

Maine's Majority

Documents refute Maine Heritage Policy Center claim that Maine State Housing Authority delayed information release

February 13, 2012

On January 17, 2012, Maine Heritage Policy Center researcher Sam Adolphson published the names of some 6,000 Maine State Housing Authority vendors on the MHPC's *Maine Wire* blog.¹ Adolphson acquired the vendor list through a Freedom of Access Act request he filed with MaineHousing last year.

Adolphson released the list without including any details about payments to the vendors. Nonetheless, he questioned the legitimacy of dozens of payees, apparently seeking to create a perception that MaineHousing had misspent taxpayer funds. Adolphson also suggested that MaineHousing had deliberately tried to withhold disclosure of the requested financial information:

[T]he Maine State Housing Authority continues to delay the release of key expenditure details more than six months after a Freedom of Access Act request — for vendor records — was filed by the Maine Heritage Policy Center. Even minus the details, the skeletal vendor list obtained by MHPC reveals a pattern of questionable expenditures that will likely increase pressure on the quasi-state agency to open its books to public scrutiny.

Last week, Maine's Majority obtained a record of communications between MaineHousing and the MHPC regarding the latter's FOAA requests. The documents, themselves obtained through a separate FOAA request filed by Maine's Majority on January 25, suggest Adolphson may be deliberately misleading the public about MaineHousing's willingness to cooperate with the MHPC.²

The record shows that the MHPC, and not MaineHousing, held up the document release process for many months; that MaineHousing went out of its way to provide documents in a timely manner; and that the MHPC released the vendor list to the public knowing full well that complete payment information was forthcoming, albeit on a timeline that did not coincide with the MHPC's political objectives.

1 <http://www.themainewire.com/2012/01/luxury-hotels-magicians-massage-maine-housing-vendor-list-reveals-questionable-expenditures/>

2 <http://www.scribd.com/doc/81437453/Maine-s-Majority-FOAA-request-to-MSHA-January-25-2012>

An excessively broad request

The MHPC filed its initial FOAA request on February 17, 2011 for 13 years of payroll and accounts payable data.³ It was from the start an unusual and excessively broad request. The Maine Freedom of Access Act web site advises those requesting public records to “be as specific as possible.” It cautions that a broad request such as the one the MHPC filed “would likely produce volumes of records,” and that “the fees for such a request would be very high.”⁴ The MHPC evidently did not heed this guidance.

Five days after the request was filed, MaineHousing attorney John Bobrowiecki told Adolphson that the request would take 60 to 180 days to fill at an estimated cost of \$2,500 to \$7,500. MaineHousing also asked MHPC to clarify whether it wanted details of electronic payments, as the original request seemed only to include paper checks.⁵ Adolphson subsequently asked for a meeting with MaineHousing officials and then-MHPC CEO Tarren Bragdon.⁶ The parties sat down together on March 17; on March 23, MaineHousing issued a revised estimate for data from 2004 through 2010.⁷

MHPC balks at document retrieval fees

Maine law allows state agencies to charge those submitting FOAA requests a fee of \$10 per hour after the first hour to offset the costs of compiling and redacting documents, and can request advance payment in the case of large requests.⁸ MaineHousing indicated in its second estimate that the request would take some 371 hours to fill, at a total cost of around \$3,700.⁹

The MHPC evidently did not feel that it should have to pay this fee. On May 23, now more than 3 months after MaineHousing had first offered to begin compiling records, MHPC attorney David Crocker asked the MaineHousing board of directors to waive all document retrieval fees.¹⁰ The board considered this request at its June meeting, and on the 27th of the month informed the MHPC that the fee waiver request was denied.¹¹

MaineHousing offers to help streamline MHPC's request

In early August, MaineHousing chief legal counsel Linda Uhl offered to help MHPC revise the scope of its request, so as to allow fulfillment in a more timely and cost-effective manner. “MaineHousing has not heard from MHPC since our Chair, Carol Kontos, notified David Crocker by letter dated June 27th that the Commissioners voted not to waive the fees set by law,” Uhl wrote in an August 4th email to Crocker and Adolphson. She continued:

3 <http://www.scribd.com/doc/81437882/MHPC-initial-FOAA-request-to-MaineHousing-February-17-2011>

4 <http://www.maine.gov/foaa/request/index.shtml>

5 <http://www.scribd.com/doc/81438106/MSHA-response-to-initial-MHPC-FOAA-request-February-22-2011>

6 <http://www.scribd.com/doc/81438377/MHPC-request-for-meeting-with-MSHA-March-7-2011>

7 <http://www.scribd.com/doc/81438662/MSHA-revised-FOAA-estimate-March-23-2012>

8 <http://www.mainelegislature.org/legis/statutes/1/title1sec408.html>

9 <http://www.scribd.com/doc/81438662/MSHA-revised-FOAA-estimate-March-23-2012>

10 <http://www.scribd.com/doc/81438927/MHPC-request-for-FOAA-fee-waiver-May-23-2011>

11 <http://www.scribd.com/doc/81439632/MSHA-denial-of-FOAA-fee-waiver-June-27-2011>

Our initial estimate addresses the broad nature of your request and is a major undertaking for a \$1.6B agency that serves over 90,000 households each year through about 70,000 transactions. We estimate that your request for 13 years would involve approximately 800,000 transactions. We believe that with a little effort, your request could be refined to reduce the overall costs. One way to do this is to narrow the data requested and another is to reduce the number of years requested.¹²

Uhl proceeds to highlight a number of specific ways for the MHPC to refine the scope of the request.

