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# **STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL**

**Janet T. Mills, Attorney General**



## **PUBLIC ACCESS OMBUDSMAN ANNUAL REPORT FOR 2015**

**January 19, 2016**

**Brenda L. Kielty, AAG, Ombudsman**

# TABLE OF CONTENTS

	<b>Page</b>
MESSAGE FROM ATTORNEY GENERAL JANET T. MILLS.....	1
SUMMARY .....	2
ANSWERING INQUIRIES & RESOLVING DISPUTES .....	4
OUTREACH & TRAINING .....	11
STATE AGENCY ANNUAL FOAA REPORTING .....	12
RECOMMENDATIONS .....	16
APPENDIX.....	18
5 M.R.S. § 200-I .....	18
1 M.R.S. § 403-A-1.....	20

## MESSAGE FROM ATTORNEY GENERAL JANET T. MILLS

“Government ought to be all outside and no inside. . . . Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety.”

- Woodrow Wilson

Many years ago, if you said you wanted to “FOA” somebody, you might have been arrested for threatening to commit a crime. Today, the word “FOA”—as a noun, as a verb—has become an integral part of our vocabulary, particularly for people who work in government and in the news media. For some the term represents a threat; for others, a nuisance, the basis for a news story, the start of a lawsuit, a glimpse into a decision or into the purpose of a meeting.

Since 1967 citizens have enjoyed the right to acquire information from the federal government by statute. Other countries, even non-democratic regimes, have followed suit. Since 1975 Maine has provided a statutory right of access to governmental information and governmental meetings. We have become accustomed to participation. We resent stalling. We expect full access.

After all, what would our government be like if it operated in secret—without access, without public participation or public knowledge? Many believe that nothing is more fundamental to our democracy than transparency in government, in its documents, its actions and its deliberations.

This right is not absolute, of course. Our statutes still shield matters of personal privacy, trade secrets, investigative information, personnel records, and the like. When you file a form with the government containing personal information, do you expect that others outside that agency will see the information, even if you had no choice about filing that form with the government, that your name might be listed in the newspaper or on a social network as holding a particular license from the government?

The balancing of public access with legitimate privacy interests is what our laws strive to achieve. It is the reason we have a “Right to Know Advisory Committee,” made up of news people, lawmakers and regular citizens. It is the reason we require the Legislature’s Judiciary Committee to review the myriad confidentiality statutes on the books each year to see if they still make sense. It is the reason we now have a fulltime “Public Access Ombudsman” in the Office of the Attorney General.

We hope this 2015 Report of the Ombudsman sheds light not only on the volume and type of work performed already but also on the challenges of achieving that important balance between competing interests of personal privacy and transparency, each of equal importance to the citizens of this state. While government may never be “all outside, no inside,” we are determined to make our government more “outside” than ever before, while protecting the legitimate “inside” for which citizens have every right to expect protection.

## SUMMARY

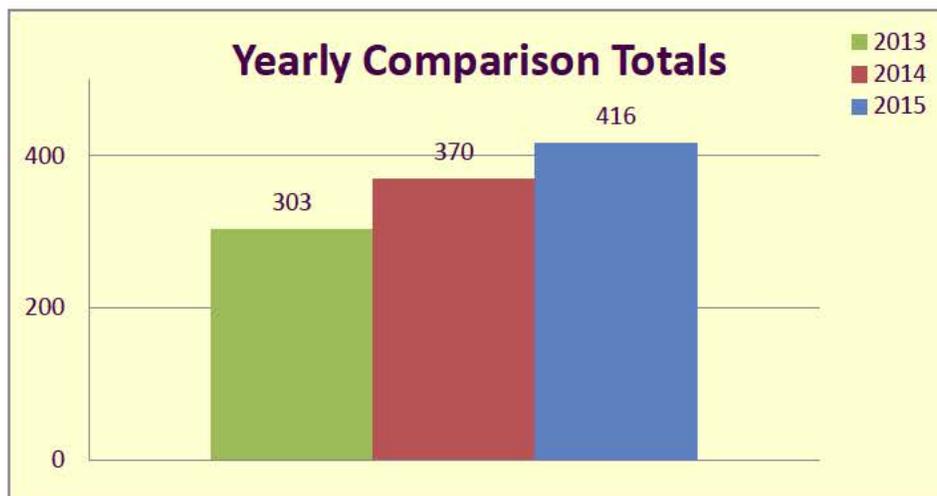
Maine's Freedom of Access Act (FOAA) recognizes that government must be accountable to the people and provides a statutory right of access to public meetings and public records. While the principles of open government, transparent deliberations and access to public information are fundamental to FOAA, these interests must be balanced with the need for government to maintain the confidentiality of information to protect personal privacy, security and other legitimate interests.

In 2007 the Legislature created the public access ombudsman position within the Office of the Attorney General. The statute authorized the ombudsman to educate the public and government officials about the requirements of the State's freedom of access law, provide dispute resolution services, answer inquiries and make recommendations for improvements to the law. In 2012 the Legislature funded a full-time ombudsman position.

The ombudsman performs an unusual role in government. Although the ombudsman receives complaints from the public, the ombudsman's job is not to be either an advocate for the complainant or a defender of the government. An ombudsman is an impartial intermediary who provides information, who informally resolves disputes and encourages full compliance with the spirit and the letter of the law.

