

RIGHT TO KNOW ADVISORY COMMITTEE
Public Records Process Subcommittee

Monday, November 6, 2023
11:00 a.m. – 12:30 p.m.

Location: State House, Room 228 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
<https://legislature.maine.gov/Audio/#228>

AGENDA

1. Introductions
2. Topics Discussed at Last Meeting
 - Require body to cite reason for going into executive session
 - Standard form for FOAA requests
 - Allow prioritization of requests based on type of requestor
 - Provide notice to individual who is the subject of inquiry
3. Discussion of Remaining Topics
 - Repeat requestors and incomplete/delayed responses
 - Define “burdensome” request
 - Give Ombudsman authority to waive agency response requirement under certain circumstances
4. Next Steps and Future Meetings
 - Monday, December 4, 2023 (AFA Committee Room)
5. Adjourn



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

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MEMORANDUM

TO: Public Records Process Subcommittee, Right to Know Advisory Committee
FROM: Colleen McCarthy Reid and Lindsay Laxon
DATE: November 3, 2023
RE: State Laws that Address Burdensome or Repeated Requests for Public Records

Based on our preliminary researchⁱ, here is an outline of selected state laws that address burdensome or repeated requests for public records. Copies of the state laws are attached; the relevant provisions are starred and boxed.

States that authorize a responder to deny a burdensome request

- Kansas (see p. 3)
 - Agency may refuse to provide public records when:
 - Request places an unreasonable burden on the agency
 - Reason to believe that repeated requests are intended to disrupt other essential functions of the agency
 - Agency must demonstrate the above circumstances by a preponderance of the evidence
- Kentucky (see p. 4)
 - Agency may refuse to provide public records when:
 - Unreasonable burden
 - Agency believes that repeated requests are intended to disrupt other essential functions of the agency
 - Agency's refusal shall be sustained by clear and convincing evidence
- New Jersey (see p. 8)
 - Custodian of a record may deny access to a record if a request would substantially disrupt agency operations after attempting to reach a reasonable solution with the requester that accommodates the interest of the agency and the requester
- Pennsylvania (see p. 10)
 - Agency may refuse to provide public records when:
 - The requester has made repeated requests for that same record
 - The repeated requests have placed an unreasonable burden on the agency

States providing injunctive relief from requests

- Connecticut (see p. 12)
 - Public agency may petition the commission for relief from a vexatious requester
 - Agency shall detail conduct which agency alleges demonstrates vexatious history or requests, including but not limited to, the number of requests; the scope of the requests; the nature, conduct, language or subject matters of the requests and communications from the requestor; and a pattern of conduct that amounts to an abuse of the right to access information or an interference with the operation of the agency

- Virginia (see p. 14)
 - A public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search and a response within the time limit required will prevent the public body from meeting its operational needs
 - Before proceeding with petition, public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested

- Maine (see p. 16-17)
 - A body, agency or official may seek protection from the courts from unduly burdensome or oppressive public records requests. A court may enter an order limiting or eliminating the body, agency or official's duty to produce records.

¹ Sources used include Westlaw and the Reporters Committee for Freedom of the Press Open Government Guide.

2020 Kansas Statutes

45-218. Inspection of records; request; response; refusal, when; fees. (a) All public records shall be open for inspection by any person, except as otherwise provided by this act, and suitable facilities shall be made available by each public agency for this purpose. No person shall removal [remove] original copies of public records from the office of any public agency without the written permission of the custodian of the record.

(b) Upon request in accordance with procedures adopted under K.S.A. 45-220, any person may inspect public records during the regular office hours of the public agency and during any additional hours established by the public agency pursuant to K.S.A. 45-220.

(c) If the person to whom the request is directed is not the custodian of the public record requested, such person shall so notify the requester and shall furnish the name and location of the custodian of the public record, if known to or readily ascertainable by such person.

(d) Each request for access to a public record shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.

(e) The custodian may refuse to provide access to a public record, or to permit inspection, if a request places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency. However, refusal under this subsection must be sustained by preponderance of the evidence.

(f) A public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records, subject to K.S.A. 45-219.


History: L. 1984, ch. 187, § 4; Feb. 9.



