

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1465

S.P. 456

In Senate, April 12, 2011

### An Act To Amend the Laws Governing Freedom of Access

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Reference to the Committee on Judiciary suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator ROSEN of Hancock.

Cosponsored by Senators: ALFOND of Cumberland, COLLINS of York, DIAMOND of Cumberland, FARNHAM of Penobscot, HILL of York, HOBBS of York, KATZ of Kennebec, LANGLEY of Hancock, MARTIN of Kennebec, MASON of Androscoggin, McCORMICK of Kennebec, PLOWMAN of Penobscot, RECTOR of Knox, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, THIBODEAU of Waldo, WHITTEMORE of Somerset, Representatives: BEAVERS of South Berwick, DUNPHY of Embden, EVES of North Berwick, GUERIN of Glenburn, HARVELL of Farmington, HAYES of Buckfield, HINCK of Portland, O'CONNOR of Berwick, OLSEN of Phippsburg, ROSEN of Bucksport, SIROCKI of Scarborough, STRANG BURGESS of Cumberland, TURNER of Burlington.

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 access officer.** "Public access officer" means the person fulfilling the  
4 duties as described in section 413.

5 **Sec. 2. 1 MRSA §406**, as amended by PL 1987, c. 477, §4, is further amended to  
6 read:

7 **§406. Public notice**

8 Public notice ~~shall~~ must be given for all public proceedings as defined in section 402,  
9 if these proceedings are a meeting of a body or agency consisting of 3 or more persons.  
10 This notice ~~shall~~ must be given ~~in ample time to allow public attendance~~ not less than 3  
11 days prior to the public proceeding and ~~shall~~ must be disseminated in a manner  
12 reasonably calculated to notify the general public in the jurisdiction served by the body or  
13 agency concerned. In the event of an emergency meeting, local representatives of the  
14 media ~~shall~~ must be notified of the meeting, whenever practical, the notification to  
15 include time and location, by the same or faster means used to notify the members of the  
16 agency conducting the public proceeding.

17 **Sec. 3. 1 MRSA §408**, as amended by PL 2009, c. 240, §4, is further amended to  
18 read:

19 **§408. Public records available for public inspection and copying**

20 **1. Right to inspect and copy.** Except as otherwise provided by statute, every person  
21 has the right to inspect and copy any public record during the regular business hours of  
22 the agency or official having custody of the public record within ~~a reasonable period of~~  
23 ~~time after making a request to inspect or copy the public record~~ the time limits  
24 established in section 408-A. An agency or official may request clarification concerning  
25 which public record or public records are being requested, but in any case the agency or  
26 official shall acknowledge receipt of the request within a reasonable period of time. A  
27 person may request by telephone that a copy of the public record be mailed or e-mailed to  
28 that person.

29 **2. Inspection, translation and copying scheduled.** Inspection, translation and  
30 copying may be scheduled to occur at such time as will not delay or inconvenience the  
31 regular activities of the agency or official having custody of the public record sought, as  
32 long as the inspection, translation and copying occur within the time limits established in  
33 section 408-A. The agency or official may use a 3rd party to make a copy of an original  
34 public record, but a requester may not remove the original of a public record from the  
35 agency or official.

36 **2-A. Form.** If a public record exists in electronic or magnetic form, the requester  
37 may request a copy of the public record in a paper, electronic, magnetic or other medium,  
38 specify the storage medium and request that the copy be provided by an electronic  
39 transfer by the Internet or other means.

1           A. An agency or official shall provide a copy of the public record in the requested  
2           medium if:

3                 (1) The agency or official has the technological ability to produce the public  
4                 record in that medium or can obtain the assistance necessary to produce the  
5                 public record at a reasonable cost; and

6                 (2) The requester agrees to pay the agency's or official's costs to purchase and  
7                 install any additional necessary computer software or hardware to accommodate  
8                 the request and to copy the public record in a requested medium.

9           B. If an agency or official cannot provide a copy of a public record in a requested  
10           medium, the agency or official shall identify every medium in which the public  
11           record can be provided for inspection and copying, which must include a paper copy,  
12           and the requester must identify the medium that is acceptable to the requester.

13           **3. Payment of costs.** Except as otherwise specifically provided by law or court  
14           order, an agency or official having custody of a public record may charge fees as follows.

15                 A. The agency or official may charge a reasonable fee to cover the cost of copying.

16                 B. The agency or official may charge a fee to cover the actual cost of searching for,  
17                 retrieving and compiling the requested public record of not more than \$10 per hour  
18                 after the first hour of staff time per request. Compiling the public record includes  
19                 reviewing and redacting confidential information.

20                 C. If translation is necessary, the agency or official may charge a fee to cover the  
21                 actual cost of translation.