### Three Year Program Trends

The ombudsman activity involving question and complaint resolution has grown over the three years of the program. The ombudsman received a total of 416 contacts in 2015 from FOAA requesters and agencies seeking assistance, representing a 37% increase from the 303 contacts in 2013. Even with a conservative growth projection rate of 10% per year, question and complaint resolution contacts could double in volume from 2013 levels by 2019. The Legislature should be aware of the robust utilization of this aspect of the program. The ombudsman can currently meet this demand but continued long term growth may warrant consideration of additional resources.



As was the case in 2014, the bulk of the contacts were telephone inquiries from private citizens regarding access to public records held by municipal government agencies.

There was a significant increase in the number of contacts from state agency personnel from 56 in 2014 to 96 in 2015. Contacts from municipal officials and staff, quasi-municipal officials and staff and attorneys all increased. Many of these contacts were made early in the FOAA process with the opportunity to resolve an emerging dispute or avoid one altogether.

### **State Agency Annual FOAA Reporting**

The Ombudsman Report for 2015 includes data on the annual number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies. This is the first year that this information has been compiled. Although incomplete data was reported on some of the indicators, this snapshot of FOAA activity should help inform policy makers and the public on how each agency is generally responding to FOAA requests over the course of a year. This data also illuminates the volume of FOAA requests for these state agencies collectively.

I would like to thank the state agency public access officers for their time in compiling the data necessary for this report and their continued dedication to providing access to public records. I would also like to thank Brian Philbrook, Maine Law student extern, for his assistance in preparing this report.

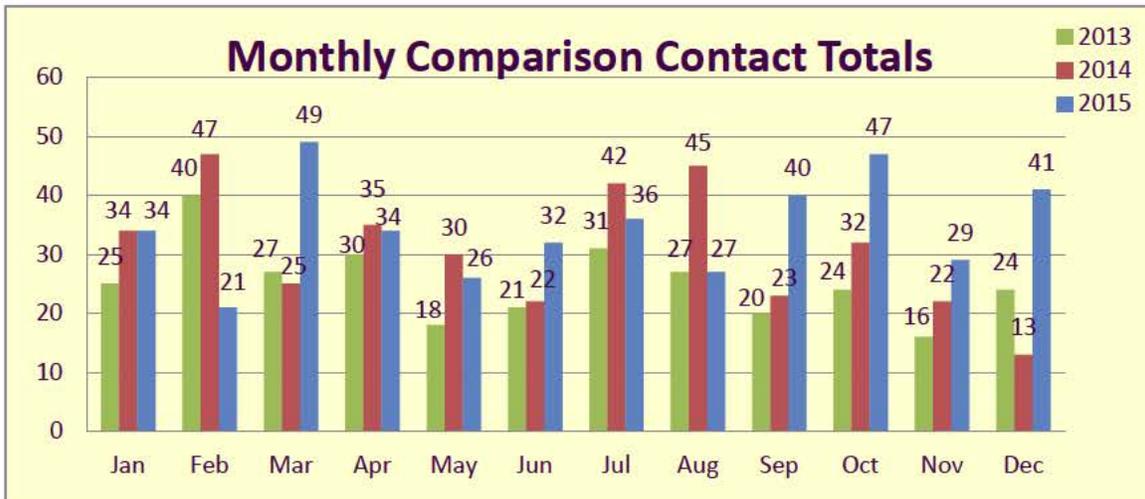
Brenda L. Kielty, Public Access Ombudsman

## ANSWERING INQUIRIES & RESOLVING DISPUTES

“The ombudsman shall respond to informal inquiries made by the public and public agencies and officials concerning the State’s freedom of access laws; and respond to and work to resolve complaints made by the public and public agencies and officials concerning the State’s freedom of access laws.” 5 M.R.S. § 200-I(2)(A) and (B).

