

Maine Department of Labor  
Freedom of Access Act (FOAA) Standard Operating Procedure

1. **APPLICABILITY** This standard operating procedure applies to employees of the Maine Department of Labor (DOL) and all DOL contractors.

2. **PURPOSE** To ensure that as part of its commitment to transparency and public accountability, the Department has a consistent, credible and efficient cross-agency process for responding to all requests for information from members of the public submitted to the Department pursuant to Maine's Freedom of Access Act (FOAA), 1 M.R.S. §§ 401-521. This document details Maine DOL's procedure for responding to such requests.

3. **RESPONSIBILITIES**

3.1 **ALL EMPLOYEES AND CONTRACTORS** The records of all Maine DOL employees, contractors and DOL-staffed workgroups are subject to FOAA unless there is a specific statutory exception that applies. It is therefore the responsibility of all employees and contractors to know the general content of the Department records they possess, maintain, manage or control and to assist the Department Public Access Officer in responding to FOAA requests in an appropriate and timely fashion.

3.2 **DEPARTMENT PUBLIC ACCESS OFFICER** The Department Public Access Officer is responsible for ensuring that each public record request is acknowledged within a reasonable period of time and that a good faith estimate of when the response to the request will be complete is provided in accordance with [Section 408-A](#). The Public Access Officer shall serve as a resource within the agency concerning FOAA questions and compliance. The Public Access Officer is responsible for receiving and logging FOAA requests; routing FOAA requests; establishing deadlines for the production of records and notifying designated distribution groups of those deadlines. The Public Access Officer serves as the primary contact between the Department and the requestor including providing the initial response, notification of records availability and invoicing; reviewing all records for responsiveness, confidentiality and privilege (in consultation with the Office of the Attorney General as appropriate); and returning records to staff upon closing of a request. The unavailability of the Public Access Officer may not delay a response to a request, therefore, he or she will, with the Commissioner's approval, designate a staff member to serve in a backup capacity.

3.3 **OFFICE OF THE ATTORNEY GENERAL** The Attorney General's Office is available to assist the Department Public Access Officer and other Department staff in responding to FOAA requests. The Public Access Officer will coordinate requests for assistance with the Office of the Attorney General in responding to FOAA requests.

3.5 **STATE PUBLIC ACCESS OMBUDSMAN** The State Public Access Ombudsman is located within the Office of the Attorney General. The Ombudsman's duties include working to resolve informally complaints by the public and public officials concerning FOAA and, upon request, issuing advisory opinions on the interpretation of and compliance with the FOAA. If the Department's response to a FOAA request is unsatisfactory, the Department may direct the requestor to the Ombudsman.

3.6 **RECORDS CONSIDERED CONFIDENTIAL** Specific categories of documents are exempted from FOAA. For the Department of Labor, these documents include, but are not limited to, personnel records, client records, and unemployment claimant records. In addition, active investigations in Workplace

Safety and Health Division and the Wage and Hour Division are exempt from FOAA, as are consultation records from the SafetyWorks! program in the Workplace Safety and Health Division. More information about FOAA exemptions is available at <http://www.maine.gov/foaa/law/exceptions.htm> . Questions regarding exemptions or confidentiality should be sent to the Public Access Officer and the Office of the Attorney General.

#### 4. PROCEDURES

1. The Department shall make a good faith effort to provide public records as requested by the public. Not all requests for public information need to be processed as a formal FOAA request. When a request for public information is made, the Department should notify the requestor of the public's right to inspect and copy public records. Please note that the Department is not required to create a record that does not already exist. A good faith effort must not delay or inconvenience the regular activities of the Department.
2. When a request is made pursuant to FOAA, Department staff shall immediately notify the Public Access Officer of the request. As set forth in section 3.2, the Public Access Officer is responsible for the coordination of the Department's response to the request. Department staff shall not directly respond to any request without consulting with and obtaining clearance from the Public Access Officer.
3. The Department prefers that FOAA requests be made in writing, though it is not a requirement under FOAA. If a verbal request for records under FOAA is made, the Department's understanding of the request shall be documented in the initial written response to the requestor.
4. Within three working days of receipt, the Public Access Officer shall enter the request in the Department's internal FOAA database, including the requestor's name, date the request was received, link to request letter and status.
5. It is essential to respond to FOAA requests in a timely manner. The Department must reply within five working days from the receipt of the request to acknowledge its submission and to request any needed clarification concerning which public record(s) are being requested. If a request must be denied because it seeks confidential information or meets any exception to the definition of "public record" set forth in FOAA, the Public Access Officer must issue written notice stating the reason(s) for the denial to the requestor within five working days of the request. The requestor has a right of appeal within 30 days.
6. The Public Access Officer should notify the Commissioner, Deputy Commissioner, and appropriate Department staff of its receipt and ask them to ascertain what records they or their team members or contractors may have that are responsive and the estimated time to furnish them.
7. Within a reasonable period of time, the Public Access Officer shall provide to the requestor in writing a good faith, nonbinding estimate of the time and cost for the agency to comply with the request. Current law authorizes a charge of up to \$15 per hour after the first hour of staff time, plus copying costs. Unless a waiver of costs has been approved, a response to a request shall be conditioned upon the requestor's agreement to pay the Department's estimated cost for

