release in response to public records requests from the Portland Press Herald and Bangor Daily News.

Anderson sided with police, however, in defending redactions that may reveal confidential medical data.

“We got what we really needed,” said Stephen Stich, supervising attorney at Yale Law School’s Media Freedom & Information Access Clinic at Yale Law School, which helped the newspapers file their suit. “We’ll not only find out why these officers were disciplined, but we could get the missing records, too.”

The ruling did not say when the Maine State Police must provide the papers with the unredacted records, or how long the agency has to conduct a new search for the missing disciplinary records. The agency may even appeal the ruling. A state police spokeswoman did not respond to calls or emails Tuesday seeking an interview.

The [lawsuit](#), which combined separate complaints filed by both newspapers, centers on records requests filed under the state’s Freedom of Access Act seeking final decisions of discipline for all Department of Public Safety employees between 2015 and 2019.

Final disciplinary measures against public employees, including police, are public records in Maine.

In response to the request, the state handed over documents involving disciplinary cases of 22 officers. But in 13 of those cases, the records were either too heavily redacted or too vague to provide any meaningful description of the conduct that gave rise to the discipline.

The state refused to cite a specific legal justification for each redaction in the records, saying that to do so would reveal the contents of the redacted sections. It also did not provide all disciplinary records referenced in the released information or information about an unknown number of inactive disciplinary measures.

During the investigation, the Maine State Police revealed that some final disciplinary actions were removed from trooper personnel files after a period of time, ranging from as little as a year for minor infractions and preventable accidents to five years for demotions and serious infractions.

Police lawyers say they cannot find all of these “inactive” files, and the court can’t be sure they were not destroyed, which is prohibited under Maine’s record retention laws. Anderson has ordered a second review for these missing inactive disciplinary records.

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Inside the Maine State Police, officers misdeeds are kept secret

The newspapers published a three-day series revealing the nature of misconduct in the ranks of the state police based on the records the police provided. The reporting showed [a secretive process](#) in which misconduct records are only briefly available to the public before they are destroyed. The lack of disclosure prevented public accountability of the troopers and the department’s disciplinary process.

State police redacted substantive descriptions of what some officers did to warrant punishment.

The reporting and the lawsuit were supported by the Pulitzer Center and the Media Freedom and Information Access Clinic at Yale Law School, where law students help media organizations advocate for greater government transparency through legal action.

Sigmund Schutz of Preti Flaherty, the lawyer representing the Press Herald, was pleased with the ruling.

“This is a terrific win for government transparency and police accountability,” Schutz said.

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