The documentary record picks up again with a September 7 email from Uhl to incoming MHPC CEO Lance Dutson. In it, Uhl indicates that verbal communications may have transpired in the preceding 4 weeks:

I am responding to the voice mail message which you left me yesterday afternoon. Thank you for calling. My preference is to communicate with you in writing to make sure there are no misunderstandings. This concern arose when earlier we had understood from a prior conversation with your staff that Maine Heritage Policy Center was limiting its FOAA request to transactions occurring from 2003 to 2010, but then we read in the paper that your original request stood. Communicating in writing will help both MHPC and MaineHousing avoid future confusion.¹³

Dutson responded with a request for another meeting with MaineHousing staff, which occurred on September 20.¹⁴

The parties reach an agreement

Minutes of the September 20 meeting between Maine Housing and MHPC representatives indicate that both parties agreed on a scope and data format. The minutes also give some insight into the complexity of the MHPC's request, which required MaineHousing to compile data from multiple storage systems from several distinct programs.¹⁵

The minutes conclude by noting that “MHPC and MH agreed it was a good meeting. MH appreciated MHPC listening to the hurdles the original request provided. MHPC thanked MH for the preparation that allowed them to see examples of what the actual data would be.”

Bobrowiecki sent the minutes to Dutson and the other meeting participants on September 22.¹⁶

12 <http://www.scribd.com/doc/81439882/MSHA-offers-to-help-MHPC-narrow-scope-of-FOAA-request-August-4-2011>

13 <http://www.scribd.com/doc/81440560/MSHA-responds-to-MHPC-voice-mail-September-7-2011>

14 <http://www.scribd.com/doc/81440916/MHPC-requests-second-meeting-with-MHPC-September-7-2011>

15 <http://www.scribd.com/doc/81441071/Minutes-of-meeting-between-MSHA-and-MHPC-September-20-2011>

16 <http://www.scribd.com/doc/81441143/MSHA-emails-9-20-meeting-minutes-to-MHPC-September-22-2011>

On the 26th, Dutson responded, “Thanks John. This looks good to me, I appreciate your help.”¹⁷

The September 22 email also indicates that MaineHousing agreed to begin compiling payroll and benefit data immediately; it ultimately delivered this information on October 7, even before the MHPC authorized it to begin filling the broader request.¹⁸

On September 30, MaineHousing deputy director Adam Krea issued a final revised estimate of 88 hours, based on a narrowed request scope.¹⁹ On October 24 – nearly a month later – Dutson agreed to the offer.²⁰ Krea indicated on October 26 that payment of \$880 would be required in order to proceed.²¹

In all, 244 days passed between MaineHousing's first estimate and the MHPC's decision to move ahead. A subsequent email indicates that MaineHousing did not receive payment, and thus could not initiate the data gathering process, until November 21 – 24 days later.²²

Maine Housing holds up its end of the bargain

MaineHousing delivered the first round of data, which included heating assistance information, vendor totals, and the now-controversial vendor master list, on December 12. It fulfilled this request only three weeks after receiving MHPC's payment.²³

The following day, Dutson asked when MaineHousing would send payment transaction details, which constituted the largest component of the MHPC's request.²⁴ Bobrowiecki answered, “at least a couple of weeks.”²⁵ Dutson asked again on January 6, 2011.²⁶ On January 10, Krea advised that the payment register would now not be ready until early February.²⁷

A week later, without waiting for explanation of vendor records it declared “questionable,” the MHPC released its report on the MaineHousing vendor list.²⁸ Hearings on legislation that could allow the governor to oust top leadership at MaineHousing began shortly thereafter.

On February 3, MaineHousing indicated that payment details would likely be cleared for release on February 13.²⁹

17 <http://www.scribd.com/doc/81441265/MHPC-accepts-9-20-meeting-minutes-September-26-2011>

18 <http://www.scribd.com/doc/81441507/MSHA-releases-wage-and-benefit-information-October-7-2011>

19 <http://www.scribd.com/doc/81441491/MSHA-issues-revised-FOAA-estimate-September-30-2011>

20 <http://www.scribd.com/doc/81441496/MHPC-accepts-FOAA-offer-October-24-2011>

21 <http://www.scribd.com/doc/81442042/MSHA-confirms-final-request-asks-for-payment-October-26-2011>

22 <http://www.scribd.com/doc/81442117/MSHA-releases-vendor-master-list-and-other-data-December-12-2011>

23 *Ibid.*

24 <http://www.scribd.com/doc/81442125/MHPC-asks-when-vendor-transactions-will-be-available-December-13-2011>

25 <http://www.scribd.com/doc/81442128/MSHA-estimates-vendor-transaction-delivery-December-13-2011>

26 <http://www.scribd.com/doc/81442706/MHPC-asks-again-when-vendor-transactions-will-be-available-January-6-2012>

27 <http://www.scribd.com/doc/81442707/MSHA-estimates-vendor-transaction-delivery-January-10-2012>

28 <http://www.scribd.com/doc/81442709/MSHA-estimates-final-document-release-February-3-2012>

29 <http://www.scribd.com/doc/81442709/MSHA-estimates-final-document-release-February-3-2012>