

Introduction
Maine Freedom of Access Act (FOAA):
The Purpose



The public's right to information about government activities lies at the heart of a democratic government.

The Maine Freedom of Access Act ("FOAA") grants the people of this state a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. The act also ensures the accountability of the government to the citizens of the state by requiring public access to the meetings of public bodies. Transparency and open decision-making are fundamental principles of the Maine Freedom of Access Act, and they are essential to ensuring continued trust and confidence in our government.

Open government is good government and the state is committed to ensuring and protecting your "right to know."

To review the Freedom of Access Law, go to www.maine.gov/foaa

In its continued efforts to serve as a resource of educating about the FOAA, the Right-to-Know Advisory Committee created this Citizen's Guide, with the help of University of Maine School of Law 2011 Legal Extern Diana DeJesus, as an easy-to-use tool that will help you navigate through the FOAA.

This Citizen's Guide was updated in 2012 with the assistance of University of Maine School of Law Legal Extern Katherine Lybrand.

Chapter 1: Freedom of Access Act: An In-Depth Overview
What is the Freedom of Access Act (FOAA)?

It is a Maine state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

FOAA does NOT apply to federal agencies operating in Maine or to federal government records. The Freedom of Information Act (FOIA), a similar but different federal statute, applies to the federal government. This federal statute does not apply to state or local government bodies, agencies, or officials.¹

Elected Officials and the Freedom of Access Laws:

All elected officials and public access officers are obligated to complete training on the FOAA. The training, which must be completed less than 2 hours, includes instruction in:

- General legal requirements when dealing with public records and public proceedings
- Procedures and requirements regarding complying with a request for a public record
- Penalties and other consequences for failure to comply with the law

The elected officials that are required to take the Freedom of Access training include:

- The Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators

- Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors, and budget committee members of municipal governments
- Officials of school administrative units
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts
- Public access officers

Once training is complete, elected officials or public access officers certify the Freedom of Access training by:

- Submitting a written or electronic record confirming that the training was completed
- Record will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected.²

Penalties for Failure to Comply with the FOAA

If a state government agency or local government entity whose officer or employee commits a willful violation of the FOAA, he or she may be held liable for a civil violation, which could result in a fine of \$500.³

No criminal penalties exist for failure to comply with a request for public records. If, however, there is intentional removal, alteration, or destruction of State documents, such act is a Class D crime.⁴

Enforcement of Freedom of Access Laws

Any aggrieved person may appeal to any Superior Court⁵ in the state to seek relief for an alleged violation of Freedom of Access Act.⁶

Relief can be in the form of an injunction issued by the court that directs the government body, agency or official to comply with the law, such as by making public records available for inspection or copying.

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful.⁷

What is the Public Access Ombudsman?

The legislature created a public access ombudsman position to review complaints about compliance with FOAA and attempt to mediate their resolution, as well as answer calls from the public, media and legislators 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.

1 Text of Freedom of Information Act can be found at 5 U.S.C. § 551 et seq. You can find more general information on the Freedom of Information Act at: <http://www.foia.gov/index.html>

2 See Appendix A for a sample training completion form.

3 1 M.R.S. § 410

4 1 M.R.S. § 452

5 See Appendix D for Superior Court directory.

6 1 M.R.S. § 409(1)

7 1 M.R.S. § 410

How do I contact the Public Access Ombudsman?

Call the Office of the Attorney General at (207) 626-8577 or get more information online at:

[Your Right to Know: Maine's Freedom of Access Act](#)

Chapter 2: Requesting Public Records

Requesting a Public Record: The Basics:

- What exactly IS a “public record?” A public record is
- Written, printed, or graphic matter, or electronic data with information;
- Either directly or after a translation into a visual or auditory format;
- In possession of a state entity or public official; and
- Used in connected or relating to a public or governmental business⁸
- Who can request a public record?
 - Per the language of the FOAA, “every person” has the right to inspect and copy public records, whether you are a citizen of Maine or not.⁹

You Want to Request a Public Record: What Do You Do?

- **Step 1:** Determine which public agency you want to request from¹⁰
 - Examples include: Dept. of Health and Human Services, Office of the Governor, and Office of Attorney General.
- **Step 2:** Determine in which form you will make your request
 - If in writing – which is NOT mandatory – make sure to:
 - **Be specific-** include the time frame, subject of record, etc.¹¹
- Here is an example: What if you want more information about active landfills around your home that accepts wood wastes. How do you make the request?