61.872 Right of Kentucky residents to inspect public records -- Written application -- Limitation.

- (1) All public records shall be open for inspection by any resident of the Commonwealth, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No resident of the Commonwealth shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.
- (2)
 - (a) Any resident of the Commonwealth shall have the right to inspect public records. The official custodian may require a written application, signed by the applicant and with his or her name printed legibly on the application, describing the records to be inspected. The official custodian may require the applicant to provide a statement in the written application of the manner in which the applicant is a resident of the Commonwealth under KRS 61.870(10)(a) to (f).
 - (b) The written application shall be:
 1. Hand delivered;
 2. Mailed;
 3. Sent via facsimile; or
 4. Sent via e-mail to the public agency's official custodian of public records or his or her designee at the e-mail address designated in the public agency's rules and regulations adopted pursuant to KRS 61.876.
 - (c) A public agency shall not require the use of any particular form for the submission of an open records request, but shall accept for any request the standardized form developed under KRS 61.876(4).
- (3) A resident of the Commonwealth may inspect the public records:
 - (a) During the regular office hours of the public agency; or
 - (b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he or she precisely describes the public records which are readily available within the public agency. If the resident of the Commonwealth requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.
- (4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
- (5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application, unless a detailed explanation of the cause is given for

further delay and the place, time, and earliest date on which the public record will be available for inspection.

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- (6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 160, sec. 2, effective June 29, 2021. -- Amended 2019 Ky. Acts ch. 64, sec. 1, effective June 27, 2019. -- Amended 1994 Ky. Acts ch. 262, sec. 3, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 163, sec. 3, effective July 14, 1992. -- Created 1976 Ky. Acts ch. 273, sec. 2.

Legislative Research Commission Note (6/29/2021). Under the authority of KRS 7.136(1), the Reviser of Statutes has altered the format of the text in subsection (2) of this statute during codification. The words in the text were not changed.

[Go to previous versions of this Section](#)



2022 New Jersey Revised Statutes

Title 47 - Public Records

Section 47:1A-5 - Times during which records may be inspected, examined, copied; access; copy fees.

Universal Citation: NJ Rev Stat § 47:1A-5 (2022)

47:1A-5 Times during which records may be inspected, examined, copied; access; copy fees.

6. a. The custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular business hours; or in the case of a municipality having a population of 5,000 or fewer according to the most recent federal decennial census, a board of education having a total district enrollment of 500 or fewer, or a public authority having less than \$10 million in assets, during not less than six regular business hours over not less than three business days per week or the entity's regularly-scheduled business hours, whichever is less; unless a government record is exempt from public access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order. Prior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person, or, in accordance with section 2 of P.L.2021, c.371 (C.47:1B-2), the home address, whether a primary or secondary residence, of any active, formerly active, or retired judicial officer, prosecutor, or law

enforcement officer, or, as defined in section 1 of P.L.2021, c.371 (C.47:1B-1), any immediate family member thereof; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor. Except where an agency can demonstrate an emergent need, a regulation that limits access to government records shall not be retroactive in effect or applied to deny a request for access to a government record that is pending before the agency, the council or a court at the time of the adoption of the regulation.

b. (1) A copy or copies of a government record may be purchased by any person upon payment of the fee prescribed by law or regulation. Except as otherwise provided by law or regulation and except as provided in paragraph (2) of this subsection, the fee assessed for the duplication of a government record embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. If a public agency can demonstrate that its actual costs for duplication of a government record exceed the foregoing rates, the public agency shall be permitted to charge the actual cost of duplicating the record. The actual cost of duplicating the record, upon which all copy fees are based, shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection c. of this section. Access to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.

(2) No fee shall be charged to a victim of a crime for a copy or copies of a record to which the crime victim is entitled to access, as provided in section 1 of P.L.1995, c.23 (C.47:1A-1.1).

c. Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying

equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies; provided, however, that in the case of a municipality, rates for the duplication of particular records when the actual cost of copying exceeds the foregoing rates shall be established in advance by ordinance. The requestor shall have the opportunity to review and object to the charge prior to it being incurred.

d. A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical, and supervisory assistance required, or both.

e. Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.

f. The custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following: (1) specific directions and procedures for requesting a record; (2) a statement as to whether prepayment of fees or a deposit is required; (3) the time period within which the public agency is required by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, to make the record available; (4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal; (5) space for the custodian to list reasons if a request is denied in whole or in part; (6) space for the requestor to sign and date the form; (7) space for the custodian to sign and date the form if

the request is fulfilled or denied. The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the information thus requested will cost in excess of \$5 to reproduce.

g. A request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. A custodian shall promptly comply with a request to inspect, examine, copy, or provide a copy of a government record. If the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof. If the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record. If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the

requestor and shall make arrangements to promptly make available a copy of the record. If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.

h. Any officer or employee of a public agency who receives a request for access to a government record shall forward the request to the custodian of the record or direct the requestor to the custodian of the record.

i. (1) Unless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than seven business days after receiving the request, provided that the record is currently available and not in storage or archived. In the event a custodian fails to respond within seven business days after receiving a request, the failure to respond shall be deemed a denial of the request, unless the requestor has elected not to provide a name, address or telephone number, or other means of contacting the requestor. If the requestor has elected not to provide a name, address, or telephone number, or other means of contacting the requestor, the custodian shall not be required to respond until the requestor reappears before the custodian seeking a response to the original request. If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when

the record can be made available. If the record is not made available by that time, access shall be deemed denied.

