

December 13, 2017

Via E-Mail Only (lawcourt.clerk@courts.maine.gov)

Matthew Pollack, Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101

Re. Recommendations Presented to the Court in the Report of the Task Force on Transparency and Privacy in Court Records. Comments by Mal Leary, TAP member and President, National Freedom of Information Coalition

I want to thank Chief Justice Leigh Saufley for naming me to the Transparency and Privacy Task Force. It has been a privilege to serve on the task force and provide these comments.

As the branch of government that resolves disputes among members of the public and renders justice, the courts must have the trust and confidence of the citizenry. An open and transparent court system is necessary to build that trust and confidence.

I was also privileged to serve on TECRA, the Task Force on Electronic Court Record Access more than a decade ago. That broad-based group reached a unanimous conclusion in its findings that the public expected the state to establish an electronic court records system and that the public would have access to that system.

“The public expects access in electronic format,” the report stated.

The TAP majority proposal would limit electronic access by the public to a type of docket sheet that would list the documents filed with the court in a particular matter. To actually view or get copies of those documents, a member of the public would have to go to a courthouse and view the documents on a computer terminal or ask the clerk to print them a hardcopy.

This makes a mockery of electronic access when most Mainers are carrying a sophisticated computer

that can allow them to access libraries full of information, including documents filed in federal court. The smartphone that many of us carry throughout the day has more computing power than the NASA computers used to control the spacecraft that landed on the moon.

While some of us struggle to master our smartphones, our children and grandchildren use their phones with the ease of taking notes on a yellow pad.

Mainers will not just be inconvenienced by such a system as recommend by the majority, their ability to scrutinize the operation of their government will be hampered. For example, in many states if the state and a county are in court over some matter, the public can read the documents in that case from home. This proposal would require a member of the public in Maine to go to a courthouse during the day, when most people are working, to view or get copies of the documents.

As I said in my dissenting comments to the TAP report, Public records are public records, regardless of the format used by the custodian of those records. The court should reject the majority recommendation and adopt an electronic records system with online public access for all documents currently available at the court house.

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