

FREEDOM OF ACCESS ACT (FOAA) REQUESTS

LAST UPDATED: AUGUST 23, 2016

PURPOSE

The purpose of this procedure is to outline the tasks and responsibilities associated with responding to all requests for information that indicate the Freedom of Access Act.

PROCEDURE

Once such a request is received the date it is received and the name of the requester are entered into the FOAA Request Log.xlsx spreadsheet located under: G:\Share\FOAA Requests. Pursuant to Maine's Freedom of Access Act, Title 1 MRS §408-A, all responses are handled as such:

3. Acknowledgment; clarification; time estimate. The agency shall acknowledge receipt of a request made according to this section within a reasonable period of time, and may request clarification concerning which public record or public records are being requested. The agency or official shall provide a good faith, nonbinding estimate of the time within which the agency will comply with the request. The agency shall make a good faith effort to fully respond to the request within the estimated time.

4. Refusals; denials. If the agency refuses permission to inspect or copy or abstract a public record, the agency shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the request for inspection or copying.

The appropriate template below, located in: G:\Share\FOAA Requests\FOAA Response Prototype.docx, is used.

RESPOND TO ALL FREEDOM OF ACCESS ACT REQUESTS

Response Acknowledging Receipt of Request:

(This is typically an e-mail sent by the Office Specialist.)

This message is being sent on behalf of Karynlee Harrington, MHDO Acting Executive Director.

This e-mail acknowledges receipt of your Freedom of Access Act, which was received Day, Month Date, Year. MHDO will respond to your request, and provide any costs associated with pulling the information, in a timely manner.

If you have any follow-up questions please contact Linda Adams directly at (207) 287-6722.

Karynlee Harrington
Acting Executive Director
Maine Health Data Organization
102 State House Station
Augusta, Maine 04333-0102
207-446-0890 (cell)
Karynlee.harrington@maine.gov

Response Acknowledging *and* Fulfilling the Request:

(This is typically an e-mail sent by the Office Specialist.)

This e-mail is being sent on behalf of Karynlee Harrington, MHDO Acting Executive Director.

In response to your Freedom of Access Act request you will find attached a copy of.... I believe this fulfills your request.

If you have any questions please contact Linda Adams at (207) 287-6722.

Karynlee Harrington
Acting Executive Director
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Response to Requests that do not fall under FOAA:

(This is a letter from the Executive Director.)

The Maine Health Data Organization (MHDO) will not be providing a copy of its records or any information in them, pursuant to your request under Maine's Freedom of Access Act (FOAA) Title 1 MRS §408-A. FOAA exempts from the definition of public records all records that are confidential or would be privileged in court. 1 MRS §402(3). As such any privileged or confidential information that MHDO has is not covered under FOAA.

In addition even “Level I data” or non-confidential information of MHDO is not subject to Maine’s FOAA. MHDO has its own specific laws and rules regarding confidentiality, release of information and charging fees for data. 22 MRS Chapter 1683 (§§8701-8712). MHDO’s data (confidential or not) can only be released in accordance with MHDO rules. 22 MRS §8707. In addition, MHDO’s law about ability to charge fees for the reasonable costs of producing the data includes the ability to set fees for the right to access and use such data. 22 MRS §8706(2). Reasonable costs and use fees are part of the permanent funding for the MHDO.

A rule of statutory interpretation is that generally, when there are two statutes dealing with the same thing (here public access to MHDO records) a statute dealing with a subject specifically (MHDO 22 MRS Chapter 1683) prevails over another statute dealing with the same subject generally (FOAA). *Michalowski v. Board of Licensure in Medicine*, 2012 ME 134, ¶12. Because MHDO’s statute and rules control in this case, we need to process your request under those rules.

Please apply for this data in accordance with rule Chapter 120: Release of Data to the Public, which can be found at <https://mhdo.maine.gov/rules.htm>. Please let me know if you have any questions with the data request process described in rule Chapter 120.

Once the request has been fulfilled the FOAA Request Log is updated with the date the information was sent and the correspondence that was sent to the requester. Hard copies are filed in Freedom of Access Act file of the Office Specialist’s files.