(2) During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.

j. A custodian shall post prominently in public view in the part or parts of the office or offices of the custodian that are open to or frequented by the public a statement that sets forth in clear, concise and specific terms the right to appeal a denial of, or failure to provide, access to a government record by any person for inspection, examination, or copying or for purchase of copies thereof and the procedure by which an appeal may be filed.

k. The files maintained by the Office of the Public Defender that relate to the handling of any case shall be considered confidential and shall not be open to inspection by any person unless authorized by law, court order, or the State Public Defender.

L.2001, c.404, s.6; amended 2010, c.75, s.5; 2014, c.19, s.3; 2020, c.10; 2020, c.125, s.2; 2021, c.24, s.2; 2021, c.371, s.11.

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(b) Judicial agencies.--A judicial agency or the Administrative Office of Pennsylvania Courts may develop a form to request financial records or may accept a form developed by the Office of Open Records.

(c) Legislative agencies.--A legislative agency may develop a form to request legislative records or may accept the form developed by the Office of Open Records.

Section 506. Requests.

(a) Disruptive requests.--

(1) An agency may deny a requester access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the agency.

(2) A denial under this subsection shall not restrict the ability to request a different record.

(b) Disaster or potential damage.--

(1) An agency may deny a requester access:

(i) when timely access is not possible due to fire, flood or other disaster; or

(ii) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of records, cause physical damage or irreparable harm to the record.

(2) To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

(c) Agency discretion.--An agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this chapter, if all of the following apply:

(1) Disclosure of the record is not prohibited under any of the following:

(i) Federal or State law or regulation.

(ii) Judicial order or decree.

(2) The record is not protected by a privilege.

(3) The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

(d) Agency possession.--

(1) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this act, shall be considered a public record of the agency for purposes of this act.

Connecticut Freedom of Information Commission

Connecticut

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Section 1-206. (Formerly Sec. 1-21i) - Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Service of process upon commission. Frivolous appeals.

Section 1-206. (Formerly Sec. 1-21i) - Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Service of process upon commission. Frivolous appeals.

Sec. 1-206. (Formerly Sec. 1-21i). Denial of access to public records or meetings. Appeals. Notice. Orders. Civil penalty. Petition for relief from vexatious requester. Service of process upon commission. Frivolous appeals. Appeal re state hazardous waste program records. (a) Any denial of the right to inspect or records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such de shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives actual or constructive notice that such meeting was held. For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken. Upon receipt of such notice, the commission shall serve upon all parties, by certified or registered mail or by electronic transmission, a copy of such notice together with any other notice or order of such commission. In the case of the denial of a request to inspect or copy records contained in a public employee's personnel or medical file or similar file under subsection (c) of section 1-214, the commission shall include with its notice or order an order requiring the public agency to notify any employee whose records are the subject of an appeal, and the employee's collective bargaining representative, if any, of the commission's proceedings and, if any such employee or collective bargaining representative has filed an objection under said subsection (c), the agency shall provide the required notice to such employee and collective bargaining representative by certified mail, return receipt requested, by electronic transmission or by hand delivery with a signed receipt. A public employee whose personnel or medical file or similar file is the subject of an appeal under this subsection may intervene as a party in the proceedings on the matter before the commission. Said commission shall, after due notice to the parties, hear and decide the appeal not later than one year after the filing of the notice of appeal. The commission shall adopt regulations in accordance with chapter 54, establishing criteria for those appeals which shall be privileged in their assignment for hearing. Any such appeal shall be heard not later than thirty days after receipt of a notice of appeal and decided not later than sixty days after the hearing. If a notice of appeal concerns an announced agency decision to meet in executive session or an ongoing agency practice of meeting in executive sessions, for a stated purpose, the commission or a member or members of the commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal not later than seventy-two hours after receipt of the notice, provided such notice shall be given to the parties at least forty-eight hours prior to such hearing. During such preliminary hearing, the commission shall take evidence and receive testimony from the parties. If after the preliminary hearing the commission finds probable cause to believe that the agency decision or practice is in violation of sections 1-200 and 1-225, the agency shall not meet in executive session for such purpose until the commission decides the appeal. If probable cause is found by the commission, it shall conduct a final hearing on the appeal and render its decision not later than five days after the completion of the preliminary hearing. Such decision shall specify the commission's findings of fact and conclusions of law.