	Too Broad	Too Narrow	Reasonable	Exact
Written Request	<i>“All records on landfills.”</i>	<i>“All records identifying landfills within 20 miles of 14 Main Street in Augusta.”</i>	<i>“All landfills in Augusta.”</i>	<i>“All landfills in Augusta that only accept wood waste.”</i>
Possible Issues	-Fees too high -Agency may be unable to locate request -Too vague	-Agency unable to locate records with that specific data	-May have more records, but still a narrower search	-Better chance to locate file with exact request language

8 1 M.R.S. § 402 (3)

9 1 M.R.S. § 408-A

10 See www.maine.gov/foaa for a list of FOAA contacts.

11 See Appendix C for a sample FOAA written request.

You Requested Public Information: What Happens?

- **Step 1: Fees**
 - No initial fee for submitting the FOAA request and no fee to inspect records.¹²
 - If you would like to *copy* records, no standard rate is set by the FOAA; an agency may charge a “reasonable fee.”¹³ Fee amounts include
 - Time spent to
 - Retrieve
 - Search
 - Compile
 - Redact confidential information or
 - Convert records
- **Step 2: Determining fee amount**
 - Public agency **MUST** prepare an estimate, which may include the following charge of \$15 after the 1st hour for staff time, *per request*. Further breakdown includes
 - \$30 or more- public agency **MUST** notify you before proceeding
 - \$100 or more – public agency may require costs in advance.¹⁴
- **Step 3: Determine if unable to pay fee amount**
 - A public agency may – but not required to -- waive part or all of the total fee **IF**
 - Indigent¹⁵
 - Release of public record is in the public interest because it will likely¹⁶ contribute to public understanding of how government works¹⁷
 - Not primarily in commercial interest of the requestor¹⁸

What Happens After You Made Your Request? Do You . . . ?

- *Receive acknowledgement of your request from the agency?*
 - Yes, within a “reasonable time.”¹⁹
- *If asked, have to provide clarification for request?*
 - Yes. An agency or official may ask for clarification concerning your request.²⁰
- *Have to state why you want a certain record?*
 - No. Even though an agency is not prohibited from asking, you are **NOT** required to provide a reason and you **CANNOT** be denied solely for that reason.²¹

The Public Agency Has Your Request: What Happens?

- Agency is to make the record(s) available “within a reasonable time.”
- You can schedule time for your inspection, translation, copying *as long as*
 - It’s within regular business hours
 - It does **NOT** affect regular daily activities
- An agency must inform you if your request is denied within **five (5)** working days of the request.²²

12 1 M.R.S. § 408-A (8)(D)

13 1. M.R.S. § 408-A (8)(A)

14 1. M.R.S. § 408-A (8) & (9)

15 1. M.R.S. § 408-A (11)

16 *Id.*

17 *Id.*

18 *Id.*

19 1. M.R.S. § 408-A (3)

20 *Id.*

21 1 M.R.S. § 408-A (3)

22 1 M.R.S. 409-A (4)

- For public records that are a mix of public and private information, the agency may
 - Decide if record(s) has any confidential information that needs to be redacted or blackened out; or
 - Deny public access to the document
- Agency is NOT required to prepare reports, summaries, or contemplations of public records.²³
- If the public record is electronically stored, the agency or official must provide the public record either as a printed document or in the medium in which the record is stored.²⁴

You Have Been Denied Your Request: How Do You Appeal?

• Step 1: Was your request a public record?

- Under the FOAA, certain documents are NOT public record. Examples²⁵ include
 - Those designated by statute;
 - Documents under legal privilege (such as an attorney-client privilege);
 - Medical records; and
 - Juvenile records
 -
- **Step 2: File a written Notice of Appeal**
 - If you are unsatisfied with an agency's decision to withhold a record, you can file, **within five (5) working days**, a written notice of appeal to any Maine Superior Court.²⁶

Other General Points:

- *Can you submit a "standing request?" If so, does the agency have to honor it?*
 - A standing request - certain reports that may be sent to you automatically each month - are NOT honored.
 - Agency is only required to make available the request on the date of the request. A new request for any additional record is required.
- *Can you ask a public official about my record?*
 - You may ask a public official about a record, but he/she are NOT required to explain or answer questions about public records.
 - Under FOAA, officials are ONLY required to make records available for inspection and copying.²⁷
- *Can you request to look at a public official's email?*
 - Any record maintained by an agency or official can be public, whether in electronic form or hand-copy form
 - Email(s) is/are considered a public record IF
 - In possession of
 - Agency or public official;
 - Political subdivision; or
 - Custody of an association
 - Membership is exclusively made up of one or more of any of the abovementioned entities;
 - Has been received or prepared in connection for public or governmental business;

