

## RESPONDING TO A FREEDOM OF ACCESS ACT (FOAA) REQUEST

### Is it a FOAA request?

FOAA requests do not need to be submitted in writing or even identified initially as FOAA requests by the requesting party. Therefore, when a caller says s/he wants to access certain information or documents, the staff member taking the call must determine if it is a FOAA request or simply an informal request for basic information. If it is determined to be a FOAA request, the following procedure must be followed, per State law.

### FOAA Coordinator

Once the FOAA has been invoked, the request must be directed immediately to the FOAA coordinator as listed on the state website, <http://www.maine.gov/foaa/contactlist/index.htm>. If this person will not be available within (3) three business days, the request must be directed to the coordinator's designated alternate.

The FOAA coordinator and alternates are required to complete the FOAA training process by reviewing the website and the FOAA law, and certify that they have completed the training by filling out the form available at <http://www.maine.gov/foaa/Training/index.shtml>. Printed, signed copies of the certifications will be kept on file in the respective agencies.

### Managing the request

- The coordinator must acknowledge receipt within 5 working days of receipt of the request. [§ 408-A(3)<sup>1</sup>] In this acknowledgement, the coordinator should restate the language of the request to confirm scope and content. If it is too broad, the coordinator should communicate with the requester to narrow a broad request.
- The coordinator should note the date of receipt of the FOAA request on the request form (attached) that is filled out by the coordinator. If the information required on the form has not been provided in the initial request, those fields should be completed at this stage. *Please note that the requester is not required by law to fill out this form; it is intended for internal use only, to organize the information about the request that is received.*
- All materials related to the request should be saved in electronic format, in its own folder within the "FOAA" folder (found on the SOS L:/ Drive: ALL), for future reference. This folder should be named with the last name of the requester and the date the request was received (ie. Wright101714). Requests that are not provided in electronic format should be saved in a physical FOAA folder within the agency files managed by the FOAA coordinator, accompanied by a printout of the completed request form.

### Time/Cost Estimates

- The FOAA coordinator must provide an estimate of time within which the agency will comply with request, and this must be within a reasonable amount of time of receiving the request. [§ 408-A(3)].
- The coordinator must also provide an estimate of fees within a reasonable amount of time of receiving the request. [§ 408-A(3)] and must seek confirmation from the requester before proceeding with a response for an estimate greater than \$30.

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<sup>1</sup> All citations are to M.R.S. Title 1.

Current with legislation through the 2013 Second Regular Session of the 126<sup>th</sup> Legislature.

If the estimate is greater than \$100, the requester may be required to pay in advance. (See section below on fees.)

- If a requester has asked for a fee waiver, a decision must be made *before* proceeding with the records search, on whether to grant it. Decisions on granting a waiver will be made by the secretary of state or, in his/her absence, the chief deputy secretary of state.

### Conducting the records search

- Using the coordinator request procedure form (attached), the FOAA coordinator must identify those staff members who may have responsive records. Those employees should be sent a copy of the employee request procedure form, explaining the scope of the request, such as period of time encompassed, types of public records requested and a clear time frame for responding.

If the subject of the FOAA request may have been described in computerized records (emails, word documents, etc.) using various words, determine multiple key words to be used for searching, such as:

- names of individuals, business entities
- project names
- towns, cities, etc.
- common misspellings of names
- Note: In some circumstances, it may be helpful to agree with the requester on key words.

Additional places to search for responsive public records can include, but are not limited to:

- paper files (in-office, home, Records Center if relevant)
- email in-box, drafts, deleted items, sent mail, archived emails
- documents on computer desktop
- documents in recycle bin
- documents in file server folder
- computer backup files/tapes/disks, if relevant

Instructions for archiving and exporting email can be found at <http://inet.state.me.us/foaa/archiving.aspx>.

- Employees must track the time it takes them to answer the request and must return the completed request procedure form and relevant documents to the FOAA coordinator by the designated deadline on the form.
- An agency is not required to create a new record in response to a FOAA request, ie. reproducing handwritten notes in a more legible format.

