

**STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW DOCKET NO. Ken-26-91

JOHN D. CLOPPER
Plaintiff-Appellant

v.

MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM
Defendant-Appellee

ON APPEAL FROM KENNEBEC COUNTY SUPERIOR COURT
Docket No. AUGSC-CV-2025-00029

**BRIEF OF DEFENDANT-APPELLEE
MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM**

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INTRODUCTION

This is an appeal from judgment of the Superior Court (Kennebec County, *Mitchell, J.*) affirming the decision of the Maine Public Employees Retirement System to not publicly disclose private investment information. The Maine Public Employees Retirement System (“MainePERS”) makes private investments to earn a premium over public market investments. MainePERS needs private investment information from investment managers and others in order to evaluate those investments, and if it discloses such information it will not be invited to make such investments or will not receive the information necessary to make such investments.

Here, MainePERS received private investment information when it invested in two funds and a fund portfolio company. The portfolio company failed, and MainePERS publicly disclosed the loss. Pursuant to Maine’s Freedom of Access Act (“FOAA”), 1 M.R.S. §§ 400-414 (2026), Plaintiff-Appellant John D. Clopper requested that MainePERS turn over solicitation materials and business updates that MainePERS had received and an analysis done for the investment manager by a consultant. MainePERS produced the requested documents but redacted information based on an exception to FOAA that permits MainePERS to not produce private investment information if it determines, in its sole discretion, that disclosure may impair its ability to obtain

such information in the future or cause substantial harm to the competitive position of MainePERS or of the person or entity from whom the information was obtained. 5 M.R.S. § 17057(4)(A), (1)-(2) (2026).

Mr. Clopper sued, seeking unredacted copies of the documents. The Superior Court, interpreting the statutory exception for the first time, found that MainePERS had just and proper cause for its decision to redact the requested documents because MainePERS reasonably determined that disclosure could impair its ability to obtain private investment information in the future and, for some of the documents, also cause substantial harm to the competitive position of the investment manager. The court based this decision on a sworn statement of the Chief Investment Officer of MainePERS and *in camera* review of unredacted versions of the documents.

On appeal, Mr. Clopper does not contest the trial court's holding that MainePERS needs only show a reasonable basis for its decision. Rather, he raises the narrower legal claim that the private investment information exception applies only to future and current investments. Section I, *infra*, addresses why Mr. Clopper's interpretation of the private investment information exception is unpreserved and unfounded.

Further, Mr. Clopper invites this Court to flip page-by-page through 1,067 pages of documents to determine whether the Superior Court properly held that MainePERS had just and proper cause to make each and every redaction. But that review is a job for the Superior Court, not for this Court. Under *Fairfield v. Maine State Police*, 2023 ME 12, 288 A.3d 1220, this Court should conduct a limited review, which may be on a sampling basis, and determine that the Superior Court did not clearly err in its description and categorization of the documents. And even if this Court does not undertake the limited *Fairfield* review, it should still find no clear error under *Blue Sky West, LLC v. Maine Revenue Services*, 2019 ME 137, 215 A.3d 812. Section II, *infra*, addresses why there is no clear error and so the trial court judgment should be affirmed.

Finally, this brief also addresses why, if this Court does not apply a clear error standard of review, it should find that MainePERS demonstrated just and proper cause for its redactions. MainePERS makes this alternative argument because in some FOAA cases this Court has conducted a more searching review. *See, e.g., Dubois v. Off. of the Att’y Gen.*, 2018 ME 67, ¶¶ 24-25, 185 A.3d 734; *Anastos v. Town of Brunswick*, 2011 ME 41, ¶¶ 6-8, 15 A.3d 1279; *Springfield Terminal Ry. Co. v. Dep’t of Transp.*, 2000 ME 126, ¶¶ 10-24, 754 A.2d 353. Section III, *infra*, addresses this alternative basis for affirming.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The following facts are drawn from the stipulated record. The pertinent facts are undisputed.

MainePERS's private investment program generally. MainePERS provides retirement benefits for public employees in Maine. Appendix ("A.") 45 (Joint Stipulated Facts ("JSF") ¶ 1). To do so, MainePERS partly invests in private equity funds, typically as a limited partner in funds that pool investments from MainePERS and other investors. A. 45 (JSF ¶ 2). MainePERS also sometimes makes co-investments in individual companies that are being acquired by private equity funds in which MainePERS has already invested. A. 45 (JSF ¶ 3). When MainePERS makes a co-investment, it is investing in the same company twice: once as a private equity fund participant, and once as a co-investor. A. 45-46 (JSF ¶ 3). Since 2013, MainePERS has invested over a billion dollars in at least 99 co-investments. A. 46 (JSF ¶¶ 5-6).

MainePERS invested in Prima Wawona. Here, in 2014, MainePERS invested in a private equity fund managed by Paine Schwartz Partners, LLC ("Paine Schwartz"). A. 46 (JSF ¶¶ 7, 9, 11).¹ Paine Schwartz acts as the investment manager for funds that invest in companies in the food and

¹ The record reflects various names for Paine Schwartz, A. 48-49 (JSF ¶¶ 25-26), but "Paine Schwartz" is used in this brief to refer collectively to the relevant entities.

agribusiness sector with a focus on promoting sustainability. A. 46 (JSF ¶¶ 7-8). The fund in which MainePERS invested was called Paine Schwartz Food Chain Fund IV, L.P. (f/k/a Paine & Partners Capital Fund IV, L.P.) (“Fund IV”). A. 46 (JSF ¶¶ 9, 11). MainePERS committed \$60 million to Fund IV. A. 46 (JSF ¶ 11). In turn, Fund IV acquired a controlling interest in an agricultural business called Wawona Packing Co. A. 46 (JSF ¶ 12).

When Fund IV invested in Wawona Packing Co., MainePERS also made a co-investment in the company. A. 47 (JSF ¶ 14). And when Wawona Packing Co. later merged with another agricultural business to create Prima Wawona, MainePERS made an additional co-investment in that merged company. A. 47 (JSF ¶¶ 16, 18). MainePERS received solicitation and other materials from Paine Schwartz when investing in Fund IV and making these co-investments. A. 46-47 (JSF ¶¶ 10, 13, 17, 23). The total amount of these co-investments was approximately \$22.2 million. A. 47 (JSF ¶¶ 14, 18).

