



Testimony in Opposition to LD 1827:

**“An Act to Implement the Recommendations of the Right to Know Advisory Committee
Concerning Public Records Requests”**

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 1827.

While the intent behind LD 1827 may be administrative clarity and agency efficiency, this bill risks undermining one of the most vital mechanisms of democratic accountability: the public’s right to know. At a time when public trust in government institutions continues to erode, expanding agency discretion to deny Freedom of Access Act (FOAA) requests sends precisely the wrong message.

A Threat to Transparency Through Subjective Language

Current law allows agencies to deny records requests deemed “unduly burdensome or oppressive,” a vague and highly subjective standard. LD 1827 would even further expand this to include a request in the context of a series of requests, making even individually unburdensome requests potentially subject to denial. Such language already lacks a clear definition and could be broadly interpreted, empowering agencies to reject inconvenient or politically sensitive requests under the guise of administrative burden. This provision invites arbitrary denials and weakens Maine’s standing as a state committed to open and transparent governance.

Government agencies should not be the arbiters of what level of inquiry is too probing. A functioning democracy requires robust transparency, especially when it is uncomfortable. As former U.S. Supreme Court Justice Brandeis once said, “Sunlight is said to be the best of disinfectants.”¹

Chilling Effects on Citizens and Watchdogs

This bill also extends the time window from 30 to 60 days for agencies to seek judicial relief from perceived “burdensome” requests and codifies a process to push back against persistent requesters. These changes could have a chilling effect on citizens, journalists, researchers, and civic organizations who rely on FOAA to conduct oversight and

¹ <https://sunlightfoundation.com/2009/05/26/brandeis-and-the-history-of-transparency/>



investigate public spending, policy implementation, and potential government misconduct.

Maine has long prided itself on civic participation and local control. Imposing greater legal and procedural hurdles may dissuade ordinary citizens from holding their government accountable — particularly those without the financial or legal resources to contest denials in court.

A Path to Concealing Inefficiency or Wrongdoing

While Maine Policy Institute supports efforts to improve government efficiency and reduce waste, LD 1827 risks creating a convenient shield behind which poor agency practices, mismanagement, or even corruption may go unchallenged. An agency's inability to efficiently process records requests is not an excuse to curtail the public's right to know. If agencies are overwhelmed, the proper remedy is to streamline internal processes and improve responsiveness — not to dilute transparency protections.

The solution to bureaucratic inefficiency should never be to diminish public oversight.

Comparative Caution: Don't Follow the Wrong Trends

Other states have experimented with limiting public records access in similar ways — and with troubling consequences. In states where similar “burdensome request” language has been enacted, watchdog groups have reported sharp declines in information access and a growing culture of secrecy among public agencies.^{2 3 4 5} Rather than following these regressive models, Maine should reaffirm its commitment to openness and accountability. We ought to be a leader among states in transparency, not an outlier in obstruction.

Conclusion

For these reasons, Maine Policy Institute respectfully urges the committee to reject LD 1827. We ask you to protect the public's right to know, to uphold meaningful government accountability, and to resist efforts, however subtle, to undermine transparency in the State of Maine. Thank you for your time and consideration.

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<https://www.investigatwest.org/investigatwest-reports/broken-records-citizens-face-growing-obstacles-to-public-records-and-legislators-are-making-them-worse-17706738>

³ <https://www.politico.com/news/2024/06/05/new-jersey-murphy-public-records-bill-00161823>

⁴ <https://www.cascadepbs.org/briefs/2024/02/wa-public-records-access-getting-worse-says-watchdog-report>

⁵ <https://www.ourmidland.com/opinion/voices/article/state-open-records-challenges-sunshine-week-20226396.php>