



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1440
TTY: (207) 287-4469

Rachel Henderson

87 Holyoke Avenue
Rumford, ME 04276
Office: (207) 287-1440
Cell: (207) 381-4237
Rachel.Henderson@legislature.maine.gov

LD 1788 An Act to Strengthen the Freedom of Access Act by Categorizing Commercial Requestors

*Testimony of Rep. Henderson - Rumford
May 2nd, 2025*

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary. I am Rachel Henderson, and I have the distinct honor of representing the people of District-78 in the Maine House, which is comprised of the beautiful towns of Bethel, Byron, Hanover, Milton TWP, Roxbury, and my home town of Rumford.

I stand before you today to introduce my bill
LD1788 An Act to Strengthen the Freedom of Access Act by
Categorizing Commercial Requestors.

First, I find it important to acknowledge the strength of Maine's current FOAA law. A law that has been developed over the years through deliberate collaboration by the Right to Know Advisory Committee and the Legislative Judiciary Committee. Both bodies have ensured that proposed changes are thoroughly vetted and designed to uphold transparency and fairness. This deliberate process reflects Maine's longstanding commitment to open government and maintaining a clear, effective system for access to public records.

At its core, FOAA exists to promote transparency and accountability within our government, ensuring the public's right

District 78 Bethel, Byron, Hanover, Rumford, Roxbury and Milton TWP

to access records and meetings of public entities. Currently, Maine law does not categorize or differentiate requestors—any individual, organization, or entity can submit a request with little restriction and no classification.

In contrast, the federal government does categorize FOIA requesters into four distinct groups:

Commercial requesters — *those seeking information primarily for commercial use.*

Educational and non-commercial scientific requesters — *researchers, students, and institutions seeking information for scholarly purposes.*

Media requesters — *journalists and news organizations seeking information for reporting.*

All other requesters — *individuals or entities that do not fall into the above categories.*

This categorization allows federal agencies to prioritize and manage requests, often providing different levels of review or processing based on the requestor's category

I am aware of the variance in resources and infrastructure that exists between federal agencies and our state and local governments. While federal agencies often have dedicated funding, staffing, and technology to efficiently handle FOIA requests, many of Maine's entities that are subject to FOAA lack the same level of resources. This disparity makes it even more important for us to ensure our system is used appropriately and efficiently, so that we do not overburden our local school boards, town councils, and taxpayers.

I am increasingly concerned that the lack of distinct categories is being exploited.

I have two main concerns that my bill aims to address.

First, private national companies are using the Maine FOAA system not for transparency or public interest, but to avoid

conducting their own research and to gather data that they then sell for profit or use to tailor sales pitches. Keep in mind the information they are provided with is at little to no cost to them, then turning for a profit. This practice raises questions about the original intent of the system and whether it is being exploited for commercial gain rather than public transparency. The integrity of Maine's FOAA law is being undermined for profit, at the cost of the Maine taxpayer.

My second concern is that attorneys and pro se defendants are increasingly using FOAA requests as a substitute for waiting for discovery in legal proceedings. This practice is problematic because it bypasses the established judicial process designed to ensure fair and orderly access to information. Moreover, it's forcing our counties to double their work, as they are compelled to respond to these requests separately from the discovery process—*information that would normally be provided during court-mandated discovery*. This unnecessary duplication not only adds to the workload of our county offices but it's also driving up costs and workloads for our counties, further straining an already overburdened system.

I believe we need to consider reforms to ensure the system is used appropriately and efficiently, focusing on transparency for the public's benefit rather than commercial or private interests.

Instead of suggesting that Maine adopt the Federal model, with 4 distinct categories, I am proposing that we only create a Commercial Requesters category.

LD1788 Makes no changes to the current fees or hourly rates for non-commercial requests. However, If someone is requesting records for a commercial purpose, then the agency may: *1) Establish a fee structure and impose a fee from commercial requests. 2) Gives that entity discretion to prioritize non-commercial requests.*

Additionally, the bill requires the person making the request to confirm whether their request is commercial or noncommercial, and to provide any extra information the agency needs—such as if

the records are related to an ongoing court case, and if the information provided would likely be produced pursuant to an ongoing judicial proceeding— this is designed to help them appropriately process the request.

Each state has it's own unique set of Freedom of Access laws. Most states either have language that a “person” may request records, or specifically distinguish who may make a request. In many states, the *purpose* or *proposed* use of a request does not affect a person's right of access to public records. However, there are at least five states and the District of Columbia, which do have specific fees provisions in their public records statute that distinguish different requirements and allowances for requests if they are commercial or in the public interest:

District of Columbia -- § 2-532(b) & (b-1)(2)

Illinois -- 5 ILCS 140/6(a) & (c)

Kentucky -- Ky. Rev. Stat. 61.874(3), (4) & (5)

Ohio -- § 149.43(B)(1)(i-iii) & (F)

Oklahoma -- 51 O.S. § 24A.5(4)

Tennessee -- Tenn. Code Ann. § 10-7-506(c)(1)&(4)

In conclusion, I believe we need to review and reform how FOAA requests are handled to reduce unnecessary costs, prevent predatory practices, and ensure that our system remains focused on transparency and service to the public, rather than commercial interests.

