



Maine Municipal Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

Comments of the Maine Municipal Association
Application of the Freedom of Access Laws to Requests for Bulk Data
Right to Know Advisory Committee
Bulk Records Subcommittee
October 14, 2011

My name is Greg Connors and I am testifying with respect to the four questions posed by the Bulk Records Subcommittee (BRS) of the Right to Know Advisory Committee (RTKAC) on behalf of the Maine Municipal Association (MMA).

MMA understands that there has been some discussion related to bulk data requests and whether "bulk data" requests should be narrowly defined as just databases of a county's registry of deeds or if it should be more broadly applied to include other data located at counties and/or at other governmental entities. MMA appreciates the opportunity to provide its version of the definition of "bulk data" as well as to answer the remaining three questions. Depending on what the BRS recommends and the RTKAC approves for a definition, MMA wanted to weigh in on the other questions as well due to our concern that large public records requests identified under LD 1465, *An Act to Amend the Laws Governing Freedom of Access*, could potentially be considered "bulk data" requests.

Below are MMA's responses to the BRS's questions.

1. What is bulk data and how should it be defined?

MMA believes there is a fundamental difference between the category of "bulk data" requests and the category of "large or multiple" requests. Both categories should be defined in law and special treatment should be provided for each category. Here are our definitions of the terms.

Bulk data are records or databases that have been compiled as a result of a transaction or transactions between two or more parties that are then recorded by a governmental entity, typically a county. The data is not static and constantly grows over a period of time due to the transactional nature of the information. These records typically contain measurements, statistics or otherwise quantified information or analyses that as a general practice would be recorded and retained by the governmental entity as a purely public record subject to very limited or no redaction. These records would reasonably be of interest by a non-governmental entity for the purpose of owning them in order to further assemble, package, organize or re-present the data for commercial purposes or utilizing the data for the purposes of surveying or distributing advertising, for example, to identified licensees and

permittees. A request for bulk data typically involves a request or a series of requests by the same or coordinated requestors for ownership of significant amounts of data.

Large or multiple public record requests would be defined similarly to the definition of "public records" (see Title 1, §402, 3) with the following language added "Large or multiple public record requests typically represent a request or a series of requests by the same or coordinated requestors for access to a significant number of records collected over a prolonged period of time, that in many cases would require redaction efforts. These large or multiple requests typically require appropriate and often supervisory governmental employees to dedicate multiple hours and often advisory resources in order to comply with the request."

2. What is the appropriate method of determining the cost that a requestor must pay for bulk data?

For bulk data requests, MMA feels that the methodology referenced in 33 MRSA §751 sub-§14-C would be appropriate. This methodology would allow a governmental entity to recover some of the other costs associated with the information that is being requested for commercial purposes.

Regarding large or multiple public record requests, the cost should be based on the amount of time that is necessary to fulfill the large or multiple public record request. Determining the hourly rate of the individual or individuals ultimately responsible for both releasing public records and not releasing non-public records, and then applying that to the time necessary to provide that information to the requestor is the appropriate method. The current standard of \$10/hr. grossly underestimates the cost of actually responding to a large FOAA request. With the current standard of \$10/hr. after the 1st hour, governmental entities are losing money every time a request is made. That cost is paid for by the municipality's property taxpayer.

3. Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requestor seeking access to records and a requestor seeking ownership of records?

A requestor should be entitled to bulk data or large public records in the format they request ONLY if the information is already in that format or the information can be easily imported into a format that is already available on the governmental entity's computer system. In addition, the format requested and provided must not allow for the information to be manipulated. If the information is able to be manipulated, advertently or inadvertently, it could result in inaccurate information being disseminated by the requestor as though it was an official public record.

Yes, a distinction should be made between access and ownership. The distinction has been incorporated in the definitions of "bulk data" and "large/multiple public record" requests that appear in the response to Question #1.

4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

Yes, a distinction should be made between requests of public records for commercial purposes and noncommercial purposes. The distinction has been incorporated in the definitions of "bulk data" and "large/multiple public record" requests that appear in the response to Question #1.

I hope these answers are beneficial to the subcommittee. Thank you for your attention to this testimony.