Prima Wawona failed, and MainePERS publicly disclosed the loss. In 2023, Prima Wawona filed for bankruptcy. A. 47 (JSF ¶ 20). Prima Wawona’s assets were liquidated in bankruptcy. A. 47 (JSF ¶¶ 20-21). MainePERS now values the co-investments at zero. A. 47 (JSF ¶¶ 15, 19). MainePERS publicly disclosed this loss at the time on its website, together with the performance of its other private investments. A. 50 (JSF ¶ 33).

Mr. Clopper requested Prima Wawona documents. Following the bankruptcy, a lawyer who represents the former 25% owner of Prima Wawona contacted MainePERS. A. 48-49, 53 (JSF ¶¶ 25, 49); Blue (“Bl.”) Brief (“Br.”) at 9. On May 23, 2024, the lawyer, Mr. Clopper, requested records from MainePERS relating to its investment in Fund IV and co-investments in Prima Wawona. A. 48-49 (JSF ¶ 25). In particular, Mr. Clopper requested:

Any records relating to any solicitation or offering of any investment opportunity, including any presentation, prospectus, offering materials, roadshow materials, sales pitches, or similar records made to MainePERS by or on behalf of [Paine Schwartz, Fund IV, Fund V, or the Wawona or Maverick co-investment funds].

Any financial or business updates, including any quarterly updates relating to valuation and/or business performance, provided to MainePERS or investors regarding [Fund IV, Fund V, the Prima Wawona firms, or the Wawona or Maverick co-investment funds].

Any records submitted by McKinsey & Company to MainePERS relating to [Fund IV, Fund V, the Prima Wawona firms, or the Wawona or Maverick co-investment funds].

A. 48-49 (JSF ¶ 25).²

MainePERS produced documents and redacted material pursuant to the private investment information exception. In response, MainePERS produced 3,947 pages of redacted documents to Mr. Clopper. A. 49-50 (JSF ¶¶ 28, 30); Bl.

² In this brief, “Fund V” refers to a Paine Schwartz fund that included information about Fund IV performance in its solicitation materials. *See* A. 48 (JSF ¶ 24). The funds through which MainePERS made the Prima Wawona co-investments are referred to herein as the “Wawona” and “Maverick” co-investment funds. *See* A. 47 (JSF ¶¶ 14, 18).

Br. at 10. MainePERS redacted information in the produced documents that it determined is non-public under an exception to FOAA's definition of public record for private investment information. A. 49 (JSF ¶ 28). When MainePERS produced the documents to Mr. Clopper, it explained:

As previously noted, within the scope of your request is information that is non-public because it consists of "trade secrets or commercial or financial information that relates to actual or potential private market investments of the retirement system," the disclosure of which "may ... [i]mpair the retirement system's ability to obtain such material, data or information in the future" or "[c]ause substantial harm to the competitive position of the retirement system or of the person or entity from whom the information was obtained." 5 M.R.S. § 17057(4). To the extent that your request seeks such information, it is denied pursuant to 1 M.R.S. §§ 402(3)(A), 402(3)(B), 408-A and 5 M.R.S. § 17057(4).

A. 49 (JSF ¶ 28). None of the documents redacted by MainePERS were among the documents made public in the Prima Wawona bankruptcy. A. 53 (JSF ¶ 47).

Mr. Clopper sued in Superior Court. On February 24, 2025, Mr. Clopper filed a Complaint appealing MainePERS's denial of his FOAA requests and seeking unredacted copies of the documents. A. 19-26. In response, MainePERS filed a Statement of Position attaching two sworn statements substantiating its decision to not produce. A. 27-35. The first statement is the Affidavit of James Bennett, the Chief Investment Officer of MainePERS (the "Bennett Affidavit"). A. 36-38. The second statement is the Affirmation of Renata Malavazzi, Esq., the General Counsel of Paine Schwartz (the "Malavazzi

Affirmation”). A. 39-44. MainePERS also submitted unredacted versions of the records responsive to Mr. Clopper’s request for *in camera* review; each redaction was shown by a translucent outline. A. 50 (JSF ¶ 31).

The trial court decided the case based on these materials, as well as joint stipulated facts (A. 45-54 & JSF Exs. filed May 14, 2025), an exceptions log that MainePERS provided (A. 58-60), and written submissions from the parties (Plaintiff’s Br. filed June 3, 2025; Defendant’s Response filed June 24, 2025; Plaintiff’s Reply Br. filed July 8, 2025). Mr. Clopper ultimately sought 1,067 pages of documents, which was a subset of the 3,947 pages initially produced by MainePERS. A. 58-60.

The Superior Court denied Mr. Clopper’s FOAA appeal in a thorough decision (“Op.”). A. 7-18. It held that, while MainePERS bore the burden of demonstrating just and proper cause for its redactions under FOAA, it would satisfy that standard if it “properly exercised its discretion by withholding and/or redacting the investment documents in this case.” A. 12 (Op. at 6). “The agency’s determination cannot be completely untethered from the language of the statute.” A. 13 (Op. at 7). The Superior Court adopted this deferential construction because the FOAA exception at issue “gives considerable latitude to MainePERS to decide which documents should be disclosed” A. 12 (Op. at 6). The Superior Court further reasoned that “the discretion MainePERS enjoys

under § 17057(4)(A) is broad, giving it the ability to withhold commercial information anytime disclosure might impair the future receipt of similar information, or if doing so might cause substantial harm to its own competitive position or that of a potential investment counterparty.” A. 14-15 (Op. at 8-9).

Applying that standard, the Superior Court held that MainePERS had demonstrated just and proper cause based on the Bennett Affidavit and its *in camera* review. A. 15-16 (Op. at 9-10). Mr. Clopper appealed.

