

**VIA EMAIL**

Deputy City Administrator Brian O'Malley  
Lewiston Freedom of Access Officer  
[bomalley@lewistonmaine.gov](mailto:bomalley@lewistonmaine.gov)

March 14, 2024

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. O'Malley,

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 regarding the City of Lewiston's policies and practices that may negatively impact unhoused individuals residing in the city.

It is our understanding that in response to growth in the number of unsheltered individuals residing in Lewiston, the City has banned camping on public property, actively decided against increasing available shelter beds, and in general has approached its unhoused population with punitive rather than restorative measures. Laws and policies that punish unhoused people for sleeping, sitting, or lying down in public places when there is insufficient adequate shelter available may violate constitutional and civil rights. To ensure that unhoused individuals' constitutional and civil rights are not violated, we request public records related to: (1) actions taken under the City's policies, ordinances, or other state and local laws that prohibit loitering or camping on public property; or (2) actions taken to enforce listed offenses under the Lewiston Police Department's Homeless Crisis Protocol, as mandated by 17-A M.R.S. § 18.

Specifically, we request:

1. any and all statements of policy, practice, guidance, or similar documents, from February 1, 2022 to present, related to enforcement of the City's ordinances and policies prohibiting public camping and loitering, including but not limited to provisions under Chapters 50 and 54 of the Lewiston Code of Ordinances;
2. any and all statements of policy, practice, guidance, or similar documents from February 1, 2022 to present related to determining if and when the presence or conditions of

campsites or other public places used by unhoused individuals for the purpose of shelter or temporary residence may be subject to removal;

3. any and all documents, from February 1, 2022 to present, related to the inspection of campsite locations by police officers, park rangers, or other city officials to determine when a campsite or other public place being used for the purpose of shelter or temporary residence may be subject to removal;
4. any and all records, from February 1, 2022 to present, related to campsite removal and other enforcement activity taken for the cleanup of public places used by unhoused individuals for the purpose of shelter or temporary residence under the City of Lewiston's ordinances and policies prohibiting public camping and loitering, including but not limited to provisions under Chapters 50 and 54 of the Lewiston Code of Ordinances;
5. all communications between the City of Sanford and the State of Maine, including but not limited to the Maine Department of Transportation, from February 1, 2022 to present, related to the resolution of encampments and removal of campsites and other public places used by unhoused individuals for the purpose of shelter or temporary residence;
6. any and all records, from February 1, 2022 to present, related to official figures on the size of the City's homeless population;
7. any and all records, from February 1, 2022 to present, identifying, on a day-by-day basis, the number of individuals residing unsheltered in the City and the number of available shelter beds in the City;
8. any and all records, from February 1, 2022 to present, documenting offers of emergency shelter, medical care, and other social services and resources, to unsheltered individuals and the outcome of each offer, including any and all reasons provided when an offer was not accepted;
9. any and all statements of policy, practice, guidance, or similar documents, from February 1, 2022 to present, for City staff to determine when property removed from campsites and other public places being used for the purpose of shelter or temporary residence is personal property, including any policies or practices related to identification and collection of medication, medical devices, and other mobility assistance devices;
10. any and all documents, from February 1, 2022 to present, related to collection, storage, and retrieval processes for personal property removed from campsites and other public places used for the purpose of shelter or temporary residence, including policies, practices, or guides indicating where property will be stored, how long property will be stored, storage security, and how property will be returned to owners;

11. any and all records, from February 1, 2022 to present, related to the disposition of all property, including any and all personal property identified, collected, and stored, during a campsite removal and/or encampment resolution;
12. any and all records, from February 1, 2022 to present, related to arrests, citations, criminal trespass notices, warnings, or other actions taken by police officers or other city officials in response to violations of the City of Lewiston’s ordinances and policies prohibiting public camping and loitering, including but not limited to provisions under Chapters 50 and 54 of the Lewiston Code of Ordinances;
13. any and all statements of policy, practice, guidance, or similar documents regarding the use of criminal trespass warnings, notices, and orders and/or arrests made pursuant to 17-A M.R.S. § 402, in effect at any time from February 1, 2018 to present;
14. any and all documents, from February 1, 2022 to present, related to the issuance and documentation of criminal trespass warnings, notices, orders, and/or arrests pursuant to 17-A M.R.S. § 402;
15. any and all documents, from February 1, 2022 to present, related to citizen requests, public comments, and/or complaints submitted to the Lewiston Police Department or other city officials about homeless persons, campsites, and encampments and/or the resolutions of encampments in Lewiston;
16. all communications between the Lewiston Police Department and City officials, from February 1, 2022 to present, related to homelessness.

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). Failure to comply in good faith with the requirements of FOAA can result in substantial penalties. *See, e.g., Human Rights Defense Center v. MCCA Risk Pool*, (Super. Ct. No. 21-131) (ordering government entity to pay over \$130,000 in attorneys' fees and costs based on its bad faith failure to comply with FOAA request for records).

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).

Please provide the applicable records to:

Anahita D. Sotoohi  
ACLU of Maine  
P.O. Box 7860  
Portland, ME 04112  
[asotoohi@aclumaine.org](mailto:asotoohi@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,



Anahita D. Sotoohi  
Legal Fellow  
ACLU of Maine

[asotoohi@aclumaine.org](mailto:asotoohi@aclumaine.org)

207.613.4350

Heather L. Zimmerman  
Legal Fellow\*

ACLU of Maine

[hzimmerman@aclumaine.org](mailto:hzimmerman@aclumaine.org)

207.400.5131

\*admission to Maine bar pending