



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

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BILL ANALYSIS

TO: Joint Standing Committee on Judiciary
FROM: Janet Stocco, Legislative Analyst
DATE: May 6, 2025
RE: LD 1683, An Act to Make a Freedom of Access Act Request Free of Charge upon Petition (Sen. Stewart)

SUMMARY

This bill would make the following two changes to the provisions of the Freedom of Access Act (FOAA) governing requests for public records in circumstances where a public records request “is accompanied by a petition signed by at least 150 individuals registered to vote in this State:

- First, the bill would prohibit an agency or official having custody or control of a public record from charging a fee for the public records request; and
- Second, the bill would require the agency or official that receives the request to provide an update on the status of the request at least every 30 days after the date the request is received.

COMPARISON TO CURRENT LAW

The OPLA Memorandum entitled “Overview of current law relating to public records requests” provides information on FOAA’s timeframes for responding to a public records requests; the fees that public agencies and officials may, and may not, charge a person who submits a request for a public record; and the authority of public agencies and officials to waive these fees in specific circumstances.

ISSUES FOR CONSIDERATION AND PROPOSED AMENDMENTS

1. **Impetus for the bill.** The sponsor and Maine Policy Institute testified in favor of the bill, emphasizing that it is to ensure that financial hurdles do not prohibit public access when there is significant community interest in a particular public record request. Requiring that at least 150 registered voters sign the request before the fee is waived ensures that the request reflects “genuine public interest.” In comparison, they observe that, if “150 or more registered voters of the State” request that an agency adopt or modify a rule pursuant to the Maine Administrative Procedure Act, 5 M.R.S. §8055(4), the agency is required to initiate appropriate rulemaking.

The provision of the bill requiring periodic updates on the progress of a public records request is designed to alleviate a common frustration the sponsor has heard from members of the public who have had to wait long periods of time, without receiving any information, before their public records requests have been satisfied.

2. **Concerns raised in testimony.** Several government entity associations, including the Maine Sheriffs’ Association, Maine County Commissioners Association, Maine Water Utilities Association and Maine School Management Association, testified in opposition to the bill. In their testimony, these organizations raised the following concerns with the specific proposals in the bill:

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- Requiring staff to validate at least 150 of the signatures associated with a particular public records request will impose an additional burden on staff, who may already be overwhelmed with the need to balance their ordinary job functions with processing public records requests, especially in chronically understaffed law enforcement agencies.
- Removing the ability of public bodies to charge fees for public records requests may impose significant financial burdens if, for example, the requests require a large amount of staff time to search for, retrieve, redact if necessary and compile the records into a usable format. They note that FOIA currently prevents public bodies from charging for the first 2 hours of staff time associated with a request. Public bodies also frequently work with requesters to narrow the scope of and costs associated with their requests.
- Public bodies already have the authority to waive fees for public records requests if release of the public record “is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.” §408-A(11).
- Requiring agencies or officials to provide an update on the status of requests at least every 30 working days will also impose a new administrative burden on public agencies and officials.
- The bill may impose a state mandate on local governments.

TECHNICAL AND DRAFTING ISSUES — The committee may wish to consider:

- Whether 150 registered voters who sign a petition must reside in a particular area of the State — for example, within a school district to whom the request is made?
- Whether the required number of signatures should vary based on the relative size of the public body to whom the request is made (for example, should fewer signatures be required in more rural areas of the State)?
- Whether it makes sense to amend the fee waiver provision in §408-A(11) either in addition to or in lieu of the fee prohibition language in the bill?
- Whether it makes sense to impose an upper limit on the cost that a public body may be required to absorb if there is a particularly burdensome public records request? Should this be something that the Superior Court should be required to adjudicate as part of a public body’s request for a protection order under §408-A(4-A)?

FISCAL INFORMATION

Not yet determined by OFPR (as of 5/3/25).

Potential state mandate? It is possible that OFPR could flag this bill as potentially imposing a state mandate related to the bill’s new requirements for public agencies to validate the signatures on a public records request or send periodic updates on the progress toward fulfilling the request. Article IX, Section 21 of the Constitution of Maine (adopted in 1992), prohibits the State from imposing a state mandate on a local unit of government unless:

- I. The State annually provides 90% of the funding; or
- II. The Legislature votes to establish an exemption by a 2/3 vote of the elected membership of each chamber.

Legislation does not constitute a state mandate unless both parts of the following 2-part test are satisfied: The legislation must (1) require a local unit of government to expand or modify its activities (2) so as to necessitate additional expenditures from local revenues.

As is expressly authorized by the Constitution, the Legislature enacted 30-A M.R.S. §5685 to implement Article IV, Section 21. Among other things, this statute clarifies that, “unless [legislation establishing a mandate is] funded or exempted from state funding,” a “local unit of government is not bound by any mandate” contained within that legislation. See attached OPLA overview of State Mandates.