(2) In any appeal to the Freedom of Information Commission under subdivision (1) of this subsection or subsection (c) of this section, the commission may confirm the action of the agency or order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act. The commission may declare null and void any action taken at any meeting which a person was denied the right to attend and may require the production or copying of any public record. In addition, upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than five thousand dollars. If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars. The commission shall notify a person of a penalty levied against such person pursuant to this subsection by written notice sent by certified or registered mail or electronic transmission. If a person fails to pay the penalty not later than thirty days after receiving such notice, the Superior Court shall, on application of the commission, issue an order requiring the person to pay the penalty imposed. If the executive director of the commission has reason to believe an appeal under subdivision (1) of this subsection or subsection (c) of this section (A) presents a claim beyond the commission's jurisdiction; (B) would perpetrate an injustice; or (C) would constitute an abuse of the commission's administrative process, the executive director shall not schedule the appeal for hearing without first seeking and obtaining leave of the commission. The commission shall provide due notice to the parties and review affidavits and written argument that the parties may submit and grant or deny such leave summarily at its next regular meeting. The commission shall grant such leave unless it finds that the appeal: (i) Does not present a claim within the commission's jurisdiction; (ii) would perpetrate an injustice; or (iii) would constitute an abuse of the commission's administrative process. Any party aggrieved by the commission's denial of such leave may apply to the superior court for the judicial district of New Britain, not later than fifteen days of the commission meeting at which such leave was denied, for an order requiring the commission to hear such appeal.

(3) In making the findings and determination under subdivision (2) of this subsection the commission shall consider the nature of any injustice or abuse of administrative process, including, but not limited to: (A) The nature, content, language or subject matter of the request or the appeal, including, among other factors, whether the request or appeal is repetitious or cumulative; (B) the nature, content, language or subject matter of prior or contemporaneous requests or appeals by the person making the request or taking the appeal; (C) the nature, content, language or subject matter of other verbal and written communications to any agency or any official of any agency from

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the person making the request or taking the appeal; (D) any history of nonappearance at commission proceedings or disruption of the commission's administrative process, including, but not limited to, delaying commission proceedings; and (E) the refusal to participate in settlement conferences conducted by a commission ombudsman in accordance with the commission's regulations.

(4) Notwithstanding any provision of this subsection, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act.

(5) Notwithstanding any provision of this subsection, in the case of an appeal to the commission of a denial by a public agency where, after a hearing, the commission finds the public agency is engaging in a practice or pattern of conduct that constitutes an obstruction of any right conferred by the Freedom of Information Act or reckless, wilful or wanton misconduct with regard to the delay or denial of responses to requests for public records under said act, the commission may impose a civil penalty of not less than twenty dollars nor more than five thousand dollars against a custodian or other official of such public agency, and order such other relief that the commission, in its discretion, determines is appropriate to rectify such obstruction or misconduct and to deter such public agency from violating the Freedom of Information Act. In case of any failure or refusal to comply with any order issued under this subdivision, the commission may apply to the superior court for the judicial district of New Britain for an order requiring such public agency to comply with such order.

(6) Notwithstanding any provision of this subsection, a public agency may petition the commission for relief from a requester that the public agency alleges is a vexatious requester. Such petition shall be sworn under penalty of false statement, as provided in section 53a-157b, and shall detail the conduct which the agency alleges demonstrates a vexatious history of requests, including, but not limited to: (A) The number of requests filed and the total number of pending requests; (B) the scope of the requests; (C) the nature, content, language or subject matter of the requests; (D) the nature, content, language or subject matter of other oral and written communications to the agency from the requester; and (E) a pattern of conduct that amounts to an abuse of the right to access information under the Freedom of Information Act or an interference with the operation of the agency. Upon receipt of such petition, the executive director of the commission shall review the petition and determine whether it warrants a hearing. If the executive director determines that a hearing is not warranted, the executive director shall recommend that the commission deny the petition without a hearing. The commission shall vote at its next regular meeting after such recommendation to accept or reject such recommendation and, after such meeting, shall issue a written explanation of the reasons for such acceptance or rejection. If the executive director determines that a hearing is warranted, the commission shall serve upon all parties, by certified or registered mail or electronic transmission, a copy of such petition together with any other notice or order of the commission. The commission shall, after due notice to the parties, hear and either grant or deny the petition not later than one year after its filing. Upon a grant of such petition, the commission may provide appropriate relief commensurate with the vexatious conduct, including, but not limited to, an order that the agency need not comply with future requests from the vexatious requester for a specified period of time, but not to exceed one year. Any party aggrieved by the commission's granting of such petition may apply to the superior court for the judicial district of New Britain, not later than fifteen days after the commission meeting at which such petition was granted, for an order reversing the commission's decision.

