

RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, October 27, 2022
1:00 p.m.

Location: State House, Room 228 (Hybrid Meeting)
Public Access through Maine Legislature's livestream:
<https://legislature.maine.gov/Audio/#228>

1. Welcome to new member and introductions
2. Public Comment
3. Discussion of **Revised** Public Access Ombudsman Proposal to Clarify Responsibility of Responders to FOAA Requests Related to Time Estimates
4. Reports of Subcommittees
5. Discussion of Other Issues?
6. Adjourn



Troy D. Jackson
President of the Senate

THE MAINE SENATE
130th Legislature

3 State House Station
Augusta, Maine 04333

October 26, 2022

Betsy Fitzgerald
85 Court St.
Machias, Maine 04654

Dear Betsy,

Pursuant to my authority under Title 1, MRSA, Chapter 13, Section 411, I am pleased to appoint you to the Right to Know Advisory Committee, effective the date of this letter. You will be serving as one member who is representative of county or regional interests.

I appreciate your willingness to serve in this capacity. Should a conflict arise, or if my office can be of assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy Jackson'.

Troy D. Jackson
President of the Senate

cc: Hon. Ryan Fecteau, Speaker of the House
Hon. Eloise Vitelli, Senate Majority Leader
Hon. Jeff Timberlake, Senate Minority Leader
Hon. Michelle Dunphy, House Majority Leader
Hon. Kathleen Dillingham, House Minority Leader
Melissa O'Neal, Director, Boards and Commissions, Governor's Office
Cathy Beaudoin, Director, Division of Corporations, UCC and Commissions
Rebecca Albair, Boards and Commissions, Secretary of State's Office
Suzanne Gresser, Executive Director, Legislative Council
Danielle Fox, Director, Office of Policy and Legal Analysis
Casey Milligan, Manager, Legislative Information Office

Right to Know Advisory Committee

1 MRSA §411

Membership List as of October 27, 2022

Name	Representation
Rep. Thom Harnett, Chair	House member of Judiciary Committee, appointed by the Speaker of the House
Sen. Anne Carney	Senate member of Judiciary Committee, appointed by the President of the Senate
Amy Beveridge	Representing broadcasting interests, appointed by the President of the Senate
Jonathan Bolton	Attorney General's designee
James Campbell	Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
Justin Chenette	Representing the public, appointed by the President of the Senate
Lynda Clancy	Representing newspaper and other press interests, appointed by the President of the Senate
Linda Cohen	Representing municipal interests, appointed by the Governor
Julie Finn	Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court
Betsy Fitzgerald	Representing county or regional interests, appointed by the President of the Senate
Chief Michael Gahagan	Representing law enforcement interests, appointed by the President of the Senate
Mal Leary	Representing broadcasting interests, appointed by the Speaker of the House
Kevin Martin	Representing state government interests, appointed by the Governor
Judy Meyer	Representing newspaper publishers, appointed by the Speaker of the House
Kim Monaghan	Representing the public, appointed by the Speaker of the House
Eric Stout	A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor
Cheryl Saniuk-Heinig	A member with legal or professional expertise in the field of data and personal privacy, appointed by the Governor
Victoria Wallack	Representing school interests, appointed by the Governor

**PROPOSED DRAFT LEGISLATION TO CLARIFY PROVISIONS IN SECTION 408-A
RELATED TO TIME AND COST ESTIMATES**

SUGGESTED BY PUBLIC ACCESS OMBUDSMAN FOR CONSIDERATION BY RTKAC

***See current law in §408-A in its entirety following summary

Sec. 1. 1 MRSA §408-A, sub-§3 is amended to read:

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the **time frame** within which the agency or official will comply with the request, ~~as well as~~ and a cost 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 frame. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

Sec. 2. 1 MRSA §408-A, sub-§8 is amended to read:

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. A reasonable fee to cover the cost of copying is no more than 10¢ per page for a standard 8 1/2 inches by 11 inches black and white copy of a record. A per-page copy fee may not be charged for records provided electronically.