complying with the request. If the requestor does not agree to the Department's cost terms, the requestor may narrow the scope of the request and receive a new estimate. The agency or official shall make a good faith effort to respond fully to the request within the estimated time.

8. The Commissioner may waive part or all of the total fee charged if the requestor is indigent or the Commissioner considers release of the public records requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. The Public Access Officer will coordinate requests for waiver to submit to the Commissioner, who has sole authority to grant a waiver.
9. The Department shall make every reasonable attempt to provide responsive records. All Department staff or contractors who possess records that appear to be responsive to the request must conduct a diligent search of all paper and electronic records that they possess, maintain, manage or control. The Department's Bureau directors or their designees are responsible for ensuring that records not necessarily associated with an individual are searched, e.g., prior employee records, databases, or other documents. Responsive records should be provided to the Public Access Officer by the deadline they have established. Responsive staff should also submit staff time, actual costs and copying fees to the Public Access Officer.
10. The Public Access Officer is responsible for compiling all responsive records and reviewing them before releasing them to the requestor. The Public Access Officer is also responsible for removing or redacting information that is designated confidential by statute or otherwise is excepted from the definition of "public record." The Public Access Officer will consult with the Office of the Attorney General as necessary to review any flagged records that may be confidential or otherwise protected by statute. Redacted records shall be held until the FOAA request is closed.
11. In advance of the FOAA being provided to the requestor, the Public Access Officer should notify the Department Commissioner, Director of Communication and other affected parties and provided them copies of the responsive materials if appropriate.
12. When the responsive records are compiled, the Public Access Officer should notify the requestor that the records are available for review or retrieval. Upon delivery, the Public Access Officer should also provide an invoice to the requestor for the Department's cost recovery of time and expenses, as well as a closing letter advising the requestor that the Department considers the request closed. The Public Access Officer will then close the request within the Department's internal FOAA database, pending payment.
13. FEE SCHEDULE
  - DOL Staff Time: \$15.00 per hour after the first hour
  - Inspection in Office: Charging for compiling or converting; no charge for time requester inspects
  - Photocopies: \$0.38 per page, if documents need redaction, two copies must be made and requestor will be charged for both.
  - 4 GB Flash Drive: \$13.00 – \$29.00 each

- CD: \$1.00 each
- Postage: Actual Cost

*NOTE. This guidance document provides general guidelines for the Maine Department of Labor's standardized method for responding to FOAA requests. This guidance does not create or affect any legal rights of persons submitting FOAA requests.*

Sample DOL FOAA Response Letter

Date:

Re: Freedom of Access Act Request dated \_\_\_\_\_, for \_\_\_\_\_

Dear :

On behalf of the Department of Labor, I am responding to your above-referenced request. The Department will produce the requested records to the extent that such records are “public records” as defined by the Freedom of Access Act (the “Act”). The Department denies your request to inspect, copy or abstract any requested records to the extent that such records are confidential, otherwise protected from disclosure, not in the possession or custody of the Department or otherwise outside the scope of the Act.

The Department will strive to make public records available to you as soon as possible. Pursuant to the Act, however, the Department requires a reasonable period to ascertain which of its records, or parts thereof, relate to your request, identify which records are subject to public investigation or copying, and determine which records, or portions thereof, are confidential, otherwise protected from disclosure, or otherwise outside the scope of the Act. It may take the Department more than five days to review the documents formally to determine whether they contain confidential or otherwise restricted information, and that may change the initial estimate.

Also pursuant to the Act, you may be charged for retrieving, compiling, translation, and copying of responsive records. You may inspect public records, without charge for copying, if it is feasible to separate or prevent the disclosure of any confidential information contained in the records. You will be provided with a good faith, non-binding estimate of the time and cost of complying with your request. Photocopies will be charged at \$0.38 per page; if documents need redaction, two copies must be made and the requestor will be charged for both copies.

Finally, please note that the Department will not proceed to comply with your request without your agreement to pay the estimated cost if the estimate exceeds \$30 and will not proceed to comply with your request without payment of the estimated cost if the estimate exceeds \$100.

Sincerely,