

# **STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL**

**Aaron M. Frey, Attorney General**



**PUBLIC ACCESS OMBUDSMAN ANNUAL REPORT FOR 2024**

**February 6, 2025**

**Brenda L. Kielty, AAG, Ombudsman**

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## SUMMARY

Maine's Freedom of Access Act (FOAA) recognizes that government must be accountable to the people and provides a statutory right of access to public meetings and public records. While the principles of open government, transparent deliberations and access to public information are fundamental to FOAA, these interests must be balanced with the need for government to maintain the confidentiality of information to protect personal privacy, security and other legitimate interests.

In 2007 the Legislature created the public access ombudsman position within the Office of the Attorney General. The statute authorized the ombudsman to educate the public and government officials about the requirements of the State's freedom of access law, provide dispute resolution services, answer inquiries and make recommendations for improvements to the law. In 2012 the Legislature funded a full-time ombudsman position.

The ombudsman performs an unusual role in government. Although the ombudsman receives complaints from the public, the ombudsman's job is not to be either an advocate for the complainant or a defender of the government. An ombudsman is an impartial intermediary who provides information, who informally resolves disputes and encourages full compliance with the spirit and the letter of the law.

### **Program Trends**

The ombudsman activity involving question and complaint resolution has remained consistently high over the course of the program. A total of 589 contacts were received in 2024 from FOAA requesters and agencies seeking assistance.

Like the activity in previous years, the bulk of the contacts were inquiries from private citizens regarding access to public records held by municipal government agencies.

### **State Agency Annual FOAA Reporting**

The Ombudsman Report for 2024 includes data on the annual number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies. Although incomplete data was reported on some of the indicators, this snapshot of FOAA activity should help inform policy makers and the public on how each agency is generally responding to FOAA requests over the course of a year. This data also illuminates the volume of FOAA requests for these state agencies collectively.

I would like to thank the state agency public access officers for their time in compiling the data necessary for this report and their continued dedication to providing access to public records.

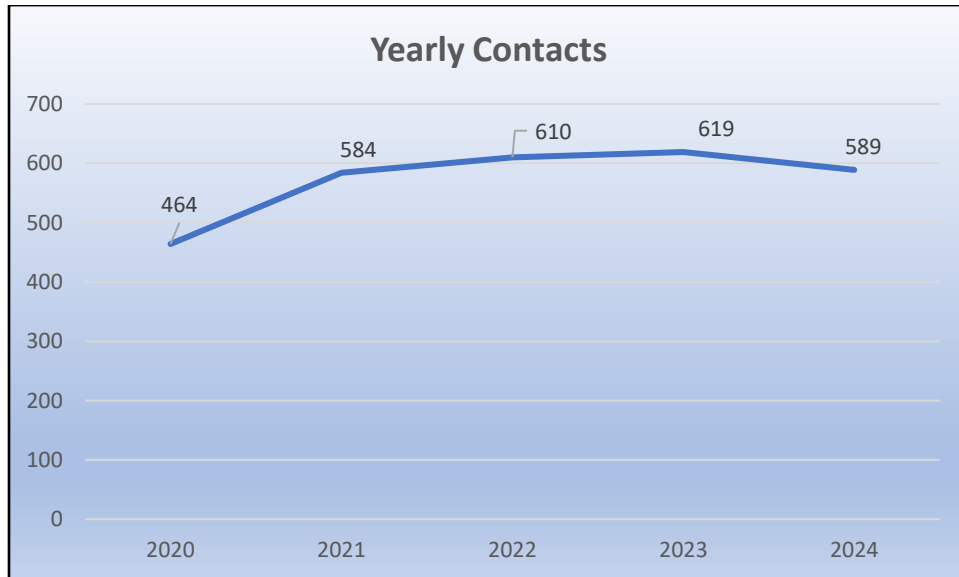
Brenda L. Kielty, Public Access Ombudsman

## ANSWERING INQUIRIES & RESOLVING DISPUTES

“The ombudsman shall respond to informal inquiries made by the public and public agencies and officials concerning the State’s freedom of access laws; and respond to and work to resolve complaints made by the public and public agencies and officials concerning the State’s freedom of access laws.” 5 M.R.S. § 200-I(2)(A) and (B).