STATEMENT OF ISSUES PRESENTED

- I. Whether the FOAA exception for information “that relates to actual or potential private market investments” covers past investments.**
- II. Whether the Superior Court clearly erred when it found that MainePERS had just and proper cause to redact the 1,067 pages of documents pursuant to the private investment information exception based on the sworn statement of the Chief Investment Officer of MainePERS and *in camera* review.**
- III. Alternatively, whether MainePERS demonstrated just and proper cause to redact the documents.**

ARGUMENT

The FOAA exception at issue is codified at 5 M.R.S. § 17057(4). That exception applies to documentary material, data or information in the possession of MainePERS that “consists of trade secrets or commercial or financial information that relates to actual or potential private market

investments” of MainePERS. *Id.* § 17057(4)(A).³ The Legislature vested in MainePERS extraordinarily broad discretion to decide whether or not to produce such private investment information. Under 5 M.R.S. § 17057(4)(A), it is for MainePERS to determine “in the sole discretion of the retirement system” whether certain enumerated harm may result from disclosure. Relevant here, MainePERS may decide to not produce information where it determines, in its sole discretion, that disclosure may “[i]mpair the retirement system’s ability to obtain such material, data or information in the future[,]” “[c]ause substantial harm to the competitive position of the retirement system[,]” or “[c]ause substantial harm to the competitive position of ... the person or entity from whom the information was obtained” *Id.* § 17057(4)(A), (1)-(2). MainePERS need not determine that disclosure *will* result in such harm, only that it *may* do so. *Id.* § 17057(4)(A).

The legislative history demonstrates that MainePERS was provided this discretion precisely so that it could make private equity investments like the Prima Wawona investments. The private investment information exception was made applicable to private equity investments through P.L. 2011, ch. 449.⁴

³ Mr. Clopper does not dispute that the documents at issue “consist[] of trade secrets or commercial or financial information” *See* 5 M.R.S. § 17507(4)(A). He also does not dispute that the investments at issue are “private market investment[s].” *See id.* § 17507(4)(C).

⁴ The exception was first adopted in P.L. 2009, ch. 633, which applied it only to private investment information relating to the state innovation finance program, which is not relevant here.

At the time, MainePERS was asked by the Appropriations Committee, “What is MainePERS prevented from doing that they would like to do and would be allowed to do as a result of the bill?” A. 55 (*An Act To Amend the Laws Relating to the Maine Public Employees Retirement System: Hearing on L.D. 1524 Before the J. Standing Comm. on Appropriations & Fin. Affs.*, 125th Legis. (responses of MainePERS) (“L.D. 1524 Committee File Materials”)). MainePERS responded that it “is prevented from investing in many top-tier private equity funds”:

These funds are in great demand and therefore have the luxury of selecting who they accept as investors. They have a strong preference for institutional investors who are willing and able to keep their trade secrets and sensitive private financial information confidential and therefore exclude MainePERS due to the current freedom of information laws applicable to MainePERS.

A. 55 (L.D. 1524 Committee File Materials). A memo from MainePERS’s private equity consultant provided to the Committee further explained that:

Numerous general partners of [private equity] funds have prohibited public investors, subject to broad FOIA provisions, from being investors. Other general partners have limited disclosure of information to public investors. Some of this information is critical to proper due diligence and monitoring for investors as fiduciaries.

A. 57 (L.D. 1524 Committee File Materials).

Here, the Superior Court held that MainePERS bore the burden of demonstrating just and proper cause for its redactions under FOAA. A. 12 (Op. at 6). Consistent with the text of the private investment information exception

and its legislative history, the Superior Court ruled that MainePERS would carry its burden if it “properly exercised its discretion by withholding and/or redacting the investment documents in this case.” A. 12 (Op. at 6). Mr. Clopper does not challenge this holding on appeal.

I. Mr. Clopper’s argument that 5 M.R.S. § 17057(4)(A) limits confidential treatment to current and future investments is unpreserved and unfounded.

Mr. Clopper presses only one claim with respect to the interpretation of 5 M.R.S. § 17057(4)(A), the statute providing the private investment information exception. According to Mr. Clopper, the words “actual or potential” in that exception should be interpreted so they apply only to current and future private investments and not actual past investments like the Prima Wawona investment that MainePERS made. Bl. Br. at 18. This Court reviews construction of a FOAA exception *de novo* as a question of law. *Dubois*, 2018 ME 67, ¶ 15, 185 A.3d 734; *Springfield Terminal Ry. Co.*, 2000 ME 126, ¶ 8, 754 A.2d 353.

As an initial matter, this argument is unpreserved. This Court “will not review an issue that has not been properly preserved.” *Dep’t of Hum. Servs. v. Hager*, 2000 ME 140, ¶ 20 n.4, 756 A.2d 489 (citation omitted). Mr. Clopper first raised this argument at the Superior Court in his reply brief, which was the last filing in this matter. *See* Plaintiff’s Reply Br. at 3. In so doing, he failed “to

alert the court and any opposing party to the existence of that issue.” *See Hager*, 2000 ME 140, ¶ 20 n.4, 756 A.2d 489 (citations omitted). The Court need look no further than the Opinion below to confirm that Mr. Clopper failed to provide the necessary notice, since the Superior Court wrote that the issue was not in dispute: “[t]he parties do not dispute that the documents at issue ‘consist of trade secrets or commercial or financial information that relates to actual or potential private market investments’ of MainePERS.” A. 12 (Op. at 6) (quoting 5 M.R.S. § 17057(4)(A)). *Compare Hager*, 2000 ME 140, ¶ 20 n.4, 756 A.2d 489 (argument raised for the first time in Superior Court reply brief preserved where it was subsequently litigated on remand to the District Court before then reaching Law Court). The Court should not consider this argument because it is not properly before the Court.

In any event, Mr. Clopper’s argument fails for several reasons. The statute applies to “actual or potential private market investments” 5 M.R.S. § 17057(4)(A). It is illogical to interpret the plain language of the private investment exception as applying only to current and future private investments – and not to “actual” private market investments that MainePERS has made. *See MaineToday Media, Inc. v. State*, 2013 ME 100, ¶ 6, 82 A.3d 104 (“If the language is unambiguous, we interpret the provisions according to their unambiguous meaning unless the result is illogical or absurd.” (quotation

omitted)). Mr. Clopper's proposed interpretation would make public not only all private investment information relating to a firm like Prima Wawona that has ceased to exist, but such information relating to all past private market investments by MainePERS. Such a blanket result is contrary to the text and structure of the exception, under which the decision to disclose turns not on the timing of the investment but on the potential impact of that disclosure. See 5 M.R.S. § 17057(4)(A), (1)-(2).

Mr. Clopper's argument also is unworkable. To choose but one example, private equity funds invest in companies not to hold them indefinitely, but to exit the investments within a few years:

Private equity invests capital in companies that are perceived to have growth potential and then works with these companies to expand or turnaround the business.... After three to seven years of ownership ..., the fund manager will seek to 'exit' the company by taking the business public or selling it for a higher valuation than it was purchased. This exit distributes profits from the sale ('returns') to the investors in the fund and the fund manager.

