From:	Rebecca Lambert
То:	<u>Laxon, Lindsay</u>
Subject:	Right to Know - Requested Information
Date:	Thursday, August 8, 2024 12:05:53 PM
Attachments:	image001.png
	image002.jpg
	2024 EOAA Abuse Survey Results.pdf

This message originates from outside the Maine Legislature.

Good afternoon Lindsay,

Attached please find the results of the survey about public records requests that are burdensome or an abuse of the Freedom of Access Act process. You will note there is an appendix that lists the towns and cities that contributed information to the survey.

Please let me know if you have any questions or would like more details.

Thanks, Rebecca

Rebecca J. Lambert Municipal Issues Specialist



60 Community Drive Augusta, ME 04330 (207) 623-8428 x2307



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Question 1: Please provide examples of the types of public records requests your municipality considers to be "burdensome."

- We recently received a request for FOAA information that was very vague and just what I would consider a "fishing" expedition. No time frame, no specifics, just anything that had the individuals name in it.
- "I would like to see the variance for the country store expansion and replacement of front porch that forces patrons to back out on the State road.
 I will want all copies of all paperwork associated.

The proposal if it is not excepted by January 30 we will be requesting a copy of all paperwork with every building permit issued since 2002.

We have requested a copy of all permits issued for all Town employees and volunteers of the Town of Bowdoinham including the Town of Bowdoinham with a copy of all details.. And a copy of all permits for Cannabis and names associated." "As stated I would like.

- 1. Copies of the Country Store replacement and expansion of the Front Porch. And any variance associated with and including the variance for the expansion of the porch forcing patrons to back out on a State road.
- 2. The building permits for the additions and the barn Mr Baines has built forced to removed additions and has since replaced them.
- 3. The number of permits issued by year since 2002.

We will be requesting all others at a later date.

- 1. All building permits issued to Town employees and volunteers.
- 2. All building permits issued to the Town of Bowdoinham.
- 3. All permits issued for cannabis and all names associated.
- 4. Permits and variance for being within 20' of the street for new home on Spring street.

I would like is a list of all board members, CEO's Town managers and others that have been working for the Town of Bowdoinham from 2002 to 2022.

The 2002 Town Ordinance.

All Ordinance changes since 2002.

When shore land zoning rules were applied to all of Bowdoinham."

- This spring I received four separate FOAA requests in less than four weeks from a pair of individuals working together on the same project since 2018. Because these two have been working together for so long on this same project, and all the issues are well known, they could and probably should have combined their requests into a single request to save the Town time and resources in responding.
- "Attached is one i got recently. Basically couldn't produce what I didn't have nor could fine. This request 004-300 was stressful when received, and in the end only pulled the tax card information from me as he already had the rest.

Most I will call and they eventually bring it way down to what it is they are really after, but not all. This is not my only job and can take me too much time to fill, but I do. My practice is to respond within 5 days (unless i'm on vacation) and tell them how long it'll take me to go through boxes in the basement as there's no 'digital' filing as of yet for our town. No archive is the issue."

• "This is a very timely subject for our office here in Sherman. We had a lawyer last month file on our behalf and on the behalf of our neighboring town of Island Falls a protection from abuse from an individual. My office had witnessed:

The individual making ongoing back-to-back calls to our office, talking about his FOAA rights endlessly and purposely trying to keep us on the phone as long as possible, tying up our phones and time.

We had information mailed to him and was in his mailbox (per our post office) but he called that day and even though he had the information, he instead now wanted a paper copy he could pick up at the office- we unfortunately had to redo those copies. He never did come in to get that material.

Office staff before me- individual asked them for information equating to 'boxes' of copies and resulted in hours/days? worth of work requests in May 2024 made to my office from this one individual: (Mind you we only have myself and the deputy clerk working in this office handling all the day to day transactions)

- All communication information we have with neighboring town office
- All invoices we have with our lawyer
- All documents/contracts we have on our transfer station
- All certification paperwork and training logs on our fire department

Approaching fire department staff while they were off duty and at a diner having supper and asking them for information. When he approached them he said he was from the Bureau of Labor.

