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COMMISSIONER

**TESTIMONY OF**

**SAM PRAWER, DIRECTOR OF GOVERNMENT AFFAIRS  
MAINE DEPARTMENT OF CORRECTIONS**

**February 5, 2025**

**In Opposition to:**

**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**

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, I am Samuel Praver, Director of Government Affairs at the Maine Department of Corrections (DOC), writing today to provide testimony in opposition to 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.

At Maine Department of Corrections, we value the principles which underly Maine's Freedom of Access Act (FOAA), and our team works hard to meet the current statutory requirement to make a good faith effort to respond to all applicable requests within a reasonable timeframe, as provided under 1 MRS §408-A. However, as explained further below, the 30-day timeframe to provide a complete response to all FOAA requests required by this bill is neither reasonable nor feasible.

To provide a picture of our current request volume, in calendar year 2024, DOC received over 77 formal freedom of access requests. This number does not include requests for DOC documents sent to our Assistant Attorneys General at the Attorney General's Office. For the requests that were formally tracked, we were able to complete 44 within 1 to 30 days, 10 within 30 to 60 days, and 5 in 60 or more days. Of the requests made in 2024, 18 are still pending. Records requests to DOC may be formally submitted through either U.S. mail or e-mail. In addition to the requests made through our formal submission process our Department received countless information requests made directly to other members of our team. Those requests were not managed by our FOAA personnel and therefore were not formally tracked, however, many of them would have fallen under the scope of FOAA. This means that the numbers presented above do not include the dozens of requests we received for records or information that were not handled through the formal FOAA process. In addition, those numbers also do not include requests for records that are not available under FOAA or requests that were cancelled by the requester after they were submitted (usually for failure to pay for the work needed to retrieve the records, as authorized under 1 MRS §408-A(8)). Even though such requests did not require the production of documents, sorting and evaluating those requests often requires several hours of work by our staff because it is not always clear from the initial request what is being sought, whether it is for public records in our possession, or the amount of work that will be needed to retrieve the records.

Requests made under FOAA range greatly in scope and complexity. Some information is easily deliverable in one day or less. We frequently receive requests for information that is publicly available on our website or in a document that was previously produced for another purpose. However, other requests require a significant amount of time to review, organize, and redact. This is especially true of requests that are broad in scope or that touch on documents that contain confidential information. For some requests there may be thousands of responsive documents that need to be reviewed and redacted to ensure the confidentiality of information that is protected by statute. Statutory confidentiality provisions that are most applicable to DOC include, but are not limited to, 1 MRS §402 (defining what is and is not a "public



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record”), 5 MRS §7070 (personnel records), 16 MRS §803 (intelligence and investigative information), and 34-A MRS §1216 (information related to those in our custody). Furthermore, there are also requests for which we rely on assistance from other state agencies to retrieve responsive information. For instance, when we receive requests for communications between state employees, we need to work with MaineIT and the Attorney General’s office to pull and review those records. We also often have to work with the Bureau of Human Resources for records related to personnel and the Correctional Service Center under Department of Administrative and Financial Services for records related to finances.

In addition to the complexities described above, this bill overlooks a central aspect of records requests that often extends the time needed to provide a response – that many requests made of our department under FOAA require clarification before our team can properly identify the information being requested. When we reach out for clarification we are reliant on the responsiveness of the requester to keep the request moving at a timely pace, and those making requests are often slow to respond when we make that ask. This issue is exacerbated when requests are made through U.S. mail rather than e-mail due to the time needed for delivery. Sometimes it can take several weeks to receive the clarification needed to move forward with a request. Compounding that issue is the fact that departments are sometimes entitled to charge and receive payment in advance of fulfilling a request under 1 MRS §408-A(10). It can also take weeks for our department to receive the required payment. This bill does not address what happens if clarification or payment is not provided with enough time to fulfill the request by the 30-day deadline. Presumably the failure to meet the 30-day deadline would result in the applicability of civil penalties under 1 MRS §410, which raises questions about the potential for this process to be manipulated. Another, related issue, is about how this bill would impact the handling of ongoing requests, where we provide the requested information and the requester then uses that information to ask for additional information or asks additional questions about the information we provided. Under the proposal before you today, it is unclear whether each of those follow-ups would be treated as new requests or treated as extensions of the original request.

Finally, there are times when DOC receives requests for records that may be in our possession but are not necessarily the Department’s records. This most often occurs when the DOC staff is assigned to support boards or commissions like the Governor’s Board on Executive Clemency (the Pardon Board). In these cases, there are often different statutory standards regarding what is a public record under each entity and it can take time for our staff to navigate the complexities of statutory provisions for documents maintained by the Department versus documents maintained by the relevant board or commission. This can add layers of legal complexity to a request, especially in instances where case law or executive orders impact what information is deliverable and which entity is appropriate to deliver that information.

The Department of Corrections estimates that the requirements of this bill would result in a significant fiscal impact to our Department alone, and likely to others who receive a similar volume of requests. While we are unable to put an exact number on that impact at this time (we can follow up with more information prior to the work session if necessary), our team anticipates that this bill would require at least two additional full-time DOC staff to manage these requests in our Central Office, as well as funding necessary to support the addition of two more Assistant Attorneys General assigned to our Department from the Attorney General’s Office.

For the reasons stated above, the Department of Corrections respectfully asks that the committee votes “Ought Not to Pass” on this proposal.

I apologize that I was not able to attend in person today. Please do not hesitate to reach out with any questions you may have.

Thank you,



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