American Investment Council, FAQ, *What is private equity?*, <https://www.investmentcouncil.org/private-equity-faqs/>. After exit, the portfolio company still exists, but MainePERS is no longer an investor through the fund since the fund has exited its position in that company. Under Mr. Clopper's reading, the private investment information relating to such a company would become public even though the company still exists (as do the

fund and its manager). Contrary to Mr. Clopper's position, under the plain language of the private investment information exception, it applies to "actual" private investments – *i.e.*, those that exist, whether now or in the past.

In addition, Mr. Clopper's own dictionary citation undercuts his argument. *See MaineToday Media*, 2013 ME 100, ¶ 26, 82 A.3d 104 (looking to dictionary definitions to identify plain and ordinary meaning of undefined term). Mr. Clopper cites to Merriam-Webster's definition of "actual," which he states is "existing or occurring at the time." Bl. Br. at 18. That definition could support his point, but that is only one in the list of definitions that Merriam-Webster provides. In fact, the very first definition of "actual" is "existing in fact or reality," which is directly contrary to Mr. Clopper's position:

- 1a: existing in fact or reality ...
- [1]b: not false or apparent ...
- [1]c[:] used for emphasis ...
- 2: existing or occurring at the time ...
- 3 obsolete: active

<https://www.merriam-webster.com/dictionary/actual>. Likewise, Black's Law Dictionary defines "actual" as "[e]xisting in fact; real," again directly contrary to Mr. Clopper's position. *Actual*, Black's Law Dictionary (12th ed. 2024). Dictionary definitions do not support Mr. Clopper's argument.

Finally, limiting the private investment information exception to current or future investments also is contrary to the legislative history showing why

the exception was adopted. *MaineToday Media*, 2013 ME 100, ¶ 6, 82 A.3d 104 (“If the plain language of a statute is ambiguous—that is, susceptible of different meanings—we will then go on to consider the statute's meaning in light of its legislative history and other indicia of legislative intent.” (citations omitted)). As detailed above, *supra* at 14-15, the Legislature adopted the exception because private investment managers will not invite MainePERS to invest if their private investment information is subject to disclosure, or will refuse to share that necessary information with MainePERS.

To continue with the example of a portfolio company that is sold by a private equity fund for a profit, the private equity manager is just as keen to protect information concerning that past investment as it is for a company in which it remains invested (and in which MainePERS remains invested through the fund). That past information could reflect, among other things, the manager's proprietary investment strategies and analysis, operational and strategic information and financial projections and forecasts. MainePERS's disclosure of such information about a past investment could, therefore, just as readily cause a private investment manager to not invite MainePERS to invest or to refuse to share information with MainePERS. The Court should reject Mr. Clopper's illogical and unsupported interpretation of the private investment information exception.

II. The Superior Court did not clearly err in finding just and proper cause for MainePERS's redactions.

The balance of Mr. Clopper's brief assigns error to the Superior Court's application of the private investment information exception. Bl. Br. at 16-44. A public entity has the burden of proving "just and proper cause" for the denial of a FOAA request and proving that information withheld from a FOAA request falls within an exception to FOAA. *Dubois*, 2018 ME 67, ¶¶ 16-17, 185 A.3d 734; *Springfield Terminal Ry. Co.*, 2000 ME 126, ¶ 9, 754 A.2d 353. The Court reviews the Superior Court's factual findings for clear error. *Fairfield*, 2023 ME 12, ¶ 9, 288 A.3d 1220 (citing *Anctil v. Dep't of Corr.*, 2017 ME 233, ¶ 5, 175 A.3d 660); *Blue Sky W.*, 2019 ME 137, ¶¶ 24 & 39, 215 A.3d 812. Although FOAA "shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent[,]" 1 M.R.S. § 401 (2026), the Court must "balance transparency of government action with the protection of sensitive information" *Anastos*, 2011 ME 41, ¶¶ 5 & 9, 15 A.3d 1279.

"[W]here a requesting party challenges a trial court's determination that a large number of requested documents are confidential," this Court will "analyze de novo whether the trial court has created a sufficient factual record upon which it can determine whether the withheld documents are confidential" and then "independently review the factual record, including any documents

submitted for *in camera* review, to ensure that the court did not commit clear error in its description and categorization of the withheld documents.” *Fairfield*, 2023 ME 12, ¶ 12, 288 A.3d 1220 (citation omitted). The review may be done on a sampling basis. *Id.*

Here, there are 1,067 pages of documents at issue. As set out in the trial court Opinion, these documents comprise:

1. The Solicitation Materials

The court has reviewed the solicitation materials The court finds these materials contain information encouraging investment by MainePERS in various funds and companies controlled by the funds....

2. The Business Updates

The business updates ... consist of a number of different types of documents including quarterly and annual reports, accounting statements, and notices regarding the bankruptcy filing and conclusion....

3. The McKinsey Materials ...

[A document that] contains significant strategic information provided by McKinsey and Company, a third-party consultant, to Paine Schwartz.

A. 15-16 (Op. at 9-10). *See also* A. 58-60 (Exceptions Log). The Superior Court reviewed these materials *in camera*. A. 15-16 (Op. at 9-10). To illustrate the fact-intensive nature of that review, the solicitation materials include a 113-page private placement memorandum,⁵ and the business updates include a 36-

⁵ Document A-1, Private placement memorandum.

page quarterly report and financial statement.⁶ The consultant analysis is a 63-page commercial due diligence report and analysis.⁷ Because the 1,067 pages were redacted, each redaction required careful review by the trial court.

This record compares favorably to the record in *Fairfield*. In that case, the Court was confronted with reviewing up to 2,700 pages of DNA contamination logs and quality assurance records. *Fairfield*, 2023 ME 12, ¶¶ 3, 20, 288 A.3d 1220. The *Fairfield* trial court had already conducted an *in camera* review and affirmed the Maine State Police’s decision to withhold. *Id.* ¶¶ 7, 12 n.5. While this appeal involves fewer pages, 1,067 pages is still “a large number of requested documents,” and reviewing the 1,067 pages of documents is still highly fact-intensive given that many of the documents are long, complex, finance documents and the redactions make review especially intensive. The *Fairfield* procedure applies here.

Applying *Fairfield*, the Superior Court had a sufficient factual record here on which to act. That record comprises sworn statements substantiating the decision to redact, *in camera* review, an exceptions log, joint stipulated facts, and the parties’ written submissions. A comparable record was endorsed by this Court in *Fairfield*. *See id.* ¶ 12 n.5.

