

Statement of Emma Best on LD 1278

An Act to End the Maine Information and Analysis Center

I would like to thank the members of the Committee on Criminal Justice and Public Safety for their time and offer my testimony not as an advocate, but as an interested and informed party. I will not attempt to speak on matters of policy or how this Committee should best pursue its goals. I will only respond to the activities of the Maine Information and Analysis Center (MIAC) and the testimony of those who have spoken before me. My testimony is not offered as a point meant to persuade, but as a counterpoint meant to provide context. Before I do, I ask that the Committee grant me a moment to explain my background and experience as a journalist and analyst.

Background

For the better part of a decade, I have worked to inform the public by publishing hundreds of articles about the government and its activities, some of which focuses on the tensions surrounding government oversight and the desires of the executive versus the duties of legislative. This work is fueled and complemented by my analysis and publication of countless primary source documents obtained through archival work, the Freedom of Information Act (FOIA) as well as legally obtained leaks. My archival work includes successfully helping push CIA to put their declassified database containing more than 13,000,000 pages of documents online in a searchable format that can be accessed by anyone,¹ and my FOIA work consistently has me at or near the top of FBI's list of High Volume Requesters, also known as the Vexsome Filer list.² My FOIA work includes looks at fusion centers and other information sharing arrangements.³

Some of my most notable work began in 2018 when I co-founded Distributed Denial of Secrets (DDoSecrets), a 501(c)3 committed to transparency as a means of accountability which has vetted, redacted⁴ and published data on a wide array of topics ranging from Russian oligarchs, fascist groups, to shell companies and tax havens.⁵ Your Committee will be undoubtedly familiar with DDoSecrets from our publication of the BlueLeaks data from dozens of fusion centers and law enforcement agencies⁶, which has been called the Pentagon Papers for law enforcement⁷, as well as the Parler data we made available⁸ which was used in the second impeachment of former President Trump.⁹

1 Brown, J. (2017, January 17). The CIA's declassified database is now online. MuckRock. Retrieved from <https://www.muckrock.com/news/archives/2017/jan/17/cias-declassified-database-now-online/>

2 United States, Federal Bureau of Investigation, Records Management Division. (2020, February 5). MuckRock. Retrieved from <https://www.muckrock.com/foi/united-states-of-america-10/fbi-vexsome-filer-list-2019-pre-file-78539/#file-840934>

3 Best, E. (n.d.). Fusion center MOUs, MOAs and NDAs. Retrieved April 23, 2021, from <https://www.muckrock.com/foi/multirequest/fusion-center-mous-moas-and-ndas-88810/>

4 Data is handled on a case-by-case basis. Some datasets are made public with portions withheld or redacted to ensure that PII and overly sensitive information is not made public, while others are only given to journalists and researchers.

5 Distributed Denial of Secrets - Publications. (n.d.). In Wikipedia. Retrieved from https://en.wikipedia.org/wiki/Distributed_Denial_of_Secrets#Publications

6 The BlueLeaks data was reviewed and portions were withheld per DDoSecrets' standard practices

7 Elder, J. (2020, August 18). The activists who say they posted BlueLeaks tell the inside story of how the massive trove of police documents revealed how cops were tracking protesters. Business Insider. Retrieved from <http://web.archive.org/web/20200818194703/businessinsider.com/history-of-blueleaks-police-documents-emma-best-ddos-2020-8>

8 Greenberg, A. (n.d.). Far-right platform gab has been hacked-including private data. Retrieved from <https://www.wired.com/story/gab-hack-data-breach-ddosecrets/>

9 Videos used as evidence in impeachment trial gathered by anonymous 'hacktivist'. (2021, February 11). Retrieved April

A Caution Against Half Measures

Before I address LD 1278, I would like to briefly address the concept of some of the alternatives which have been proposed, such as LD 12 (An Act To Require Annual Information Reporting by the Maine Information and Analysis Center). While on the surface it may seem like a step in the right direction, annual self-reporting with vague requirements will hardly ensure accountability for the MIAC. That it doesn't address the problem is hardly surprising, given that those members of law enforcement proposing the bill have trouble admitting the problem exists.

Testifying in support of the LD 12 and representing the Maine State Police and the Maine Department of Public Safety, Michael P. Johnston wrote that they were proposing the statute “because of the perceived secrecy” surrounding the MIAC.¹⁰ Secrecy is not “perceived,” however, when those representing an agency are unable or unwilling to answer questions about how they are responding to faulty and biased intelligence reporting¹¹ or with the information they gather on citizens who may not even be suspected of a crime.¹² Less than a year ago, Representative Warren said she'd never seen an audit of the group's activities or an accounting for its budget.¹³ Regardless of the MIAC's lack of sinister intent, that is not “perceived secrecy,” and the failure to admit the problem raises serious questions about if and how their proposed solution could work.

Testimony submitted on behalf of the Maine Chiefs of Police Association similarly presents LD 12 as a solution to a problem they won't actually admit exists, vaguely framing concerns as “based on inaccurate information about the role of MIAC.”¹⁴

Never in the history of human governance has someone who isn't ready to admit the problem proposed a good and proper solution to an issue been through anything other than sheer luck. The first step is always to admit there's a problem; anything else is wishful thinking, self-deception, or outright gaslighting. Good intentions do nothing to change that fact or even mitigate it.

