

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1575

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H.P. 1137

House of Representatives, April 16, 2019

### An Act To Improve the Freedom of Access Laws of Maine

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative HARNETT of Gardiner.  
Cosponsored by Senator BREEN of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 1 MRSA §402, sub-§1-B** is enacted to read:

3 **1-B. Public or governmental business.** "Public or governmental business" means  
4 the administration of public policy and the exercise of governmental power through laws,  
5 rules, ordinances, regulations and the equivalent. "Public or governmental business" does  
6 not include personal communications of agency staff or public officials unless the subject  
7 of the communication is the administration of public policy or the exercise of  
8 governmental power through laws, rules, ordinances, regulations or the equivalent.

9 **Sec. 2. 1 MRSA §408-A, sub-§1-A** is enacted to read:

10 **1-A. Request.** A person who requests to inspect or copy a public record under this  
11 section shall provide to the office of the agency or official having custody of the public  
12 record sufficient information to identify the record sought. At a minimum, a request for a  
13 public record must include:

14 A. The specific subject matter contained in the record; and

15 B. The date or dates upon which the record was created. If the person is not aware of  
16 the specific date or dates upon which the record was created, the person may provide  
17 a broad range of dates within which the record may have been created.

18 **Sec. 3. 1 MRSA §408-A, sub-§3,** as amended by PL 2015, c. 317, §1, is further  
19 amended to read:

20 **3. Acknowledgment; clarification; time estimate; cost estimate.** The agency or  
21 official having custody or control of a public record shall acknowledge receipt of a  
22 request made according to this section within 5 working days of receiving the request and  
23 may request clarification concerning which public record or public records are being  
24 requested. ~~Within a reasonable time 30 days of receiving the request, the agency or~~  
25 ~~official shall provide a good faith, nonbinding estimate of the time within which the~~  
26 ~~agency or official will comply with the~~ to the requester an update on the agency's or  
27 official's progress on the request, as well as a cost estimate as provided in subsection 9.  
28 ~~The~~ Within 30 days of providing the update on the agency's or official's progress, the  
29 ~~agency or official shall make a good faith effort to fully respond to the request within the~~  
30 ~~estimated time fulfill the request or, if fulfillment of the entirety of the request is not~~  
31 ~~possible within the 30-day time frame, the agency or official shall fulfill that portion or~~  
32 ~~portions of the request that it can fulfill within the 30-day time frame and shall provide to~~  
33 ~~the requester an explanation of the reason or reasons that the request cannot be fulfilled~~  
34 ~~within the 30-day time frame and a written estimate of the expected date of compliance~~  
35 ~~with the remainder of the request. A requester that is aggrieved by the inability of an~~  
36 ~~agency or official to comply with a request within the 30-day time frame may file a~~  
37 ~~complaint with the Public Access Ombudsman appointed under Title 5, section 200-I.~~  
38 For purposes of this subsection, the date a request is received is the date a sufficient  
39 description of the public record, in accordance with subsection 1-A, is received by the  
40 agency or official at the office responsible for maintaining the public record. An agency  
41 or official that receives a request for a public record that is maintained by that agency but

1 is not maintained by the office that received the request shall forward the request to the  
2 office of the agency or official that maintains the record, without willful delay, and shall  
3 notify the requester that the request has been forwarded and that the office to which the  
4 request has been forwarded will acknowledge receipt within 5 working days of receiving  
5 the request.

6 **Sec. 4. Review; report.** The Right To Know Advisory Committee, established  
7 under the Maine Revised Statutes, Title 5, section 12004-J, subsection 14, shall examine  
8 the specific challenges of ensuring public access to public records in the face of new and  
9 emerging technologies and shall develop recommendations that are designed to preserve  
10 communications that can be accessed by the public. In conducting its review, the  
11 committee shall specifically examine:

12 1. The effect of the increasing reliance on the use of text messaging to conduct  
13 business and how text messaging fits within the parameters of the Freedom of Access  
14 Act;

15 2. How to ensure the preservation of public records when the use of technology that  
16 does not create a permanent record, such as Snapchat, is surging; and

17 3. Strategies to encourage public agencies and public officials to adopt business  
18 practices that are specifically designed to preserve public records that are subject to the  
19 Freedom of Access Act.

20 The Right To Know Advisory Committee shall submit its report, together with any  
21 proposed implementing legislation, to the Joint Standing Committee on Judiciary by  
22 December 4, 2019. Upon receipt and review of the report, the joint standing committee  
23 may report out a bill to the Second Regular Session of the 129th Legislature.

## 24 SUMMARY

25 The purpose of this bill is to enhance access to public records without imposing  
26 undue burdens on the efficient and effective functioning of government. This bill makes  
27 the following changes to the Freedom of Access Act.

28 1. Current law defines public records that are subject to the Freedom of Access Act  
29 as matter in the possession or custody of an agency or public official that has been  
30 received or prepared for use in connection with, or that contains information relating to,  
31 the transaction of public or governmental business. This bill defines "public or  
32 governmental business" as the administration of public policy and the exercise of  
33 governmental power through laws, rules, ordinances, regulations and the equivalent.

34 2. The bill requires that, when requesting to inspect or to receive a copy of a public  
35 record, a person must provide to the agency or official with custody of the record  
36 sufficient information to identify the record sought. Under the bill, a request for a public  
37 record must include, at a minimum, the specific subject matter contained in the record  
38 and the date or dates upon which the record was created or a range of dates within which  
39 the record may have been created.

1           3. Current law requires that, within "a reasonable time" of receiving a request for  
2 information, the agency or official must provide a good faith, nonbinding estimate of the  
3 time within which the agency or official will comply. This bill instead requires that the  
4 agency or official, within 30 days of receiving the request, provide to the requester an  
5 update on progress on the request and, within 30 days of providing the update, fulfill the  
6 request. If the agency or official is unable to fulfill the entirety of the request within the  
7 specified time period, the agency or official must provide to the requester an explanation  
8 of the reason or reasons it was unable to comply, fulfill those portions of the request that  
9 it can fulfill and provide a written estimate of the expected date of compliance with the  
10 remainder of the request.

11           4. The bill directs the Right To Know Advisory Committee to examine the specific  
12 challenges of ensuring public access to public records in the face of new and emerging  
13 technologies and to develop recommendations that are designed to preserve  
14 communications that can be accessed by the public. The Right To Know Advisory  
15 Committee is directed to report its findings and recommendations to the Joint Standing  
16 Committee on Judiciary, which is authorized to report out a bill to the Second Regular  
17 Session of the 129th Legislature.