⁶ Document B-20, Wawona Co-Investment Fund and Wawona/Maverick Co-Investment Fund Quarterly Reports and Financial Statements dated June 30, 2023.

⁷ Document C-1, Progress Review updated November 18, 2016.

And the Superior Court “did not commit clear error in its description and categorization of the withheld documents” based on that record. *See id.* ¶ 12. With respect to all of the redacted documents, the Superior Court held that MainePERS had a reasonable basis to determine that disclosure of the redacted materials could impair MainePERS’s ability to obtain similar information in the future. A. 15-16 (Op. at 9-10). In support, the Superior Court properly cited the Affidavit of the Chief Investment Officer of MainePERS and the contents of the documents themselves. A. 15-16 (Op. at 9-10).

The Bennett Affidavit details why MainePERS invests in private equity transactions like the Prima Wawona investment. Mr. Bennett has more than three decades of experience in investment matters. A. 36 (Bennett Affidavit ¶ 1). As Chief Investment Officer, he is responsible for overseeing MainePERS’s public and private market investments. A. 36 (Bennett Affidavit ¶ 1). According to Mr. Bennett, MainePERS invests in private market investments because it “expect[s] to earn a premium from private market investments over their public market counterparts” A. 36-37 (Bennett Affidavit ¶ 5). “[T]his premium is crucial to MainePERS earning its expected rate of return to maintain stable contribution rates and pay the benefits that have been earned by public employees.” A. 37 (Bennett Affidavit ¶ 5).

Mr. Bennett also describes the consequences of MainePERS disclosing the private investment information that it receives relating to such private market investments. In Mr. Bennett's experience, private market investment managers "maintain tight control over information about their investments" A. 37 (Bennett Affidavit ¶ 6). MainePERS receives such information to make informed decisions regarding investments, but it is confidential and proprietary to the fund managers. A. 37 (Bennett Affidavit ¶¶ 6-7). According to Mr. Bennett, "if MainePERS were not able to maintain this information as confidential, private market investment managers would withhold this crucial information from MainePERS or be unwilling to work with MainePERS." A. 37 (Bennett Affidavit ¶ 8).

The documents at issue contain just the kind of private investment information described in the Bennett Affidavit. As the Superior Court properly found, that information includes: "Paine Schwartz's investment strategy and philosophy as well as the past and prospective financial performance of some of its portfolio companies[;]" "calculations and analysis of the numbers in" business updates; and "significant strategic information provided by McKinsey and Company, a third-party consultant, to Paine Schwartz." A. 15-16 (Op. 9-10).

The Superior Court also found that MainePERS had just and proper cause to redact the Paine Schwartz solicitation materials and the consultant analysis for an additional reason – that MainePERS could reasonably have determined that disclosure could cause substantial harm to the competitive position of Paine Schwartz. A. 15-16 (Op. 9-10). Again, the record reflects that the solicitation documents contain information concerning Paine Schwartz’s investment strategy and philosophy as well as the past and prospective financial performance of some of its portfolio companies, and the McKinsey document contains significant strategic information provided by a consultant to Paine Schwartz. A. 15-16 (Op. 9-10).

The Superior Court’s findings also are supported by other evidence in the record but not cited in its Opinion, namely the Affirmation of the General Counsel of Paine Schwartz. The Malavazzi Affirmation confirms Mr. Bennett’s concern that disclosure of the private investment information could impair MainePERS’s ability to obtain such information in the future: “disclosure of this information could have a chilling effect on the type of information that [Paine Schwartz], and similarly situated entities, are willing to provide limited partners or other investors in the future” A. 43 (Malavazzi Affirmation ¶ 16). And Ms. Malavazzi details how disclosure of that information could cause substantial harm to Paine Schwartz’s competitive position “by potentially

revealing [Paine Schwartz's] financial information and business strategies to competitors[,]” and “by potentially impacting [Paine Schwartz's] ability to attract limited partners and other business partners.” A. 43 (Malavazzi Affirmation ¶¶ 14-15). In Ms. Malavazzi's experience, “potential investors and business partners are, understandably, extremely protective of their confidential information and may be deterred from working with [Paine Schwartz] if they believe there is a risk that their confidential information could be subject to public disclosure” A. 43 (Malavazzi Affirmation ¶ 15).

Against this record evidence, the Superior Court weighed and rejected two arguments by Mr. Clopper that he presses on appeal. A. 16-17 (Op. at 10-11). First, the Superior Court correctly rejected Mr. Clopper's argument that disclosure of the information could not impair MainePERS's ability to obtain similar information or cause substantial competitive harm because Prima Wawona went bankrupt. A. 17 (Op. at 11). *See also* Bl. Br. at 16-23. As the Superior Court reasoned, one portfolio company's failure does not mean that MainePERS was unreasonable when it decided that disclosing information given to it by a private equity partner could “impair its ability to obtain similar commercial information from other sources (or Paine Schwartz) in the future.” A. 17 (Op. at 11). Also, regardless of whether Prima Wawona still exists, “MainePERS could reasonably have concluded that disclosure of these

documents would cause substantial harm to either its own or Paine Schwartz's competitive position, as many of the documents contain sensitive strategic information." A. 17-18 (Op. at 11-12).

Second, the Superior Court properly rejected Mr. Clopper's proposition that other jurisdictions releasing "documents like those sought by him" meant that MainePERS's decision under the private investment information exception was unreasonable. A. 17 (Op. at 11). *See also* Bl. Br. at 27-33. As the court found, such disclosures do not "restrict the broad discretion that statute grants to MainePERS" A. 17 (Op. at 11). The Superior Court did not clearly err by rejecting these arguments and instead crediting the Bennett Affidavit and the contents of the documents submitted for *in camera* review. *See Fairfield*, 2023 ME 12, ¶¶ 20-32, 288 A.3d 1220.

Moreover, even if this Court does not apply the *Fairfield* procedure and so reviews all 1,067 pages of documents, it should still find the Superior Court did not clearly err. This is because *Fairfield* is not the only FOAA case in which this Court has applied that deferential standard. In *Blue Sky West*, this Court likewise held that a trial court "did not commit clear error" by finding that wind power project valuation information was confidential pursuant to a FOAA exception for certain "proprietary information." 2019 ME 137, ¶ 39, 215 A.3d 812 (applying 36 M.R.S. § 706 (2017), *repealed and replaced by* P.L. 2017, ch.