I've also spent countless hours researching and writing about the subject of oversight, including a 12-part series exploring CIA's 60-year war with the Government Accountability Office and their efforts to escape its “army of auditors” and the accompanying Congressional oversight based off a deep dive into CIA's archives.¹⁵ In this and a dozen other instances of attempts at either oversight or even outright reform, half measures were approached by the legislature as an attempt to compromise, but ultimately approached by executive agencies as the subject of a war of attrition to be worn down over the years.

23, 2021, from <https://www.independent.co.uk/news/world/americas/us-politics/trump-riot-videos-parler-impeachment-b1801019.html>

10 Johnston, M. P. (n.d.). In Support of (LD 12). Retrieved from <https://legislature.maine.gov/bills/getTestimonyDoc.asp?id=150968>

11 Neumann, D. (2020, July 31). Maine's police fusion Center launches PR Campaign, denies bias in tracking BLM protests. Retrieved April 23, 2021, from <https://mainebeacon.com/maines-police-fusion-center-launches-pr-campaign-denies-bias-in-tracking-blm-protests/>

12 Writer, M. (2020, June 25). Secretive police unit gathers information on MAINE citizens, commissioner tells lawmakers. Retrieved April 23, 2021, from <https://pressherald.com/2020/06/24/maine-police-unit-gathers-information-on-citizens-commissioner-says/>

13 Byrne, M. (2020, May 16). Legislator, activists want oversight, answers in alleged police surveillance abuses. Retrieved April 23, 2021, from <https://www.pressherald.com/2020/05/15/legislator-activists-want-oversight-answers-in-alleged-police-surveillance-abuses/>

14 <https://legislature.maine.gov/bills/getTestimonyDoc.asp?id=151852>

15 Best, E. (n.d.). The War on Oversight. Retrieved April 23, 2021, from <https://www.muckrock.com/project/the-war-on-oversight-141/>

Is the MIAC Necessary?

Several representatives of law enforcement attempted to use their testimony to address the question of MIAC's necessity. However, many of them answer a different, related question: does MIAC sometimes assist with functions that reasonable citizens might consider important or even critical? While this is a worthwhile question to ask as a supervisor conducting a performance review, it is not the question that must be considered with this legislation. In June 2020, the Maine Information and Analysis Center produced a “MIAC 101” powerpoint presentation for the Maine legislature which explained that fusion centers are meant to bring “critical context and value to Homeland Security and Law Enforcement that **no other federal or local organization can replicate.**”¹⁶ [emphasis added]

This is the question that must be asked when reviewing the “success stories” offered by representatives of MIAC member agencies: **can or has this function be replicated by another federal or local agency?**

In many cases, there are already state and federal agencies that can be, and often already are, just as easily used to assist in and coordinate cases. The Maine Sheriff's Association says the bill would “set Maine back fifteen years,” then relates a story in which the U.S. Marshall Service Violent Offender Task Force plays a central role and in which York County Sheriff's Office and the Maine State Police could have directly contacted the FBI and/or Montana law enforcement.¹⁷

The testimony of two FBI agents offer two examples in which MIAC “worked to help ensure public safety,” first citing possible voter intimidation in October 2020, then a possible attack on the Maine State Legislature after the attempted coup on January 6th.¹⁸ In the former case, the Maine State Police undoubtedly could have handled the issue without the MIAC. In the latter case, the issue was being discussed by nearly every journalist and had crossed the mind of nearly every citizen. The FBI hardly needed the MIAC to be aware of the situation.

The testimony of Commissioner Michael J. Sauschuck argued that fusion centers “are uniquely situated to empower frontline personnel to understand the local implications of national intelligence by tailoring national threat information into a local context” before urging Committee members to listen to Lieutenant Michael Johnston about the MIAC's operational details and successes.¹⁹ Lt. Johnston lists the MIAC's accomplishments as including assisting with situational awareness about a pair of stolen cell phones, initiating a wellness check of a suicidal women (one of the very things advocates of LD 1278 argue MIAC's funds should be diverted to ensure qualified professionals do instead of police), issuing bulletins and analyzing threats surrounding the Presidential inauguration.²⁰

None of the examples provided provided by those opposing LD 1278 meet either standard set out by Commissioner Sauschuck or the MIAC presentation prepared for the legislature less than a year ago. None of those examples are unique or require things from MIAC that no other federal or local agency can replicate with greater accountability.