Our neighboring town has had it much worse. The same individual would:

- Do "phone bombing" keeping all their phone lines tied up so no one could call in or out
- Keeping staff on the phone with him as long as possible.
- At their office and over the phone demand information immediately or would start harassing, yelling, and scaring staff
- Camping out/stalking across town office property
- Individual not understandable that some information cannot be provided as it is protected/confidential. "
- The ones I have problems with include those who will not identify themselves. I understand that the law allows this because there could be some sort of retribution by some people

toward the questioner. Still the requests that come from made up names such as the one we have had twice now, Presqueisle24hournews, is clearly just a cover and we are not the only town that has been subjected to this one. They have, more than once, asked about police discipline issues. Once they find they must pay half of the estimated costs (as per the law) up front they go away after harassing a few town employees for a few days. I suggest for this that the law could force such requesters to identify themselves to Brenda Kielty who oversees this for the State.

- No known burdensome FOAA requests in approximately the past 5 years.
- "The two types of requests/records that I've seen so far that strike me as burdensome are:
 - 1. Requests from private entities that appear to be either assembling private databases of public information, or which appear to be gathering invoices, contract data, etc. for the purpose of commercial activity; or
 - 2. Exceedingly broad requests for ill-defined sets of records."
- "I have only been Clerk here in Palermo since September, 2023. During this time here, we have not had any issues with people or residents asking for information.
 I showed this to my Deputy, Melinda Smith who has been here over 5 years. She also stated that we really do not have any residents, or a group of residents abusing this."
- The Town of Windsor only received one FOAA request from Jan 2024-June 2024. This is a yearly request for payroll information. I am not able to respond to your three questions due to the lack of experience
- A single parent in our school department who is not a resident of our town has requested almost 100 FOAA requests in a single school year alone. This parent has been keeping up this pace for over 2 years now. You can see the requests by CLICKING HERE as we post them on our website.
- "Data Mining" requests from companies using our data to support for-profit ventures. An example is construction data aggregators asking for plan-holder lists or asking for bid results. Another example is the out-of-state companies asking for all of our pay records.

"Fishing Expeditions" - requests from residents asking for broad categories of information with little focus other than their belief that there has been some public wrongdoing or that someone is hiding something.

"Serial Requests" - Requests coming in one after the other, asking for similar information or trying to piggyback one request on another."

- I am a firm believer in the public's right to know and work diligently to assist a citizen in getting what they need from us
- I am fairly new (9/2023) and we have not yet had many FOAA requests to date.

- "Last fiscal year, I responded to 37 FOAA requests. This does not include many Police Department FOAAs, as most requests go directly to them and are responded to by that department.
- I receive a lot of requests from companies working with developers seeking information for their environmental site assessments. These requests are typically looking for information from our Code, Planning, Fire and Water Resource Protection departments. We follow the direction given to us in 2022 by Brenda Kielty from the Attorney General's Office to treat these as one usually made "in the ordinary course of business." If the requester includes "FOAA" or "Public Records Request" etc. in their request, I typically respond that this is a request in the ordinary course of business, copy the involved heads of departments, and they respond directly with the records being sought."

"We get a number of other requests from commercial entities as well. For example, seeking insurance claim information, cell phone tower information, purchasing records, real estate tax roll data, etc.

FOAA requests that take many hours to complete I would also consider burdensome. Many times, if the requester's search terms are not specific enough, or they do not provide specific email addresses to search, I need to conduct a general search and review hundreds, sometimes thousands of emails—many of which are not relevant to the person's request. For example, we had a recent request where, after spending a considerable amount of time with the requester to narrow down search terms, the City still reviewed and delivered nearly 9,000 emails, in addition to many other types of records."

