



OLR RESEARCH REPORT

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LAWS IN OTHER NEW ENGLAND STATES CONCERNING THE DISCLOSURE OF WITNESSES' IDENTITIES

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You asked whether the other New England states exempt from disclosure under their Freedom of Information (FOI) laws the identities of (1) witnesses generally or (2) witnesses who are minors specifically.

SUMMARY

None of the five other New England states have laws that specifically address the disclosure of witnesses' identities (whether in general or for minors specifically). However, each state has broader exemptions that likely cover witness identities in certain circumstances.

Concerning the names of witnesses who are minors, New Hampshire's Attorney General's Office, in its most recent [memorandum on the state's Right-to-Know law](#), directs agencies to redact the names of juvenile witnesses named in a crime investigation report. The basis for this direction appears to be a provision in the Right-to-Know law that exempts from disclosure records "whose disclosure would constitute invasion of privacy" (N.H. Rev. Stat. Ann. § 91-A:5(IV)). We did not find any directives from the four other states that construe their FOI laws in a similar manner.

WITNESSES GENERALLY

Three of the five other New England states (Maine, Rhode Island, and Vermont) have exemptions that mirror the federal Freedom of Information Act's (FOIA) exemption for law enforcement records. (Note that Maine's exemption is codified in a statute concerning criminal records generally.) Additionally, under case law in New Hampshire, the federal FOIA governs disclosure of state and local law enforcement records.

The federal FOIA's law enforcement records exemption covers, among other things, "records or information compiled for law enforcement purposes" if their production could reasonably be expected to (1) constitute an unwarranted invasion of personal privacy or (2) endanger the life or physical safety of any individual (5 USC § 552(b)(7)(C and F)).

Thus, a witness's identity could be withheld if disclosure meets one of the two above provisions. Vermont's law also has a provision expressing the legislature's intent that witness identities not be disclosed unless their withholding would conceal government wrongdoing.

In Massachusetts, the FOI law exempts from disclosure law enforcement records if disclosure "would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest" (Mass. Gen. Laws ch.4, § 7, cl. 26(f)). The most recent [guide to the Massachusetts Public Records Law](#), published by the secretary of the commonwealth, advises agencies that details in witness statements are exempt if their disclosure would "create a grave risk of directly or indirectly identifying a private citizen who volunteers as a witness." The guide cites a 1976 state court case as the authority for this directive (*Bougas v. Chief of Police of Lexington*, 371 Mass. 59, 62 (1976)).

Table 1 has more details on these exemptions.

Table 1: FOI Exemptions that May Apply to Witnesses' Identities

| State and Citation | Description |
|--|---|
| <p>Maine</p> <p>Me. Rev. Stat. Tit. 16 § 614 1 (C and H)</p> | <p>Law enforcement records are exempt if there is a reasonable possibility that public release or inspection of the reports or records would (1) constitute an unwarranted invasion of personal privacy or (2) endanger the life or physical safety of any individual, including law enforcement personnel</p> |
| <p>Massachusetts</p> <p>Mass. Gen. Laws ch.4, § 7, cl. 26(f)</p> | <p>Law enforcement records are exempt if disclosure would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest</p> |
| <p>New Hampshire</p> <p><i>Murray v. New Hampshire Div. of State Police</i>, 154 N.H. 579 (2006), reaffirming <i>Lodge v. Knowlton</i>, 118 N.H. 574 (1978)</p> | <p>No specific statute. However, the state's supreme court has ruled that the disclosure of law enforcement records is governed by the federal FOIA (see above description)</p> |
| <p>Rhode Island</p> <p>RI Gen. Laws § 38-2-2(4)(D)</p> | <p>Law enforcement records are exempt if disclosure could reasonably be expected to (1) constitute an unwarranted invasion of personal privacy or (2) endanger the life or physical safety of any individual</p> |
| <p>Vermont</p> <p>1 V.S.A. § 317(c)(5)(A and D)</p> | <p>Law enforcement records are exempt, but only to the extent that the production of such records could reasonably be expected to (1) constitute an unwarranted invasion of personal privacy or (2) endanger the life or physical safety of any individual</p> <p>The law also provides the following statement on legislative intent:</p> <p style="padding-left: 40px;">It is the intent of the General Assembly that, consistent with [previous court decisions], a public agency shall not reveal information that could be used to facilitate the commission of a crime or the identity of a private individual who is a witness to or victim of a crime, unless withholding the identity or information would conceal government wrongdoing</p> |

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