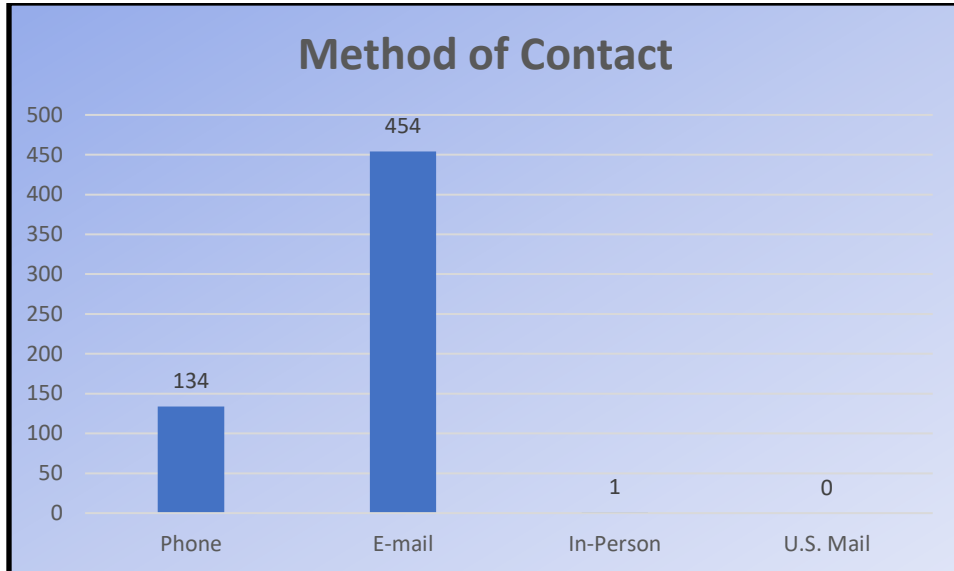
### 2024 Contacts with the Ombudsman

In 2024 I logged 589 inquiries and complaints. Requests for help ranged from questions about how to file a FOAA request to more complex inquiries regarding situations in which the FOAA issues were only part of a larger dispute or where some fact-finding was necessary before appropriate advice could be given.



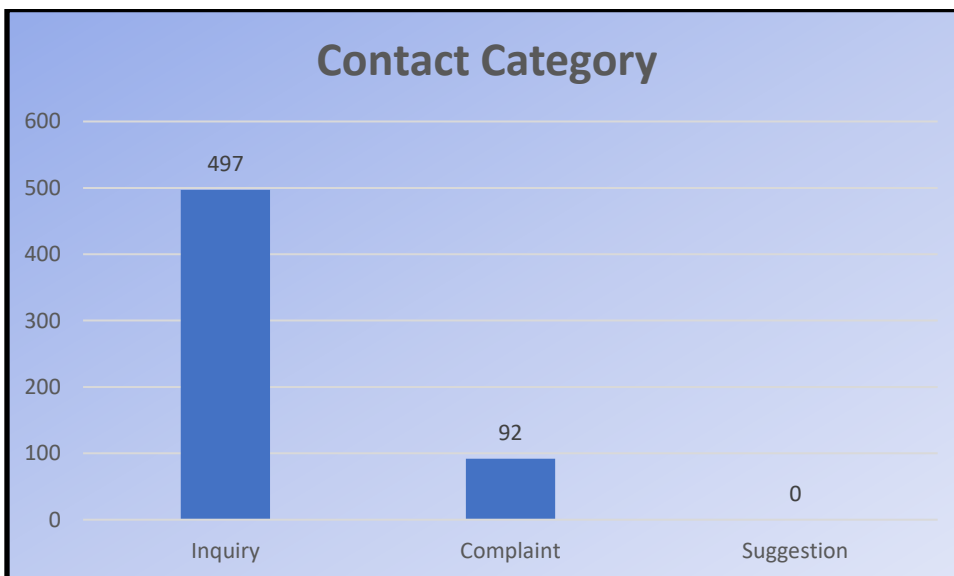
**Method of Contact**

The bulk of initial contacts was by email (454) followed by telephone (134) U.S. Mail (0) and in-person (1).



