Written Testimony
Before
The State of Maine Legislature
Regarding Legislative Document 1353,
An Act Regarding Salary Information for
Public Employees
by
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Introduction

The blanket prohibition in Legislative Document 1353 obscuring the identity and salary of every Maine government employee at all levels — state, county, municipal, school, and university — is overly broad and is shockingly contrary to well-established state and federal jurisprudence, legislation, and public policy. The Act cannot become law without singling out Maine as an anomaly, and an inopportune one at a time when the United States as a whole has renewed its commitment to openness in government.¹

The Reporters Committee for Freedom of the Press has advanced open government policies for decades. As a voluntary, unincorporated association of reporters and editors working to defend the First Amendment rights and freedom of information interests of the news media, the organization has provided representation, guidance and research in First Amendment and Freedom of Information Act litigation since 1970. The Reporters Committee frequently files *amicus curiae* briefs in media law cases, and

¹ On his first day in office, President Obama issued a presidential memo stating, “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”
compiles information and offers comments about significant legal and statutory developments affecting journalists and the public’s right to know.

As both a news organization that produces several publications to inform journalists and lawyers about media law issues and a free-press advocate, the Reporters Committee has a strong interest in the policies governing the rights of reporters to access state and federal government records. It is through this dual role that the Reporters Committee can offer a unique perspective on the need for greater openness in government, which the Maine legislature would undermine by adopting this law.

The Act Regarding Salary Information for Public Employees\(^2\) attempts to preserve some deference to Maine’s open government laws by designating as public information the salaries allocated to positions, while obscuring identities of individuals in those positions. Regardless, this “carve-out” still improperly shields government employees — paid by citizens to conduct business on their behalf — from the appropriate level of accountability and leaves Maine citizens and journalists without access to a vast amount of information that the overwhelming majority of U.S. jurisdictions, and federal law,\(^3\) agree is rightfully theirs. A more open government at all levels allows citizens to see their tax money at work and provides oversight opportunities to prevent corruption and misuse of public funds.

For these reasons, the Reporters Committee supports policies that allow the broadest access to salary records, allowing for redactions when circumstances truly

\(^2\) L.D. 1353, 124th Leg., 1st Sess. (Me. 2009).

\(^3\) See 5 C.F.R. § 293.311 (2007) (government employee information available to the public includes name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary); see also Barwick v. Cisneros, 941 F.Supp. 1015 (D. Kan. 1996) (upholding release of government workers’ personnel files including letters of commendation and awards, as well as their prior work history, including federal positions, grades, salaries, and duty stations under 5 C.F.R. § 293.311, with redactions of other information including home addresses and Social Security numbers pursuant to Exemption 6 of FOIA).
require it, and allowing for full access of state employee names and salaries in keeping with nationwide practice and policy.

Maine Law

The Maine Legislature enacted the Maine Freedom of Access Act ("FOAA") sometimes referred to as the Right to Know Law, in 1959, committing the state to the belief that citizens have a right to know what their government is up to a full 7 years before the federal government passed the federal Freedom of Information Act. ME. REV. STAT. ANN. tit. 1, § 401 (1989). The purpose of FOAA is to require that public actions and records be available to the public. To achieve this, FOAA must be liberally construed. See id.; see also Town of Burlington v. Hosp. Admin. Dist. No. 1, 769 A.2d 857 (Me. 2001).

The FOAA mandates a presumption of openness, and Maine’s courts have established a tradition in repeatedly holding that that this presumption requires the release of the names and salaries of government employees. See Town of Burlington, 769 A.2d 857 (finding that a public hospital district’s agreement with a private contractor and its employees’ compensation records were both public records within meaning of FOAA); see also Guy Gannett Pub. Co. v. Univ. of Maine, 555 A.2d 470 (Me. 1989) (affirming disclosure of a settlement agreement between a university and its former basketball coach); cf. Citizens Commc’ns Co. v. Attorney Gen., 931 A.2d 503 (Me. 2007) (“The public policy guiding the interpretation of FOAA is the Legislature’s declaration that ‘public proceedings exist to aid in the conduct of the people’s business.’”). Indeed, these cases ordered release of information arguably much more susceptible to legitimate
privacy concerns than that of run-of-the-mill payroll information — a strong indicator of the Maine judiciary’s general interpretation of the public nature of salary information.

Other Jurisdictions

In 2007, the California Supreme Court heard a case on this very issue, noting that across the states, “disclosure of public employee names and salaries is overwhelmingly the norm.” Int’l Fed’n of Prof’l and Technical Eng’rs, Local 21, AFL-CIO v. Super. Ct., 165 P.3d 488, 495 (Cal. 2007). The court continued, ordering release of the information at issue:

The present case … involves disclosure of financial matters directly related to the individual’s public employment. Of course, we recognize that many individuals, including public employees, may be uncomfortable with the prospect of others knowing their salary and that many of these individuals would share that information only on a selective basis, even within the workplace. Nor do we question that public disclosure of an individual’s salary may cause discomfort or embarrassment. Nonetheless, in light of the strong public policy supporting transparency in government, an individual’s expectation of privacy in a salary earned in public employment is significantly less than the privacy expectation regarding income earned in the private sector. To the extent some public employees may expect their salaries to remain a private matter, that expectation is not a reasonable one….