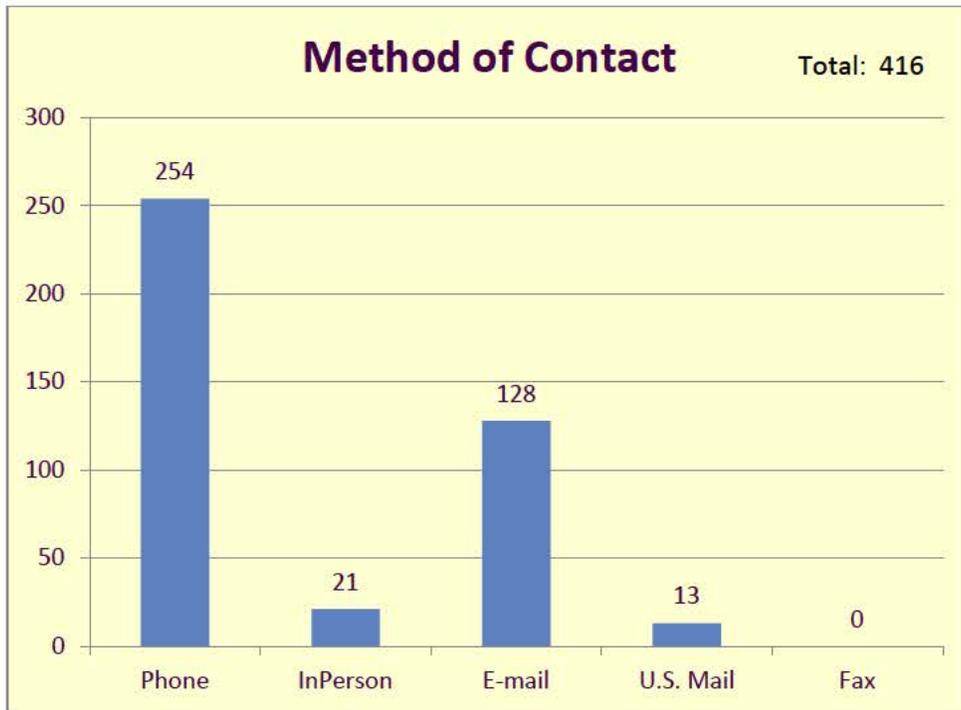
### 2015 Contacts with the Ombudsman

In 2015 the ombudsman logged 416 inquiries, complaints and suggestions. Requests for help ranged from questions about how to file a FOAA request to more complex inquiries regarding situations in which the FOAA issues were only part of a larger dispute or where some fact-finding was necessary before appropriate advice could be given.



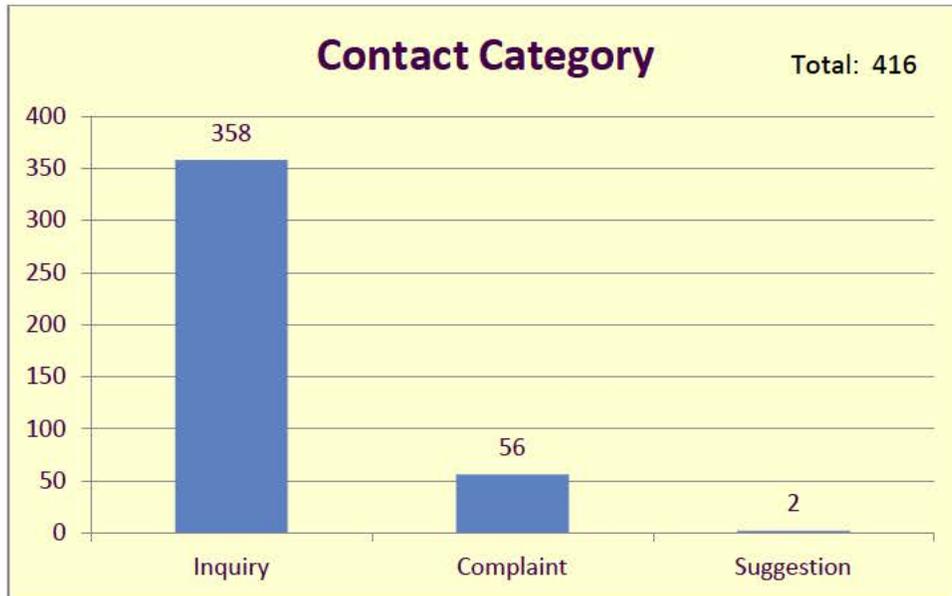
**Method of Contact**

The bulk of initial contacts was by telephone (254) followed by email (128), U.S. Mail (13) and in- person (21).



**Contacts Included Inquiries, Complaints and Suggestions**

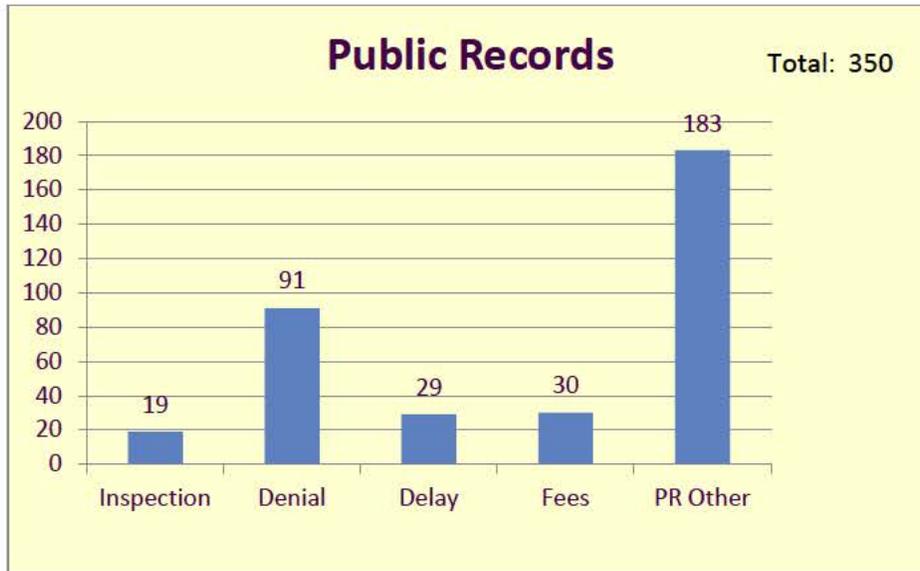
The 416 contacts included general inquiries (358), complaints (56) and suggestions (2). Contacts that were characterized as complaints involved a substantial controversy between the parties with specific relief or remedy sought by the complainant.