B. The agency or official may charge a fee to cover the ~~actual cost of~~ time spent searching for, retrieving and compiling the requested public record in accordance with this paragraph. Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2) After the first 2 hours of staff time, the agency or official may charge a fee of not more than \$25 per hour.

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies

F. An agency or official may require payment of all costs before the public record is provided to the requester.

~~Sec. 3.2.~~ **1 MRSA §408-A, sub-§9** is amended to read:

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9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the ~~time necessary to complete the request~~ the **time frame** within which the agency or official will comply with the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than ~~\$30~~ \$50, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

Summary

This **revised** proposed draft makes the following changes:

1. It clarifies that an agency or official must specify the estimated **time frame** within which an agency or official will comply with a request for public records; and
2. It clarifies language to better describe the scope of the fee charged by an agency or official for searching for, retrieving and compiling a requested public record.
3. It increases the cost threshold for when an agency or official must inform a requester of the estimate of the total cost before proceeding with a request for public records. The increase reflects the changes made by Public Law 2021, chapter 375 that changes the “free” staff time per request from 1 hours to 2 hours and increases the hourly fee for staff time that may be charged by an agency or official from \$15 to \$25.

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CURRENT LAW

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [PL 2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8. [PL 2011, c. 662, §5 (NEW).]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [PL 2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [PL 2011, c. 662, §5 (NEW).]
[PL 2011, c. 662, §5 (NEW).]

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost 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. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request. [PL 2015, c. 317, §1 (AMD).]

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, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in

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subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[PL 2015, c. 494, Pt. A, §1 (RPR).]

4-A. Action for protection. A body, an agency or an official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

(1) The terms of the request and any modifications agreed to by the requesting party;

(2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;

(3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and

(4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [PL 2015, c. 248, §2 (NEW).]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [PL 2015, c. 248, §2 (NEW).]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [PL 2015, c. 248, §2 (NEW).]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [PL 2015, c. 248, §2 (NEW).]

[PL 2017, c. 288, Pt. A, §1 (AMD).]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[PL 2011, c. 662, §5 (NEW).]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

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[PL 2011, c. 662, §5 (NEW).]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [PL 2011, c. 662, §5 (NEW).]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. A reasonable fee to cover the cost of copying is no more than 10¢ per page for a standard 8 1/2 inches by 11 inches black and white copy of a record. A per-page copy fee may not be charged for records provided electronically. [PL 2021, c. 313, §1 (AMD).]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record in accordance with this paragraph. Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2) After the first 2 hours of staff time, the agency or official may charge a fee of not more than \$25 per hour. [PL 2021, c. 375, §1 (AMD).]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [PL 2011, c. 662, §5 (NEW).]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [PL 2011, c. 662, §5 (NEW).]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [PL 2011, c. 662, §5 (NEW).]

F. An agency or official may require payment of all costs before the public record is provided to the requester. [PL 2017, c. 158, §1 (NEW).]

[PL 2021, c. 313, §1 (AMD); PL 2021, c. 375, §1 (AMD).]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete

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the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

[PL 2011, c. 662, §5 (NEW).]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or [PL 2011, c. 662, §5 (NEW).]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [PL 2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record requested to be in the public interest because doing so 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. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

12. Retention of fees or costs. An agency may retain any fees or costs charged under this section. [PL 2021, c. 375, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 662, §5 (NEW). PL 2013, c. 350, §§1, 2 (AMD). PL 2015, c. 248, §§1, 2 (AMD). PL 2015, c. 249, §1 (AMD). PL 2015, c. 317, §1 (AMD). PL 2015, c. 494, Pt. A, §1 (AMD). PL 2017, c. 158, §1 (AMD). PL 2017, c. 288, Pt. A, §1 (AMD). PL 2021, c. 313, §1 (AMD). PL 2021, c. 375, §§1, 2 (AMD).

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