STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DKT. NO. WAL-25-431

STEPHEN BENNETT AND ERIN BENNETT-WADE

Plaintiffs-Appellants

v.

WALDO COUNTY SHERIFF'S OFFICE

Defendant-Appellee, and

TOWN OF FREEDOM

Party-In-Interest

ON APPEAL FROM THE SUPERIOR COURT
BELFAST
DOCKET NO. CV-25-15

REPLY BRIEF OF APPELLANTS

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I. INTRODUCTION

The public's right to know about the actions of their elected officials is both the purpose of Maine's Freedom of Access Act (FOAA) and the core issue in this case. In arguing for a strict interpretation of the exemptions to the Act contained in 16 M.R.S. § 804, the Appellee seeks to treat all individuals mentioned in an investigative report identically, regardless of whether they are private citizens or public officials acting in their official capacities. This categorical approach violates FOAA's requirement that exceptions be construed narrowly and transforms a privacy protection designed for crime victims and witnesses into a shield that allows government officials to avoid accountability.

The Appellants' opening brief identified three critical errors in the Superior Court's analysis: (1) failing to recognize that public officials acting in their official capacity have diminished privacy interests; (2) imposing an impermissibly high "serious or substantiated misconduct" threshold for the public-interest requirement; and (3) failing to consider partial disclosure that would protect private individuals while revealing official conduct.

The Appellee's response brief does little to justify these errors. It mischaracterizes the purpose of Appellants' request as purely private, invokes *Blethen Maine Newspapers, Inc. v. State* — a case concerning crime victims — to shield elected officials, and attempts to distinguish federal cases involving

high-level officials by asserting that local officials are entitled to greater privacy protection, thereby inverting the principle of accountability. Most tellingly, Appellee cannot explain why an official contacted because of their governmental position to answer questions about official Town authorization should have their identity protected when they refuse to provide a law enforcement officer with information about an alleged trespass on a constituent's property. That is precisely the government conduct FOAA is designed to illuminate. Finally, Appellee does not explain why the Superior Court was justified in failing to at least partially unredact the report, as allowed by Maine law.

ARGUMENT

I. The Appellee Fundamentally Mischaracterizes the Nature of Official Government Communications as Private Interactions.

A. The Appellee Conflates Private Individuals with Public Officials.

Appellee treats all individuals mentioned in the Report as possessing identical privacy interests. This approach is fundamentally flawed because it ignores the critical distinction between private individuals and public officials acting in their official capacity, a distinction that lies at the heart of this appeal. The facts establish that Deputy Dyer contacted at least one Town of Freedom official specifically because of that person’s governmental role. That official was neither a crime victim nor a voluntary witness, but was contacted to provide information

about whether the Town's Select Board had authorized certain conduct on Appellants' property. This inquiry goes to the core of official government action and public accountability.

Despite this distinction, the Appellee's brief repeatedly refers to "individuals," "witnesses," and "persons" without ever acknowledging their fundamental differences. This phrasing allows Appellee to invoke privacy protections crafted for one category (private citizens swept into criminal investigations) and misapply them to a fundamentally different one: elected officials acting in their governmental capacity.

FOAA's exceptions must be "strictly construed to promote the Act's underlying policies and purposes." *Moffett v. City of Portland*, 400 A.2d 340, 348 (Me. 1979). A strict construction requires courts to distinguish between those who are genuinely entitled to privacy protection and those whose official conduct directly implicates governmental accountability. By treating all individuals identically, Appellee effectively urges an expansive construction of the privacy exemption. This Court should reject that approach.

The context makes clear that the town official was acting in an official capacity. The Report shows that the official discussed what the Select Board did and did not authorize. App. 28. No private citizen would have authority to speak definitively about Select Board authorizations, and only an official with knowledge

of governmental deliberations could provide such information. When a public official speaks to law enforcement about official government actions that are the subject of an investigation into alleged wrongdoing on private property, that official is exercising governmental authority, not engaging in private conduct protected by 16 M.R.S. § 804(3).

Appellee's attempt to relabel all of the individuals mentioned in the Report as undifferentiated "people present" obscures the crucial fact that at least one person was contacted precisely because they were a Town official with knowledge of Select Board authorizations, not an ordinary private witness. In fact, none of the interviewees were "people present" at the alleged cutting on private property. They were interviewees who likely only had information about such cutting. By treating that official as if they were simply another private participant in a civil dispute, Appellee asks this Court to erase the distinction between private citizens and public officials that *Blethen* and the federal cases require courts to confront when balancing privacy against the public's right to know what its government is doing.