**Contacts Included Inquiries, Complaints and Suggestions**

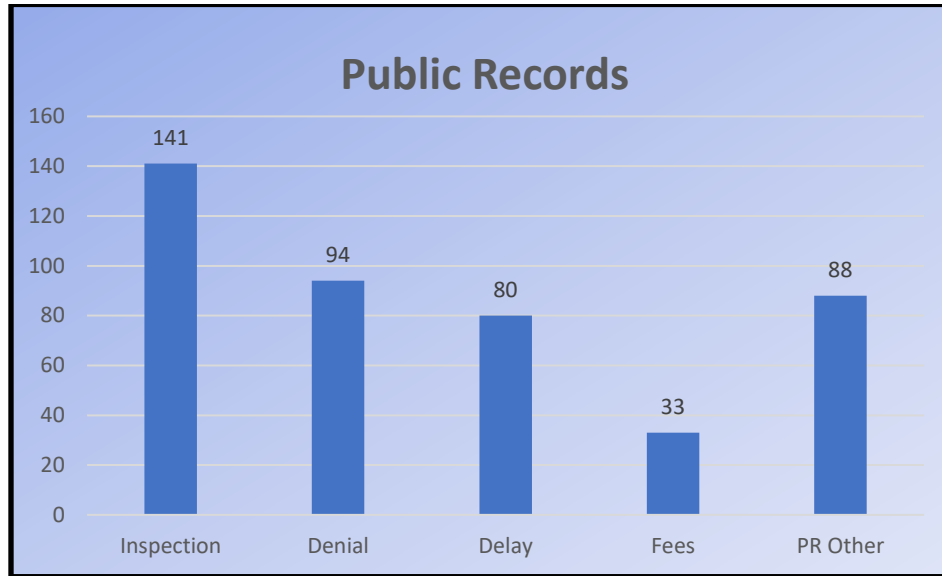
The 589 contacts included general inquiries (497), complaints (92) and suggestions (0). Contacts that were characterized as complaints involved a substantial controversy between the parties with specific relief or remedy sought by the complainant.



## Contacts Concerning Public Records

Of the contacts about public records (433), some of the most common questions concerned:

- Basis for a denial
- Confidentiality exceptions
- Reasonable response times and delay
- Production or inspection of public records
- Fees and costs for public records



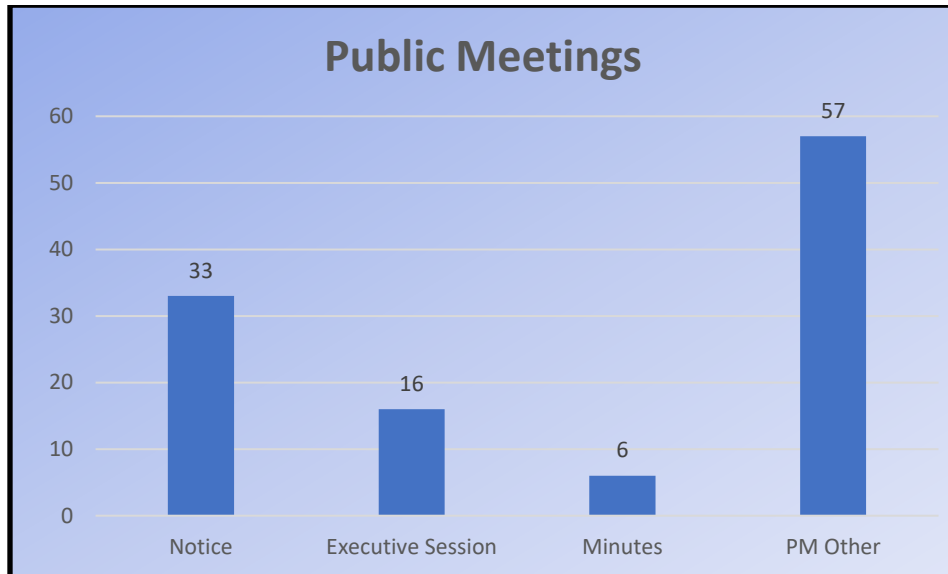
All other public records contacts concerned either a combination of issues or a narrow subset of the listed categories. The “Other” category includes the following kinds of questions:

- Retention and destruction of records
- Confidentiality of specific documents prior to a FOAA request being made
- Access to records normally part of discovery
- General information on making a FOAA request
- Mandatory FOAA training for officials
- Whether an entity is subject to FOAA
- Asking for a document rather than asking for the answer to a question
- Legislation and case law
- Asking an agency to compile data or create a document
- Burdensome FOAA requests
- Due diligence of an agency in searching for records

## Contacts Concerning Public Meetings

Of the contacts concerning public meetings (106), most questions concerned:

- Use of executive session
- Notice and minutes
- What constitutes a meeting

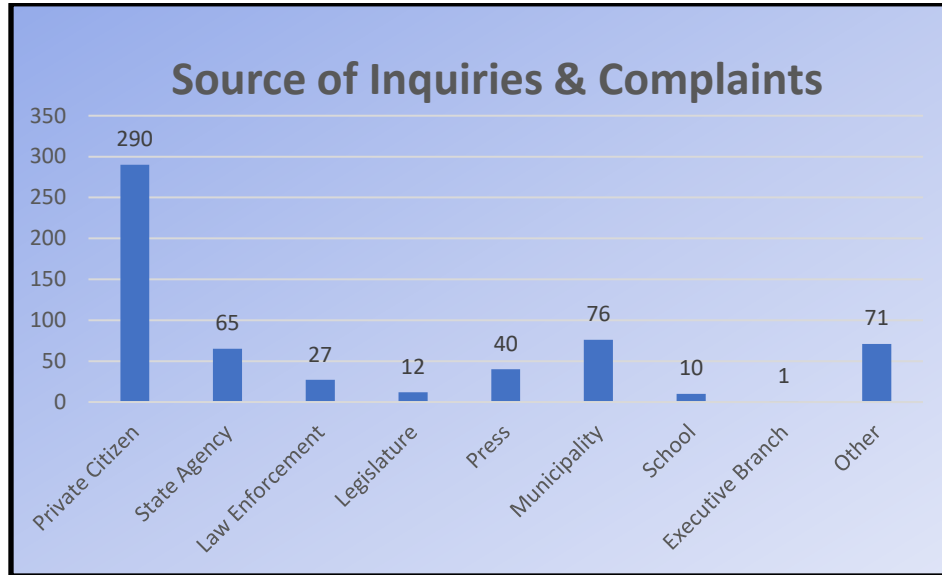


All other public meetings contacts concerned either a combination of issues or a narrow subset of the listed categories. The “Other” category includes the following kinds of questions:

- Whether an agenda is required
- Public comment period during public meetings
- What entities are subject to FOAA

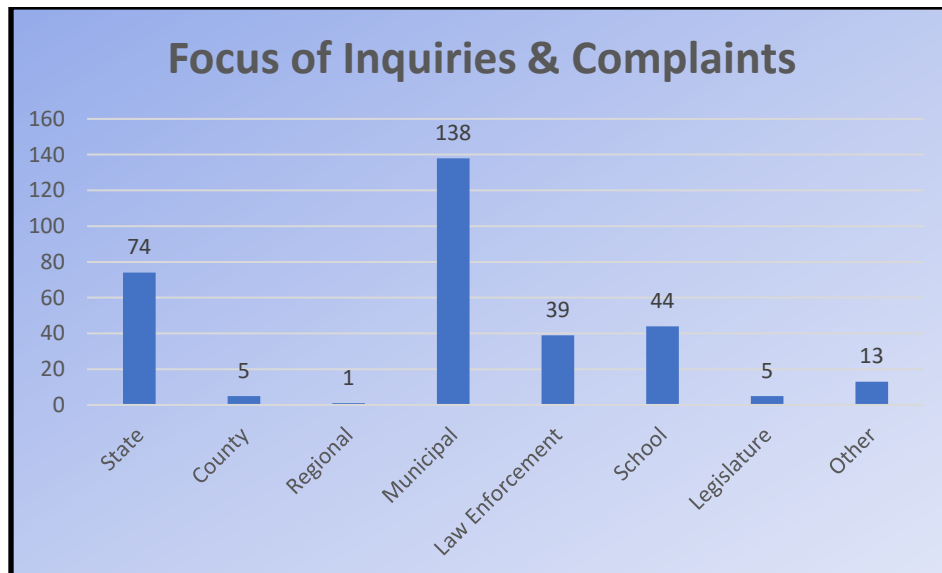
### Source of Inquiries, Complaints and Suggestions

