

February 13, 2024

VIA CERTIFIED MAIL AND EMAIL

Malcolm L. Ulmer, Director of Operations
MCCA Self-Funded Risk Management Pool
4 Gabriel Drive, Suite 2
Augusta, Maine 04330
mlu@mainecounties.org

RE: Request for Inspection and Copying of Public Records Pursuant to the Maine
Freedom of Access Act, 1 M.R.S. § 408-A

Dear Mr. Ulmer,

This is a request for inspection and copying of public records under 1 M.R.S. § 408-A submitted by the American Civil Liberties Union of Maine Foundation (“ACLU of Maine”). As detailed below, we request records in the possession of the Maine County Commissioners Association Self-Funded Risk Management Pool (“Risk Pool”) concerning legal claims.

On September 29, 2022, in a hearing in the matter of *Human Rights Defense Center v. Risk Pool* (Kennebec Superior Ct. Dock. No. 21-131), you testified under oath that the Risk Pool has a claim file for every claim you cover.¹ You further testified that these claim files contain, among other things, documentation related to the settlement of lawsuits.² And, you testified that, in the ten years that you have been in charge of the Risk Pool, you estimate that the Risk Pool has approved approximately ten to twenty settlements per year.³

¹ Q: “You have a claim file for every claim that you cover?”

A: “Correct”

Transcript 117:23-25.

² Q: “But you maintain documentation related to the settlement of lawsuits, right?”

A: “Yes”

Q: “Claim records for settlements, banking records, et cetera?”

A: “Yes”

Q: “And you keep documents that are prepared to request those payments?”

A: “Yes”

Q: “And those are all kept in the claim file, right?”

A: “Yes”

Transcript 118:20-119:5.

³ Q: “So that’s somewhere between 100 and 200 settlements that you’ve been connected with?”

A: “Yeah. There could—there could be that many. I---I don’t have an exact number but yes.”

Transcript 125:12-15.

Specifically, we request:

1. Every claim file, along with all its contents, for every settlement in which the Risk Pool was involved, from January 1, 2019 to the date of this request.

Maine’s Freedom of Access Act (FOAA) must “be liberally construed and applied to promote its underlying purposes” of promoting openness and transparency in governance, and exceptions to the law are interpreted narrowly. 1 M.R.S. § 401. The law broadly defines the term “public records” to include:

any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, . . . and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business.

1 M.R.S. § 402(3).

The term “public records” includes, but is not limited to, electronic data stored on computers and electronic communications such as e-mails and text messages. Information “received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business” includes, but is not limited to, information stored on the home computers, phones, and other devices of government officials and employees.

Under FOAA, you are required to acknowledge this request within five working days. You are further required, within a reasonable time, to provide an estimate of the time frame for your response. 1 M.R.S. § 408-A(3).

If you deny all or any part of this request, please provide written notice of the denial and the asserted basis for that denial within five working days of the receipt of the request, as required by law. 1 M.R.S. § 408-A(4). Please cite each specific FOAA exemption that you assert as a basis for your denial. To the extent that you deny this request on the basis of 16 M.R.S. § 804, please indicate which subsection of the statute is applicable to the withheld records.

Under 1 M.R.S. § 408-A(11)(B), ACLU of Maine is entitled to a waiver of any fees because release of the requested records is in the public interest. Release of the requested records is “likely to contribute significantly to public understanding of the operations of activities of government and is not primarily in the commercial interest of the requester.” 1 M.R.S. § 408-A(11)(B). To the extent that fee waiver is not granted, please provide a cost estimate within a reasonable time as required by law. *See* 1 M.R.S. § 408-A(3), (9).

If any records responsive to this request are stored electronically, please produce them in the medium in which they are stored. *See* 1 M.R.S. § 408-A(7).

Re: ACLUME FOAA Request—Risk Pool
February 13, 2024

Please provide the applicable records to:

Zachary L. Heiden
ACLU of Maine
P.O. Box 7860
Portland, ME 04112
zheiden@aclumaine.org

Thank you for your anticipated cooperation. We look forward to hearing from you as soon as possible and no later than five working days from your receipt of this request.

Respectfully,

A handwritten signature in black ink, appearing to read "Zachary Heiden", with a long horizontal flourish extending to the right.

Zachary L. Heiden
Chief Counsel
ACLU of Maine
zheiden@aclumaine.org
207-619-6224