23 1 M.R.S. § 408-A (6)

24 1 M.R.S. § 408-A (7)

25 To determine if a record is public, use the searchable tool at <http://www.mainelegislature.org/legis/foa/>.

26 See Appendix D for list of Superior Courts.

27 1 M.R.S. § 408-A (7)(B)

- Contains information relating to the transaction of governmental business; AND
- Not confidential or an exemption under the FOAA.²⁸

Chapter 3: Public Proceedings

What is a “public proceeding?”

- The “transactions of any functions affecting any or all citizens of the State,” and applies to
 - Maine Legislature and its committees and subcommittees;
 - Any board/commission of state agency or authority, including University of Maine and the Maine Community College System;
 - Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;
 - Membership meetings of any association – members comprised of counties, municipalities, school districts, other political/administrative subdivisions, or their boards, commissions, agencies or authorities; and
 - Any advisory organization established, authorized or organized by law, resolved by executive order²⁹

If it is a public proceeding, what happens?

- **Requirements**
 - Need to be open to the public AND
 - Any person must be permitted to attend³⁰
- **Minutes**
 - Not required under FOAA for public agency or body to keep running minutes; *BUT* required to
 - Keep written record of every decision that involves conditional approval or denial of application, license, certificate or permit; AND
 - Every decision that involves the dismissal or refusal to renew contract of any public official, employee or appointee³¹
 - *If “adjudicatory proceeding”- as defined in Maine Administrative Procedure Act-
 - Need to compile what complies with any statutory specifications, including recording in a form that allows for transcription.³²
 - If minutes provided, must be
 - Made promptly AND
 - Shall be open to public inspection³³
- **Notice**
 - Required for all public proceedings if includes a meeting of a body or agency of three (3) or more persons;
 - Must be given in “ample time” to allow public attendance; and
 - Must be disseminated in a manner reasonably calculated to notify the general public in the area where the public proceeding will be held³⁴

28 1 M.R.S. § 402 (3)

29 1 M.R.S. § 402 (2).

30 1. M.R.S. § 403.

31 1. M.R.S. § 407 (1) & (2).

32 5 M.R.S. §§ 8002 (1) & 9059.

33 1 M.R.S. § 403.

34 1 M.R.S. § 406.

- Emergency Meeting
 - Notice requirement is still needed;
 - Must be provided to local representative of media, whenever practicable; and
 - Notice must include
 - Time
 - Location of meeting AND
 - Be provided by same – or faster – means used to notify the members of the public body or agency hosting the public proceeding³⁵

When is a public proceeding considered closed?

- Executive sessions – or closed public proceeding meetings – are permitted IF
 - Voted on specified subjects
 - After a public recorded vote of 3/5 of the members present and voting³⁶
- Executive sessions are **limited** to what can be discussed.
 - Examples include:³⁷
 - Discussions regarding suspension or expulsion of a student;
 - Certain employment actions;
 - Acquisition, use or disposition of public property;
 - Consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and
 - Discussion of documents that are confidential by statute
 - Prohibited from giving final approval to³⁸
 - Any ordinance
 - Orders
 - Rules
 - Resolutions
 - Regulations
 - Contracts
 - Appointments, or
 - Other official actions
- If improper business has been conducted during an executive session
 - Any person may appeal to any Maine Superior Court.
 - If the court finds the body or agency acted illegally
 - Action taken by the body or agency will be declared **null and void**
 - Officials responsible will be subject to the penalties provided in the FOAA³⁹

If you decide to attend a public meeting, can you...?

- *Record the public proceeding?*
 - Yes. The FOAA allows for individuals to make written, taped or filmed records of a public proceeding or to broadcast it live as long as it doesn't interfere with the orderly conduct of the proceedings.⁴⁰

35 1 M.R.S. § 403.

36 See 1 M.R.S. § 405 (1)-(5).

37 See 1 M.R.S. § 405 (6) for a full list of permitted deliberations within an executive session.

38 1 M.R.S. § 405(2).

39 1 M.R.S. § 409 (2).

40 1. M.R.S. § 404.