## Contacts Concerning Public Records

Of the contacts about public records (350), the most common questions concerned:

- Basis for a denial
- Email records of government officials
- Requests for research from a database
- Reasonable response times and delay
- Confidentiality exceptions



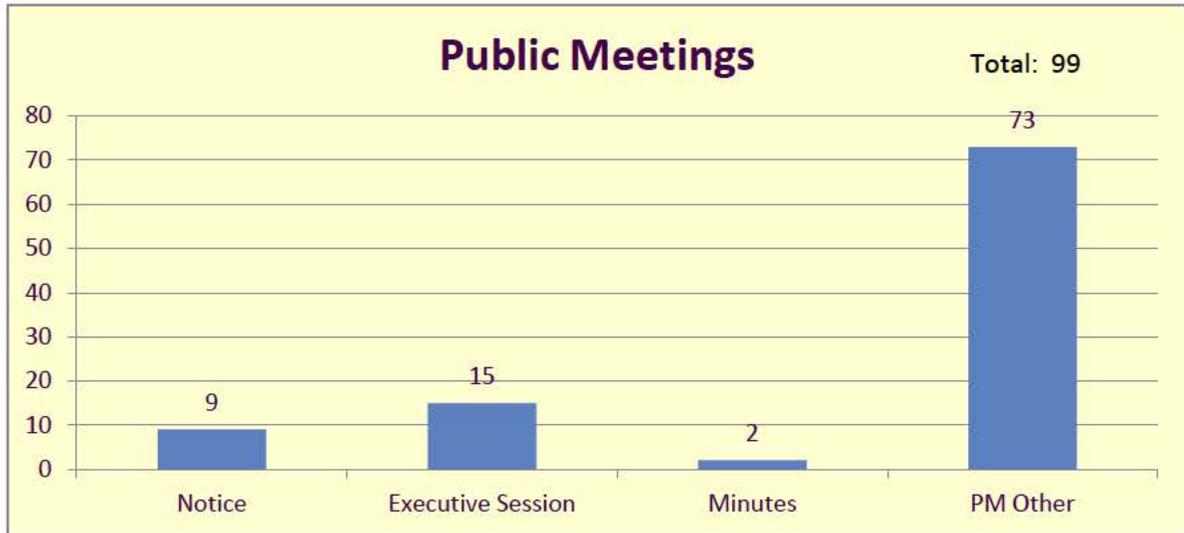
All other public records contacts concerned either a combination of issues or a narrow subset of the listed categories. The “Other” category includes the following kinds of questions:

- Retention and destruction of records
- Confidentiality of specific documents prior to a FOAA request being made
- Access to records normally part of discovery
- General information on making a FOAA request
- Mandatory FOAA training for officials
- Whether an entity is subject to FOAA
- Asking for a document rather than asking for the answer to a question
- Legislation and case law
- Asking for an agency to compile data or create a document
- Abuse of FOAA by requesters
- Due diligence of an agency in searching for records

### Contacts Concerning Public Meetings

Of the contacts concerning public meetings (99), most questions concerned:

- Use of executive session
- What constitutes a meeting

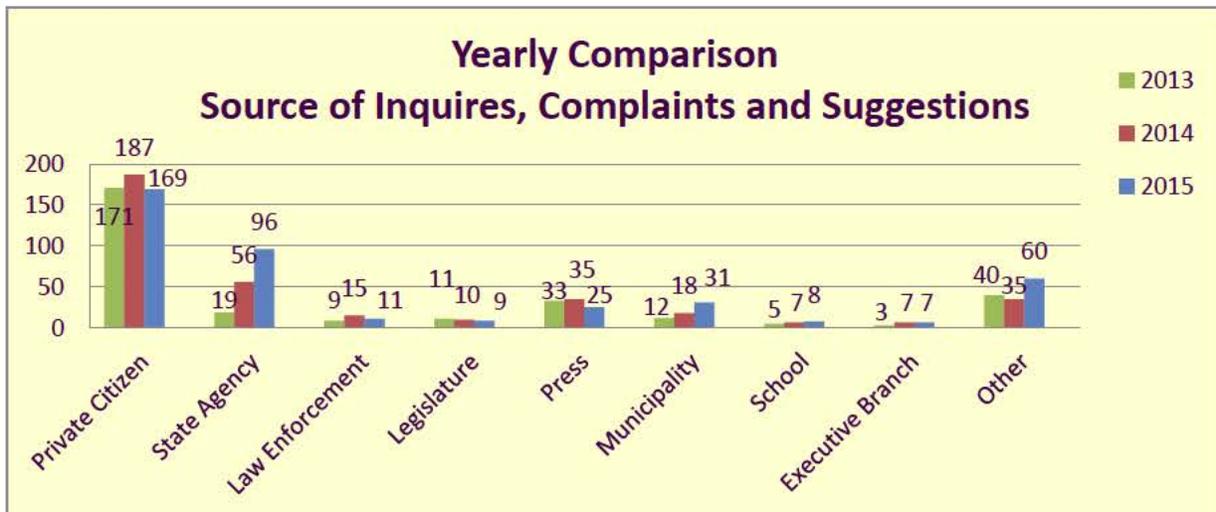
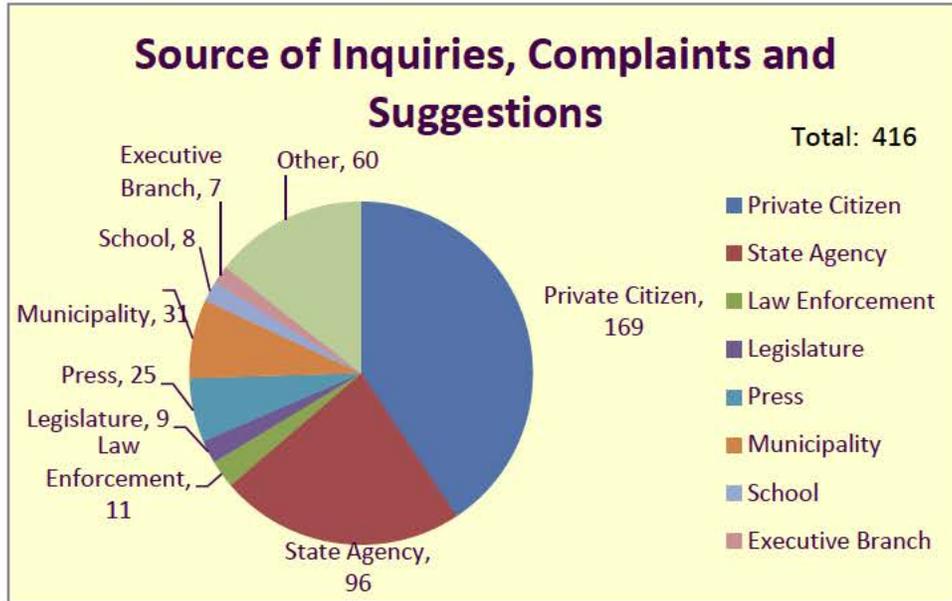


