

RESPONDING TO A FREEDOM OF ACCESS ACT (FOAA) REQUEST

Receipt

1. Is it a FOAA request or a request for information?
 - *Agency dissemination of information as usual course of business, not all is FOAA*
 - *If you have it and can provide it readily and it's a public record, can respond without triggering any FOAA formalities*
 - *Avoid "who are you and why do you want it" unless that information is needed to determine what level of accessibility is available for the particular requester*
 - *Request forms permissible? Yes, if not mandatory*
2. What is the date of receipt?
 - *Date a "sufficient description" is received by agency or official at the office responsible for maintaining the record*
 - *Five day acknowledgment deadline, never let it sit on your desk*

FOAA database entry

How is the agency tracking and retaining FOAA requests?

Communication

1. Do agency management, the public access officer, and the press contact need to be consulted?
2. Who has custody of responsive records?

Acknowledgment

1. Acknowledge receipt of request within 5 working days of receipt of the request. [§ 408-A(3)¹]
2. Date of receipt is date a "sufficient description" of the record is received by the agency or official at the office responsible for maintaining the record. (*Effective October 15, 2015*)
3. Forward a request made to a department or office within an agency to the office or official who maintains the record "without willful delay." (*Effective October 15, 2015*)
4. Notify the requester that the request was forwarded within the agency (*Effective October 15, 2015*)
5. A forwarded request must be acknowledged by the office to which it was forwarded within 5 working days of receipt of the request.

Estimate

1. Provide an estimate of time within which the agency will comply with request within a reasonable amount of time of receiving the request. [§ 408-A(3)]
FOAA requires a reasonable time frame for providing records. [§ 408-A]
Provide estimate of fees within a reasonable amount of time of receiving the request. [§ 408-A(3)]
 - Seek confirmation from requester before proceeding with response for estimate greater than \$30.

¹ All citations are to M.R.S. Title 1.

Current with legislation through the 2015 First Regular Session of the 127th Legislature.

2. Review any fee waiver request.

Clarify

1. Restate the language of the request in the acknowledgment to confirm scope and content.
2. Communicate with requester to narrow a broad request.

Notice of denial

1. Provide written notice to requester within 5 working days of receipt of the request if denying access to any public records. State reason for denial. [§ 408-A(4)]
2. If the identification of confidential records requires more time, 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.
3. A supplemental denial or further explanation of the grounds for the denial may be provided depending on the circumstances.

Search

- *Can you demonstrate that you conducted a search reasonably calculated to uncover all relevant documents?" Due diligence*
1. Public access officer and/or assigned staff identify who may have responsive records.
 2. Explain scope of the request such as period of time encompassed, types of public records requested and time frame for responding.
 3. Identify repositories where responsive records may be stored such as:
 - 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
 4. If subject of FOAA request may have been described in electronic 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 requester on key words.

Confidentiality review

Determine if any public records requested are confidential, privileged or otherwise protected from disclosure. [§ 402(3), 408-A]

1. Redact confidential or privileged material where reasonably possible rather than withholding entire public record.

2. If access is denied in whole or in part, provide written notice of denial and state reason for denial. [§ 408-A(4)]
3. 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

Schedule time 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. [§ 408-A(5) &(7)]

Time and expense

- *Can you charge according to an agency fee schedule?*
 - *Although FOAA contemplates fees and is not free, it's not for profit, either*
 - *Requesters encounter inconsistency between agencies*
1. Track staff time, actual costs and copying fees.
 2. The invoice will account for the recorded costs and any fee waiver that has been granted.
 3. Fees:
 - Reasonable copying fee [§ 408-A(8)(A)]
 - Actual cost of searching, retrieving & compiling (compiling includes reviewing & redacting confidential information) of \$15/hour after the first hour of staff time. [§ 408-A(8)(B)]
 - Determine actual cost to convert into form susceptible of visual or aural comprehension or into usable format. [§ 408-A(7)(A) & (8)(C)]
 - Actual mailing costs. [§ 408-A(8)(E)]
 4. No charge for inspection unless public record cannot be inspected without being compiled or converted. [§ 408-A(1) & (8)(D)]
 5. 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)]
 6. Fee notification if cost is greater than \$100.
 - If estimated total cost is greater than \$100, requester may be required to pay all or portion of estimated costs before search, retrieval, compiling, conversion & copying.
 - Payment in advance may be required if requester has previously failed to pay properly assessed fee in timely manner. [§ 408-A(9) & (10)]
 7. Part or all of the fee may be waived 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.

Close the FOAA request