367, §§ 4-5 (effective Aug. 1, 2018)). In so holding, this Court appears to have reviewed all of the valuation information. *Id.* ¶¶ 38-41. For all of the reasons set out above, whether after a *Fairfield* review or otherwise, this Court should find no clear error and affirm the Superior Court judgment.

III. Alternatively, MainePERS demonstrated just and proper cause for the redactions.

That should be the end of the analysis. However, if this Court declines to apply the deferential standard of review here, it should take a fresh look at all 1,067 pages of documents. This is what Mr. Clopper requests, Bl. Br. at 16-44, and it is how this Court has sometimes reviewed decisions affirming refusal to produce under FOAA. In such a review, a public entity has the burden of proving “just and proper cause” for the denial of a FOAA request and proving that information withheld from a FOAA request falls within an exception to FOAA. *Dubois*, 2018 ME 67, ¶¶ 16-17, 185 A.3d 734; *Anastos*, 2011 ME 41, ¶ 5, 15 A.3d 1279; *Springfield Terminal Ry. Co.*, 2000 ME 126, ¶ 9, 754 A.2d 353. In reviewing whether MainePERS demonstrated just and proper cause, this Court should apply the Superior Court’s interpretation of the private investment exception, which applies to “actual” past investments (*see supra* at 16-20) and is otherwise uncontested by Mr. Clopper on appeal. As the Superior Court held based on the text and legislative history of 5 M.R.S. § 17057(4), MainePERS can

demonstrate just and proper cause for its redactions if it “properly exercised its discretion by withholding and/or redacting the investment documents in this case.” A. 12 (Op. at 6).

a. MainePERS had a reasonable basis to determine that disclosure may impair obtaining private investment information or cause substantial competitive harm.

Contrary to Mr. Clopper’s claim (Bl. Br. at 16-27), MainePERS had a reasonable basis to determine to redact the documents here. As detailed above, *see supra* at 22-23, the documents comprise solicitation materials and business updates, and an analysis done for Paine Schwartz by consultant McKinsey & Co. MainePERS’s decision to redact those documents is substantiated by the Bennett Affidavit and the Malavazzi Affirmation. Those sworn statements set out how disclosure could impair MainePERS’s ability to obtain similar information, *see supra* at 24-26, and how disclosure could cause substantial harm to the competitive position of Paine Schwartz, *see supra* at 26-27.

In addition, MainePERS had a reasonable basis to decide that disclosure could cause substantial harm to its own competitive position. This additional reason was not addressed in detail by the Superior Court and so is not addressed above. But it provides yet a third ground on which to find that MainePERS had a reasonable basis for its decision to redact. As set forth in the Bennett Affidavit, participating in private market investments is “crucial to

MainePERS earning its expected rate of return” A. 37 (Bennett Affidavit ¶ 5). But disclosing private investment information would result in private market investment managers “withhold[ing] this crucial information from MainePERS or be[ing] unwilling to work with MainePERS.” A. 37 (Bennett Affidavit ¶ 8). In other words, MainePERS also reasonably determined that its own competitive position could suffer substantial harm because disclosure could result in not participating in private market investments MainePERS needs to make its return target or in not receiving information about those investments that it needs to analyze them.

MainePERS’s determinations are supported by record evidence in addition to the Bennett Affidavit and the Malavazzi Affirmation, namely the 1,067 pages of documents submitted for *in camera* review. Review of the information that MainePERS redacted confirms that MainePERS had a reasonable basis for its decision. Like the Superior Court, this Court should find that MainePERS had just and proper cause for its redactions.

b. MainePERS’s decision is not made unreasonable by the bankruptcy of one fund portfolio company.

In the face of this record evidence, Mr. Clopper points to the Prima Wawona bankruptcy. *See* Bl. Br. at 16-23. According to Mr. Clopper, the fact that Prima Wawona was liquidated and certain disclosures were made in that

process “moots” any confidentiality concerns as to information about Prima Wawona redacted by MainePERS. But the question is not whether Prima Wawona has any interests to protect, but rather whether MainePERS reasonably determined that disclosure of private investment information, including information about Prima Wawona, could impair its ability to obtain such information or cause substantial competitive harm to it or Paine Schwartz.

The answer, again, is Yes. MainePERS provides retirement benefits for public employees in Maine and invests in private equity funds to do so. A. 45 (JSF ¶¶ 1-2). Paine Schwartz acts as the investment manager for funds that invest in companies in the food and agribusiness sector. A. 46 (JSF ¶ 8). As such, each of MainePERS and Paine Schwartz exists and could reasonably be harmed by disclosure of private investment information concerning a private equity investment in an agricultural business.

None of the documents redacted by MainePERS were among the documents made public in the Prima Wawona bankruptcy. A. 53 (JSF ¶ 47). The solicitation materials, business updates and consultant analysis reflect confidential and proprietary business information, including: Paine Schwartz’s “proprietary investment strategies [and] internal analyses regarding the investment opportunity, relevant market, and competitive landscape[.]” “detailed financial statements, operational and strategic updates, and financial

projections and forecasts[;]” and “McKinsey’s proprietary analyses regarding the relevant market, consumption trends, supply dynamics, and production economics.” A. 41-43 (Malavazzi Affirmation ¶¶ 9-12). That information “is not publicly available and is commercially valuable to [Paine Schwartz].” A. 42-43 (Malavazzi Affirmation ¶¶ 10-12).

The documents Mr. Clopper highlights (Bl. Br. at 22-23) reflect this valuable information:

- One document comprises capital calls issued by the co-investment funds that invested in Prima Wawona.⁸ The redacted portion reflects the total amounts of capital called from all investors, the purposes of the calls, and banking details. (MainePERS’s share of those contributions is produced.)
- Two documents are letters from Paine Schwartz to investors concerning the Prima Wawona bankruptcy.⁹ The redacted portions of the letters reflect steps taken by Paine Schwartz in advance of the bankruptcy proceeding and valuation of the firm.
- The final document is an annual report by the co-investment fund that invested in Prima Wawona.¹⁰ The detailed financial statements and discussion are redacted.

⁸ Document B-8, Wawona Maverick Co-Investment Fund Capital Demand Notices dated December 14, 2022.