All other public meetings contacts concerned either a combination of issues or a narrow subset of the listed categories. The “Other” category includes the following kinds of questions:

- Online communication during public meetings
- Public comment period during public meetings
- Remote participation
- What entities are subject to FOAA

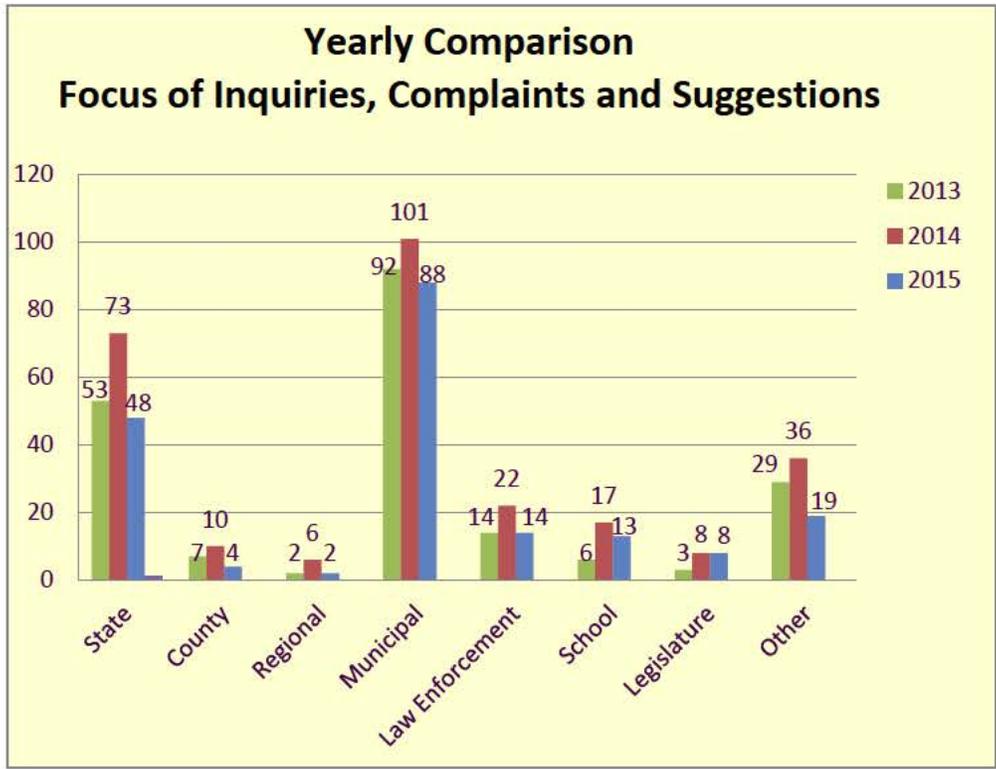
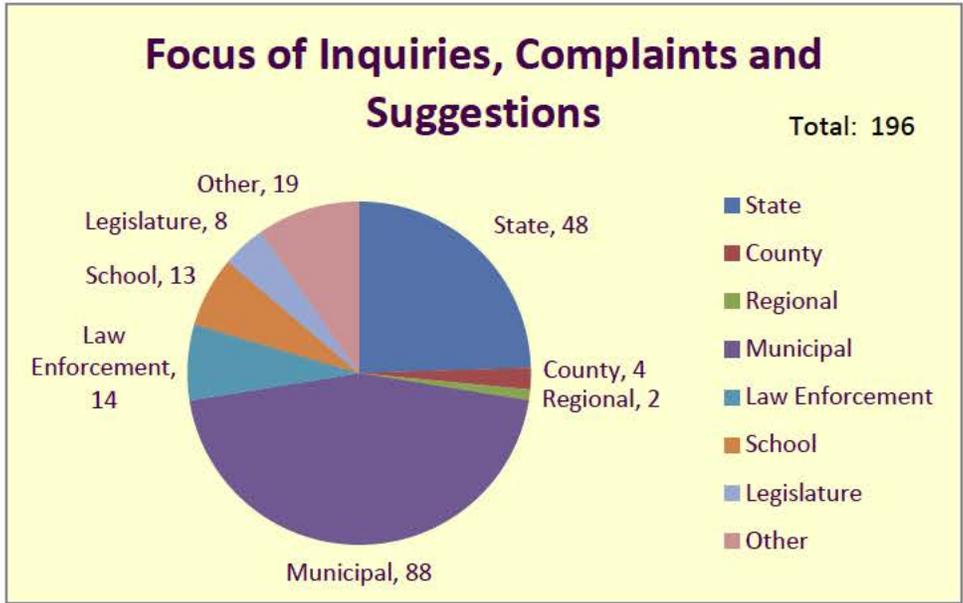
### Source of Inquiries, Complaints and Suggestions

Of the 416 inquiries, complaints and suggestions, 169 came from private citizens, 96 from state agencies, 11 from law enforcement agencies, 9 from the Legislature, 25 from members of the media, 8 from school districts, 7 from the executive branch and 60 from others including attorneys and commercial requesters.



