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February 4, 2025

Committee on Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Subject: Opposition to LD 152 – An Act to Amend the Freedom of Access Act to Require a Specific Time Frame for Agencies to Comply with Requests for Public Records

Dear Honorable Members of the Judiciary Committee,

I am writing to express my strong opposition to LD 152, An Act to Amend the Freedom of Access Act (FOAA) to Require a Specific Time Frame for Agencies to Comply with Requests for Public Records. We certainly agree that transparency and timely access to public records are vital to an open government. However, imposing a strict 30-day deadline for compliance places an undue burden on public agencies such as schools. It will undoubtedly lead to unintended consequences that ultimately hinder, rather than enhance, access to public information as well as debilitate the ability of public schools to carry out their primary responsibilities of educating Maine's youth.

I speak to this from personal experience. The school district I serve was inundated with FOAA requests to the extent that it crippled our ability to function and maintain daily operations. We have had over 75 FOAA requests in the very recent past, and we honored every one. We appropriately prioritized FOAA documents and upheld the process despite its significant negative impact on our staff and the students we serve. Multiple staff had to review thousands of pages of documents, redacting any information that we can not legally share such as personal information, personnel information, or anything that violates the Family Educational Rights and Privacy Act.

What does this look like? It starts with a document search via the technology department. Every digital file, email, message or document stored digitally are cultivated based on the content of the search criteria. This takes time away from our technology department who should be supporting educators and learners. One example of (hopefully) unintended negative consequences is that when technology staff are pulling and organizing files for a FOAA request, they can not prioritize monitoring email. This is detrimental because our email is the communication tool for our safety and security flagging system. Everything from inappropriate content online to preventing self harm or harm to others can possibly be prevented if staff have the time to monitor the system and read and address those emails with safety flags. When the tech staff are cultivating documents for a FOAA deadline, they do not monitor with the same diligence simply because it is not possible. In our experience, our team still monitored, but not with the fidelity they regularly offered. It was very stressful and not sustainable. This is just ONE example. It does not include the negative impact on teaching with technology or assessing/testing with technology (some of which is state mandated), both of which deserve time and attention from technology experts, or we would not have those positions. These technology positions exist to serve students and staff, and we don't have "extra staff" to address FOAA requests.

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Next, administrative assistants who have had to be specially trained go in and start reading. Don't forget they already have full time job responsibilities. This means their primary work does not get done or gets dumped on a colleague. The administrative assistants black out any private student data or information protected that we can not share. This takes hours. If something is missed and student confidentiality is jeopardized, it is unacceptable for the learner and their parents. It also leaves us liable for breaking the law. Student diagnosis, health issues, and other private information are housed digitally and need to be protected carefully. We want to honor FERPA and our employee confidentiality but still give as much detail as possible to the person requesting the information. This takes more time than you could ever understand if you have not lived it, and we have. We don't cut corners. We don't remove entire documents from what gets shared, but instead black out the portion of the documentation that is not allowed to be shared.

Sometimes there is content that is questionable by law. Administrators have to conduct a final read and sometimes consult with legal. They must make sure that no errors were made and that clarity is brought to any information in question. If we share it and it is protected, will we be liable? The work has now been duplicated for the third time because there is no other way, even with Artificial Intelligence or additional staff, to appropriately screen. Technology, administrative assistants, and then administrators from various departments all play a role.

Case in point. A request for any and all documents related to kitty litter in our schools was made. The schools do not purchase kitty litter. There were no accounting or other documents in the school where we had purchased kitty litter. There was one email saying that we don't have kitty litter boxes in our bathrooms. However, there were thousands of "hits" in the kitty litter search. Upon review it became obvious, because every email or flyer that comes across devices or through our doors from a Walmart flyer to advertisements such as "Chewy" that sells kitty litter was flagged. This search generated days of work so that a person could look at kitty litter advertisements. We don't question the "why" of anyone. We don't question "who".

Companies and/or organizations, not in our state or country, have submitted lengthy FOAA requests. We don't ever really know where the information is going. It doesn't matter. It's public information. We just comply as is our jobs. However, in this kitty litter case, as is the case with dozens of others, a phone call to the principal or district administrator asking, "Do you allow children to use the bathroom in kitty litter boxes?" would have taken a few minutes not hours or days. The question is absurd and the answer is an obvious no. However, the goal was not to get the answer. The goal was to take time away from the daily operations of a school system through a weaponized FOAA process. Children were the victims as their human resources were stolen from them and this all happened under the "reasonable time" guidelines. What happens if this moves to 30 days? Compounded negative impacts.

As you are aware, under current law, FOAA requires agencies to comply with records requests within a "reasonable time." We do this. We communicate why the time is reasonable. We communicate an estimated time to get the job done. We have only charged for one FOAA request that included years of documents. We prioritize these requests to expedite speed to the extent that it is humanly possible and even when it marginalizes our services to students and their families. This current language provides necessary flexibility to account for the wide-ranging complexities of requests, the varying workloads of our involved staff, and the availability of resources. The proposed bill, however, fails to recognize the realities faced by many public offices, especially schools.

This 30 day requirement would negatively impact those with limited staffing and resources. Human resources wise, we were not prepared for the over 75 requests that flooded into our office. You can't order crayons and tissues when that same person is screening FOAA requests. We tried to be creative and considered somehow using substitutes to process FOAAs more efficiently and prevent declining services to schools and students.

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We have tried to hire substitutes to support this work. Even if the local taxpayers or the person requesting the information paid for the substitutes (with the needed skills to either cultivate and screen FOAA requests or cover for those who do), there are no substitutes to be found. This is additional work that falls on current staff members when we are already short staffed. Schools don't allow for funding office positions that are not totally essential, or at least our taxpayers do not. Are you interested in funding a staff person or persons from the state level for every single district to be able to lead this effort so that they can also continue to run schools?

As a medium sized school district, we struggled, I guarantee that smaller municipalities and agencies with fewer resources may struggle to meet the 30 day deadline. I was once a teaching principal with an administrative assistant who was also my librarian. We were a two person team and that was it for administrative staff. This was a small Maine district, and we were getting it done! These districts are still out there today! I can not imagine what it would be like if the FOAA requests made to my current district happened in that district. It literally would have been impossible to comply. Can any school districts afford situations leading to potential noncompliance and legal challenges? My taxes are already high enough without taking on this additional liability responsibility, and I know many stakeholders that would agree. I heard the outcry even the way the law is currently written. Simply put, with the 30 day requirement you would be increasing legal liability and increasing costs to schools and taxpayers. Instead of improving public access, LD 152 could force agencies to be out of compliance with the law. Worse yet, they would be forced to prioritize FOAA requests over their essential functions, delaying other critical public services. Additionally, the bill does not address potential consequences for agencies that, despite good-faith efforts, cannot comply within 30 days due to legitimate constraints. What happens then? Because it will only be a matter of time before it happens.

A more balanced approach would be to enhance existing guidance on reasonable response times, provide additional resources or staffing for agencies and school departments to process requests efficiently, and allow for case-by-case flexibility. Legislating a rigid timeframe without considering the practical implications does not serve the interests of transparency or effective governance.

For these reasons, I respectfully urge the Committee to oppose LD 152. Instead, I encourage the Legislature to explore alternative solutions that improve access to public records while ensuring that agencies can fulfill their responsibilities effectively and without undue hardship.

Thank you for your time and consideration. I appreciate your commitment to government transparency and responsible policymaking.

Sincerely,



Christine Boone
Assistant Superintendent