

FOR COMMITTEE REVIEW

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PROPOSED COMMITTEE AMENDMENT
2/23/2012 1:14 PM
NOT APPROVED AS OF 2/23/12

**COMMITTEE AMENDMENT “.” To LD 1465, An Act To Amend the
Laws Governing Freedom of Access**

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 1 MRSA §400 is enacted to read:

§400. Short title

This subchapter may be known and cited as the "Freedom of Access Act."

Sec. 2. 1 MRSA §401-A is enacted to read:

§401-A. Public records; information technology

Each agency shall consider the following in the purchase of and contracting for computer software and other information technology resources:

1. **Maximize public access.** Maximizing public access to public records; and
2. **Maximize exportability; protect confidential information.** Maximizing the exportability of public records while protecting confidential information that may be part of public records.

Sec. 3. 1 MRSA §402, sub-§§1-B, 1-C and 1-D are enacted to read:

1-B. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

1-C. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

Sec. 4. 1 MRSA §402, sub-§3, ¶M is amended to read: *(this is an existing exception from the definition of "public record")*

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, ~~and systems and software~~. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

Sec. 5. 1 MRSA §408 is repealed.

Sec. 6. 1 MRSA §408-A is enacted to read:

§408-A. Public records available for inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy the public record.

2. Clarification. An agency or official may request clarification concerning which public record or public records are being requested.

3. Acknowledgment; time estimate. The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If a body or an agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.

5. Schedule. Inspection, conversion and copying may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

6. Inspect. A person may inspect any public record during reasonable office

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hours. An agency or official may not charge for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 10.

7. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 10.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

8. No requirement to create new record. An agency or official is not required to create a record that does not exist.

9. Electronically stored public records. An agency or official shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 10.

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

10. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

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

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

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C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

E. The agency or official may charge for the actual mailing costs to mail a copy of a record.

11. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 12 applies.

12. 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 conversion, search, retrieval, compiling and copying 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.

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

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. 7. ~~1~~ MRSA §409 is amended to read:

§409. Appeals

~~1. Records.~~ If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are

privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

Sec. 8. 1 MRSA §412, as amended by PL 2007, c. 576, §2, is further amended to read:

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

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

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

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

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

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

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

A. The Governor;

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

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

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

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

G. Officials of school administrative units ~~and school boards~~; and

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

This section also applies to a public access officer.

Sec. 9. 1 MRSA §413 is enacted to read:

§413. Public access officer

1. Designation; responsibility. Each State agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit and regional or other political subdivision with regard to requests for public records under this chapter. The public access officer is responsible for ensuring that each public records request is acknowledged within a reasonable period of time and that a good faith estimate when the response to the request will be complete is provided. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

2. Acknowledgement and response required. A State agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

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

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made. *(Assumes April 1, 2012 effective date.)*

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration – Attorney General 0310

Initiative: Provides funds for one Assistant Attorney General position to serve as a Public Access Ombudsman.

GENERAL FUND	2011-12	2012-13
Position – Legislative Count	1.000	1.000
Personal Services	\$18,160	\$75,420
All Other	\$5,178	\$3,178
GENERAL FUND TOTAL	\$23,338	\$78,598

SUMMARY

This amendment is the Majority Report of the Joint Standing Committee on Judiciary. It replaces the bill.

This amendment titles Chapter 13, subchapter 1 of Title 1 the “Freedom of Access Act.”

This amendment requires government agencies, when making purchases of or contracting for computer software and other information technology resources, to consider maximizing public access to public records, as well as maximizing the exportability of public records while protecting confidential information.

This amendment creates the position of “public access officer” and requires each State agency, county, municipality, school administrative unit and regional or other political subdivision to designate an existing employee to serve in that capacity as a resource for freedom

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of access questions. Requests for public records do not have to be made to the public access officer. The public access officer must undergo the same freedom of access training as elected officials.

This amendment adds “software” to the description of information technology elements that are excepted from the definition of “public records” to clarify that proprietary information technology infrastructure, systems and software used by governmental entities are not public records.

This amendment repeals and replaces the current section of law that lays out the process and fees concerning inspecting and copying public records, although much of the current language is retained. It allows inspection and copying of public records during reasonable office hours. The reasonable office hours must be posted. It requires the agency or official, when acknowledging the receipt of a request for public records, to provide a good faith estimate of when the response to the request will be complete. Although the time estimate is not binding, the agency or official must make a good faith effort to meet that time target.

The agency or official may not charge for inspection unless the requested public record is such that it cannot be inspected without being compiled or converted. If the agency or official must compile the record for inspection, then the agency or official may charge \$15 per hour, after the first hour, for the time it takes to enable inspection. If the agency or official must convert a public record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge for the actual cost to perform the conversion.

This amendment clarifies that a request for public records does not have to be made in writing or in person. This amendment provides that an agency or official is not required to create a record that does not exist in response to a request for public records.

An agency or official shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public records as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

This amendment clarifies that an agency or official is not required to provide a requester with access to a computer terminal.

This amendment increases the per hour cost for compiling a record from \$10 to \$15, after the first hour. Similarly, the threshold for the estimated cost that triggers payment in advance is raised from \$20 to \$30.

This amendment includes funding for a full-time Assistant Attorney General to serve as the Public Access Ombudsman in the Office of the Attorney General.