**Focus of the Inquiries, Complaints and Suggestions**

Most of the inquiries and complaints concerned municipalities (88) and state agencies (48). The remainder concerned law enforcement agencies (14), school administrative units (13), county agencies (4), the Legislature (8) and regional agencies (2). Others (19) concerned individual requesters, commercial requesters and various quasi-municipal and public entities.



### Outcomes Reached as Result of Contact with Ombudsman

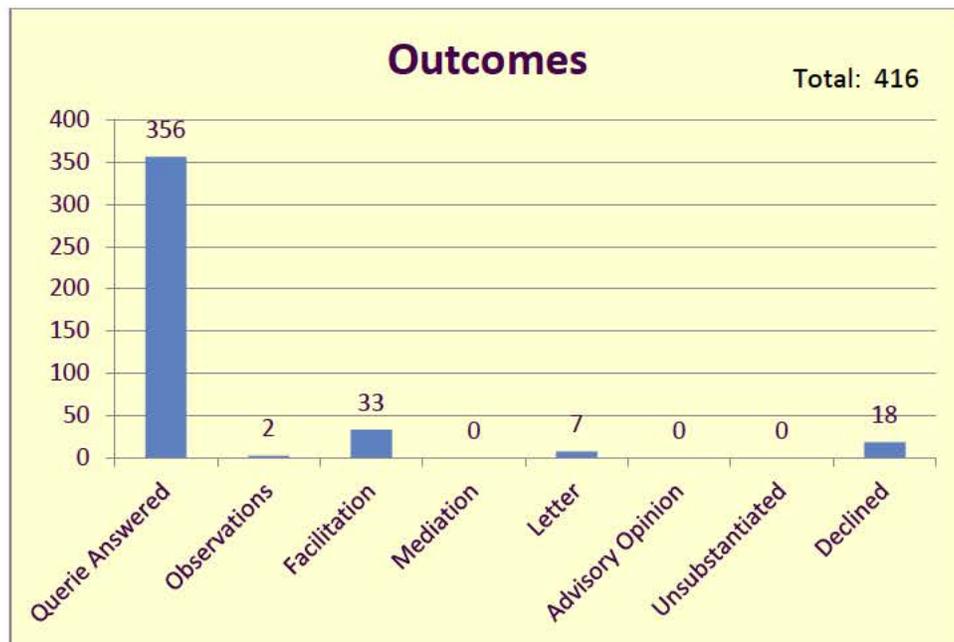
A contact may be logged as “resolved” for the following reasons:

- Complaint was deemed unsubstantiated
- Informal discussions or facilitation resulted in an agreement on how to proceed
- Agency offered an acceptable remedy
- Complaint was withdrawn
- Complainant failed to produce requested information
- Ombudsman determined there was other good cause not to proceed

A contact may be logged as “declined” if the subject of the dispute was outside the scope of authority of the ombudsman or related to a matter that was the subject of an administrative or judicial proceeding. In 2015 a total of 18 cases were declined.

Many of the inquiries were answered either immediately or within a matter of days. The 416 contacts included 356 answers to inquiries, 2 suggestions from citizens for improvements to the law, 33 facilitated resolutions, and 7 letters addressing cases of substantial controversy.

The ombudsman did not issue any advisory opinions in 2015.



## OUTREACH & TRAINING

The ombudsman provided on-site FOAA trainings and presentations to a variety of state and local entities including the following:

- Maine Department of Inland Fisheries & Wildlife
- Regional Organization of Municipal Attorneys
- Maine Department of Health and Human Services
- Maine County Commissioners Association Annual Convention
- Maine Municipal Association Annual Conference
- Brunswick Sewer District
- South Portland City Council

The State FOAA website, [Your Right to Know: Maine's Freedom of Access Act](#) provides contact information for the ombudsman and links to a variety of resources including a Frequently Asked Questions page that serves as a self-administered training for public officials. The ombudsman updates and maintains the website to reflect changes in the law.

## STATE AGENCY ANNUAL FOAA REPORTING

Pursuant to [5 M.R.S. § 200-I\(2\)\(F\)](#) the Ombudsman report for 2015 includes data on the number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies.

### Method

Each reporter was asked to submit data on key FOAA response indicators and include any other explanatory information relevant to their FOAA program. The absence of uniform FOAA tracking across agencies, variations in data collection and incomplete reporting limit the accuracy of the compiled data for some indicators.

Although the statute refers to “requests for information” and that could include a set of data much broader than FOAA requests, reporting was limited to requests that were processed within an agency’s FOAA procedures.

The “average” response time was reported based on the set of timeframes listed below.

The “costs” of processing requests could include multiple criteria to assess the use of agency resources. As a baseline the data included the amount billed as fees for FOAA requests.