22                 D. An agency or official may not charge for inspection.

23                 E. If the requester requests that the public record be mailed, the agency or official  
24                 may charge a fee not greater than the actual cost of mailing the record.

25           **4. Estimate.** The agency or official shall provide to the requester an estimate of the  
26           time necessary to complete the request and of the total cost. If the estimate of the total  
27           cost is greater than \$20, the agency or official shall inform the requester before  
28           proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies and  
29           the estimate must be provided within 3 business days of the request.

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

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

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

36           **6. Waivers.** The agency or official may waive part or all of the total fee if:

37                 A. The requester is indigent; or

38                 B. Release of the public record requested is in the public interest because doing so  
39                 is likely to contribute significantly to public understanding of the operations or

1 activities of government and is not primarily in the commercial interest of the  
2 requester.

3 **Sec. 4. 1 MRSA §408-A** is enacted to read:

4 **§408-A. Timelines**

5 **1. Availability; redaction; location; collection.** A public record must be made  
6 available immediately upon request unless time is required to redact the record so as to  
7 allow inspection and copying of only those portions of the record containing information  
8 that is a public record or to locate and collect a record that is not in active use or that is in  
9 storage.

10 **2. Certification.** If a public record is not available immediately, a public access  
11 officer shall promptly certify that fact in writing to the requester, provide an explanation  
12 for the delay and either provide an opportunity to inspect or copy the public record within  
13 5 business days or mail or e-mail the public record within 5 business days.

14 **3. Large or multiple requests.** If a large public record is requested or multiple  
15 public records are requested and the public access officer or a person acting on behalf of  
16 the agency or official cannot in the exercise of due diligence produce the entire record or  
17 multiple records within 5 business days after the request, the public access officer shall  
18 provide the portion of the public record or public records when available. The requester  
19 may waive this requirement and request to see the public record or public records  
20 requested as a whole when available.

21 **4. Estimate.** If the cost to comply with a request to inspect or copy a public record  
22 is greater than \$100, an estimate must be provided within 3 business days of the request.

23 **5. Failure to comply.** Failure to comply with this section may be treated as a denial  
24 of a request and is subject to the enforcement provisions of this chapter.

25 **Sec. 5. 1 MRSA §408-B** is enacted to read:

26 **§408-B. Inspection by requester**

27 **1. Ten business days.** A requester shall complete an inspection of a public record  
28 within 10 business days after the record is made available for inspection. If the  
29 inspection is not completed within the 10-business-day period, a public access officer or a  
30 person acting on behalf of the agency or official shall inform the requester that a written  
31 request for additional time may be filed with the agency or official that has custody of the  
32 public record.

33 **2. Additional periods.** An agency or official shall allow an additional 20 business  
34 days beyond the period in subsection 1 for a requester to review a public record if the  
35 requester filed a written request for additional time with the agency or official or its  
36 public access officer or a person acting on behalf of the agency or official. If the  
37 inspection is not completed upon the expiration of the additional 20 business days, the  
38 public access officer or person acting on behalf of the agency or official shall inform the

1 requester that a 2nd written request for an additional 10 days may be filed with the  
2 agency or official that has custody of the public record.

3 **3. Interruption of inspection.** The time allowed for inspection of a public record  
4 may be interrupted if the agency or official needs to use the public record. If an agency or  
5 official invokes this subsection, the public access officer, no later than 5 business days  
6 after the agency or official takes the record back, shall inform the requester in writing the  
7 dates that the public record will be available for the inspection to resume. The time  
8 allowed for an inspection is tolled during the period in which the public record is being  
9 used by the agency or official.

10 **Sec. 6. 1 MRSA §410**, as repealed and replaced by PL 1987, c. 477, §6, is  
11 amended to read:

12 **§410. Violations; injunction**

13 For every willful violation of this subchapter, the state government agency or local  
14 government entity whose officer or employee committed the violation ~~shall be~~ is liable  
15 for a civil violation for which a ~~forfeiture~~ fine of not more than \$500 may be adjudged.

16 The Superior Court may issue an injunction to enforce the provisions of this chapter  
17 against any agency or official. A motion for an injunction is privileged in respect to its  
18 assignment for hearing and trial over all other actions except writs of habeas corpus and  
19 actions brought by the State against individuals.

20 **Sec. 7. 1 MRSA §412**, as amended by PL 2007, c. 576, §2, is further amended to  
21 read:

22 **§412. Public records and proceedings training for certain elected officials and**  
23 **public access officers**

24 **1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official and a public  
25 access officer, subject to this section shall complete a course of training on the  
26 requirements of this chapter relating to public records and proceedings. The official or  
27 officer shall complete the training not later than the 120th day after the date the elected  
28 official takes the oath of office to assume the person's duties as an elected official or the  
29 person is designated as a public access officer pursuant to section 413, subsection 1. ~~For~~  
30 ~~elected officials subject to this section serving in office on July 1, 2008, the training~~  
31 ~~required by this section must be completed by November 1, 2008.~~

32 **2. Training course; minimum requirements.** The training course under subsection  
33 1 must be designed to be completed by an official or a public access officer in less than 2  
34 hours. At a minimum, the training must include instruction in:

- 35 A. The general legal requirements of this chapter regarding public records and public  
36 proceedings;
- 37 B. Procedures and requirements regarding complying with a request for a public  
38 record under this chapter; and
- 39 C. Penalties and other consequences for failure to comply with this chapter.

