

VIA CERTIFIED MAIL AND EMAIL

Jessica Grondin, City of Portland FOAA Officer
389 Congress Street
Room 208
Portland, ME 04101
jgrondin@portlandmaine.gov

December 8, 2023

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

Dear Ms. Grondin,

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 Portland'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 Portland, the Executive Department developed the Administrative Policy 'Enforcement and Removal Policies and Procedures Relating to Unauthorized Campsites on City Properties' (Enforcement and Removal Policy) in July 2022. As documented in memos and other communications issued by the Executive Department, City staff acting under this policy have routinely decided to remove campsites and unsheltered individuals using public places for the purpose of shelter or temporary residence. 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. As the City has recognized, shelters in Portland lack capacity on a substantial percentage of nights.¹ Moreover, policies at the City's Homeless Services Center may functionally limit access to the facility even when shelter capacity is available.² To ensure that unhoused individuals' constitutional and civil rights are not

¹ See, e.g., Troy R. Bennett, *Portland's New \$24 Million Homeless Shelter Will Be 'at Capacity on Day One'*, Bangor Daily News (Mar. 22, 2023), <https://www.bangordailynews.com/2023/03/22/news/portland/portland-riverside-street-homeless-shelter/>; see generally *Encampment Crisis Response Team*, City of Portland, <https://www.portlandmaine.gov/1417/Encampment-Crisis-Response-Team> (last visited Dec. 4, 2023) ("We recognize that, due to lack of shelter capacity, some people may have no alternative but to sleep outdoors.").

² Grace Benninghoff, *Portland City Council Votes Against Expanding Capacity at Homeless Services Center*, Portland Press Herald (Oct. 2, 2023), <https://www.pressherald.com/2023/10/02/portland-city-council-votes-against->

violated, we request public records related to: (1) actions taken under the City’s Enforcement and Removal Policy or other state and local laws that prohibit loitering or camping on public property; or (2) actions taken to enforce listed offenses under the Portland 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 January 1, 2022 to present, related to enforcement of the City of Portland’s Enforcement and Removal Policy and the City’s ordinances and policies prohibiting public camping and loitering, including provisions under Chapters 17, 18, and 25 of the Portland City Code of Ordinances;
2. any and all statements of policy, practice, guidance, or similar documents from July 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 constitute “obstructions” or an “immediate hazard,” as defined in the City of Portland’s Enforcement and Removal Policy, or may otherwise be subject to removal;
3. any and all documents, from July 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 is an “obstruction” or “immediate hazard,” as defined in the City of Portland’s Enforcement and Removal Policy, and/or may otherwise be subject to removal;
4. any and all records, from January 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 Portland’s Enforcement and Removal Policy and the City’s ordinances and policies prohibiting public camping and loitering, including provisions under Chapters 17, 18, and 25 of the Portland City Code of Ordinances;
5. all communications between the City of Portland and the State of Maine, including but not limited to the Maine Department of Transportation, from January 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 July 1, 2022 to present, related to designation and enforcement of an “emphasis area,” as defined in the City of Portland’s Enforcement and Removal Policy;
7. any and all records, from January 1, 2022 to present, related to official figures on the size of the City’s homeless population;
8. any and all records, from January 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;

[expanding-capacity-at-homeless-services-center/](#) (discussing the barriers that exist in the Homeless Services Center, an outreach worker said “[o]ur fear is that if the emergency order does not ... address these barriers, any additional capacity that is created will be underutilized.”).

9. any and all records, from July 1, 2022 to present, documenting offers of emergency shelter, and other social services and resources, to unsheltered individuals and the outcome of each offer, including any and all reasons provided when a shelter offer is not taken;
10. any and all statements of policy, practice, guidance, or similar documents, from January 1, 2022 to present, relating to the compliance with disability discrimination laws (including but not limited to the Americans with Disabilities Act (ADA) or Maine Human Rights Act (MHRA)) at City-operated shelters;
11. all records, from January 1, 2022 to present, documenting requests made for reasonable accommodation at City-operated shelters and the City's response to those requests;
12. any and all statements of policy, practice, guidance, or similar documents, from July 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;
13. any and all documents, from July 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;
14. any and all records, from July 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;
15. any and all records, from January 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 Portland's Enforcement and Removal Policy or the City's ordinances prohibiting public camping and loitering, including provisions under Chapters 17, 18, and 25 of the Portland City Code of Ordinances;
16. 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 January 1, 2018 to present;
17. any and all documents, from January 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;
18. any and all records, from January 1, 2022 to present, related to citizen requests and/or complaints submitted to the Portland Police Department, See Click Fix/Portland 311, or other city officials about homeless persons, campsites, and encampments and/or the resolutions of encampments at Bayside Trail, Deering Oaks Park, Fore River Trail, Harbor View Park, Marginal Way (including the State of Maine Department of Transportation's Park and Ride lot), Oxford Street, and Somerset Street; and
19. all communications between the Portland Police Department and City officials, from January 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).

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

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
207.613.4350

Heather L. Zimmerman
Legal Fellow*

ACLU of Maine
hzimmerman@aclumaine.org
207.400.5131

*admission to Maine bar pending