Thank you for your time and consideration.

Rep. Rachel Henderson

Public Records Fee Categories

(May 2025)

District of Columbia (§ 2-532(b) & (b-1)(2))

“(b) A public body may establish and collect fees not to exceed the actual cost of searching for, reviewing, redacting, and making copies of records. Documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(b-1) Any fee schedules adopted by the Mayor, an agency or a public body shall provide that:

(2) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non-commercial scientific institution for scholarly or scientific research, or a representative of the news media;”

Illinois (5 ILCS 140/6(a) & (c))

“(a) When a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the public records in the specified electronic format, then the public body shall furnish it in the format in which it is maintained by the public body, or in paper format at the option of the requester. A public body may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium. If a request is not a request for a commercial purpose or a voluminous request, a public body may not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records. Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of public records when furnished in a paper format shall not be applicable to those records when furnished in an electronic format.

(c) Documents shall be furnished without charge or at a reduced charge, as determined by the public body, if the person requesting the documents states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. For purposes of this subsection, "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public. In setting the

~~NOT A WAIVER~~
amount of the ~~waiver~~ or reduction, the public body may take into consideration the amount of materials requested and the cost of copying them.

Kentucky (Ky. Rev. Stat. 61.874(3), (4) & (5))

"(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee. (b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee. (c) The fee provided for in subsection (a) of this section may be based on one or both of the following: 1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records; 2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a: (a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or (b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or (c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use."

Ohio (§ 149.43(B)(1)(i-iii) & (F))

"(c) In any policy and procedures adopted under division (B)(7) of this section:

(i) A public office may limit the number of records requested by a person that the office will physically deliver by United States mail or by another delivery service to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes;

(ii) A public office that chooses to provide some or all of its public records on a web site that is fully accessible to and searchable by members of the public at all times, other than during acts of God outside the public office's control or maintenance, and that charges no fee to search, access, download, or otherwise receive records provided on the web site, may limit to ten per month the number of records requested by a person that the office will deliver in a digital format, unless the requested records are not provided on the web site and unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes.

(iii) For purposes of division (B)(7) of this section, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special

extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or database by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research."

Oklahoma (51 O.S. § 24A.5(4))

"4. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

- a. is solely for commercial purpose, or
- b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law. Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk. In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants. The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information;"

Tennessee (Tenn. Code Ann. § 10-7-506(c)(1)&(4))

"(c) (1) If a request is made for a copy of a public record that has commercial value, and such request requires the reproduction of all or a portion of a computer generated map or other similar geographic data that was developed with

public funds, a state department or agency or a political subdivision of the state having primary responsibility for the data or system may establish and impose reasonable fees for the reproduction of such record, in addition to any fees or charges that may lawfully be imposed pursuant to this section. The additional fees authorized by this subsection (c) may not be assessed against individuals who request copies of records for themselves or when the record requested does not have commercial value. State departments and agencies and political subdivisions of the state may charge a reasonable fee (cost of reproduction only) for information requested by the news media for news gathering purposes (broadcast or publication).

(4) As used in this subsection (c), "record that has commercial value" means a record requested for any purpose other than:

(A) A non-business use by an individual; and

(B) A news gathering use by the news media."

Public Records Law – Requestor Status

Rep. Henderson
LD 788

State	Public Records Statute	Language about who may request records
Alabama	<u>AL Code § 36-12-40 et seq.</u> <u>AL Code § 36-12-43</u>	“Every resident has a right to inspect and take a copy of any public record of this state, except as otherwise expressly provided by applicable law.” “(3) RESIDENT. An individual who is permanently domiciled in Alabama with an expectation to remain in Alabama as demonstrated by reasonable proof of residency such as, but not limited to, an Alabama driver license or voter registration.”
Alaska	<u>AK Stat. § 40.25.110</u>	No distinction made as to who may request public records: “(a) Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours.”
Arizona	<u>AZ Rev. Stat. § 39-121.01</u>	“1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person.”
Arkansas	<u>AR Code Ann. § 25-19-105</u>	“Except as otherwise specifically provided by this section or by laws specifically enacted to provide otherwise, all public records shall be open to inspection and copying...by any citizen of the State of Arkansas during the regular business hours of the custodian of the records.”
California	<u>CA Govt. Code § 7922.530</u>	“(a) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. ”
Colorado	<u>CO Rev. Stat. Ann. § 24-72-202 & 203</u>	“(a) All public records shall be open for inspection by any person at reasonable times” “(3) “Person” means and includes any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm, or association.”
Connecticut	<u>CT Gen. Stat. § 1-200</u> <u>CT Gen. Stat. § 1-210</u>	“(a) Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency...shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section <u>1-212</u> , or (3) receive a copy of such records in accordance with section <u>1-212</u> . ” “(4) “Person” means natural person, partnership, corporation, limited liability company, association or society.”