1 An elected official or public access officer meets the training requirements of this section  
2 by conducting a thorough review of all the information made available by the State on a  
3 publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding  
4 specific guidance on how a member of the public can use the law to be a better informed  
5 and active participant in open government. To meet the requirements of this subsection,  
6 any other training course must include all of this information and may include additional  
7 information.

8 **3. Certification of completion.** Upon completion of the training course required  
9 under subsection 1, the elected official or public access officer shall make a written or an  
10 electronic record attesting to the fact that the training has been completed. The record  
11 must identify the training completed and the date of completion. The elected official  
12 shall keep the record or file it with the public entity to which the official was elected. A  
13 public access officer shall file the record with the agency or official that designated the  
14 public access officer.

15 **4. Application.** This section applies to the following elected officials:

16 A. The Governor;

17 B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

18 C. Members of the Legislature elected after November 1, 2008;

19 E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers  
20 of probate and budget committee members of county governments;

21 F. Municipal officers, clerks, treasurers, assessors and budget committee members of  
22 municipal governments;

23 G. Officials of school units and school boards; and

24 H. Officials of a regional or other political subdivision who, as part of the duties of  
25 their offices, exercise executive or legislative powers. For the purposes of this  
26 paragraph, "regional or other political subdivision" means an administrative entity or  
27 instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a  
28 quasi-municipal corporation or special purpose district, including, but not limited to,  
29 a water district, sanitary district, hospital district, school district of any type, transit  
30 district as defined in Title 30-A, section 3501, subsection 1 or regional transportation  
31 corporation as defined in Title 30-A, section 3501, subsection 2.

32 This section also applies to a public access officer designated pursuant to section 413,  
33 subsection 1.

34 **Sec. 8. 1 MRSA §413** is enacted to read:

35 **§413. Public access officer; responsibilities**

36 **1. Designation; responsibility.** Every agency or official shall designate to an  
37 existing staff member the responsibility of serving as a public access officer to oversee  
38 responses to requests for public records under this chapter. The public access officer  
39 shall oversee the prompt response to a request to inspect or copy a public record.

1           **2. Training.** A public access officer shall complete a course of training on the  
2 requirements of this chapter relating to public records and proceedings as described in  
3 section 412.

4           **3. Purpose; schedule.** A public access officer or other person acting on behalf of an  
5 agency or official may not inquire into the purpose of a request. A public access officer  
6 may inquire as to the schedule or order of inspection or copying of a public record or a  
7 portion of a public record under section 408.

8           **4. Uniform treatment.** A public access officer shall treat all requests for  
9 information under this chapter uniformly without regard to the requester's position or  
10 occupation, the person on whose behalf the request is made or the status of the requester  
11 as a member of the media.

12           **5. Comfort and facility.** The public access officer shall ensure that a person may  
13 inspect a public record in the offices of the agency or official in a manner that provides  
14 reasonable comfort and facility for the full exercise of the rights of the public under this  
15 chapter.

16           **6. Unavailability of public access officer.** The unavailability of a public access  
17 officer may not delay a response to a request.

18           **Sec. 9. Appropriations and allocations.** The following appropriations and  
19 allocations are made.

20           **ATTORNEY GENERAL, DEPARTMENT OF THE**

21           **Administration - Attorney General 0310**

22 Initiative: Provides funds for a part-time Assistant Attorney General position to act as the  
23 public access ombudsman and general operating expenses required to carry out the  
24 purposes of this Act.

25

26 <b>GENERAL FUND</b>	27 <b>2011-12</b>	28 <b>2012-13</b>
29           POSITIONS - LEGISLATIVE COUNT	0.500	0.500
30           Personal Services	\$62,120	\$65,576
31           All Other	\$5,000	\$5,000
	<hr/>	<hr/>
31           GENERAL FUND TOTAL	\$67,120	\$70,576

32           **SUMMARY**

33           This bill increases governmental transparency by enhancing the existing freedom of  
34 access laws to provide deadlines for responses to requests for public records, to ensure  
35 that requesters can access public records in the format requested and to require the  
36 designation of public access officers for every agency and political subdivision.



1           The bill provides funding for an Assistant Attorney General position located in the  
2 Office of the Attorney General to act as the public access ombudsman, which is a  
3 part-time position.