(c) Any person who does not receive proper notice of any meeting of a public agency in accordance with the provisions of the Freedom of Information Act may appeal under the provisions of subsection (b) of this section. A public agency of the state shall be presumed to have given timely and proper notice of any meeting as provided for in said Freedom of Information Act if notice is given in the Connecticut Law Journal or a Legislative Bulletin. A public agency of a political subdivision shall be presumed to have given proper notice of any meeting, if a notice is timely sent under the provisions of said Freedom of Information Act by (1) first-class mail to the address, or (2) electronic transmission to the information processing system, as defined in section 1-267, indicated in the request of the person requesting the same. If such commission determines that notice was improper, it may, in its sound discretion, declare any or all actions taken at such meeting null and void.

(d) Any party aggrieved by the decision of said commission may appeal therefrom, in accordance with the provisions of section 4-183. Notwithstanding the provisions of section 4-183, in any such appeal of a decision of the commission, the court may conduct an in camera review of the original or a certified copy of the records which are at issue in the appeal but were not included in the record of the commission's proceedings, admit the records into evidence and order the records to be sealed or inspected on such terms as the court deems fair and appropriate, during the appeal. The commission shall have standing to defend, prosecute or otherwise participate in any appeal of any of its decisions and to take an appeal from any judicial decision overturning or modifying a decision of the commission. If aggrievement is a jurisdictional prerequisite to the commission taking any such appeal, the commission shall be deemed to be aggrieved. Notwithstanding the provisions of section 3-125, legal counsel employed or retained by said commission shall represent said commission in all such appeals and in any other litigation affecting said commission. Notwithstanding the provisions of subsection (c) of section 4-183 and section 52-64, all process shall be served upon said commission at its office. Any appeal taken pursuant to this section shall be privileged in respect to its assignment for trial over all other actions except writs of habeas corpus and actions brought by or on behalf of the state, including informations on the relation of private individuals. Nothing in this section shall deprive any party of any rights he may have had at common law prior to January 1, 1958. If the court finds that any appeal taken pursuant to this section or section 4-183 is frivolous or taken solely for the purpose of delay, it shall order the party responsible therefor to pay to the party injured by such frivolous or dilatory appeal costs or attorney's fees of not more than one thousand dollars. Such order shall be in addition to any other remedy or disciplinary action required or permitted by statute or by rules of court.

(e) Within sixty days after the filing of a notice of appeal alleging violation of any right conferred by the Freedom of Information Act concerning records of the Department of Energy and Environmental Protection relating to the state's hazardous waste program under sections 22a-448 to 22a-454, inclusive, the Freedom of Information Commission shall, after notice to the parties, hear and decide the appeal. Failure by the commission to hear and decide the appeal within such sixty-day period shall constitute a final decision denying such appeal for purposes of this section and section 4-183. On appeal, the court may, in addition to any other powers conferred by law, order the disclosure of any such records withheld in violation of the Freedom of information Act and may assess against the state reasonable attorney's fees and other litigation costs reasonably incurred in an appeal in which the complainant has prevailed against the Department of Energy and Environmental Protection.

(P.A. 75-342, S. 14; P.A. 76-435, S. 25, 82; P.A. 77-403; 77-603, S. 2, 125; 77-609, S. 6, 8; P.A. 78-331, S. 57, 58; P.A. 81-431, S. 2, 3; P.A. 83-129, S. 1, 2; 83-587, S. 69, 96; June Sp. Sess. P.A. 83-31, S. 1, 2; P.A. 84-112, S. 2, 3; 84-136; 84-311, S. 1, 3; P.A. 86-408, S. 1, 4; P.A. 87-285, S. 2; 87-526, S. 4; P.A. 88-230, S. 1, 12; 88-317, S. 39, 107; 88-353, S. 2, 4; P.A. 90-98, S. 1, 2; 90-307, S. 1, 5; P.A. 92-207, S. 2; P.A. 93-142, S. 4, 7, 8; 93-191, S. 1, 4; P.A. 95-220, S. 4-6; P.A. 97-47, S. 10-12; P.A. 00-136, S. 6; P.A. 07-202, S. 11; P.A. 11-80, S. 1; P.A. 17-86, S. 1; P.A. 18-95, S. 1; P.A. 19-64, S. 14.; June Sp. Sess. P.A. 21-2, S.148; P.A. 23-200, S.1)