Of the 589 inquiries, complaints and suggestions, 290 came from private citizens, 65 from state agencies, 27 from law enforcement agencies, 12 from the Legislature, 40 from members of the media, 76 from municipal officials, 10 from school districts, 1 from the executive branch and 71 from others including attorneys and commercial requesters.



### Focus of the Inquiries, Complaints and Suggestions

Most of the inquiries and complaints concerned municipalities (138) and state agencies (74). The remainder concerned school administrative units (44), law enforcement agencies (39), county agencies (5), regional agencies (1) and the Legislature (5). Others (13) concerned individual requesters, commercial requesters, and various quasi-municipal and public entities. The focus of the inquiries and complaints continues to be dominated by municipalities, as could be expected based on the number of municipal entities in the state.





## Outcomes Reached as Result of Contact with Ombudsman

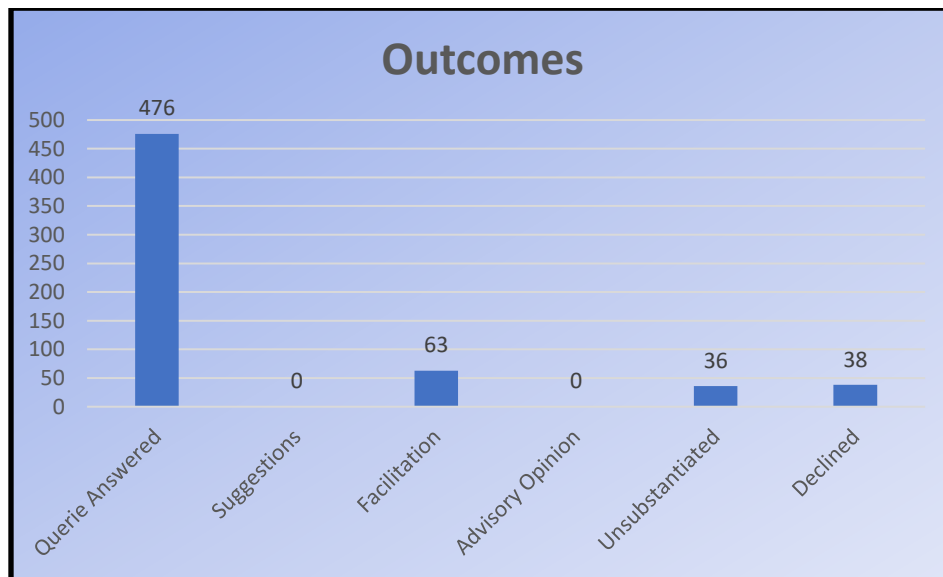
A contact may be logged as “resolved” for the following reasons:

- Complaint was deemed unsubstantiated
- Informal discussions or facilitation resulted in an agreement on how to proceed
- Agency offered an acceptable remedy
- Complaint was withdrawn
- Complainant failed to produce requested information
- Ombudsman determined there was other good cause not to proceed

A contact may be logged as “declined” if the subject of the dispute was outside the scope of authority of the ombudsman or related to a matter that was the subject of an administrative or judicial proceeding. In 2024 a total of 38 cases were declined.

Many of the inquiries were answered either immediately or within a matter of days. The 589 contacts included 476 answers to inquiries and 63 facilitated resolutions.

There were no advisory opinions issued in 2024.



