



Memorandum

March 27, 2024

To: Board of Trustees

From: Michael Stoddard, Executive Director
Laura Martel, Senior Research and Evaluation Manager

Re: Request to Declare Individual Distributor, Retailer, and Manufacturer Sales Data as "Confidential Records"

Staff requests that the Board affirmatively determine that sales data attributable to a single retailer, distributor or manufacturer are "confidential records" under the Efficiency Maine Trust Act (MRS Title 35-A, Chapter 97) and as such are not subject to Freedom of Access Act requests.

Background

The *Maine Won't Wait* climate action plan and the Governor have established goals for the sale of heat pumps in Maine. The goals pertain to total sales (and installations) of heat pumps in Maine, regardless of whether an incentive was provided. Efficiency Maine and MaineHousing keep records of the quantity of heat pumps associated with the financial incentives provided through their own programs, but do not currently have access to data about heat pumps that are sold/installed outside of these programs. To measure progress towards the goals of the climate action plan, Efficiency Maine is seeking sales data from distributors for all heat pumps sold in Maine. Distributors (and retailers and manufacturers) consider sales data to be sensitive business data and proprietary, and will typically only share such information if it is treated as confidential to avoid jeopardizing a competitive advantage with other distributors, retailers, or manufacturers.

Section 10106 of the Efficiency Maine Trust Act provides for Board approval to treat data as confidential (emphasis added):

1. *Confidential records. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:*
 - A. *A record obtained or developed by the trust that:*
 - (1) *A person, including the trust, to whom the record belongs or pertains has requested be designated confidential and that the **board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage** over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a **business or competitive disadvantage, loss of business or other significant detriment**, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains...*

Proposed Motion

Move to determine that, if requested, sales data attributable to single retailer, distributor or manufacturer be treated as "confidential records" and, as such, not be subject to a Maine Freedom of Access Act request.