

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Freedom of Access Act

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:

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 a reasonable period of time, and may request clarification concerning which public record or public records are being requested. 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. The agency or official shall respond to each communication within 5 calendar days of the receipt of the communication.

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 workingcalendar 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. The agency or official shall provide information describing the reasons for the costs, including the statute that identifies any confidential information that must be redacted.

Sec. 4. 1 MRSA §409, sub-§1, as amended by PL 2011, c. 559, Pt. A, §1 and c. 662, §6, is repealed and the following enacted in its place:

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 appeal the refusal, denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to any Superior Court within the State as a trial de 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 cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

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

4. Attorney's fees. In an appeal under subsection 1 or 2, the court, in its discretion, 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.

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

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.

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

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