⁹ Document B-13, Paine Schwartz Partners (PSP) notice of filing bankruptcy to Fund IV and Prima Wawona Co-Investment Limited Partners dated October 13, 2023; Document B-28, PSP letter to co-Investors dated April 16, 2024 re: conclusion of bankruptcy process and PSP letter with attachment.

¹⁰ Document B-24, Wawona / Maverick Co-Investment Fund I Annual report and Financial Statement dated March 31, 2024.

The redacted information in these documents is confidential and proprietary financial and operational information. Disclosing how Paine Schwartz runs a company in which it takes a controlling stake, even if that company has since gone bankrupt, still deprives Paine Schwartz of that value. The Bennett Affidavit and the Malavazzi Affirmation detail the harms that could follow such disclosure. *See* A. 37 (Bennett Affidavit ¶¶ 8-9); A. 43-44 (Malavazzi Affirmation ¶¶ 14-16).

Against this backdrop, Mr. Clopper's reliance on *MaineToday Media* is misplaced. *See* Bl. Br. at 19-20. Far from establishing a general rule that timeliness of the information is always a relevant consideration when applying any FOAA exception, Bl. Br. at 19, that case turned on whether the State had shown that disclosure of E-9-1-1 transcripts would create the reasonable possibility of interfering with law enforcement proceedings, as required under the specific exception at issue. *See MaineToday Media*, 2013 ME 100, ¶¶ 28-31, 82 A.3d 104. The *MaineToday Media* Court ordered production because it held that the State had failed to argue any such particularized possibility of harm. *Id.* The well-supported record here of why even information about Prima Wawona is not publicly available and is commercially valuable to Paine Schwartz stands in stark contrast to *MaineToday Media*.

Mr. Clopper’s federal citations also miss the mark. *See* Bl. Br. at 19. Those cases apply FOIA Exemption 4, 5 U.S.C. § 552(b)(4) (2026), which exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” But the text of FOIA Exemption 4 is different from the private investment information exception at issue here, as it requires the withheld information to be “privileged or confidential,” and so federal constructions of that text are of limited use. Regardless, the federal cases Mr. Clopper cites do not stand for a general rule that information about a bankrupt entity, or stale information, is never confidential under FOIA. *See Forest Cnty. Potawatomi Cmty. v. Zinke*, 278 F. Supp. 3d 181, 205-06 (D.D.C. 2017) (information confidential even though “several years old” where evidence that it was relevant to ongoing commercial activity); *Ctr. for Auto Safety v. Dep’t of Treasury*, 133 F. Supp. 3d 109, 134 (D.D.C. 2015) (information not confidential where post-restructuring car manufactures failed to rebut expert testimony that information about failed manufacturers would not be useful to competitors); *Biles v. Dep’t of Health & Hum. Servs.*, 931 F. Supp. 2d 211, 225-27 (D.D.C. 2013) (information not confidential where agency failed to rebut expert testimony of significant market changes).

Moreover, none of Mr. Clopper’s citations involves a FOAA exception like § 17057(4)(A) that vests in MainePERS extraordinarily broad discretion to

determine whether disclosure could impair its ability to obtain private investment information in the future or cause substantial harm to the competitive positions of MainePERS and Paine Schwartz.

c. MainePERS's decision is not made unreasonable by other jurisdictions disclosing different documents.

In addition, the fact that other jurisdictions disclosed other documents relating to Paine Schwartz funds does not mean that MainePERS was unreasonable. *See* Bl. Br. at 27-33. These Paine Schwartz fund documents can be found in the record as Exhibit C to the Affidavit of Samuel D. Zuerier and Exhibits 2-14 to the JSF. Mr. Clopper argues that the disclosures of these documents render MainePERS's decision unreasonable because those other jurisdictions still are able to invest in private equity.

Initially, the documents disclosed by other jurisdictions are not included in the 1,067 pages that Mr. Clopper requested here. The fact that other jurisdictions disclosed other documents and still invest in private equity does not mean that MainePERS was unreasonable in deciding to redact the private investment information it received. The Bennett Affidavit sets out the basis for MainePERS's decision that disclosure may impair its ability to obtain such information or cause substantial competitive harm. *See* A. 37 (Bennett Affidavit ¶¶ 8-9).

In fact, the experience in other jurisdictions where public entities have not treated private investment information as confidential reinforces that MainePERS made a reasonable determination. MainePERS's private equity consultant, for example, referred to that experience in the memo provided to the Appropriations Committee when it was considering the private investment information exception: "Numerous general partners of these funds have prohibited public investors, subject to broad FOIA provisions, from being investors [and o]ther general partners have limited disclosure of information to public investors." A. 57 (L.D. 1524 Committee File Materials). Indeed, in a judicial decision declining to disclose private equity agreements under New Jersey's public access law, a trial court in that state cited to the experiences of California, Michigan, and Texas, where such documents had been disclosed. *Comm'n Workers of Am. v. McCormac*, No. MER-L-3217-05, 2008 WL 1780819 (N.J. Super. Ct. Law Div. Mar. 05, 2008). In each case, investment firms limited business with the jurisdiction after their documents were disclosed and the state disclosure laws were then amended to provide more confidentiality. *Id.*¹¹

¹¹ Mr. Clopper's comparison of fund performance (Bl. Br. at 32) likewise does not make unreasonable MainePERS's decision to redact. In addition to the reasons above, Mr. Clopper ignores factors like funding status, risk/return targets, asset allocation, and size that would be necessary to meaningfully compare pension fund performance.

d. MainePERS's redactions are otherwise supported.

Finally, Mr. Clopper repeats on appeal his recitation of other complaints about the redactions that MainePERS made to the 1,067 pages of documents: that MainePERS's redactions are excessive; that MainePERS consulted Paine Schwartz about redaction of information that could substantially harm the competitive position of Paine Schwartz if disclosed; and that the public interest in disclosure outweighs the need for confidential treatment here. Bl. Br. at 25, 33-44. Not one of these arguments undercuts that MainePERS had a reasonable basis for its redactions.