- The Town of Jay does not really get that many FOAA requests and I would say that most of them we get are not really burdensome. But, there is potential. I've attached an example of several that my Police Chief recently received. There are actually 6 individual requests from the same person. They come from someone in Pennsylvania and are on a State of Missouri form. They originally went automatically to the Chiefs spam email folder but because he periodically checks that folder he saw them and we responded. *(Submitted pdf of FOAA request)*
- "in recent weeks the Monroe select board has had several FOAA requests that I believe reveals a potential pattern of continuing needless harassment.

Before listing the request a little background is needed and I write this knowing this is itself subject to a FOAA request.

The person making these requests stands in opposition to some of the initiatives put forward by the planning board, of which she is a member, the select board and the Monroe Conservation Commission. I believe we have tried to answer her questions sincerely but they appear to fall short of her expectations resulting in the following FOAA request submitted."

- As the Town Clerk and Public Access Officer, I have not had a burdensome amount of any type of FOAA request. I am fairly new however in the clerk world, only four years now. So far my requests for public information have mainly come from residents, with a couple coming from Lawyers or out of town interests.
- "The City of Bangor has decided to provide the Right to Know Advisory Committee with three general examples of the types of FOAA requests that are burdensome:
 - 1. Attorneys who use FOAA as a substitute for a request for production of documents in civil lawsuits;
 - 2. Media companies and political parties who use FOAA requests to try to shift to the municipality their burden of compiling research; and
 - 3. Large FOAA requests from state agencies that include documents going back 50+ years."
 - Committee minutes (kept by each committee, town office has no access to these minutes unless requests them from committee)
 Real estate agents asking for information easily found on the website
 Financial information (audit, usually before completed)"
 Requests that ask for all documents to or from a person without reference to time frame or subject matter.
 Requests for all documents pertaining to an overly broad subject matter like "land use", "roads" 'town budget" without regard to any aspect within that subject matter, or timeframe i.e. year to date, 2023, past 5 years or the beginning of time.
 Requests for "all documents that pertain to"... (this is subjective in terms of how a

document might pertain either directly, indirectly or very indirectly to another subject) instead of asking for specific documents."

• Attached is an example of a burdensome FOAA request. The data in question would take much time and research to support a legal claim. This person should be consulting a lawyer as our town only has 2 employees in the town office. One employee is the Tax Collector full-time, and the other employee is the Clerk, Treasurer, and Registrar of Voters, working 30 hours per week. (*submitted pdf of FOAA request*)

Question 2: Please provide examples of the types of public records request or situation that your municipality believes represents an abuse of the FOAA process.

- In talking to the Town Clerk, she said that we get minimal request and probably the above is the only example of "abuse". The individual is upset because we asked the state about a message board that he had near the side of the road that was posting negative comments about the Town officials.
- Any information regarding a municipal employee's personnel record (resume, application, resignation, discipline, etc). Municipal employees should have the same protections as non-public employees. Being a public employee should not give the public rights to an

employee's personal information. This is part of the reason we have a shortage of municipal employees.

- Indeed, some of their requests this spring were identical to requests that they had made of the Town in 2022, and to which the Town had responded comprehensively in 2022. After a phone call (or two) with the state's FOAA ombuds office, and relying on the federal FOIA, I aggregated my time spent on those requests and charged them for all four requests as if it had been one.
- We have one couple who keeps suing our town over the same issues that have been dismissed in superior court, and continually ask for foaa's that have come to pass'....They also pull FOAAs from all state agencies, and annoy the attorney general at times. They are relentless in their requests. They asked me once for copies of all building permits I had issued and all the paperwork associated with those since my employ in 2021. Then try to discredit me with DEP and the FM Office....what was the purpose of this? Just to make it burdensome on me and the municipality. Their way of terrorizing legally.
- Office staff before me- individual asked them for information equating to 'boxes' of copies and resulted in hours/days? worth of work

Sample requests in May 2024 made to my office from this one individual: (Mind you we only have myself and the deputy clerk working in this office handling all the day to day transactions)

