

MAINE STATE LEGISLATURE

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No. 1881

S.P. 684

April 27, 2007

An Act To Improve Transparency and Accountability in Government

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator WESTON of Waldo.

Cosponsored by Representative TARDY of Newport and Senators: BENOIT of Sagadahoc, President EDMONDS of Cumberland, HASTINGS of Oxford, HOBBS of York, RAYE of Washington, Representatives: CANAVAN of Waterville, CROSTHWAITE of Ellsworth, SIMPSON of Auburn.

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. Governmental body.** "Governmental body" means the State; a state agency,
4 including the Office of Information Technology; a political subdivision; or any other
5 governmental entity subject to the provisions of this chapter.

6 **Sec. 2. 1 MRSA §408, sub-§1,** as enacted by PL 2003, c. 709, §2, is amended to
7 read:

8 **1. Right to inspect and copy.** Except as otherwise provided by statute, every person
9 has the right to inspect and copy any public record during the regular business hours of
10 the agency or official having custody of the public record within ~~a reasonable~~ the time
11 ~~period of time after making a request to inspect or copy the public record~~ established in
12 section 412, subsections 2 and 3. A person may request by telephone that a copy of a
13 public record be mailed to that person.

14 **Sec. 3. 1 MRSA §408, sub-§2,** as enacted by PL 2003, c. 709, §2, is amended to
15 read:

16 **2. Inspection, translation, copying and mailing scheduled.** Inspection, translation
17 ~~and,~~ copying and mailing may be scheduled to occur at such time as will not delay or
18 inconvenience the regular activities of the agency or official having custody of the public
19 record sought.

20 **Sec. 4. 1 MRSA §408, sub-§3, ¶E** is enacted to read:

21 E. If the requester requests that the public record be mailed, the agency or official
22 may charge a fee to cover the actual cost of mailing the record.

23 **Sec. 5. 1 MRSA §408, sub-§5,** as enacted by PL 2003, c. 709, §2, is amended to
24 read:

25 **5. Payment in advance.** The agency or official may require a requester to pay all or
26 a portion of the estimated costs to complete the request prior to the translation, search,
27 retrieval, compiling ~~and,~~ copying and mailing of the public record if:

28 A. The estimated total cost exceeds \$100; or

29 B. The requester has previously failed to pay a properly assessed fee under this
30 chapter in a timely manner.

31 **Sec. 6. 1 MRSA §412** is enacted to read:

32 **§412. Public record requests**

33 **1. Public information officer.** Every governmental body shall appoint a public
34 information officer to handle requests for public records under this chapter. A public
35 information officer shall ensure that a sign provided by the Attorney General that
36 contains basic information about the rights of a requester, the responsibilities of the

1 governmental body and the procedures for inspecting or obtaining a copy of a public
2 record under this chapter is prominently displayed where the sign is plainly visible to a
3 member of the public requesting a public record in person and an employee of the
4 governmental body who receives or responds to a request under this chapter. A public
5 information officer or any employee of the governmental body may not inquire into the
6 purpose for the request. In response to a request, a public information officer may inquire
7 only as to the schedule or order of inspection and copying of a public record or a portion
8 of a public record under subsection 2, paragraph D. A public information officer shall
9 treat all requests for information under this chapter uniformly without regard to the
10 requester's position or occupation, the person on whose behalf the request is made or the
11 status of the requester as a member of the media.

12 **2. Production of public records.** A public information officer shall promptly
13 produce a public record for inspection or duplication upon request by a member of the
14 public pursuant to section 408, subsection 1 as provided in this subsection.

15 A. A member of the public may inspect the public record in the offices of the
16 governmental body in a manner that provides reasonable comfort and facility for the
17 full exercise of the rights of the public under this chapter. A requester may not
18 remove the original copy of a public record from the office of the governmental body.

19 B. If the requested public record is unavailable at the time of the request because the
20 record is in active use or in storage, the public information officer shall certify this
21 fact in writing to the requester and set a date and hour within a reasonable time when
22 the public record will be available for inspection or copying.

23 C. If the public information officer is unable to produce the public record within 10
24 business days after the request for any reason other than in paragraph B, the public
25 information officer shall certify this fact in writing to the requester and set a date and
26 hour within 20 business days after the request when the public record will be
27 available for inspection or copying.

28 D. If a large public record is requested or multiple public records are requested and
29 the public information officer cannot produce the entire request with 10 business days
30 after the request, the public information officer shall produce the portion of the public
31 record or public records requested as they become available. The requester may
32 waive this requirement and request to see the public record or public records
33 requested as a whole when the entire request becomes available.

34 **3. Inspection.** The time to inspect a public record requested under this chapter is
35 subject to the following limitations:

36 A. A requester must complete an inspection of a public record under subsection 2,
37 paragraph A no later than 10 business days after the record is made available for
38 inspection. If the inspection is not completed within the time limit of this paragraph,
39 the request is deemed to be withdrawn unless the requester files a written request for
40 additional time under paragraph B.

41 B. A requester may receive an additional 20 business days beyond the time allowed
42 under paragraph A to conduct an inspection if the requester files with the public
43 information officer a written request for additional time. Upon the expiration of the

1 20 additional business days allowed under this paragraph, a requester may receive an
2 additional 10 days to conduct an inspection if the requester files with the public
3 information officer a second written request for additional time.

4 C. The time allowed for inspection of a public record under this subsection may be
5 interrupted if the governmental body needs to use the public record. If a
6 governmental body invokes the provisions of this paragraph, the public information
7 officer shall within 20 days of the interruption inform the requester in writing of the
8 date and hour that the public record will be available for the inspection to resume.
9 The time allowed for an inspection under this subsection is tolled during the period in
10 which the record is being used by a governmental body under this paragraph.

11 **4. Copying.** The right to receive a copy of a public record under section 408,
12 subsection 1 is subject to the following requirements.

13 A. If a public record exists in electronic or magnetic form, the requester may request
14 a copy of the public record in a paper, electronic or magnetic medium. A
15 governmental body shall provide a copy of a public record in the requested medium
16 if:

17 (1) The governmental body has the technological ability to produce the public
18 record in that medium;

19 (2) The governmental body is not required to purchase any computer software or
20 hardware to accommodate the request; and

21 (3) Providing a copy of the public record does not violate the terms of a
22 copyright agreement between the governmental body and a 3rd party.

23 B. If a governmental body cannot provide a copy of a public record in a requested
24 medium under paragraph A, the governmental body shall provide a paper copy of the
25 public record or a copy in another medium that the governmental body is able to copy
26 and is acceptable to the requester.

27 **5. Repetitious or redundant requests.** If a governmental body determines that a
28 requester has made a request for a public record that the governmental body has
29 previously allowed to be inspected by the requester or of which the governmental body
30 has provided a copy to the requester, the governmental body may:

31 A. Comply with the request; or

32 B. Decline to comply with the request. If the governmental body declines to comply
33 with a request, the public information officer shall notify the requester in writing of
34 the decision and certify that the request had previously been complied with by the
35 governmental agency. A certification under this paragraph must provide:

36 (1) A description of the public record that had previously been provided to the
37 requester for inspection or copying;

38 (2) The date the governmental body received the original request;

39 (3) The date the governmental body complied with the original request;

