



MAINE PRESS ASSOCIATION
On the record since 1864

Sen. Carney, Rep. Kuhn, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am the editor of the Sun Journal in Lewiston, the Kennebec Journal and the Morning Sentinel.

I am here today on behalf of the Maine Press Association to urge this committee not to pass 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.

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The Maine Press Association enjoys a seat on the Right to Know Advisory Committee, a committee established by the Legislature 20 years ago specifically to serve as a resource for ensuring compliance with Maine's Freedom of Access Act and upholding the integrity of the purposes of the Act as it applies to all public entities in the conduct of the public's business.

Every single year since its inception, RTK Committee members have discussed, debated and deliberated on the question of what is a "reasonable" response time for FOAA estimates and requests and each and every time have landed on what is known as the "reasonable" standard for response, a specific legal standard that applies when one entity owes a duty to another. That means government may take only so long to respond as is reasonable, and no longer.

So, if a person were to request access to Planning Board records approving a recent development project, for instance, a reasonable response time for both estimate and records might be the same or next day. The more complicated the request, the longer it takes for an entity to respond. Which is reasonable.

According to the 2023 annual report of Maine's Public Access Ombudsman, which tracks response time of FOAA requests at various state agencies, there were a total of 2,936 FOAA requests made to these agencies in 2023, of which – nearly half – or 1,418 of the requests were fully responded to within five days. Another 763 requests were responded to within 30 days, and the remaining requests – 742 – took 30 days or longer for response.

That's a lot of numbers, but the gist is that of all requests received in 2023, 2,062 were responded to in full in less than 30 days, or about 75 percent.

In 2022, there were a total of 2,625 FOAA requests made to state agencies, of which 1,423 were fully responded to within five days. Another 639 requests were responded to within 30 days, which means nearly 79 percent of all requests were responded to within 30 days. The remaining requests – 573 – took 30 days or longer for response.

In 2021, of 3,060 FOAA requests, 47 percent were responded to within five days, and more than 60 percent within 30 days.

In 2020, 48 percent of all FOAA requests were responded to within five days; 65 percent within 30 days.

And, in 2019, 41 percent of all FOAA requests were responded to within five days; 54 percent within 30 days.

Again, a lot of numbers, but what the ombudsman's reports show is that FOAA responses have actually sped up over the past five years. I've attached the response time summaries from those reports to my testimony, and they are also available online.

Under the proposal before you, government entities would still have to acknowledge receipt of a public records request within five days and provide a nonbinding time and cost estimate within a "reasonable" time of receiving the request, and entities would still be expected to make a "good faith effort to fully respond to the request within" the time estimated, but the addition of a 30 day deadline could very easily set that timeframe as the expectation for response.

Thirty days is too long to receive a response to the vast majority of records requests and the ombudsman's state-level data clearly shows most requests are already being fulfilled within 30 days.

Everyone at the Maine Press Association loves a hard deadline, but the fact is if a person has a 30-day deadline to respond to any request for anything, more than likely they will take nearly all – or all – of that time to respond. It's how we're all wired.

A 30-day deadline could significantly slow access for a majority of requestors for what could be an urgent request and/or a simple request – which includes most media requests – especially if records are needed within that 30-day timeframe.

A 30-day deadline is unreasonable and will significantly hinder access, which does not serve the public good.

STATE AGENCY 2023 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 2023 REQUESTS
Administrative & Financial Services								
Agriculture, Conservation & Forestry	153	97	41	9	5 1 0	\$3675	375	0
Corrections	80	29	36	8	1 2 1	\$184	n/a	0
Defense, Veterans & Emergency Management	3	2	1	0	0 0 0	n/a	4	0
Economic & Community Development	18	8	7	1	0 0 0	\$112	Average 0.93 per request	0
Education	184	51	78	25	18 1 0	n/a	231	0
Environmental Protection	208	108	61	19	6 13 0	\$ 900	533	15
Health & Human Services	459	149	133	75	73 11 2	\$ 4,213	783	0
Inland Fisheries & Wildlife	53	15	22	6	5 3 2	\$ 213	91	0
Labor	29	16	10	2	1 0 0	\$150	27	0
Marine Resources	28	4	10	5	1 2 1	\$ 525	80	0
Professional & Financial Regulation	89	40	44	5	0 0 0	n/a	169	0
Public Safety	1562	885	290	159	201 49 10	n/a	820	0
Transportation	70	14	30	7	12 1 0	\$ 425	n/a	3
TOTALS	2,936	1,418	763	321	322 83 16	\$ 10,397	3,130	18

