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New England First Amendment Coalition

*The region's leading
defender of First Amendment
freedoms and government
transparency — the foundation
of a healthy democracy.*

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SENT VIA EMAIL TO JUD@LEGISLATURE.MAINE.GOV

Maine State Legislature
Committee on Judiciary
Attn: Committee Chairs Anne Carney and Amy Kuhn
100 State House Station
Augusta, ME 04333

February 5, 2025

RE: LD 152 — An Act to Amend the Freedom of Access Act to Require a Specific Time Frame for Agencies to Comply with Requests for Public Records

Dear Committee Chairs Carney and Kuhn,

I'm writing on behalf of the New England First Amendment Coalition. NEFAC is a non-profit non-partisan advocate for public access to government. Our Board of Directors and advisors include many leading journalists and media attorneys in the state.¹

We respectfully ask you to oppose LD 152 which would set a 30-day deadline by which agencies must respond to Freedom of Access Act requests. A month is simply too long and provides an incentive for abuse. As I recently told WGME when asked about this bill, some requests only require minutes or hours and certainly not 30 days. If this legislation passes, the new law will implicitly give permission to every agency to take a month to fulfill a request, no matter how simple it might be.²

Our current law allows agencies to fulfill requests under any timeline they determine reasonable. As a result, hundreds of requests to state agencies in 2023 took more than 30 days to be acknowledged, according to a FOAA Ombudsman report.³ Despite these delays, it's also important to note that nearly half of the 2,936 requests to state agencies in 2023 were responded to within five days.

For these reasons, we applaud the intent behind LD 152 and agree that a specific deadline should replace the current "reasonable" requirement. But we're also concerned that any deadline set will become the *de facto* date of compliance. Thirty days is not the magic number. Providing a month to respond to requests will do little to change the slow pace at which many requests are already being fulfilled and it will likely prolong those requests that would otherwise be completed quickly.

Except for Connecticut⁴ — which has a similarly problematic "promptly" requirement for responses — all other New England states require agencies to respond to record requests in less than 30 days unless those requests are considered burdensome in some way.⁵ Rather than supporting the timeframe proposed by LD 152, we encourage your committee and fellow legislators to consider the more effective deadlines of other states.

One potential solution is to require agencies to respond to requests as soon as they are reasonably able to do so, but no longer than five business days. An exception could be

made for when agencies in good faith show that more time is needed because the request involves voluminous records, extensive legal review or other reasonable causes for delay. We welcome the opportunity to provide additional information about other state public record laws for your review.

In short, setting a 30-day deadline for all requests is counterproductive. Please oppose LD 152 and allow for a better solution to be found.

Thank you for your time and consideration.

Sincerely,



Justin Silverman
Executive Director

1 View NEFAC's Board of Directors and Advisors at: <https://www.nefac.org/about/leadership/>

2 WGME's coverage on LD 152 can be found here: <https://fox23maine.com/news/i-team/proposed-bill-would-require-faster-responses-to-maine-public-records-requests>

3 Please note that data for 2024 is not available on the Ombudsman's website. The 2023 data is found at: <https://www.maine.gov/foaa/docs/Ombudsman%202023%20Annual%20Report%20.pdf>

4 See Conn. Gen. Stat. ch. 14 §1-210.

5 Vermont requires records to be produced "promptly" but no later than three business days after the request is received, unless certain exceptions apply. 1 V.S.A. § 318. Massachusetts requires a response within 10 days that either provides the records or details a "reasonable" date for production that does not exceed 15 days for state agencies and 25 days for municipalities. M.G.L. ch. 66 §10(b)(vi). Rhode Island requires records produced within 10 days unless there are extenuating circumstances. R.I. Gen. Laws § 38-2-3(e). In New Hampshire, a public body must produce records immediately when they are immediately available. Otherwise, agencies in that state have five business days to respond with the records, deny the request or state the time needed to fulfill the request. N.H. RSA 91A:4