### Confidentiality review

- The FOAA coordinator must determine if any public records requested are confidential, privileged or otherwise protected from disclosure. [§ 402(3), 408-A] <http://www.mainelegislature.org/legis/statutes/1/title1sec402.html> Assistance of the agency's attorney(s) may be solicited to determine records or parts of records that are not public. The coordinator may redact confidential or privileged material where reasonably possible, rather than withholding entire public record. If access

is denied in whole or in part, the coordinator must provide written notice of denial and state reason for denial. [§ 408-A(4)] within 5 working days of receipt of the request. If the identification of confidential records requires more time, the coordinator must provide an initial written notice within 5 working days of receipt of the request explaining that access to some public records may be denied after the review is complete. *This notice may be combined with acknowledgement of receipt.*

- Depending on the circumstances, including the types and numbers of records requested, written notice may take the form of a letter summarizing the reasons for denial of access or of a more formal privilege log.

### **Provide access**

Once the requested public records are identified and any redactions completed, the coordinator can schedule a time for the requester to inspect records; provide paper copies; or provide access to an electronically stored record as either a printed document or in the medium it is stored, at the discretion of the requester as recorded on the initial request form. [§ 408-A(5) &(7)]

### **Time and expense**

All employees involved in responding to the FOAA request must track the amount of time they spend on the response. The coordinator must also calculate the total costs and copying fees. The invoice will account for the recorded costs and any fee waiver that has been granted.

#### 1. Fees:

- A reasonable copying fee [§ 408-A(8)(A)] of 15 cents per page. This will be charged for copies of all documents and records on 8.5"x11" paper (one-sided or two-sided) that are not otherwise subject to fee schedules as defined in State law. For copies of documents on 11"x17" paper, each page will be billed at 25 cents for two sides or 20 cents for one side.
- Actual cost of searching, retrieving and compiling (compiling includes reviewing and redacting confidential information) of \$15/hour after the first hour of staff time.

[§ 408-A(8)(B)] Determine actual cost to convert the requested items into a form susceptible of visual or aural comprehension or into usable format. [§ 408-A(7)(A) & (8)(C)] This may include costs such as writable compact discs or flash drives. Compact discs will be charged at \$1/each, DVDs at \$2/each. Flash drives will be charged by size: 8GB \$10; 16GB \$15; 32GB \$20.

- Actual mailing costs. [§ 408-A(8)(E)]
2. No charge for inspection unless public record cannot be inspected without being compiled or converted. [§ 408-A(1) & (8)(D)]
  3. Fee notification if cost is greater than \$30.
    - If estimated total cost is greater than \$30, you must inform requester (preferably in writing) before proceeding. [§ 408-A(9)]
  4. Fee notification if cost is greater than \$100.
    - If estimated total cost is greater than \$100, the requester may be required to pay all or portion of estimated costs before search, retrieval, compiling, conversion and copying. This decision will be made on a case-by-case basis.

- Payment in advance may be required if requester has previously failed to pay properly assessed fee in timely manner. [§ 408-A(9) & (10)]
5. Part or all of the fee may be waived by the secretary of state or chief deputy if:
- Requester is indigent, or
  - The agency determines release of public record requested to be in public interest because doing so is likely to contribute significantly to public understanding of operations or activities of government and is not primarily in commercial interest of requester.
- 6. Fee payments**
- Checks should be made out to: Secretary of State, 148 State House Station, Augusta, ME 04333-0148. When received, payments can be passed along to the impacted bureau (CEC, Archives, BMV).
  - Credit and debit cards can be handled via the accounting department at the BMV. Accounting technician Michelle Alexander should be contacted and informed of the invoice amount. The FOAA coordinator should then contact the requester with the final cost and transfer the person to Michelle at 624-9015 to complete the transaction. Michelle will then follow-up with an email or call to confirm that the payment has been made. We cannot accept American Express.

### **Closing the FOAA request**

The request will be considered closed after the requester has been sent the documents and/or has been able to view them. Those with legal concerns with the processing of their request can be directed to the public access ombudsman. The FOAA coordinator should ensure that all related correspondence and documents are saved in the appropriate folder on the L:/ drive and log the request in the Excel file

Resources:

State FOAA Website

[www.maine.gov/foaa](http://www.maine.gov/foaa)

State of Maine Intranet/internal web network for State employees

<http://inet.state.me.us/foaa/default.aspx>

Public Access Ombudsman

[Brenda.kielty@maine.gov](mailto:Brenda.kielty@maine.gov)

626-8577

*Updated March 2015*

## FOAA REQUEST INFORMATION

DATE: \_\_\_\_\_  
 FOAA COORDINATOR: \_\_\_\_\_  
 FULL NAME OF REQUESTER: \_\_\_\_\_  
 MAILING ADDRESS: \_\_\_\_\_  
 CITY/STATE/ZIP CODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_  
 EMAIL: \_\_\_\_\_  
 PREFERRED DELIVERY FORMAT/IN-PERSON REVIEW: \_\_\_\_\_

