



Testimony in Opposition to LD 1788:

“An Act to Strengthen the Freedom of Access Act by Categorizing Commercial Requesters”

Senator Carney, Representative Kuhn, and the distinguished members of the Committee on Judiciary, my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to submit testimony in opposition to LD 1788.

LD 1788 proposes dividing citizens into "commercial" and "noncommercial" requesters under Maine's Freedom of Access Act (FOAA), allowing agencies to impose additional fees and certification requirements on specific individuals based on their intended use of the information. While proponents claim this bill will "strengthen" FOAA, it actually creates a discriminatory, bureaucratic gatekeeping mechanism that will further erode Maine's already weakened public records system.

Maine's FOAA Already Underserves the Public

Public access to government records is a foundational element of transparent governance. Unfortunately, Maine's FOAA law is among the weakest in the country. Maine's FOAA law is already outdated, underdeveloped, and poorly regarded nationally.¹ Government agencies often require payment for basic information, and appeal mechanisms are limited or nonexistent for ordinary citizens.

Rather than improving access, LD 1788 moves in the opposite direction—erecting new barriers and subjecting Mainers to unequal treatment under the law.

Tiered Access Is Antithetical to Transparency

The bill defines "commercial requesters" broadly to include any individual seeking information that "furthers a trade or profit interest," including for litigation purposes. This definition is both vague and overreaching. Nearly any use of information—including investigative journalism, academic research that later supports a business, or nonprofit advocacy—could be construed as "commercial" under this standard. The law gives government officials unilateral authority to determine the requester's intent and assign fees accordingly, introducing subjectivity, potential bias, and deterrents to access. It also allows agencies to inquire into and question the justifications of a FOAA request, further disincentivizing future requests.

¹ https://mainepolicy.org/government-transparency-foaaget-about-it-in-maine/?utm_source=chatgpt.com



This two-tiered system undermines the principle that public records belong to the public—regardless of who is asking or why. FOAA was never meant to discriminate based on a requester’s profession or perceived motive. A business owner, investigative journalist, or citizen watchdog should have equal footing under the law.

Certification Requirements Chill Participation

LD 1788 also requires requesters to formally certify the purpose of their request and disclose whether the materials will be used in a judicial proceeding. This type of compelled speech discourages use of FOAA by individuals who may fear legal exposure, privacy intrusion, or retaliation. It also adds red tape for agencies and requesters alike, creating a chilling effect on public oversight.

Maine Should Expand—Not Restrict—Public Access

Rather than limiting FOAA, Maine lawmakers should be exploring how to strengthen it in meaningful ways: mandating faster response times, increasing transparency from state contractors, narrowing exemptions, and capping or eliminating fees. Maine Policy Institute has long advocated for reforms that make it easier—not harder—for the public to hold the government accountable.

The public deserves timely, affordable, and equal access to government records. Transparency is not a privilege reserved for a select few; it is a right guaranteed to all Mainers. LD 1788 diminishes that right by allowing state agencies to judge the worthiness of a requester and charge accordingly.

Conclusion

At a time when trust in government is near historic lows, LD 1788 sends the wrong message. It invites secrecy, creates unequal access, and burdens citizens with unnecessary red tape. We urge the committee to reject this measure and instead prioritize reforms that make Maine a leader, not a laggard, in open and transparent government. Thank you for your time and consideration.