STATE AGENCY 2022 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 2022 REQUESTS
Administrative & Financial Services	167	18	58	24	30 2 0	n/a	n/a	35
Agriculture, Conservation & Forestry	91	44	25	6	0 0 0	\$2,200	228	0
Corrections								
Defense, Veterans & Emergency Management	14	9	4	0	0 1 0	n/a	25	0
Economic & Community Development	14	6	2	2	2 1 0	Average \$184	Average 4.3	1
Education	185	54	71	11	11 1 0	\$858	163	0
Environmental Protection	177	82	67	13	7 0 0	\$ 3,425	460.25	8
Health & Human Services	252	60	85	49	48 10 0	\$ 4,228	653.5	0
Inland Fisheries & Wildlife	49	27	8	7	1 0 0	\$ 508	100	6
Labor								
Marine Resources	34	10	10	4	8 0 0	\$ 570	n/a	0
Professional & Financial Regulation	51	29	17	4	5 0 0	\$ 327	156.5	0
Public Safety	1530	1064	275	62	48 14 0	\$ 1,459	493	0
Transportation	61	20	17	3	11 1 0	\$ 1,950	425	9
TOTALS	2,625	1,423	639	185	171 30 0	\$ 15,709	2,764	59

STATE AGENCY 2021 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 2021 REQUESTS
Administrative & Financial Services	112	18	1	3	9 9 10	n/a	n/a	83*
Agriculture, Conservation & Forestry	78	53	20	3	2 0 0	\$ 1,357	148.5	2
Corrections	101	68	23	3	1 6 0	n/a	30 per week	6
Defense, Veterans & Emergency Management	7	4	3	0	0 0 1	n/a	94.5	1 (2020)
Economic & Community Development					0 0 0			
Education	136	56	53	8	11 3 0	\$ 345	178.5	1
Environmental Protection	138	69	42	10	8 0 0	\$ 6,742	449.5	9
Health & Human Services	218	67	34	21	41 55 0	n/a	n/a	0
Inland Fisheries & Wildlife	29	11	12	1	2 1 0	\$ 3,634	30	2
Labor	23	6	4	3	8 2 0	\$ 52	177	5
Marine Resources	44	18	12	6	8 0 0	\$ 570	n/a	0
Professional & Financial Regulation	89	38	36	7	4 1 0	\$ 570	91	2
Public Safety	2,052	1,011	167	107	35 5 0	\$ 11,982	399	0
Transportation	33	11	13	1	0 0 0	\$ 990	95	0
TOTALS	3,060	1,430	420	173	129 82 22	\$ 26,242	3,223	111

STATE AGENCY 2020 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	FEEES CHARGED	AGENCY HOURS TO RESPOND	PENDING 2018 REQUESTS
Administrative & Financial Services	160	43	41	16	13 0 2	n/a	n/a	0
Agriculture, Conservation & Forestry	120	100	20	0	0 1 1	\$ 1350	190	0
Corrections	75	60	13	1	0 0 0	n/a	1,300	1
Defense, Veterans & Emergency Management	9	2	3	1	0 0 0	n/a	9	3
Economic & Community Development	3	0	3	0	0 0 0	n/a	3	0
Education	124	34	72	12	7 0 0	\$ 585	176	5
Environmental Protection	145	65	57	14	5 0 0	\$ 4,755	317	4
Health & Human Services	332	79	75	23	81 74 0	n/a	n/a	0
Inland Fisheries & Wildlife	36	16	6	2	3 3 0	n/a	n/a	6
Labor	27	11	9	4	3 0 0	\$ 360	323	2
Marine Resources	26	3	4	14	4 1 0	\$ 840	63	0
Professional & Financial Regulation	47	21	13	5	0 0 0	n/a	n/a	3
Public Safety	1,516	822	118	67	90 27 0	\$ 9,892	124	0
Transportation	30	22	8	0	0 0 0	\$ 450	65	0
TOTALS	2,652	1,278	442	159	206 106 3	\$ 18,232	2,570	24

STATE AGENCY 2019 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 2018 REQUESTS
Administrative & Financial Services	75	30	26	6	0 2 1	\$ 315	n/a	10
Agriculture, Conservation & Forestry	133	77	52	4	0 0 0	\$ 1065	190	0
Corrections	102	72	23	1	1 0 0	n/a	n/a	5
Defense, Veterans & Emergency Management	7	3	4	0	0 0 0	n/a	n/a	0
Economic & Community Development	4	2	1	0	1 0 0	\$ 0	2	1
Education	183	87	75	11	5 0 0	\$ 465	227	12
Environmental Protection	139	71	48	9	7 0 0	\$ 1,413	249	4
Health & Human Services	213	44	87	34	40 8 0	n/a	n/a	0
Inland Fisheries & Wildlife	45	20	16	4	2 2 1	\$ 570	62	0
Labor	20	11	7	2	0 0 0	\$ 1,350	188	0
Marine Resources	17	2	7	6	2 0 0	\$ 690	61	0
Professional & Financial Regulation	112	58	27	8	5 0 0	\$300	120	0
Public Safety	2,919	1,129	158	52	53 0 0	\$ 12,757	690	0
Transportation	53	26	27	0	0 0 0	\$ 545	77	0
TOTALS	4,022	1,632	558	137	116 12 2	\$ 19,785	1,866	32