B. The Appellee's Brief Disregards the Balancing Test Adopted in *Blethen*.

The Appellee's brief mentions the FOAA's core purpose and the balancing test adopted by this Court in *Blethen*, but then ignores both in favor of an unduly narrow reading of the Act's exemptions that undermines them. In his investigative

report, Deputy Dyer explicitly characterized the matter as a "civil issue being addressed in civil court." App. 28. That characterization is crucial because, in *Blethen*, this Court held that heightened privacy protections were warranted where investigative records often contain sensitive, unverified information and where "few people wish to be publicly associated with investigations of alleged criminal conduct, whether as a perpetrator, witness, or victim." *Blethen*, 2005 ME 56, ¶ 15, 871 A.2d at 531. The *Blethen* framework is designed to balance private and public interests in determining whether disclosure is unwarranted. Here the police themselves concluded the matter was civil, which significantly diminishes the privacy interest of an elected official who, by virtue of office, is a party to that dispute. The Appellee, however, abandons that balance, effectively asserting that anyone named in any investigative record enjoys an unassailable "apex" privacy interest, even invoking the fact that intentional dissemination of such information can be a Class E crime. Appellee's Br. 11.

At the same time, Appellee's arguments show why its position cannot be sustained. Appellee insists there is "little public interest in Appellants' civil case," and that Appellants seek to unredact portions of the Report "simply" to learn the identities of the parties for use "in a civil lawsuit." Appellee's Br. 13-15. That assertion is incomplete and legally beside the point. The record makes clear that Appellants requested the Report to understand what a Town of Freedom official

told law enforcement regarding whether the Select Board had authorized cutting trees on private property, a question that goes directly to official governmental decision-making, regardless of any parallel private dispute.

FOAA does not turn on a requester's subjective motive; its public-interest inquiry asks whether disclosure would shed light on "what [the] government is up to," not whether the citizen might also use the information in litigation. *Blethen*, 2005 ME 56, ¶ 29 (quoting *Reporters Committee*). The public interest exists so long as unredacting the Town official's identity and statements reveals how a local official understood and communicated the scope of Select Board authority to a criminal justice agency, even if Appellants also have a private interest in the same information. Appellee's attempt to recast that dual-purpose request as "simply" a civil-litigation tactic improperly collapses FOAA's public-interest analysis into an unrecognized motive test.

II. The Appellee Misreads Federal Precedent on Public Officials' Diminished Privacy Interests

Appellee attempts to distinguish the federal cases (recognizing that public officials have diminished privacy interests in their official conduct) by asserting that those decisions involved "high-level" federal officials whereas this case involves "individuals who may have been local Select Board members." Appellee's Br. 14-15. That framing – higher level officials deserve more privacy than

lower-level officials – misunderstands the core principle those cases apply. The federal courts did not draw lines based on the rank or agency of the official; they focused on whether disclosure would shed light on "official information that sheds light on an agency's performance of its statutory duties." *Quinon v. FBI*, 86 F.3d 1222, 1230–31 (D.C. Cir. 1996) (quoting *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 894–95 (D.C. Cir. 1995)). When an official speaks or acts in a governmental capacity, the public interest in accountability is the same whether the official is a Chief Judge, an Immigration and Naturalization Service General Counsel, or a local town official.

In *Quinon*, the D.C. Circuit framed the "relevant question" as "whether the FBI, not Chief Judge Tjoflat, has engaged in wrongdoing," and emphasized that disclosure serves the public interest when it reveals something about "an agency's own conduct," not when it merely exposes private individuals. *Id.* at 1230–31. That holding was not nearly as restrictive as Appellee suggests, explaining that "[a]lthough *Reporters Committee* and the precedent of this circuit make clear that FOIA extends only to those records which reveal something about agency action, the mere fact that records pertain to an individual's activities does not necessarily qualify them for exemption. Such records may still be cloaked with the public interest if the information would shed light on agency action." *Id.*

That reasoning directly supports disclosure here. Appellants seek the identity and statements of a Town official whom the deputy contacted precisely because of that official's governmental role, in order to determine whether the Select Board had authorized cutting trees on private property. Revealing what that official told law enforcement sheds light both on the Town's handling of the complaint and on the information provided to a criminal justice agency about the scope of local governmental authority.

Similarly, in *Perlman v. Department of Justice*, the Second Circuit held that there was only a "minimal" public interest in the identities of certain third-party witnesses because those names "t[old] little or nothing about either the administration of the INS program or the Inspector General's conduct of its investigation." 312 F.3d 100, 106 (2d Cir. 2002). In that case, the court's reasoning turned on whether the identity at issue illuminated government conduct. Here, the Town official's identity and statements do exactly that: they reveal how a municipal official characterized Select Board authorization when responding to a constituent-driven investigation, and whether that official sought to distance the Town from conduct occurring on private land.