16 Maine Information and Analysis Center. (2020, June 23). MIAC 101 Powerpoint for Legislature. Retrieved from <http://legislature.maine.gov/doc/4165>

17 Morton, T. (2021, April 12). re: L.D. 1278 – An Act To End the Maine Information and Analysis Center. Retrieved from <http://legislature.maine.gov/bills/getTestimonyDoc.asp?id=152429>

18 McMahon, G. M., & Hughes, G. T. (n.d.). Testimony of Senior Supervisory Intelligence Analyst Gerald M. McMahon and Supervisory Special Agent Gregory T. Hughes. Retrieved from <http://legislature.maine.gov/bills/getTestimonyDoc.asp?id=152438>

19 Sauschuck, M. J. (2021, April 12). Testimony of Commissioner Michael J. Sauschuck Against LD 1278, An Act to End the Maine Information and Analysis Center Program. Retrieved from <http://legislature.maine.gov/bills/getTestimonyDoc.asp?id=151609>

20 Johnston, M. (n.d.). Testimony of Lieutenant Michael Johnston In Opposition of (LD 1278). Retrieved from <http://legislature.maine.gov/bills/getTestimonyDoc.asp?id=151607>

What Happens if the MIAC is Ended

There is a natural tendency to think about the end of the MIAC as, well, The End. Supporters of the fusion center understandably perceive and portray it as the end of coordination and information sharing, instead of ending excess, quotas and the need to justify programs' existence. Communication and coordination, especially with and through state and federal agencies, will continue as they have elsewhere. I have seen agencies across the country do this without fusion centers.^{21 22 23}

Other gaps that might exist will not go unattended by either law enforcement or the legislature. For instance, this Committee is currently considering LD 58 (An Act To Improve Information Sharing by Criminal Justice Agencies with Government Agencies Responsible for Investigating Child or Adult Abuse), which is unanimously endorsed by the Maine Sheriffs' Association²⁴ and fosters information sharing without the need for fusion centers like MIAC.

There are myriad solutions, both alternatives to policing as well as better, safer, and more accountable methods of policing which this Committee and the legislature can pursue in lieu of the MIAC. This Committee likely knows better than anyone that the dialogue with law enforcement is an ongoing one, as is the search for solutions.

Fusion Center FOMO

Several opponents of LD 1278 have invoked in their testimony, either directly or indirectly, a Fear Of Missing Out if the MIAC is shut down. Maine would be without a fusion center; it would be different, and this is framed as a bad thing. The counterview is that Maine would no longer be part of a system which has been criticized, locally and nationally, since their inception. Since the infamous 2012 Senate report,²⁵ little has changed except more evidence has emerged documenting fusion centers' problems. Two examples of deceptive practices and failure to self-govern emerged just this year:

Less than a month ago, Lucy Parsons Labs²⁶ found that Chicago's City Hall considered concealing the fusion center's role in social media monitoring to avoid conflicts with privacy advocates like the ACLU and Lucy Parsons Labs.²⁷ Earlier in the year, it was reported by the *Austin American-Statesman* that one of Texas' fusion centers, Austin Regional Intelligence Center (ARIC), was retaining reports on citizens without demonstrating a nexus to criminal or terrorist activity, in violation of ARIC's privacy policy. According to ARIC's Deputy Director, this wasn't discovered through an internal audit or a procedural review, but through DDoSecrets' publication of BlueLeaks.²⁸

21 Best, E. (2019, June 11). ICE MOUs/MOAs. Retrieved April 23, 2021, from <https://www.muckrock.com/foi/multirequest/ice-mousmoas-71936/>

22 Best, E. (2019, June 24). ICE MOUs/MOAs. Retrieved April 23, 2021, from <https://www.muckrock.com/foi/multirequest/ice-mousmoas-71937/>

23 Best, E. (2019, June 8). ICE MOUs/MOAs. Retrieved April 23, 2021, from <https://www.muckrock.com/foi/multirequest/ice-mousmoas-72544/>

24 Morton, T. (2021, February 10). re: L.D. 58 – An Act To Improve Information Sharing by Criminal Justice Agencies with Government Agencies Responsible for Investigating Child or Adult Abuse. Retrieved from <http://legislature.maine.gov/bills/getTestimonyDoc.asp?id=142591>

25 Permanent Subcommittee on Investigations, Homeland Security & Governmental Affairs. (2012, October 03). Investigative Report Criticizes Counterterrorism Reporting, Waste at State & Local Intelligence Fusion Centers. Retrieved from <https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>

26 Lucy Parsons Labs is a 501(c)3 collaboration between data scientists, transparency activists, artists, & technologists

27 Lucy Parsons Labs. (2021, April 19). The city said it shouldn't call its social media monitoring team at the fusion center what it is because it bothers privacy groups. Retrieved from <https://twitter.com/lucyparsonslabs/status/1384181379726938124>

28 Mulder, B. (2021, February 07). Hackers leaked nearly 2,000 incidents of Austin surveillance. Here's what they found. Retrieved from <https://www.statesman.com/story/news/2021/02/07/austin-police-surveillance-operation-leaked->

Conclusion

In the minds and words of the opponents of LD 1278, fusion centers and what they're supposed to do are virtually synonymous. If you shut down a fusion center, you're shutting down information sharing. Coordination ends and communication ceases. It won't restart, new more efficient networks and ad-hoc connections won't be created because in their minds, the end of the MIAC represents The End. But that isn't logic talking, only fear. Logically, we know Maine would carry on, unburdened by a very expensive and chronic problem.

Logically we know it represents a new start for Maine and an historic new model for the nation.

I thank the members of the Committee on Criminal Justice and Public Safety for their time and consideration.