

Via E-Mail Only (lawcourt.clerk@courts.maine.gov)

December 14, 2017

Matthew Pollack, Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101

Regarding the Recommendations Presented to the Court in the Report of the Task Force on
Transparency and Privacy in Court Records

Dear Mr. Pollack:

I am not an attorney but I am a taxpayer, as well as a person who is deeply concerned both about personal privacy and about the public's access to information generated by and through our government. I do a weekly radio program about digital technology and often focus on the topic of privacy in the digital age, an issue of immense importance in today's world. As Chair of the Maine Library Association's Intellectual Freedom Committee (though I am speaking as an individual here), I have a deep respect for the value of personal privacy as an essential tool of personal autonomy and of societal value.

I also believe that "Sunshine is the best disinfectant," in Justice Brandeis's words, and, more recently, in the words of the Banner on the *Washington Post*, that "Democracy Dies in Darkness." That is why I accepted a position on the Legislature's Right to Know Advisory Committee. In my role on that Committee, and in my life as a citizen, I constantly strive to get the balance right between the two values of personal privacy, and of access to government information. I believe that members of the Task Force on Transparency and Privacy in Court Records were striving for that balance as well. In my opinion, they did not achieve it. In fact, they downplayed the public's right to observe the operation of their government in several key ways that are fatally flawed for our democracy.

1. **A public document is a public document, period.** The format a document may be in does not change that basic fact. Whether information is rendered in paper form or as an electronic file, transparency is key to maintaining citizen confidence in government, and public access to government documents is key to transparency. The Federal Court system has recognized that truth and has increasingly made documents generated in that system available online. In proposing a digital system for court records in Maine, a similar recognition of the value of electronic access to court documents was part of the justification for taxpayers investing in such a system.

2. **“Privacy by obscurity” is neither a legal doctrine, nor is it a practical reality in today’s world.** “Privacy by obscurity” is simply an approach to access to public information that favors those who are able to travel to courts where this public information is available. Many people are not able to do so, e.g., people who work during the limited hours courts are open; people with disabilities that limit their ability to travel; people with limited incomes; people without access to private transportation in a state with minimal public transportation options outside of a few major population centers; people with families and limited access to child care—the list could go on. The point here is that citizens who are less privileged than attorneys or those who can afford to pay attorneys are seriously disadvantaged by the approach the Task Force has proposed. There may be many reasons why Maine people who are not directly involved in a court case may want to have access to the full materials that are available at court houses. Hoping that those people will not wind up going to court houses is not a principled approach to somehow facilitating the value of privacy.

It is possible that Task Force members have not seen recent advertisements for part-time workers who would go to court houses specifically to gather and copy the information

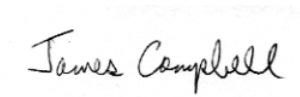
only available at court houses (in one case, court in Aroostook County was mentioned). That personally gathered information is then sold to commercial brokers who offer it online for a fee to anyone willing to pay an often substantial price. Imagining that “privacy by obscurity” is an effective means to keep information from being available online is not a particularly supportable position today. It simply removes online access at a reasonable cost from the citizens who paid for the system, and creates economic friction through commercial brokerage of public records.

3. **Balance is key at the specific level, not at the one-size-fits-all general level.** There are many approaches already in use to protect sensitive personal information. We see this daily in the other branches of government where some personal information is considered privileged. The same is true as well in the courts where certain sensitive personal information, e.g., Social Security numbers, is not included in publicly available documents. The Task Force asserts that it is proposing a balanced approach to public access to court records/information. However, instead of suggesting some specific classes of information that should be privileged, the Task Force asserts as a general principle that most detailed case information is privileged from appearing online, except for those directly involved in court cases, their attorneys, and, of course, agents of the state such as prosecutors. Why? Why not, as courts do now, deal with cases as situations arise? If there is a valid reason to seal a case for a time period, seal it. If specific information in a case is considered privileged, privilege that specific information. Simply saying that anything that appears in court proceedings except what are essentially summaries and lists should not be online is overreach, overkill, and not in the public interest when it comes to public documents.

In summary, a balance between privacy and the public’s right to know is absolutely essential for

the survival of our form of government. The balance proposed by the Task Force on Transparency and Privacy in Court Records regarding online access to court documents leans too far away from public access and provides, practically speaking, minimal protection of privacy which is far outweighed by the disadvantages this overly general, non-specific approach creates for the general public. I urge the Justices to recognize that a public record is a public record. whether it happens to be in a court house or on the Web.

Sincerely,

A handwritten signature in cursive script that reads "James Campbell". The signature is written in black ink on a white background.

James Campbell
48 Monroe Rd.
Searsport, ME 04974