- Body or agency having the public proceeding can make reasonable rules or regulations to govern the recording activities so long as they do not defeat the purpose of FOAA.⁴¹
- *Speak at the public meetings?*
 - It depends. The FOAA *does not* require public participation at open meetings.
 - If public participation is permitted, public body or agency may adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner
 - An example of a rule is allocating the same amount of time to each person willing to speak

Chapter 4: Right-to-Know Advisory Committee

What is the Right-to-Know Advisory Committee (RTKAC)?

The RTKAC⁴² is an on-going advisory council

- With oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Right of Access Laws
- Created to serve as resource and advisor about Maine's FOAA

What are the duties of the RTKAC?

- Specific duties include
 - Providing guidance in ensuring access to public records and public proceedings;
 - Serve as central source and coordinator of information about FOAA
 - Support provision of information about public access to records and proceedings via the Internet;
 - Serve as resource of support training and educating about the FOAA; and
 - Report annually to discuss the public's access to proceedings and records to
 - The Governor
 - Joint Standing Committee on Judiciary; and
 - Chief Justice of Supreme Judicial Court

Who serves on the RTKAC?

The RTKAC is comprised of thirteen (13) members, each with different terms. The members include, but are not limited to:⁴³

- Senator from Joint Standing Committee
- Representative of municipal interests
- Representative of school interests
- Representative of newspaper publishers
- Representative of county or regional interests
- Representative of law enforcement interests
- Representative of state government interests
- Representative of broadcasting interests
- Representative of a statewide coalition of advocates of freedom of access
- Two representatives of the public
- The Attorney General or designee

⁴¹ Id.

⁴² The Maine Right-to-Know Advisory Committee was created by Public Law 2005, chapter 631.

⁴³ 1 M.R.S. § 411; See *also* Appendix E for a list of current members.

Appendix A: Sample Training Completion Form

CERTIFICATION OF COMPLETION OF
FREEDOM OF ACCESS TRAINING REQUIRED BY 1 M.R.S.A. § 412

I, _____, hereby certify that I have met the training requirements
(Name of elected official)

set forth in 1 M.R.S.A. § 412 on _____ by completing the following training:
(date of training)

- A thorough review of all of the information made available on the Frequently Asked Questions portion of the State website, www.maine.gov/foaa/faq.
- Another training course that includes this information, identified as follows:

(Title of Course)

(Name of Course Provider)

Dated this _____ day of _____, 20_____.

Signature

Printed Name

Elected Office

Note: Training must be completed within 120 days after an elected official takes the oath of office.

Appendix B: Maine Freedom of Access of Act Contacts

Administrative and Financial Services

Office of the Commissioner	Cross Building Augusta, ME 04333	David Emery 624-7800
Bureau of Alcoholic Beverages and Lottery Operations	10 Water Street Hallowell, ME 04347	Tim Poulin 287-6750
Bureau of General Services	Cross Building 14 State House Station Augusta, ME 04333	624-7344
Bureau of Human Resources	4 State House Station Augusta, ME 04333	
Office of Employee Relations	45 Memorial Circle Augusta, ME 04333	Joyce Oreskovich 287-4447
Office of Information Technology	26 Edison Drive 145 State House Station Augusta, ME 04333	Greg McNeal 624-7568
Service Centers	111 Sewall Street 78 State House Station Augusta, ME 04333	Sandra Harper 624-7344
State Controller	Cross Building 14 State House Station Augusta, ME 04333	Terry Bran 626-8423
State Budget Officer	Cross Building 3rd Floor Augusta, ME 04333	Dawna Lopatosky 624-7810
Maine Revenue Services	26 Edison Drive Augusta, ME 04333	Jon Sagaser 624-9536
Agriculture	28 State House Station Deering Building Augusta, ME 04333	Melanie Littlefield 287-3419
Attorney General's Office	6 State House Station Augusta, ME 04333	Phyllis Gardiner 626-8800
Audit	66 State House Station Hallowell, ME 04333	Michael Poulin 624-6266
Conservation	22 State House Station Augusta, ME 04333	Eliza Townsend 287-4900 Gale Ross 287-4900

