



NNEPRA Policy Governing Access to Public Records Under the Maine Freedom of Access Act

Effective Date: 1/29/15
Updated: 1/30/17

1. SUMMARY AND PURPOSE

This Policy Governing Access to Public Records is established to implement the provisions of the Maine Freedom of Access Act (FOAA), 1 M.R.S.A. Sections 400 et seq. The purpose of this policy is to support access to public records in the possession of the Northern New England Passenger Rail Authority (NNEPRA) while, at the same time, complying with state law requirements as to confidential information and maintaining administrative efficiency.

Link to the FOAA: www.maine.gov/foaa

2. DEFINITIONS

Terms used in this Policy Governing Access to Public Records have the same meanings as in the FOAA.

“Public Records”: The FOAA defines "public records" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business." The FOAA then specifies a number of exceptions to this definition:

<http://www.maine.gov/foaa/law/exceptions.htm>. NNEPRA’s specific exceptions can be found here: <http://legislature.maine.gov/statutes/23/title23sec8115-A.html>.

“Requestor”: A person who submits a FOAA request for public records.

3. PROCEDURES FOR REQUESTING PUBLIC RECORDS

Written FOAA requests for public records are preferable and may be submitted to NNEPRA’s Public Access Officer (PAO) at the following address:

Public Access Officer
NNEPRA
75 West Commercial Street
Portland, Maine
04101

Or to:

marina@nnepra.com

FOAA requests also may be made verbally or in writing to any NNEPRA employee, who will relay the request to NNEPRA’s PAO as soon as possible.

Responses to FOAA requests will not be delayed due to the unavailability of the PAO. Should the PAO be unavailable to respond to FOAA requests, the Executive Director will act as the PAO.

4. FORM AND CONTENT OF REQUEST FOR PUBLIC RECORDS

A FOAA request for public records should include the following information:

- A. The requestor's full name, address and phone number.
- B. A brief description of the public records being sought, being as specific as possible. If the exact document is not known, state what specific information is being requested.

5. TIMELINE FOR RESPONSE TO REQUEST FOR PUBLIC RECORDS

- A. Acknowledgment of Receipt and Request for Clarification. NNEPRA will acknowledge receipt of a FOAA request within 5 working days of receiving the request and may request clarification concerning which public records are being requested.
- B. Estimate of Time for Response and Fees. Within a reasonable time of receiving the request, NNEPRA will provide a good faith, non-binding estimate of the time within which NNEPRA will comply with the request, as well as an estimate of the fees that may be charged in connection with the request. Factors affecting "reasonable time" include administrative work load, the complexity of the request and/or the amount of staff time required to comply with the request. NNEPRA will make a good faith effort to fully respond to the request within the estimated time.

6. RESPONSE TO REQUEST FOR PUBLIC RECORDS

- A. No Requirement to Create Record. NNEPRA is not required to create a public record that does not already exist.
- B. Modes of Compliance. When complying with a FOAA request for public records, NNEPRA may:
 - a. provide copies of (or link to electronic copies of) the requested public records;
 - b. give notice of estimated fees that may be charged for researching, compiling and/or for copying (see FEES discussion below); or,
 - c. give the requestor the option to inspect the requested public records at a time and place designated by NNEPRA.
- C. Confidential Information. Some requested records may contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the FOAA. If a requested record contains any confidential or otherwise excepted information, the PAO will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the requested record should be denied.
- D. Electronic Public Records. Access to electronically stored public records will be provided either as a printed document or in an electronic medium in which the record is stored at the requestor's option, except that NNEPRA is not required to provide access to a computer file if it has no ability to separate or prevent disclosure of confidential or otherwise excepted information in that file. The law does not require NNEPRA to provide access to a computer terminal, nor does it require that an electronically stored public record be provided in a different electronic medium or format. If an electronically stored public record must be converted into a comprehensible or usable format in order to provide access to it, NNEPRA may charge a fee for the actual cost of conversion.

- E. Inspection of Public Records. When public records are made available for inspection, this generally will take place during normal working hours at NNEPRA's office. A NNEPRA employee generally will be present throughout the inspection. Documents which the requestor wishes to have copied will be segregated for copying during the course of the inspection, and all copying will be done by a NNEPRA employee. A requestor may be prohibited from bringing bags, brief cases or other similar items into the inspection room.

7. FEES

NNEPRA will charge the requestor any and all fees that are permitted by the FOAA. Such fees include \$15.00 per hour after the first hour of staff time, a reasonable fee to cover the cost of copying, and mailing costs.

If the fees to retrieve, compile and/or redact confidential or other excepted information from the requested records are estimated to exceed \$30, NNEPRA will inform the requestor before proceeding. Prepayment will be required if the fees are estimated to exceed \$100 or if the requestor has previously failed to pay a properly assessed fee under this policy in a timely manner.

NNEPRA may, but is not required to, waive part or all of the total fee if the requestor is indigent, or if NNEPRA considers release of the public record to be in the public interest because it is likely to contribute significantly to public understanding of NNEPRA's operations.

8. CONFIDENTIAL RECORDS

The FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, records subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures, and the personal contact information of public employees contained within records.

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, go to this website: <http://www.maine.gov/foaa/law/exceptions.htm>. While this listing may not be totally complete, it contains the vast majority of exceptions to the FOAA. NNEPRA-specific exceptions are listed at 23 M.R.S.A. Section 8115-A:

1. Confidential records. The following records of the authority are confidential:
 - A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;
 - B. Trade secrets;
 - C. Estimates prepared by or at the direction of the authority of the costs of goods or services to be procured by or at the expense of the authority; and,
 - D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

9. DENIAL OF REQUEST

If NNEPRA denies a FOAA request for public records, NNEPRA will provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying.

A requestor whose FOAA request for public records has been denied may appeal, within 30 calendar days of the receipt of the written notice of denial, to any Superior Court within the State of Maine.

10. STATE PUBLIC ACCESS OMBUDSMAN

The Maine Legislature has created a public access ombudsman position to review complaints about compliance with the FOAA and attempt to mediate their resolution, as well as answer calls from the public, media, public agencies and officials about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law. The Public Access Ombudsman can be reached at 207-626-8577.