



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

**1. APPLICABILITY.** This standard operating procedure applies to employees of the Maine Department of Education (DOE) and all DOE 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 Freedom of Access Act (FOAA) requests. This document details Maine DOE's procedure for responding to such requests.

**3. RESPONSIBILITIES.**

**3.1 ALL EMPLOYEES AND CONTRACTORS.** The records of all Maine DOE employees, contractors and DOE-staffed workgroups are subject to FOAA. 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 produce them as requested by the public, including under FOAA.

**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 Title 1, Chapter 13. 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 to the FOAA Distribution Group; establishing deadlines for the production of records and notifying the distribution group of those deadlines; being 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.

**3.3 DEPARTMENT FOAA DISTRIBUTION GROUP.** The Department FOAA Distribution Group includes all Commissioner's Office staff and Team Leaders, and will be expanded on a request by request basis to include any Department staff and contractors deemed relevant by the Public Access Officer or Team Leader given the nature of the request. Members of this group are responsible for working with the Public Access Officer to ensure all appropriate team staff/contractors and their responsive records are provided by the established deadline.

**3.4 OFFICE OF THE ATTORNEY GENERAL.** The Attorney General's Office is responsible for consulting with Department staff and providing legal advice and guidance to the Department concerning potentially confidential or privileged records and interpretations of the FOAA statute, as requested by Department staff.

**3.5 STATE PUBLIC ACCESS OMBUDSMAN.** The State Public Access Ombudsman is located within the Office of the Attorney General. The Ombudsmen's duties include working to informally resolve 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 considered unsatisfactory by the requestor, the Department may direct the requestor to the Ombudsman.

#### 4. PROCEDURES.

- 4.1 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.
- 4.2 When a request is made pursuant to FOAA, employees and contractors shall immediately notify the Public Access Officer of any request for Department records. The Public Access Officer shall then be responsible for the coordination of the Department's response to the request. Employees shall not directly respond to any request without the permission of the Public Access Officer.
- 4.3 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.
- 4.4 Within two 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.
- 4.5 It is essential to respond to FOAA requests in a timely manner. The Department must reply within two 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 is denied because it is for confidential information, a written notice stating the reason(s) for the denial shall be provided to the requestor within five working days of the request.
- 4.6 The Public Access Officer should notify the Department FOAA Distribution Group of the request within two business days of its receipt and query the group as to what records they or their team members or contractors may have that are responsive and the estimated time to furnish them. Requests for which the Department is not the appropriate recipient or has no responsive records will not be distributed to the Department FOAA Distribution Group, nor will requests for basic information easily accessible on the Department's website.
- 4.7 Within five working days, the Department's 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, they may narrow the scope of the request and receive a new estimate. Prepayment shall be required if the estimated response costs exceed \$100 or if the requestor has previously failed to pay a properly assessed fee under this policy in a timely manner. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

- 4.8 The Department may waive part or all of the total fee charged if the requestor is indigent or the Department 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. Waivers may only be granted by the Department's Commissioner.
- 4.9 The Department shall make every reasonable attempt to provide responsive records. All DOE staff or contractors who have records requested are responsible for conducting a thorough diligent search of all paper and electronic records that they possess, maintain, manage or control. Team Leaders or their designees are responsible for ensuring that records not necessarily associated with an individual are searched, e.g. prior employee records, databases, etc. 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.
- 4.10 The Public Access Officer is responsible for compiling all responsive records, and reviewing them before releasing them to the requestor. He/she is also responsible for removing or redacting information that is statutorily protected or subject to an evidentiary privilege and will work with the Office of the Attorney General to review any flagged records that may be privileged, confidential or contain personnel information. Redacted records shall be held until the FOAA request is closed.
- 4.11 In advance of the FOAA response being provided to the requestor, the Public Access Officer should notify the Department Commissioner, Director of Communications and other affected parties and provided them copies of the responsive materials if appropriate.
- 4.12 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 complete. The Public Access Officer will then close the request within the Department's internal FOAA database, pending payment.

*NOTE. This guidance document provides general guidelines for the Maine Department of Education's standardized method for responding to FOAA requests. This guidance does not create or affect any legal rights of persons submitting FOAA requests to Maine DOE, all of which are determined by applicable statutes and law.*

Signature:  Date: 12-5-13