



MAINE PRESS ASSOCIATION

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P.O. Box 336 Camden, ME 04843

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Sen. Carney, Rep. Kuhn, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I offer testimony on behalf of the Maine Press Association against LD 1788, An Act to Strengthen the Freedom of Access Act by Categorizing Commercial Requestors

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The Maine Press Association has been part of ongoing discussions over the years as a member of the Right to Know Advisory Committee on setting tiers of public access by category of requestor and/or request and has steadfastly opposed doing so.

We oppose the bill before you for a number of reasons, including that it would – for the first time under Maine law – allow a government entity to ask for the purpose a public record request is being made and how the records might be used. It also leaves the decision about whether a requestor fits the “commercial” definition up to agencies and government officials on a “case-by-case basis,” leaving much to interpretation. And, much to discretion, as we have seen through multiple court challenges at the federal level.

Other issues of concern include:

- The definition of “educational institution” is specific to a “school that operates a program of scholarly research,” which casts out a whole universe of educational pursuits that are not connected with established schools.
- The definition of “noncommercial request” is limited to an “educational institution,” which blocks out individual educators and researchers, is limited to “a representative of the news media,” which may block out freelance or self-employed journalists who are not represented by a specific media entity, or another person who asks for information “for a use or purpose that is not determined to be a commercial request.” Does that block out authors doing research for a book they intend to sell for profit? And would it prohibit a researcher who uncovers something of commercial value after obtaining public records from later using that material for commercial purposes?
- The definition of “news media” leans heavily on creating work related to a “current” event or items of “current” interest to the public. Often, with journalism, an event that may be of interest to the public can be historical or well into the future and a particular topic may not become of interest to the public until it is revealed by a journalist. This definition for access is exceedingly narrow and limiting to the public interest. The definition also leans heavily on “stations,” “publishers” and “news organizations,” which can exclude – depending on the case-by-case view of the agency or government official deciding who is a “representative of news media” – a huge number of individual journalists, citizen

bloggers and others who gather "information of potential interest to a segment of the public" for dissemination.

Some of the language contained in this bill matches certain elements of the federal Freedom of Information Act. Under FOIA, if a requestor meets the definitions of an "educational institution, noncommercial scientific institution or representative of the news media," the records search is not subject to fees. That is not the case under Maine law, which charges search fees after two hours, so if Maine were to consider moving toward federal language as it pertains to noncommercial use should it also move toward waiving fees for educational, scientific and news media requestors?

This bill also creates a significant extra step for every FOAA request made in Maine for government officials to seek commercial or noncommercial certification from each requestor regarding use of the records, and for the requestor to predict whether the records may be used in any future judicial proceeding, neither of which may be known at the time of a request.

The Maine Press Association appreciates that commercial requestors, and those making requests for public records to serve discovery, can be an irritant. But, as the public access ombudsman has reported out annually in her data on FOAA requests made to state agencies, the vast bulk of all requests are made by private citizens and journalists and not commercial requestors.

Before Maine moves in the direction of setting tiers that will be subject to case-by-case and possibly subjective decisions, the Maine Press Association suggests that the Right to Know Advisory Committee seek clear data on the load from commercial versus noncommercial requestors and requests across municipal, county and state government so we know with certainty what we're trying to tame here.

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The **Maine Press Association**, founded in 1864, is one of the oldest professional news organizations in the nation. Our goals, as spelled out in our charter and by-laws are: To promote and foster high ethical standards and the best interests of the newspapers, journalists, and media organizations of the state of Maine that constitute its membership; to encourage improved business and editorial practices and better media environment in the state; and to improve the conditions of journalism and journalists by promoting and protecting the principles of freedom of speech and of the press and the public's right to know.