- All communication information we have with neighboring town office
- All invoices we have with our lawyer
- All documents/contracts we have on our transfer station
- All certification paperwork and training logs on our fire department
- Approaching fire department staff while they were off duty and at a diner having supper and asking them for information. When he approached them he said he was from the Bureau of Labor.
- I also think there should be some way to stop the use of the law for business development fishing. You may know of the attorney in Stonington who has used FOAA requests to many municipalities (more than once now) to fish for people who have lost properties on back taxes. He seems to be either looking to defend such folks or build a class action law suit. As you likely know he has done wholesale requests to many of us.
 I have also had one building materials supplier seek weekly reports on building permits issued. This is also just an attempt to market their services. It can become painful on a weekly basis."
- "Recent examples of #1 include a request for all purchasing records from a given period from SmartProcure.com; or a series of six requests from FoiaBuddy.com requesting several categories of data on IT expenditures from the police department, including a request to see

invoices for all of such expenditures. It feels like we are spending taxpayer money to help support the business models of private entities.

A recent example of #2 was a request for "all records on a given property going back to 1850 if possible." While we frequently get broad requests from citizens, this one bugged me because it came from a law office that should have known better :). "

- We have emails from this parent that specifically threaten us to either give him information, or do what he wants or he will purposefully FOAA us just to eat up our time.
- Requests that are designed to disrupt or discourage public officials or volunteers. As an example we recently had requests for the Fire Chief's personal phone records because he sometimes makes and receives official calls from his landline. In this example we will redact any non-public information, but we are still dealing with a mix of public and private information. Most small town volunteers don't have the tools or ability to keep everything in a silo, despite best practices telling them to do so. It's the act by the requester of showing that "I can get to you, and I can make you jump and do things I want, and you can't do anything about it" that is at the root of most of the abuse we see. These kinds of requests certainly discourage public officials and volunteers, and are often intended to cause disruption and distress to the subject of the inquiry.
- "I received the attached FOAA request. I do not consider the request to be an abuse of the law but in my opinion the request is rather burdensome. In support of my opinion I offer the following:

The Lincolnville Town Office has four full-time employees (one of which is currently out on an extended medical leave). Free staff time to conduct meaningful and thorough research is limited.

- The request asks for "All Records" for 15 individuals or entities for a period of 23 years
- Records is defined in the request as "all written records, reports, correspondence (including e-mail correspondence and text messages), letters, notes, memoranda, orders, votes, resolutions, permits, approvals, denials, directives, notices, stop orders, settlement or consent agreements, voice recordings, video recordings, and all other similar items, whether in paper or electronic form.
- Not all of the Town's records are electronic so a manual search of paper files (for 15 individuals/entities over a 23 year time period) is time consuming and, again in my opinion, burdensome."
- The requests from commercial entities seeking information are, I believe, an abuse of the intentions of FOAA. My guess is that they are selling this data or using it to advance the company's financial gains, and this does not seem like a fair use of taxpayer resources. The \$25/hour after the first two hours that municipalities are permitted to charge the requester does not cover the cost of staff time involved in fulfilling these requests.

- What I actually sent was summary sheets of our accounts payable for the relevant accounts related to what he was requesting (repairs and communications). I asked him to look them over and let me know if he wanted copies of specific invoices. He has not responded back. The potential is there though that he could request copies of invoices related to all of these items for the past 2 years which seemed to be his original request. Usually if I get something like this I try to work with the person to figure out what it is they really want and get them that. Sometimes they don't know how to ask for what they're looking for. Sometimes it feels like it might be a fishing expedition.
- "Early May FOAA to the town of Monroe for all financials

Mid May - FOAA to the selectboard for all communication between its members and with its members to and from Tom M. the planner for Maine's Land Management Office regarding the proposed comprehensive plan for Monroe. June 12 - Attended and recorded select board meeting June 15 - Attended and recorded select board meeting Late June - FOAA for all communication between select board members and Monroe Conservation Commission and any other group regarding the proposed sale of a parcel of town land to Coastal Mountain Trust. June 26 - FOAA via certified letter to select board for comprehensive plan communication and any discussion on road repairs as well as the proposed land sale."

