

126th MAINE LEGISLATURE

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Legislative Document

No. 1216

H.P. 861

House of Representatives, March 26, 2013

An Act To Amend the Freedom of Access Act

Reference to the Committee on Judiciary suggested and ordered printed.

Millient M. Mac Jarland

MILLICENT M. MacFARLAND Clerk

Presented by Representative CAREY of Lewiston. Cosponsored by Senator THOMAS of Somerset and Representatives: BEAULIEU of Auburn, CROCKETT of Bethel, EVANGELOS of Friendship, HARVELL of Farmington, PRIEST of Brunswick, Senators: HILL of York, KATZ of Kennebec, PATRICK of Oxford.

1 Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §408-A, sub-§3, as enacted by PL 2011, c. 662, §5, is amended to read:

4 3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a 5 request made according to this section within a reasonable period of time, and may 6 request clarification concerning which public record or public records are being 7 8 requested. The agency or official shall provide a good faith, nonbinding estimate of the 9 time within which the agency or official will comply with the request, as well as a cost 10 estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. The agency or official 11 shall respond to each communication within 5 calendar days of the receipt of the 12 communication. 13

Sec. 2. 1 MRSA §408-A, sub-§4, as enacted by PL 2011, c. 662, §5, is amended
 to read:

4. Refusals; denials. If a body or an agency or official having custody or control of
 any public record refuses permission to inspect or copy or abstract a public record, the
 body or agency or official shall provide written notice of the denial, stating the reason for
 the denial, within 5 working calendar days of the receipt of the request for inspection or
 copying. Failure to comply with this subsection is considered failure to allow inspection
 or copying and is subject to appeal as provided in section 409.

- Sec. 3. 1 MRSA §408-A, sub-§8, ¶B, as enacted by PL 2011, c. 662, §5, is
 amended to read:
- B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. <u>The agency or official shall</u> <u>provide information describing the reasons for the costs, including the statute that</u> identifies any confidential information that must be redacted.
- 30 Sec. 4. 1 MRSA §409, sub-§1, as amended by PL 2011, c. 559, Pt. A, §1 and c.
 31 662, §6, is repealed and the following enacted in its place:

32 1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may 33 appeal the refusal, denial or failure within 30 calendar days of the receipt of the written 34 notice of refusal, denial or failure to any Superior Court within the State as a trial de 35 36 novo. The agency or official shall file an answer within 14 calendar days. If a court, after a trial de novo, determines such refusal, denial or failure was not for just and proper 37 cause, the court shall enter an order for disclosure. Appeals may be advanced on the 38 39 docket and receive priority over other cases when the court determines that the interests 40 of justice so require.

1 Sec. 5. 1 MRSA §409, sub-§4, as enacted by PL 2009, c. 423, §1, is amended to 2 read:

4. Attorney's fees. In an appeal under subsection 1 or 2, the court<u>, in its discretion</u>, may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

9 This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 10 2010.

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SUMMARY

This bill amends the Freedom of Access Act to require agencies and officials to respond within 5 calendar days to any communication about public records. The response must include a good faith, nonbinding estimate of the cost to provide the records. When estimating the cost, the agency or official must provide details of the costs, including the statutes governing the confidentiality of any information redacted from requested records.

18 This bill provides that failure to provide a written denial or refusal is considered a 19 failure to allow inspection or copying and is subject to an appeal to Superior Court.

20 This bill gives the court discretion to award reasonable attorney's fees and litigation 21 expenses to the substantially prevailing plaintiff without making a finding of bad faith.