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. 485, 532, 606, 839, 853, 918; 1995, cc. 299, 362, 499, 562, 638, 722, 812, 837; 1996, cc. 168, 469, 589, 599, 783, 786, 794, 855, 862, 902, 905, 1001, 1046; 1997, cc. 198, 295, 439, 567, 636, 641, 777, 782, 785, 838, 861; 1998, cc. 427, 891; 1999, cc. 438, 703, 726; 2001, c. 844; 2002, cc. 715, 830; 2003, cc. 275, 981, 1021; 2007, c. 439; 2009, c. 626; 2010, c. 627; 2011, c. 604; 2016, cc. 620, 716; 2017, c. 778; 2020, c. 1142; 2021, Sp. Sess. I, c. 483; 2022, c. 756; 2023, c. 534.

Virginia

Code of Virginia
Title 2.2. Administration of Government
Chapter 37. Virginia Freedom of Information Act

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days or, in the case of a request for criminal investigative files pursuant to § 2.2-3706.1, 60 work days in which to provide one of the four preceding responses.



C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. Except with regard to scholastic records requested pursuant to subdivision A 1 of § 2.2-3705.4 that must be made available for inspection pursuant to the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and such requests for scholastic records by a parent or legal guardian of a minor student or by a student who is 18 years of age or older, a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records and shall make all reasonable efforts to supply the requested records at the lowest possible cost. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. Prior to conducting a search for records, the public body shall notify the requester in writing that the public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records and inquire of the requester whether he would like to request a cost estimate in advance of the supplying of the requested records. The public body shall provide the requester with a cost estimate if requested. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn. Any costs incurred by the public body in estimating the cost of supplying the requested records shall be applied toward the overall charges to be paid by the requester for the supplying of such requested records. Any local public body that charges for the production of records pursuant to this section may provide an electronic method of payment through which all payments for the production of such records to such locality may be made. For purposes of this subsection, "electronic method of payment" means any kind of noncash payment that does not involve a paper check and includes credit cards, debit cards, direct deposit, direct debit, electronic checks, and payment through the use of telephonic or similar communications.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [PL 2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[PL 2011, c. 662, §5 (NEW).]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [PL 2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [PL 2011, c. 662, §5 (NEW).]
[PL 2011, c. 662, §5 (NEW).]

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

[PL 2015, c. 317, §1 (AMD).]

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[PL 2015, c. 494, Pt. A, §1 (RPR).]

4-A. Action for protection. A body, an agency or an official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

- (1) The terms of the request and any modifications agreed to by the requesting party;
- (2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;
- (3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and
- (4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [PL 2015, c. 248, §2 (NEW).]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [PL 2015, c. 248, §2 (NEW).]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [PL 2015, c. 248, §2 (NEW).]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [PL 2015, c. 248, §2 (NEW).]

[PL 2017, c. 288, Pt. A, §1 (AMD).]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists. [PL 2011, c. 662, §5 (NEW).]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist. [PL 2011, c. 662, §5 (NEW).]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [PL 2011, c. 662, §5 (NEW).]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. A reasonable fee to cover the cost of copying is no more than 10¢ per page for a standard 8 1/2 inches by 11 inches black and white copy of a record. A per-page copy fee may not be charged for records provided electronically. [PL 2021, c. 313, §1 (AMD).]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record in accordance with this paragraph. Compiling the public record includes reviewing and redacting confidential information.

(1) The agency or official may not charge a fee for the first 2 hours of staff time per request.

(2) After the first 2 hours of staff time, the agency or official may charge a fee of not more than \$25 per hour. [PL 2021, c. 375, §1 (AMD).]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [PL 2011, c. 662, §5 (NEW).]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [PL 2011, c. 662, §5 (NEW).]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [PL 2011, c. 662, §5 (NEW).]

F. An agency or official may require payment of all costs before the public record is provided to the requester. [PL 2017, c. 158, §1 (NEW).]