- Committees constantly demanding information"
- Any of the burdensome requests described above represents an abuse of the FOAA process, as well as requests from an individual for copies of all the emails that they have sent the town (which they should have) or requests for copies of all FOAA requests that that individual has claimed to have made to the town (again they should have this).

These are abuses to the FOAA process because its clearly not what the law intends, especially in the case of the latter two examples. These requests serve no other purpose than to "test" the ability of the town to comply with FOAA and does not necessary for the requester in terms of their ability to access their information that they have sent the town in the past. I.e. if the requester wishes to use e-mail they should be able to retain access to their email history to see what they have emailed and/or what FOAA requests they have made without creating another FOAA request.

• Requests that take a lot of time, over 1-2 hours, are burdensome. Requests that are complex and needed for legal reasons, are often burdensome

Question 3: Please describe your recommendation for statutory changes that would address the examples described in questions 1 or 2.

• I think that if you were going to change something, it should be that there is a specific request- what exactly are they looking for; a specific timeframe; and is there a specific occurrence that they want more information about.

• "30-A M.R.S. § 2702 –

1.A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

1.B.(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action, including any disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision andkept confidential. If the employee whose name was deleted from the final written decision andkept that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, ""final written decision"" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and "

 An amendment to FOAA that expressly allows a municipality to aggregate similar requests from the same individual or group of individuals working together, received within some reasonably short period of time, would be greatly helpful. Some federal agencies permit aggregating time and fees only when requesters have made separate requests "solely" to avoid fees. See, e.g., 14 CFR § 1206.508 (NASA's FOIA regulation). I think that that restriction is too narrow, and that the broad language of the FOIA statute should be adopted (allowing aggregation "if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters").

- Recommend:
 - pull information that is relevant to yourself, your property, your town records or any police action that might have affected you personally, etc. All other requests should come from a lawyer. Don't be pulling police records or FOAA on your neighbors just for the sake of gossip or smearing. There must be 'more' to just pulling an foaa, just because you want to see the info.
 - 2. Our response times need to be longer. If the FOAA Officer is gone on a 2 week vacation, there's no other 'staff' trained, then what's the solution. I get FOAA from people who are going to court the next day...well you knew about your court date how many months ago? We do our best to accommodate, but not always feasible.
 - 3. .10 cents a copy is so 1980s. Copies are 25 cents per page here and fax \$2, so bring up that pricing for sure."
- Our neighboring town has had it much worse. The same individual would:
 - Do "phone bombing" keeping all their phone lines tied up so no one could call in or out
 - \circ $\;$ Keeping staff on the phone with him as long as possible.
 - At their office and over the phone demand information immediately or would start harassing, yelling, and scaring staff
 - Camping out/stalking across town office property
 - Individual not understandable that some information cannot be provided as it is protected/confidential. I believe in the FOAA. It's a great right we all have.
 But there needs to be a balance from these types of abuses. I thank you for covering this issue.
- "Also, I think it should be clearer as to how we treat employee records regarding discipline. Defining the line between when a department head instructs an employee about some thing and when that falls over the line into discipline can be questionable. And do we owe to the requester disciplinary records for all? Lastly, there should be some sort of statue of limitations on information. We have had one requester who reduced his request from 60 years of records to only 30. Still that is a big job in part because records storage systems have changed over time so we must go back and
- No recommendations at this time.

review many."

• However, so far I have been successful in negotiating with people making broad requests to help them refine what they really want to see – gentle reminders that we can charge for time in excess of two hours and that broad requests may take many weeks to fulfill have helped

there. I do not at this point have any statutory suggestions. To this point, discreet use of the provisions for charging for time, and making estimates for delivery that balance the request against the workload of the department keep the effort from being too significant, and I can't today think how to draw better boundaries around requests that wouldn't be overly narrow.