DATE OF REQUEST RECEIPT: \_\_\_\_\_  
 DATE OF ACKNOWLEDGMENT (WITHIN 5 WORKING DAYS OF RECEIPT): \_\_\_\_\_  
 DATE I NOTIFIED REQUESTER THAT RECORDS WOULD BE WITHHELD (WITHIN 5 WORKING DAYS OF RECEIPT): \_\_\_\_\_

Under the Maine Freedom of Access Act, the requester listed above would like to review and/or copy all available files for the following:

**I IDENTIFIED THE FOLLOWING EMPLOYEES AS HAVING POTENTIALLY RESPONSIVE RECORDS (attach separate list, if necessary). Include date the employee was contacted, deadline to send materials to FOAA coordinator, and date of receipt of completed form:**

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WERE POTENTIALLY PROTECTED RECORDS IDENTIFIED? Yes    No  
 Attorney/supervisor consulted: \_\_\_\_\_

COST ESTIMATE: \_\_\_\_\_  
 DATE I NOTIFIED REQUESTER OF TIME ESTIMATE: \_\_\_\_\_  
 DATE IT NOTIFIED REQUESTER OF COST ESTIMATE: \_\_\_\_\_  
 REQUESTER APPROVED COST ESTIMATE /DATE OF APPROVAL: \_\_\_\_\_

DATE REQUESTER PICKED UP/SENT/VIEWED DOCUMENTS: \_\_\_\_\_

**COSTS:**

a. Staff time spent copying, searching for, retrieving and compiling records, by employee:

\_\_\_\_\_ X\$15 per hour (after first hour) = \_\_\_\_\_

\_\_\_\_\_ X\$15 per hour (after first hour) = \_\_\_\_\_

\_\_\_\_\_ X\$15 per hour (after first hour) = \_\_\_\_\_

\_\_\_\_\_ X\$15 per hour (after first hour) = \_\_\_\_\_

b. Copying costs: (15 cents per page/ or per document fee by statute) \$ \_\_\_\_\_

c. Translation costs: \$ \_\_\_\_\_

d. Mailing costs: \$ \_\_\_\_\_

e. Other costs (CDs, flash drives, binders, etc): \_\_\_\_\_

FINAL TOTAL COST: \_\_\_\_\_

INVOICE SENT DATE/CREDIT CARD RUN? \_\_\_\_\_

PAYMENT RECEIVED: \_\_\_\_\_

11. DATE MY RESPONSIBILITIES COMPLETED, INFORMATION LOGGED IN L DRIVE FOLDER AND SPREADSHEET: \_\_\_\_\_

# EMPLOYEE FOAA REQUEST PROCEDURE FORM

1. EMPLOYEE NAME: \_\_\_\_\_
2. REQUESTER NAME: \_\_\_\_\_
3. SUBJECT OF REQUEST: \_\_\_\_\_
3. FOAA COORDINATOR: \_\_\_\_\_
4. RESPONSE REQUIRED NO LATER THAN: \_\_\_\_\_
4. DESCRIPTION OF REQUESTED DOCUMENTS FROM YOUR FILES:

5. PLEASE CHECK BELOW INDICATING THAT THE FOLLOWING HAVE BEEN COMPLETED:

**Document Identification:**

- Hand-Search of Paper Records Pursuant to Section S.C.1.a
- Search for Electronic Mail Pursuant to Section S.C.1.b
- Search for Other Electronic Records Pursuant to S.C.1.c

Were responsive records identified? Yes No

**Identification of Records Not Subject to Public Access:**

Were records identified pursuant to review under Section 5 (D)? Yes No

If yes, I advised the FOAA coordinator of records that may not be subject to public access and/or records with information that must be redacted, as well as a list of those items to be redacted.

*Notes:*

**I provided responsive records to the designated FOAA coordinator on the following date:**

\_\_\_\_\_

6. PROVIDE AN ACCOUNT OF STAFF TIME REQUIRED TO COMPLETE REQUEST:

a. Time spent copying, searching for, retrieving and compiling records:

\_\_ Hours \_\_ Minutes

RETURN COMPLETED FORM TO FOAA COORDINATOR UPON COMPLETION