

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1087

H.P. 748

House of Representatives, March 25, 2015

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Response Deadlines and Appeals**

Reported by Representative HOBBS of Saco for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

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

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 1 MRSA §408-A, sub-§4**, as amended by PL 2013, c. 350, §2, is further
3 amended to read:

4 **4. Refusals; denials.** If a body or an agency or official having custody or control of
5 any public record refuses permission to inspect or copy or abstract a public record, the
6 body or agency or official shall provide written notice of the denial, stating the reason for
7 the denial or the expectation that the request will be denied in full or in part following a
8 review, within 5 working days of the receipt of the request for inspection or copying.
9 Failure to comply with this subsection is considered failure to allow inspection or
10 copying and is subject to appeal as provided in section 409.

11 **Sec. 2. 1 MRSA §409, sub-§1**, as repealed and replaced by PL 2013, c. 350, §3,
12 is amended to read:

13 **1. Records.** Any person aggrieved by a refusal or denial to inspect or copy a record
14 or the failure to allow the inspection or copying of a record under section 408-A may
15 appeal the refusal, denial or failure within 30 calendar days of the receipt of the written
16 notice of refusal, denial or failure to ~~any~~ the Superior Court within the State for the
17 county where the person resides or the agency has its principal office as a trial de novo.
18 The agency or official shall file ~~an answer~~ a statement of position explaining the basis for
19 denial within 14 calendar days of service of the appeal. If a court, after a trial de novo
20 review, with taking of testimony and other evidence as determined necessary, determines
21 such refusal, denial or failure was not for just and proper cause, the court shall enter an
22 order for disclosure. Appeals may be advanced on the docket and receive priority over
23 other cases when the court determines that the interests of justice so require.

24 **Sec. 3. 1 MRSA §413, sub-§1**, as enacted by PL 2011, c. 662, §8, is amended to
25 read:

26 **1. Designation; responsibility.** Each agency, county, municipality, school
27 administrative unit and regional or other political subdivision shall designate an existing
28 employee as its public access officer to serve as the contact person for that agency,
29 county, municipality, school administrative unit and regional or other political
30 subdivision with regard to requests for public records under this subchapter. The public
31 access officer is responsible for ensuring that each public record request is acknowledged
32 ~~within a reasonable period of time~~ 5 working days of receiving the request and that a
33 good faith estimate of when the response to the request will be complete is provided
34 according to section 408-A. The public access officer shall serve as a resource within the
35 agency, county, municipality, school administrative unit and regional or other political
36 subdivision concerning freedom of access questions and compliance.

37 **SUMMARY**

38 This bill amends the Freedom of Access Act to make clear that an agency's or
39 official's written notice of denial in response to a request to copy or inspect records may
40 be a statement that the agency or official expects to deny the request in full or in part, but

1 that decision can be made only after reviewing the records subject to the request. The
2 agency or official is required to provide the written response within 5 days of the receipt
3 of the request.

4 The bill clarifies the procedures for an appeal from a denial of a request to inspect or
5 copy public records. Current law allows the appeal to be filed in any Superior Court; this
6 bill requires the appeal to be filed in the Superior Court for the county in which either the
7 requestor lives or in which the agency has its principal office. Instead of filing an answer
8 to the complaint, the agency or official may file a more informal statement of position
9 explaining the basis for denial within 14 days of the service of the appeal. This bill
10 eliminates the need for a de novo trial and instead requires the Superior Court to conduct
11 a review de novo, taking whatever testimony or other evidence the court determines
12 necessary. The basis for the decision, whether the agency's or official's refusal, denial or
13 failure was not for just and proper cause, is not changed from current law.

14 The bill also amends the laws governing public access officers by specifically
15 requiring that a request for public records be acknowledged within 5 working days of the
16 receipt of the request. This is consistent with the current acknowledgement deadline in
17 the Maine Revised Statutes, Title 1, section 408-A, subsection 3.