Agencies that were able to calculate the actual hours spent responding to FOAA requests included that data.

1. Number of FOAA requests received in 2015
2. Response time 0 – 5 days
3. Response time 6 – 30 days
4. Response time 31 – 60 days
5. Response time greater than 60 days
6. Amount of fees and costs for FOAA requests
7. Amount of agency hours spent responding to FOAA requests

### Findings

A total of 969 FOAA requests were logged by the fourteen executive branch state agencies in 2015. There was a wide variation in totals between the agencies from six requests for Defense, Veterans & Emergency Management to 330 for the Department of Health and Human Services. Although 557 requests were responded to within five days, 37 took 60 days or more to fulfill. There can be a number of reasons for the length of response times including the scope and complexity of the request, earlier pending requests and the availability of employees to shift from operational duties to FOAA. This relatively small data set does not provide sufficient information to determine why some requests took longer than others.

Agencies reported a total of \$11,273 of fees charged for responding to FOAA requests. This indicator does not include hourly fees and costs that could have been charged and were waived. Several agencies did not report on this metric and the actual total would certainly be greater with complete data.

Agency staff hours spent responding to FOAA requests totaled 1,269 hours with several agencies not reporting this indicator. The Department of Health and Human Services had both the greatest number of requests (330) and number of hours spent on FOAA responses (404.45) while the Department of Defense, Veterans & Emergency Management had the least number of requests (6) and number of hours spent on FOAA responses (2) among all the agencies.

## STATE AGENCY 2015 FOAA REPORTING

AGENCY	FOAA REQUESTS RECEIVED	RESPONSE TIME 0-5 DAYS	RESPONSE TIME 6-30 DAYS	RESPONSE TIME 31-60 DAYS	RESPONSE TIME >60 DAYS	FEES CHARGED	AGENCY HOURS TO RESPOND	PENDING 2015 REQUESTS
Administrative & Financial Services	98	36	35	9	4	0	110	14
Agriculture, Conservation & Forestry	48	10	24	6	3	\$1,645	135	5
Corrections	23	17	6	0	0	1	n/a	0
Defense, Veterans & Emergency Management	6	1	1	2	1	0	2	1
Economic & Community Development	6	1	2	0	3	\$ 345	19	0
Education	49	16	18	9	4	\$ 338	168.75	2
Environmental Protection	59	17	26	6	2	\$3,439	181	8
Health & Human Services	330	271	34	12	13	\$2,167	404.45	0
Inland Fisheries & Wildlife	35	6	9	6	3	\$2,153	160	12
Labor	8	6	1	0	2	\$ 185	12	0
Marine Resources	10	0	8	1	1	\$ 15	24	0
Professional & Financial Regulation	35	19	13	2	1	\$ 298	53	0
Public Safety	217	135	41	n/a	n/a	n/a	n/a	0
Transportation	45	22	22	1	0	687	n/a	0
<b>TOTALS</b>	<b>969</b>	<b>557</b>	<b>240</b>	<b>54</b>	<b>37</b>	<b>\$11,273</b>	<b>1,269.25</b>	<b>42</b>

Agency comments:

Labor: True staff costs exceed hourly FOAA reimbursement rate. Most staff involved were high-level management, plus usually AAG time for reviewing.

Marine Resources: The actual amount of time spent on providing individuals with information is much greater than hours spent responding to listed FOAA requests. Marine Resources processes hundreds of data requests that are not considered FOAA requests.

Public Safety: The actual volume of record requests including FOAA requests to the bureaus and offices of the Department exceeded 6,362 in 2015. The information provided for this report does not necessarily account for all of the record requests and the data should be regarded as generally providing a fair, informed picture regarding the record requests the Department processed.

## RECOMMENDATIONS

The ombudsman is in a unique position to suggest improvements to the FOAA process and is mandated by statute to make recommendations concerning ways to improve public access to public records and proceedings.

### **Record Management and Retention**

The recommendations contained in the Ombudsman's Annual Report for 2014 focused on the need for proper management and retention of public records as a prerequisite to agency FOAA compliance. In 2014 the Government Oversight Committee (GOC), in consideration of state-level record management policies and practices, requested that the ombudsman participate in a working group to make recommendations for improvements to the State's record retention framework. The ombudsman and the Director of the State Archives Records Management Division presented findings and recommendations to GOC in April 2015.

Subsequently, GOC asked the Secretary of State to convene a stakeholder group to specifically address the records management issues and recommendations identified in the April 2015 report. The Records Management Stakeholder Group met several times in late 2015 and will continue to work into 2016. As a member of the Stakeholder Group the ombudsman represents the interests of the public in the proper preservation of and access to government records.

### **Remote Participation in Public Meetings**

There is widespread confusion regarding whether and under what circumstances members of a public body may participate in a public meeting through remote means. The Right to Know Advisory Committee has diligently pursued a solution to the complex issues presented by remote electronic participation and has proposed legislation to allow remote participation by members of appointed bodies. This legislation is found in the [Advisory Committee's Tenth Annual Report](#) and in the Appendix of this report.

The proposed legislation contains open meeting requirements to ensure that remote participation by a member does not hinder the public's access to the proceeding. These requirements include notice of the meeting, that a quorum be present except in certain emergencies, audible deliberations, votes taken by roll call vote, that the remote participant be supplied with materials available at the proceeding and identify persons present at the remote location. At least one meeting per year must be conducted without remote participation by any members. In addition, remote voting on substantive issues in quasi-judicial proceedings and remote participation by a member in an executive session are not allowed.