165 P.3d at 494.

State officials and courts across the country, including Maine, have repeatedly asserted that the names and salaries of employees are among the most basic pieces of public information to which the public is entitled. For example, the Kentucky Attorney General has stated that public officials’ salaries are subject to disclosure. 99 Op. Att’y Gen. 209 (1999) (“The principle that the salary of a public servant is a matter of legitimate public interest, and records reflecting a public servant’s salary must be made
available for inspection, is as old as the Open Records Act itself.”). The Supreme Court of Alaska wrote that public employees have no legitimate expectation of privacy in their salaries and benefits because this information is not “sensitive and personal” and is “clearly of legitimate public concern.” *Int’l Ass’n of Firefighters, Local 1264 v. Mun. of Anchorage*, 973 P.2d 1132, 1136 (Alaska 1999).

Even in instances where courts have kept some employee salary information confidential, it was due to the inclusion of other information, such as Social Security numbers or tax information, along with the net salary. *See*, *e.g.*, *Tribune-Review Publ’g Co. v. Allegheny County Hous. Auth.*, 662 A.2d 677 (Pa. Commw. Ct. 1995) (holding that payroll records containing Social Security numbers and other employment information are not “public records” because dissemination of Social Security numbers is restricted by federal law). Washington’s Attorney General also has stated that public employee salary information is generally not personal information subject to nondisclosure, although individual employee deductions may be protected by a right to privacy. *See* 1973 Op. Att’y Gen. 4 (1973); *see also* WASH. REV. CODE § 42.56.250 (2009). Still, names and salaries are most commonly thought of as public records, as is demonstrated by the Illinois open government statute’s explicit identification of them as such. *5 ILL. COMP. STAT. 140/2(c)(viii)* (2009).

**Payroll information and the media**

In its role as an independent check on the government, the press uses names and salaries in ways that benefit the public interest. When granted access to the names and salaries of state employees, reporters have helped expose potentially wasteful spending and overcompensation of particular government employees, as the following examples
demonstrate. In such tight economic times, the public, more than ever, has a right and an interest to be informed of the whereabouts of its tax dollars.

Locally, the Bangor Daily News in 2007 reported extensively on state spending on employee salaries — which in recent years was considerably higher than that of neighboring states.\(^4\) The Portland Press Herald used 100 volunteers and journalists to visit public agencies and ask for public records including expense reports and salary information, and published the results of the survey in a three-part series. The paper wrote: “When citizens have access to information that is their right, our state and our nation become stronger, not weaker. When citizens exercise their rights as members of a democracy, that democracy becomes stronger, not weaker.”\(^5\)

This type of information has also resulted in notable articles across the nation, some which relied heavily on the ability to identify those involved. For example:

- **2009** – The Star Tribune [Minneapolis] reported that some employees and a former council member questioned the increase in salaries of already well-paid staff while cutting the work week and paychecks of lower-earning clerks, all women, by one day.\(^6\)

- **2007** – The San Francisco Chronicle obtained data indicating that 184 San Francisco city employees made at least $30,000 each in overtime alone.\(^7\)

- **2002** – The Washington Post reported that the Immigration and Naturalization Service had rehired hundreds of retired employees over the previous six years, paying some of them top salaries in addition to their retirement benefits, resulting in 131 dually compensated employees on its payroll.\(^8\)

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\(^4\) Anne Ravana, *Big jobs, big pay?*; More than 950 Maine state, university, judiciary and legislative jobs pay $75,000 or more. (The governor’s is not one of them.), BANGOR DAILY NEWS, July 14, 2007, at A1.

\(^5\) Jeannine Guttman, *Don’t let door close on our right to access*, PORTLAND PRESS HERALD, Jan. 5, 2003, at 1C.

\(^6\) Jim Adams, *Champlin officials under fire over raises*, STAR TRIBUNE, Apr. 12, 2009, at 1B.

\(^7\) Wyatt Buchanan, *S.F. overtime costs soar - crackdown is proposed; 184 workers top $30,000 in 6 months - one nears $128,000*, S. F. CHRON., July 29, 2008, at A1.

• 1993 – *The Cincinnati Post* discovered that nearly 4,500 Ohio state and local government workers were simultaneously collecting pension checks and paychecks at the public’s expense, sparking legislative action to correct the loophole.\(^9\)

As Indiana’s *Star Press* noted in a 2007 editorial, newspapers provide a public service by often publishing information that is otherwise available only through tedious searches of public records, and taxpayers engaged in government monitoring deserve a quick way to learn how much they are paying their employees.\(^{10}\)

**Conclusion**

The Act Regarding Salary Information for Public Employees should not become law. The Act runs afoul of established judicial precedent and legislation in the state of Maine and across the United States. Additionally, the public interest weighs in favor of the full disclosure of identities and salaries of public employees to give citizens a clear picture of how individuals working on their behalf are compensated and to shore up confidence in government.

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\(^{10}\) *Salary database lets readers mine for nuggets of information*, *The Star Press*, Sept. 28, 2007, at 6A.