Stern v. FBI follows the same logic. There, the D.C. Circuit allowed disclosure of the Special Agent in Charge's identity while protecting lower-level agents, recognizing that a senior official's conduct is of greater public concern than

that of rank-and-file employees. 737 F.2d 84, 91 (D.C. Cir. 1984). Appellee cites *Stern* to emphasize the official's high rank, but the decision's rationale is that the more responsibility an official has for government action, the stronger the public interest in knowing who they are when misconduct or questionable conduct is alleged. By Appellee's own account, the redacted individual here "may have been" a Select Board member. Appellee's Br. 15. If anything, that fact strengthens the case for disclosure under *Stern*'s accountability logic: if formal position matters, a Select Board member holds the highest rank and responsibility to citizens in town government.

Nor do these federal cases turn on the requester's motives. In each, the courts evaluated whether disclosure would advance the public's ability to assess government performance, not whether the requester had a concurrent private interest. The same is true under FOAA where *Blethen's* adoption of the *Reporters Committee* framework focuses on whether records reveal "what [the] government is up to," while distinguishing information that is "about private citizens" and "reveals little or nothing about an agency's own conduct." 2005 ME 56, ¶ 29. Properly characterized, the Town official's identity and statements fall squarely on the "agency conduct" side of that line.

Properly understood, then, the federal decisions Appellee seeks to distinguish actually reinforce Appellants' position. They establish that privacy interests are

strongest for private individuals swept into investigations and weakest for public officials whose official conduct is at issue. They do not support the notion that local officials enjoy greater secrecy than federal officials, nor do they permit a government agency to recast an accountability-driven FOAA request as "simply" a private discovery tool and thereby downgrade the public interest to "minimal."

III. The Appellee's Brief Fails to Address the Partial Disclosure Alternative Mandated by *Doyle*.

The Appellee's brief is silent on Appellants' third argument: that even if complete disclosure is unwarranted, FOAA allows the Superior Court to order partial disclosure that protects private citizens while revealing the identities and statements of public officials acting in their official capacity.[1] The Appellee's failure to grapple with partial disclosure is especially significant given that its own brief acknowledges that Maine's FOAA is intended to ensure government accountability to the people. Appellee's Br. 13. Partial disclosure answers that charge directly: unredacting public officials' identities and official statements would illuminate government conduct, while maintaining redactions for private individuals would safeguard legitimate privacy interests.

[1] *See, e.g., MaineStay Media, LLC v. Waldo County*, No. AUGSC-CV-2025-152, 2025 WL 4033381, at *5–6 (Me. Super. Ct. Dec. 30, 2025) (ordering disclosure of a police report and an officer's audio recording, with redactions of private individuals' identifying information but leaving the name and actions of the accused and responding officers).

If this Court declines to order full disclosure, partial disclosure is the appropriate remedy. Unredacting the identities and official statements of public officials acting in their official capacity, while maintaining redactions for private citizens, would satisfy 16 M.R.S. § 804(3) by protecting genuine privacy interests while advancing FOAA's central purpose of governmental accountability.

CONCLUSION

The Court should reverse the Superior Court's judgment and order disclosure of the unredacted investigative report, or, at minimum, require disclosure of the identity and statements of the Town of Freedom official who spoke to law enforcement in an official capacity. Properly construed, 16 M.R.S. 804 does not permit government officials to invoke victim- and witness-centered privacy protections to shield their own official conduct from public scrutiny, and FOAA's core purpose of enabling citizens to know "what the government is up to" demands disclosure where, as here, the record illuminates how an elected official understood and communicated the scope of municipal authority. At the very least, FOAA and *Doyle* require the Court to adopt the less restrictive alternative of partial disclosure, preserving redactions for private citizens while unredacting the identities and official statements of public officials, thereby protecting legitimate privacy interests without transforming a narrow exemption into a broad cloak for governmental secrecy. Accordingly, Appellants respectfully request that this Court

reverse and remand with instructions to order full, or in the alternative partial, disclosure consistent with FOAA's mandate of transparency and accountability.

Respectfully submitted, dated in Freedom, Maine, on February 11, 2026.

/s/ Tyler C. Hadyniak

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IV. CERTIFICATE OF SERVICE

I, Tyler C. Hadyniak, Esq., certify that I served two copies of this Reply Brief upon the other parties in this matter by regular U.S. mail, postage paid, with a copy by email, at the addresses below:

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Dated: February 11, 2026

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