MainePERS's redactions are fully supported by the private investment information exception. To support his claim of excessive redactions, Mr. Clopper makes much of the fact that, while the 1,067 pages of documents are redacted, not everything in those documents is blacked out. According to Mr. Clopper, "MainePERS must ... have determined that disclosure of the portions of the documents it disclosed would not" impair its ability to obtain private investment information or cause substantial competitive harm. Bl. Br. at 39. But it simply does not follow, as Mr. Clopper would have it, that disclosure of that information "means there must be more in the redacted materials that would not have those effects" and so must also be disclosed. *See* Bl. Br. at 39. Neither does it follow that there must be excessive redactions because the

Opinion below states there is “*substantial information contained within the [solicitation] documents that pertains to Paine Schwartz’s investment strategy and philosophy as well as the past and prospective financial performance of some of its portfolio companies.*” See Bl. Br. at 40 (quoting A. 15 (Op. at 9)). In fact, the trial court found that MainePERS demonstrated just and proper cause for each and every redaction: “[T]he court finds the redactions MainePERS made to be consistent with its discretionary authority in § 17057(4).” A. 15 (Op. at 9). Review of the information that MainePERS redacted confirms that MainePERS redacted private investment information consistent with the FOAA exception and properly produced the documents in redacted form.

Mr. Clopper also cites (Bl. Br. at 25, 41) to cases where documents were ordered disclosed under FOAA with only discrete confidential information redacted. *Cyr v. Madawaska Sch. Dep’t*, 2007 ME 28, ¶ 11, 916 A.2d 967 (ordering redaction from a report of the confidential information concerning school employees and production of the rest); *Guy Gannett Pub. Co. v. Univ. of Me.*, 555 A.2d 470, 471-72 (Me. 1989) (ordering redaction from a settlement agreement of one sentence containing confidential medical information of a public employee and production of the rest); *S. Portland Police Patrolman’s Ass’n v. City of S. Portland*, No. AP-05-026, 2005 WL 3338723, at *2 (Me. Super. Ct. Sept. 30, 2005) (ordering redaction from a report of the confidential

information concerning a municipal employee and production of the rest). But this is not a situation where there is only discrete confidential information like the one sentence of medical information at issue in *Guy Gannett* or the employee information in *Cyr* and *South Portland Police*. Rather, the redacted information in this matter includes discrete pieces of information like the amount and purposes of a capital call,¹² but it also includes information like Paine Schwartz’s “proprietary investment strategies [and] internal analyses regarding the investment opportunity, relevant market, and competitive landscape” See A. 42 (Malavazzi Affirmation ¶ 10). See also A. 42-43 (Malavazzi Affirmation ¶¶ 10-12). For example, analysis of Prima Wawona reflects Paine Schwartz’s selection of information, its research methods, its industry analysis, and other information revealing how Paine Schwartz goes about buying and selling businesses.¹³ Redaction of such analysis and other financial and operational information will not be limited to a line or two because the assembly as a whole is confidential.

MainePERS’s redactions are supported by *Anastos v. Town of Brunswick*. There, the Court considered whether a report containing some publicly available data was nevertheless properly withheld in full pursuant to the FOAA

¹² Document B-8, Wawona Maverick Co-Investment Fund Capital Demand Notices dated December 14, 2022.

¹³ See, e.g., Document A-10, Co-investor materials November 2016.

exception codified at 5 M.R.S. § 13119-A(1) (2026). *Anastos*, 2011 ME 41, ¶¶ 9-10, 15 A.3d 1279. The requestor argued that the report should have been released in redacted form. *Id.* This Court affirmed the trial court decision that, to the contrary, the entire report was confidential because it reflected proprietary analysis: “[T]he study at issue in this case cannot be dissected into sensitive and nonsensitive information because the selective inclusion of public and private data, and the analysis of that data, creates a single, integrated work product.” *Id.* ¶ 12. The Court should reach a similar result here, where heavy redaction is necessary to protect from disclosure analysis and other financial and operational information.

MainePERS appropriately conferred with Paine Schwartz. Mr. Clopper’s next complaint is that MainePERS conferred with Paine Schwartz. Bl. Br. at 33-36. But Paine Schwartz provided requested information to MainePERS. A. 46-47 (JSF ¶¶ 10, 13, 17, 23-24). And MainePERS is charged with determining whether disclosure of that information may, among other things, “[c]ause substantial harm to the competitive position of ... the person or entity from whom the information was obtained” 5 M.R.S. § 17507(4)(A), (2). MainePERS acted consistently with the statute by conferring with Paine Schwartz about that potential harm.

In so doing, MainePERS did not cede to Paine Schwartz the decision whether to redact. The redacted information is confidential not because Paine Schwartz said so, but because MainePERS reasonably exercised its discretion and determined that disclosure could impair its ability to obtain such information and cause substantial competitive harm. *See* A. 37 (Bennett Affidavit ¶¶ 8-9).

The private investment information exception, as written, reflects the balancing of interests in disclosure and confidentiality. Mr. Clopper also urges the Court to order disclosure to “expos[e] to the light of day the history and circumstances of this bad investment decision made by the MainePERS staff.” Bl. Br. at 42. Initially, it is difficult to square Mr. Clopper’s professed interest in transparency with the fact that he represents the former 25% owner of Prima Wawona. A. 53 (JSF ¶ 49); Bl. Br. at 9. But whether Mr. Clopper is a good-governance activist or a lawyer for an aggrieved former owner – or neither – the result is the same: the redacted material is confidential pursuant to the private investment information exception to FOAA.

The plain language of that exception reflects the Legislature’s balancing of the interest in disclosure and the need for confidentiality. On the one hand, 5 M.R.S. § 17507(4)(B) directs public disclosure of, among other things, the name of the fund, contributions and distributions made to or received from the

fund and the market value of the investment. On the other, 5 M.R.S. § 17507(4)(A) reserves to MainePERS the sole discretion to determine whether disclosure of other private investment information should be denied because disclosure may impair its ability to obtain such information or cause substantial competitive harm. The Legislature was well aware that it was excluding from public view certain private investment information so that MainePERS could make private equity investments. *See* A. 55-57 (L.D. 1524 Committee File Materials).

The private investment information exception should be applied as written. *See Anastos*, 2011 ME 41, ¶¶ 5 & 9, 15 A.3d 1279 (FOAA disclosure considerations must be balanced against the legislative policy in favor of confidentiality). MainePERS publicly disclosed the Prima Wawona loss. A. 50 (JSF ¶ 33). And, consistent with the statute, MainePERS redacted the private investment information in the 1,067 pages of documents.

CONCLUSION

For the reasons stated above, MainePERS asks that the Court affirm the judgment of the Superior Court.

Dated: June 3, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Nichols, Assistant Attorney General, do hereby certify that I have emailed a copy of this brief, and will upon notification of approval by the Court cause to be mailed a paper copy to:

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