## OUTREACH & TRAINING

I provided remote and in-person FOAA training and presentations to a variety of governmental entities, including Inland Fisheries & Wildlife, the Maine Water Utilities Association, the City of Lewiston, the Secretary of State's Office, the Maine Department of Administrative and Financial Services, the New England First Amendment Coalition, the Maine Midcoast Town Managers' Group and the incoming 132<sup>nd</sup> Legislature. As with last year, there was more demand for one-on-one training resources this year and those are logged as inquiries in the data.

I continue to serve as the Attorney General's designee to the [Maine Archives Advisory Board](#). The Board serves in an advisory role to the Maine State Archivist and reviews proposed records retention schedules and issues related to proper records management for both Maine state and local government. The right of access to public records provided in the Freedom of Access Act is dependent on the capture, preservation and management of public records. I am grateful to be able to participate in the work of ensuring that our records management systems serve the needs of not only government and persons seeking records today, but also future generations who will witness in the permanent archival collections the aspirations and challenges of our era.

## STATE AGENCY ANNUAL FOAA REPORTING

Pursuant to [5 M.R.S. § 200-I\(2\)\(F\)](#) the Ombudsman report for 2024 includes data on the number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies.

### **Method**

Each reporter was asked to submit data on key FOAA response indicators and include any other explanatory information relevant to their FOAA program. The absence of uniform FOAA tracking across agencies, variations in data collection and incomplete reporting limit the accuracy of the compiled data for some indicators.

Although the statute refers to “requests for information” which could include a set of data much broader than FOAA requests, reporting was limited to requests that were processed within an agency’s FOAA procedures. This does not include the large volume of requests for information that agencies handle in the normal course of business and that do not implicate the FOAA response procedures.

The “average” response time was reported based on the set of timeframes listed below.

The “costs” of processing requests could include multiple criteria to assess the use of agency resources. As a baseline the data included the amount billed as fees for FOAA requests.

Agencies that could calculate the actual hours spent responding to FOAA requests included that data.

### Key FOAA Response Indicators

1. Number of FOAA requests received in 2024
2. Response time 0 – 5 days
3. Response time 6 – 30 days
4. Response time 31 – 60 days
5. Response time greater than 60 days
6. Response time greater than 6 months
7. Response time greater than 1 year
8. Amount of fees and costs for FOAA requests
9. Amount of agency hours spent responding to FOAA requests

## STATE AGENCY 2024 FOAA REPORTING

AGENCY	FOAA REQUESTS RECEIVED	RESPONSE TIME 0-5 DAYS	RESPONSE TIME 6-30 DAYS	RESPONSE TIME 31-60 DAYS	RESPONSE TIME >60 DAYS > 6 Months > 1 Year	FEES CHARGED	AGENCY HOURS TO RESPOND	PENDING 2024 REQUEST
Administrative & Financial Services	261	28	89	44	66 29 5	\$1,125	n/a	0
Agriculture, Conservation & Forestry	134	81	41	6	3 3 0	\$504	233	0
Corrections	77	24	20	8	5 0 0	\$877	n/a	18
Defense, Veterans & Emergency Management	9	4	4	1	0 0 0	n/a	17	0
Economic & Community Development								
Education	227	78	102	30	11 2 0	n/a	362	0
Environmental Protection	174	83	57	15	5 1 0	n/a	432	8
Health & Human Services	463	228	171	68	49 9 0	\$ 5,113	977	0
Inland Fisheries & Wildlife	77	33	27	8	2 0 0	\$ 619	106	0
Labor	15	14	1	0	0 0 0	\$0	8	0
Marine Resources	45	8	18	16	6 0 0	\$ 925	140	0
Professional & Financial Regulation	124	46	40	13	12 2 0	\$1,533	n/a	10
Public Safety	1,856	1,239	407	75	56 16 38	\$775	1,022	0
Transportation	86	48	28	5	2 0 0	\$ 3,400	n/a	3
<b>TOTALS</b>	<b>3,548</b>	<b>1,914</b>	<b>1,005</b>	<b>289</b>	<b>217 62 43</b>	<b>\$ 14,871</b>	<b>3,289</b>	<b>39</b>

## RECOMMENDATIONS

The ombudsman is in a unique position to suggest improvements to the FOAA process and is mandated by statute to make recommendations concerning ways to improve public access to public records and proceedings.