The proposed legislation requires that these basic safeguards be part of an approved written policy of the public body. This allows each public body to consider remote participation for their members based on the need or preferences of their community and constituency. The Advisory Committee expressed a strong sentiment that elected officials should have face to face contact with the public and each other at meetings. The proposed legislation limits remote participation to appointed bodies.

Local and state public bodies in Maine need guidance on how and when to permit remote electronic participation by their members. Action by the Legislature on this issue is timely and the Judiciary Committee should carefully consider this legislation, balancing the need for transparency and public participations with the practical and geographical needs of non-elected public bodies.

## APPENDIX

### 5 M.R.S.A. § 200-I

#### § 200-I. Public Access Division; Public Access Ombudsman

**1. Public Access Division; Public Access Ombudsman.** There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13<sup>1</sup>. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

**2. Duties.** The ombudsman shall:

**A.** Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee established in Title 1, section 411;

**B.** Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

**C.** Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

**D.** Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved;

**E.** Make recommendations concerning ways to improve public access to public records and proceedings; and

**F.** Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

**3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

**4. Confidentiality.** The ombudsman may access records that a public agency or official believes are confidential in order to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency

or official under this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

**5. Report.** The ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

- A.** The total number of inquiries and complaints received;
- B.** The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C.** The number of complaints received concerning respectively public records and public meetings;
- D.** The number of complaints received concerning respectively:
  - (1)** State agencies;
  - (2)** County agencies;
  - (3)** Regional agencies;
  - (4)** Municipal agencies;
  - (5)** School administrative units; and
  - (6)** Other public entities;
- E.** The number of inquiries and complaints that were resolved;
- F.** The total number of written advisory opinions issued and pending; and
- G.** Recommendations concerning ways to improve public access to public records and proceedings.

**6. Repealed.** Laws [2009, c. 240, § 7, eff. June 2, 2009.](#)

## **Credits**

[2007, c. 603, § 1; 2009, c. 240, § 7, eff. June 2, 2009; 2013, c. 229, §§ 1, 2, eff. Oct. 9, 2013.](#)

## **Footnotes**

1

[1 M.R.S.A. § 401 et seq.](#)

5 M. R. S. A. § 200-I, ME ST T. 5 § 200-I

Current with legislation through the 2013 Second Regular Session of the 126th Legislature.

The Second Regular Session convened January 8, 2014 and adjourned May 2, 2014. The general effective date is August 1, 2014.

**Right to Know Advisory Committee**  
Draft: Remote Participation by Members of Public Bodies

PART A

**Sec. A-1. 1 MRSA §403-A** is enacted to read:

**§403-A. Public proceedings through other means of communication**

**1. Requirements.** A public proceeding subject to this subchapter, except a proceeding of a publicly elected body, may be conducted through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a written policy that authorizes a member of the body who is not physically present to participate in a public proceeding. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session;

B. Notice of the public proceeding has been given in accordance with section 406;

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406, except that a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum if:

(1). An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

(2). The public proceeding is necessary to take action to address the emergency;  
and

(3). The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency;

D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations;

E. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication identifies the persons present at the location from which the member is participating;

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior

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Draft: Remote Participation by Members of Public Bodies

to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

**2. Voting; quasi-judicial proceeding.** A member of a body who is not physically present and who is participating in a quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the quasi-judicial public proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

**3. Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.

**PART B**

**Sec. B-1. 32 MRSA §88, sub-§1, ¶D,** is amended to read:

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. ~~The~~Notwithstanding Title 1, section 403-A, the board may use video conferencing and other technologies to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

**Sec. B-2. 39-A MRSA §151, sub-§5,** is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. ~~The~~Notwithstanding Title 1, section 403-A, the board may hold sessions at its central office or at any other place within the State and shall establish procedures through which

## **Right to Know Advisory Committee**

### **Draft: Remote Participation by Members of Public Bodies**

members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

### **SUMMARY**

Part A of this bill allows members of body subject to the Freedom of Access Act to participate in meetings of the body through telephonic, video, electronic or other similar means of communication under certain conditions; however, the bill does not allow members of elected bodies to participate in public proceedings unless physically present. The body must have adopted a written policy authorizing remote participation with criteria that must be met before a member may participate remotely, but the policy may not allow a member to participate remotely in an executive session of the body. The bill also requires that notice of the proceeding must be given as if no members were participating remotely, each member of the body must be able to hear and speak to all other members, members of the public must be able to hear all members of the body, each member participating remotely must identify anyone else present at the location from which the member is participating, documents or visuals discussed or presented at the proceeding must have been received by or transmitted to members participating remotely, and that all votes must be taken by roll call vote. A member who is not physically present may not vote in a quasi-judicial proceeding of the body. A quorum of the body must be physically present unless an emergency has been declared and the proceeding is necessary to address the emergency. If the body conducts proceedings with members participating remotely, the body must also hold at least one proceeding annually where no members participate remotely.

Under current law, the following state agencies are authorized to use remote-access technology to conduct meetings: the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Emergency Medical Services' Board and the Workers' Compensation Board. Part B provides a specific exemption from the new requirements for the Emergency Medical Services' Board and the Workers' Compensation Board and does not affect the existing authority of those agencies or the Finance Authority of Maine or the Commission on Governmental Ethics and Election Practices to use remote-access technology to conduct meetings.