Corrections	Tyson Building AMHI Augusta, ME 04333	Judy Plummer 287-4386
Defense, Veterans, and Emergency Management		
Army and Air National Guard	38 State House Station Camp Keyes Augusta, ME 04333	Kevin McDougall 430-5012
Bureau of Veteran Affairs	33 State House Station Camp Keyes Augusta, ME 04333	Don Lagace 626-4271
Maine Emergency Management Agency	45 Commerce Drive Augusta, ME 04333	Lynette Miller 624-4420
Economic and Community Development	Cross Building Augusta, ME 04333	Brian Hodges 624-9804
Education	Cross Building 23 State House Station Augusta, ME 04333	Gregg Scott 624-6620
Environmental Protection	17 State House Station Hospital Street Augusta, ME 04333	Pete Carney 287-4305
Finance Authority of Maine	5 Community Drive PO Box 949 Augusta, ME 04333	Beth Bordowitz 623-3263
Health and Human Services	221 State Street 11 State House Station Augusta, ME 04333	Marina Thibeau 287-4252
Inland Fisheries and Wildlife	284 State Street Augusta, ME 04333	Andrea Erskine 287-5201
Labor	54 State House Station Augusta, ME 04333	Adam Fisher 621-5095
Maine Housing Authority	353 Water Street Augusta, ME 04333	Linda Uhl 626-4600
Maine Commission on Governmental Ethics	135 State House Station Augusta, Me 04333	Paul Lavin 287-3024
Maine Commission of Indigent Legal Services	154 State House Station Augusta, ME 04333	John Pelletier 287-3254
Maine Arts Commission Programs	25 State House Station 193 State Street Augusta, ME 04333	Donna McNeil 287- 2714

Business Administration	Maine State Library State Office Complex Augusta, ME 04333	Gail Waddell 287-5633
Maine International Trade Center	511 Congress Street Suite 100 Portland, ME 04101	Janine Bisalilloni-Cary 541-7400
Maine Historic Preservation Commission	55 Capitol Street 65 State House Station Augusta, ME 04333	Earle Shettleworth 287-2132
Maine Health Data Organization	151 Capitol Street 102 State House Station Augusta, ME 04333	Alan Prysunka 287-6723
Maine Technology Institute	405 Water Street Suite 300 Gardiner, ME 04345	Betsy Biemann 582-4790
Maine Turnpike Authority	2360 Congress Street Portland, ME 04102	Jon Arey 871-7771
Marine Resources	Winthrop Street Hallowell, ME 04247	Donna Hall 624-6553
Professional and Financial Regulation		
Bureau of Financial Institution	122 Northern Avenue Gardiner, ME 04333	John Barr 624-8561
Bureau of Consumer Credit Protection		Will Lund 624-8527
Office of the Commissioner		Anne Head 624-6553
Office of Licensing and Registration		Anne Head 624-6553
Bureau of Insurance	124 Northern Avenue 34 State House Station Gardiner, ME 04345	Tom Record 624-8424
Office of Securities	76 Northern Avenue Gardiner, ME 04345	Judy Shaw 624-8551
Public Advocate	103 Water Street 3rd Floor Hallowell, ME 04347	Patty Moody-DAngelo 287-2447
Public Safety	45 Commerce Drive Suite 1 Augusta, ME 04333	Christopher Parr 624- 7205
Public Utilities Commission	242 State Street Augusta, ME 04333	Joanne Steneck 287-1390

Secretary of State	148 State House Station Augusta, ME 04333	Charles E. Summers, Jr. 626-8400
State Planning Office		
Office of the Director	38 State House Station 184 State Street Augusta, ME 04333	Tony Van Den Bossche 287-1474
Office of Energy Independence and Security		John Kerry 287-3292
Transportation	Child Street, 2nd Level Augusta, ME 04333	Toni Kemmerle 624-3024
Worker's Compensation Board	AMHI Deering Building Augusta, ME 04333	John Rohde 287-7091

Appendix C: Sample FOAA Written Request

Date
Name
Company Name (if applicable)
Address

Dear (FOAA Officer):

Pursuant to the Maine Freedom of Access Act, (1 M. R. S. A. § 401 *et seq.*) I respectfully request access to [insert a specific, detail description of the material you would like to request]. I believe these records are in the custody of [try to identify the specific office/department/ bureau where record(s) is/are located].

I am willing to pay all lawful and reasonable costs associated with this request. Please notify me in advance what the costs will be.

If you intend to deny this public interest in whole or in part, I request that you advise me, in writing, of the particular statutory exemption upon which you are relying, and an explanation for doing so, as required by Chapter 13 of the Maine Statutes. Also, if the exemption you are claiming applies to only a portion of a record please delete the exemption section and release the remainder of the records as required by law.

In light of the nature and importance of the records requested, please make them available within a reasonable time. If you have any questions about this request, please call me at [phone number].

Thank you in advance for processing my request.

Sincerely,

Concerned Citizen