- "There was a bill that was presented to the legislature by Rep. Mo Terry in the first session of the legislature. This bill was supported by MSMA and MEA, but didn't get anywhere. Specific items I would suggest:
 - Placing a limit on the total number of FOAA's from any single citizen in the course of a year.
 - Prevent citizens from "breaking up" FOAA requests into smaller chunks in order to stay under the 2 hour limits for paid time of personnel needed to fulfill the FOAA requests.
 - After a certain number of FOAA requests by any single individual in a year, remove the 2-hour limit so that we can charge for actual time required moving forward."
- The main issue I have with FOAA's: The word "All" when someone uses the word all in their request they mean all and to find all in a town office is pretty near impossible. All documents that use my name, really? That's a tough one and could go back to years of research. When someone makes a FOAA, I think it should be limited to them asking for an exact date or document that they know they are looking for. It should not be open-ended and the burden of providing research should be limited to the exact document/documents and not left for us to guess what they are looking for.
- "Even though we are paid for (some of) the time involved with completing a request it's the time that is most valuable and we can least afford to lose. Almost any request outside of the most simple and straightforward takes a few hours to complete properly. Completing them properly usually involves detailed tracking, multiple calls or emails, compilation, review, etc. If we don't perform the request carefully we are more open to litigation and attacks. The single best thing that could happen to relieve some of the pressure is to make requesters pay for ALL of the time spent in responding to a request. Make them pay for all of the time, no exceptions. Why are my taxpayers paying for data miners and their disgruntled neighbors to get two hours of free staff time? I don't think it's fair.

Another improvement to the law would be to require requests to be in writing and include specific things like the timeframe, key words, contact information, etc. Right now those are completely optional and so I have to request clarifications on about half of the requests I receive, and develop documentation on almost all of them (again, if you don't document, they can come after you). If the requester wants the information they should be doing their part to provide a clear request - which ultimately is to their benefit. Right now all of that burden is on the FOAA Officer or record holder. It just isn't efficient or equitable."

- I am not an expert on the statute, but I think that including something that would prevent commercial entities from exploiting the law would be helpful. I also think that it would be worth studying the actual hourly cost to municipalities in fulfilling FOAA requests and increasing the maximum hourly amount that municipalities can charge for these requests.
- While this is a somewhat extreme case, it is not unusual for me to receive a request that requires reviewing hundreds or upwards of 1,000 emails.
- Our office is all for transparency and we try to be as open as we can but requests like this can be frustrating. Our weekly accounts payable warrants are filed separately so if we had to pull each of these invoices it would take a substantial amount of time even if the person were coming in to view them. If they wanted us to copy/scan all of them it would be even more intensive. Even if we can charge for this it is taking a person away from what they would normally be doing so it adds pressure to the staff. Again, I'm not opposed to doing that when it's a legitimate concern but I wish there were a way to discern between them. I don't really have any great remedies to solve the issue though.
- "We have been in compliance in responding but it has taken considerable time. As you know, the pay for our service to the towns which we serve is not great but we do it with altruistic intent so when the stress of these request presents it makes it less likely that one would serve their community

I would recommend that all FOAA request be submitted to MMA for review prior to being submitted to the municipal officials.

- The City recommends that the State of Maine consider increasing the fee under 1 M.R.S. Section 408-A(8). This may cut down on the burdensome requests and abuses of the FOAA process. Increasing the fee would also be responsive to the increasing cost of living and wages. The City supports the goal of FOAA and wants to ensure that records of our actions are open to public inspection.
- No recommendation
- The FOAA law should be amended to be clear about how a FOAA request should be presented. The requestor should be required to articulate the following at a minimum.
 - What specific document(s) they are requesting?
 - What specific subject matter do the documents pertain to?
 - What timeframe does the requests/documents cover?
 - FOAA should not be used to simply get copies of documents created by and provided to the town by the requestor.
 - FOAA should not be used to request documents already provided to the requestor through a previous FOAA request.

Appendix A

MMA Members who participated in the survey include: Bangor Bingham Blue Hill Bowdoinham Brownfield Dover-Foxcroft Eastport Gorham Hollis Jay Jefferson Lincoln Lincolnville Madawaska Monroe Montville Northport Palermo Readfield Sherman South Portland Sweden Windsor