[PL 2021, c. 313, §1 (AMD); PL 2021, c. 375, §1 (AMD).]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

[PL 2011, c. 662, §5 (NEW).]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or [PL 2011, c. 662, §5 (NEW).]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [PL 2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record 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. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

12. Retention of fees or costs. An agency may retain any fees or costs charged under this section. [PL 2021, c. 375, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 662, §5 (NEW). PL 2013, c. 350, §§1, 2 (AMD). PL 2015, c. 248, §§1, 2 (AMD). PL 2015, c. 249, §1 (AMD). PL 2015, c. 317, §1 (AMD). PL 2015, c. 494, Pt. A, §1 (AMD). PL 2017, c. 158, §1 (AMD). PL 2017, c. 288, Pt. A, §1 (AMD). PL 2021, c. 313, §1 (AMD). PL 2021, c. 375, §§1, 2 (AMD).

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**Freedom of Access Act (FOAA) Request Form
with optional checklist for search process**

Maine Office of Information Technology

FOAA and Litigation Support Coordinator Eric.Stout@maine.gov, cell (207) 446-2438

Updated November 3, 2023

The purpose of this form/ checklist is to help better define what is needed in response to Freedom of Access Act (FOAA) requests. State of Maine agency staff can handle this on their own, or optionally reach out to the Maine Office of Information Technology (OIT) FOAA and Litigation Support Coordinator for consultation and assistance on searching.

Agency/ office receiving FOAA request: _____

Dates:

- Date of request: _____
- Date received agency: _____
- Date of initial response to acknowledge request (within 5 days): _____
- Date(s) of follow-up responses for time and cost estimate (or revisions): _____
- Date requestor agreed to pay FOAA fee of \$25 an hour after first 2 hours free: _____
- Date results provided: _____

Requestor contact information (to be able to send response or ask for clarification):

- Name of individual or entity (if known): _____
- Email address (if known): _____
- Phone (if known): _____
- Mailing address (if known): _____

Description of records being requested (language from requestor):

Timeframe requested (if known): _____

Time and cost estimates (\$25 an hour after first 2 hours free):

- Initial estimates:
 - \$ _____
 - _____ days
- Revised estimates (if search scope is revised):
 - \$ _____
 - _____ days
- Time to produce: _____ days
- Amount charged and paid: \$ _____

See page 2 for optional checklist for search process.

Optional checklist for search process:

Agency key people who would likely have relevant records, emails, or documents:

- _____
- _____

Search terms suggested by requestor (if any) or recommended by agency subject-matter experts in line with the description above:

- _____
- _____

Advanced search options for Microsoft-based email or files:

Search “filters” (optionally to use between search terms to fine-tune results):

- **OR** between search terms will give either/ or results
- **AND** between search terms will give only results that include BOTH
- **NOT** will exclude those terms
- **NEAR** (a Microsoft only filter) is a “proximity” filter that will give results when terms are near each other. For example:
 - NEAR defaults to within 8 words of each term
 - NEAR(100) = within 100 words of each term (can change value to any number for fine-tuning the search results based on proximity of terms)

TECHNICAL NOTES: check with your IT support people or see Microsoft website at:

<https://learn.microsoft.com/en-us/purview/ediscovery-keyword-queries-and-search-conditions?view=o365-worldwide#search-operators>:

- The **NEAR** search filter shown below is a “proximity” filter, to narrow the search results to any of the first set of terms (**OR, OR, OR**) to be within proximity to any of the second set of terms. In Microsoft the **NEAR** filter defaults to within 8 words of each other. This filter can be customized to tighten or broaden the proximity to any number of words, such as **NEAR(5)**, **NEAR(50)**, **NEAR(100)**, or any number. Other filters can be used, such as the **NOT** filter, which would exclude unwanted results.
- **The * is a “wildcard” to pick up any variation on that “root word.”**
- Microsoft search is not “case sensitive” meaning that it ignores capitalization of words. This is good because whether a word is capitalized or not, the search will find it. But it’s bad because you can’t specify a capitalized-only version of a word, like an acronym. The Microsoft search will find both capitalized and non-capitalized versions and not distinguish them.

See slides below for some examples of using the search filters described above.

3.0

Topic 3: In-Depth Search Skills

(OR, AND, NEAR, NOT filters)

The Goal of
your searches?

"Fishing is
NOT fun
for me..."



"Fishing
is FUN!"

To "fish out"
what you're
looking for!

<https://www.wvlogcabins.com/wp-content/uploads/2018/05/AndreLarkoDianaLarkoHarmansRainbowTrout-700x933.jpg>



3.1

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

What?

