

The Time for Transparency Act

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

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

1-B. Governmental body. "Governmental body" means the State; a state agency; a political subdivision; or any other governmental entity subject to the provisions of this chapter.

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

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

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

2. Inspection, translation, copying and mailing scheduled. Inspection, translation ~~and~~ copying and mailing may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought, within the time period established in section 412, subsections 2 and 3.

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

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

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

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

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

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

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

§ 412. Public record requests

1. Public information officer. Every governmental body shall designate from existing staff the responsibility of serving as a public information officer to oversee requests for public records under this chapter. A public information officer or any employee of the governmental body may not

inquire into the purpose for the request. In response to a request, a public information officer may inquire only as to the schedule or order of inspection and copying of a public record or a portion of a public record under subsection 2, paragraph D. A public information officer shall treat all requests for information under this chapter uniformly without regard to the requester's position or occupation, the person on whose behalf the request is made or the status of the requester as a member of the media.

2. Production of public records. A public information officer shall oversee the prompt production of a public record for inspection or duplication upon request by a member of the public pursuant to section 408, subsection 1 as provided in this subsection.

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

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

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

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

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

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

B. A requester may receive an additional 20 business days beyond the time allowed under paragraph A to conduct an inspection if the requester files with the governmental body or its public information officer a written request for additional time. Upon the expiration of the 20 additional business days allowed under this paragraph, a requester may receive an additional 10 days to conduct an inspection if the requester files with the governmental body or its public information officer a second written request for additional time.

C. The time allowed for inspection of a public record under this subsection may be interrupted if

the governmental body needs to use the public record. If a governmental body invokes the provisions of this paragraph, the public information officer shall within 10 days of the interruption inform the requester in writing of the date that the public record will be available for the inspection to resume. The time allowed for an inspection under this subsection is tolled during the period in which the record is being used by a governmental body under this paragraph.

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

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

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

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

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

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

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

A. Comply with the request; or

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

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

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

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

(4) A certification that no subsequent additions, deletions or corrections have been made to

the public record previously made available to the requester for inspection or copying; and

(5) The name, title and signature of the public information officer or the officer's agent.

6. Enforcement. A Superior Court within the State may issue an injunction to enforce the provisions of Title 1, Subchapter 1 against any government body, agency or official.

SUMMARY

This bill amends the freedom of access laws in the following ways.

1. It creates a timeline that must be followed to comply with requests for public records (public record or records to be produced within 10 days of the request, in records are unavailable, certify in writing when, within 20 days of the request, the records will be available).

2. It permits a person to request by telephone that a copy of a public record be mailed to that person.

3. It allows a copy of a requested public record to be mailed if the requester pays for the mailing service.

4. It establishes procedures for requests for inspection or copies of public records.