		cost and least delay to the person or governmental unit that requests the inspection."
Massachusetts	<u>MA Gen. Laws Ch. 66 § 10</u>	No distinction made as to who may request public records: "A records access officer appointed pursuant to section 6A, or a designee, shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record as defined in clause twenty-sixth of section 7 of chapter 4, or any segregable portion of a public record, not later than 10 business days following the receipt of the request."
Michigan	<u>MI Comp. Laws § 15.233</u>	"Except as expressly provided in section 13, upon providing a public body's FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body."
Minnesota	<u>MN Stat. § 13.03</u>	"Upon request to a responsible authority or designee, a person shall be permitted to inspect and copy public government data at reasonable times and places..."
Mississippi	<u>MS Code Ann. § 25-61-5</u>	"(a) Except as otherwise provided by Sections 25-61-9, 25-61-11, 25-61-11.2 and 37-153-7, all public records are hereby declared to be public property, and any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body in accordance with reasonable written procedures adopted by the public body..."
Missouri	<u>MO Rev. Stat. § 610.023</u>	No distinction made as to who may request public records: "Each public governmental body shall make available for inspection and copying by the public of that body's public records."
Montana	<u>MT Code Ann. § 2-6-1006</u>	"A person may request public information from a public agency."
Nebraska	<u>NE Rev. Stat. § 84-712</u>	"Except as otherwise expressly provided by statute, all residents of this state and all other persons interested in the examination of the public records as defined in section <u>84-712.01</u> are hereby fully empowered and authorized to (a) examine such records..."
Nevada	<u>NV Rev. Stat. § 239.0107</u>	" 1. Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity shall do one of the following, as applicable: (a) Except as otherwise provided in subsection 2, allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person."
New Hampshire	<u>NH Rev. Stat. § 91-A:4</u>	"I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to

		inspect all governmental records in the possession, custody, or control of such public bodies or agencies..."
New Jersey	<u>NJ Rev. Stat. § 47:1A-1</u>	"1. The Legislature finds and declares it to be the public policy of this State that: government records shall be readily accessible for inspection, copying, or examination by the citizens of this State"
New Mexico	<u>NM Stat. § 14-2-1 et seq.</u>	"Every person has a right to inspect public records of this state..."
New York	<u>NY PBO Article 6 § 84</u>	No distinction made as to who may request public records: "The legislature therefore declares that government is the public's business and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article."
North Carolina	<u>NC G.S. § 132-6</u>	"Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person"
North Dakota	<u>ND Cent. Code § 44-04-18</u>	"Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. An initial request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may require written clarification of the request to determine what records are being requested, but may not ask for the motive or reason for requesting the records or for the identity of the person requesting public records."
Ohio	<u>OH Rev. Code § 149.43</u>	"(B)(1) Upon request by any person and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to the requester at all reasonable times during regular business hours."
Oklahoma	<u>OK Stat. Tit. 51 § 24A.5v1</u>	"All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided: 1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.30 of this title, does not apply to records specifically required by law to be kept confidential..."
Oregon	<u>ORS § 192.001 et seq.</u>	"(1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.338, 192.345 and 192.355."
Pennsylvania	<u>65 Pa. Stat. § 67.101 et seq.</u>	"'Requester.' A person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency."
Rhode Island	<u>R.I. Gen. Laws § 38-2-3</u>	"(a) Except as provided in § 38-2-2(4), all records maintained or kept on file by any public body, whether or not those records are required by any law or by any rule or regulation,

		shall be public records and every person or entity shall have the right to inspect and/or copy those records at such reasonable time as may be determined by the custodian thereof."
South Carolina	<u>SC Code § 30-4-30</u>	"(A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access."
South Dakota	<u>SD Cod. Laws § 1-27-1</u>	"Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in § 1-27-1.1, are hereby fully empowered and authorized to examine such public record, and make memoranda and abstracts therefrom during the hours the respective offices are open for the ordinary transaction of business and, unless federal copyright law otherwise provides, obtain copies of public records in accordance with this chapter."
Tennessee	<u>Tenn. Code Ann. § 10-7-503</u>	"(A) All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state..."
Texas	<u>TX Stat. Gov. Code § 552.001</u>	"...it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees."
Utah	<u>UT Code § 63G-2-201</u>	"Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours..."
Vermont	<u>1 V.S.A. § 316</u>	"(a) Any person may inspect or copy any public record of a public agency..."
Virginia	<u>VA Code § 2.2-3704</u>	"A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records."
Washington	<u>RCW 42.56.080</u>	"(2) Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person..."
West Virginia	<u>WV Code § 29B</u>	"(a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article."
Wisconsin	<u>WI Stat. § 19.35</u>	"(a) Except as otherwise provided by law, any requester has a right to inspect any record."
Wyoming	<u>WY Stat. Ann. § 16-4-202</u>	"(a) All public records shall be open for inspection by any person at reasonable times, during business hours of the governmental entity, except as provided in this act or as otherwise provided by law"