- You can search for a single word, multiple words, or phrases (in quotes) – all in a single pass.
- Fine-tune your searches to "catch the fish" you want.

How?

- These same techniques work with any Microsoft software product (for email, documents, any files).
- "Fish in your favorite trout steam" (folder) or widen search.



3.2

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

OR – either term will give results

AND – both terms must co-exist, or no results will be found

- This option is very limiting so be careful using it

NEAR – “proximity” filter works only in cloud-based sources (Outlook, OneDrive), but not on local or network drives

- one term near another (8 words by default)
- NEAR(5) = 5 words, NEAR(50) = 50 words, or any number

NOT – exclude a term similar to another, but you don’t want

- Example: Trout NOT “Tom Trout” NOT “Thomas Trout”

For a “deep dive” on search filters, see Microsoft’s website:

<https://docs.microsoft.com/en-us/microsoft-365/compliance/keyword-queries-and-search-conditions?view=o365-worldwide#search-operators>



3.3

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

Caution Tip:

Showing recent results...



More

- When searching Outlook email, Microsoft tends to give you only partial results (but quickly). Be sure to slide down to the bottom of the list of results. If you see this, then click More to get possibly more results.
- It’s a poor design (at the very bottom of the results list), but something to be aware of so you don’t miss any results.

When searching Outlook, it will find these terms in either the email itself or inside file attachments



3.4

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

Example #1: using OR filter

Looking for: emails and reports about population of trout in Maine streams for the past 3 years.

You might search for this:

trout OR population received:>=11/1/2018

Which would find: All mentions of EITHER trout OR population for dates since (>=) Nov. 1, 2018

255 characters is the maximum limit for a single search. In this example the search string totals 41 characters, including spaces. You can load up to 255 characters in a single search (10,000 for a "cloudsearch" discussed later).



3.5

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

Example #2: using AND filter

Looking for: emails and reports about population of trout in Maine streams for the past 3 years.

You might search for this:

trout AND population received:>=11/1/2018

Which would find: All mentions of BOTH trout AND population for dates since (>=) Nov. 1, 2018

This is a more narrowed search where BOTH words have to co-exist. It doesn't find all instances of trout, but only in the context of trout population.



3.6

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

Example #3: using **AND** in combination with **OR**

Looking for: emails and reports about health **or** population of all fresh-water fish in Maine from 2018 – 2020.

You might search for this:

fish **AND** (health **OR** population) received: **>=**1/1/2018 **AND** received: **<=**12/31/2020

Which would find: All mentions of fish, but then narrowed to **ALSO** mention either the word health **OR** population for dates shown.

Like a mathematical formula, the parentheses must be in the right place to work right. In this case you want to find fish but then (health OR population) as a sub-set filter.



3.7

Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

Example #4: using phrases (in quotes)

Looking for: emails and reports about health **or** population of all fresh - water fish in Maine.

You might search for this:

“fish health” **OR** “health of fish” **OR** “fish population” **OR** “population of fish” [or any other likely exact phrases that might have been used]

Which would find: Results from any of these exact phrases – use as many combinations as you can think of if using exact phrases. Or use the AND, OR filters as shown in the previous examples.



CAUTION: The danger is missing other ways of phrasing those topics



Topic 3: In-depth search skills

(OR, AND, NEAR, NOT filters)

Example #5: using the NEAR filter

Looking for: emails and reports about health or population of all fresh - water fish in Maine.

You might search for this:

fish NEAR (health OR population)

Which would find: Results for “fish” if NEAR “health” OR “population” – like in the same sentence.

Or use the AND, OR filters as shown in the previous examples.

NOTE: NEAR searches within 8 words. NEAR(50) would be within 50 words. You can add any number to finetune the proximity search.



Name of Agency
Freedom of Access Act (FOAA)
Request for Records

What is the requestor's contact information?

- Name
- Email
- Phone
- Address

What is the date that you are submitting this request?

Do you want to inspect the records in person, receive paper copies or receive electronic copies of records that exist in electronic format?

Please describe the records you are seeking. Include as much detail as possible, including:

- Type of record, such as email, reports, audio/visual, etc.
- Subject matter of the request
- Agency staff or officials who may possess the records, if known
- Time frame that the records were created or received by the agency.

The use of a form to submit a FOAA request is not mandatory. Please direct any questions about the form, alternate ways to submit a request or directions for ADA assistance to the agency contact listed below.

Agency contact information:

- Name
- Email
- Phone
- Address