### **FOAA Request Refusals and Denials**

The statute currently requires an agency or official to provide a “written notice of denial, stating the reason for the denial...” [1 M.R.S.A. § 408-A\(4\)](#) The statute does not further elaborate how specific the “reason” for the denial must be to satisfy this provision. In some instances, an agency will provide a detailed log of each redaction or withholding with a corresponding reference to a legal citation. Another agency may issue a notice of denial that simply refers to the records as “confidential” or “private” without further explanation. Clarification of this provision is necessary for requestors, since the denial contains information critical to the decision whether to exercise the right to appeal to Superior Court.

The Right to Know Advisory Committee Nineteenth Annual Report (2025) contains a recommendation to amend the language of this provision to require that the “written notice of denial must contain a citation to the statutory authority used as the basis for the denial.” I support this amendment as a reasonable way of ensuring that each denial is grounded on a *legal* basis and is clearly communicated to the requestor.

### **Burdensome Requests and an Agency Action for Protection**

The statute currently allows an agency to seek an “action for protection” from a request that is “unduly burdensome or oppressive” by filing an action for an order for protection within 30 days of receipt of the request. [1 M.R.S.A. § 408-A\(4-A\)](#) Although I have seen numerous instances of an agency or official finding the labor and time involved in responding to FOAA requests to be well beyond allocated resources and thus burdensome to normal operations, I am not aware of any agency seeking protection through this remedy.

The Right to Know Advisory Committee Nineteenth Annual Report (2025) contains a recommendation to amend the language of this section to include not just a single request but also a “series of requests.” This language reflects the reality that the burden of responding may be cumulative, as an initial request may be followed by many more requests from the same requestor. The amended language extends the time frame for filing of a complaint from 30 to 60 days after receipt or the “point at which a body, agency or official determines that a series of requests is unduly burdensome or oppressive.” This extended timeframe accounts for the fact that days may have passed while a clarification process to narrow a broad request occurred between the agency and requestor. The timeframe is further shortened by the requirement that the agency give the requestor a notice of intent to file at least 10 days prior to filing a complaint.

The proposed amendments improve the process of filing an action for protection and make this a viable option for agencies in the most extreme situations. I fully support these amendments.

## APPENDIX

5 M.R.S.A. § 200-I

### § 200-I. Public Access Division; Public Access Ombudsman

**1. Public Access Division; Public Access Ombudsman.** There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13<sup>1</sup>. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as “the ombudsman,” to administer the division.

**2. Duties.** The ombudsman shall:

**A.** Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right to Know Advisory Committee established in Title 1, section 411;

**B.** Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

**C.** Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

**D.** Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved;

**E.** Make recommendations concerning ways to improve public access to public records and proceedings; and

**F.** Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

**3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

**4. Confidentiality.** The ombudsman may access records that a public agency or official believes are confidential to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under

this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

**5. Report.** The ombudsman shall submit a report not later than January 15th of each year to the Legislature and the Right to Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

- A.** The total number of inquiries and complaints received;
- B.** The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C.** The number of complaints received concerning respectively public records and public meetings;
- D.** The number of complaints received concerning respectively:
  - (1)** State agencies;
  - (2)** County agencies;
  - (3)** Regional agencies;
  - (4)** Municipal agencies;
  - (5)** School administrative units; and
  - (6)** Other public entities;
- E.** The number of inquiries and complaints that were resolved;
- F.** The total number of written advisory opinions issued and pending; and
- G.** Recommendations concerning ways to improve public access to public records and proceedings.

**6. Repealed.** Laws [2009, c. 240, § 7, eff. June 2, 2009.](#)

## **Credits**

[2007, c. 603, § 1; 2009, c. 240, § 7, eff. June 2, 2009; 2013, c. 229, §§ 1, 2, eff. Oct. 9, 2013.](#)

## **Footnotes**

[1 M.R.S.A. § 401 et seq.](#)

5 M. R. S. A. § 200-I, ME ST T. 5 § 200-I

Current with legislation through the 2021 First Regular Session of the 130th Legislature.