



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

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MEMORANDUM

TO: Joint Standing Committee on Judiciary
FROM: Janet Stocco, Legislative Analyst
DATE: May 6, 2025
RE: Overview of current law relating to public records requests

- A. Public Policy.** The Freedom of Access Act (FOAA), which can be found in Title 1, Chapter 13 of the Maine Revised Statutes, declares as a matter of public policy that “public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.” 1 M.R.S. §401.
- B. Public records.** The phrase “public records” is defined for purposes of FOAA to include:
- any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except ...
- A. Records that have been designated confidential by statute; ...
- C. Public records requests.** Unless otherwise provided by statute, FOAA establishes that “a person has the right to inspect and copy any public record . . . within a reasonable time of making the request.” Importantly, however, in responding to a public records request “an agency or official is not required to create a record that does not exist.”
1. **Timeline for public records requests.** Section 408-A establishes the following time requirements.

Within 5 working days of the request.	Must acknowledge receipt of the request. §408-A(3)
	May request clarification of “which records are being requested” §408-A(3).
	Must provide written notice of any decision to deny a public records request, “stating the reason for the denial.” §408-A(4).
Within a reasonable time of the request.	Must provide “a good faith, nonbinding estimate of the time within which the agency or official will comply with the request.” §408-A(3).
	The agency or official must “make a good faith effort to fully respond to the request within the estimated time.” §408-A(3).
	Must provide “an estimate of the time necessary to complete the request” and “an estimate . . . of the total cost as provided by subsection 8.” §408-A(9).

Before proceeding with request	If the estimated cost is “greater than \$50,” the public agency or official must inform the requester before proceeding.” The agency or official “may require a requested to pay all or a portion of the estimated costs . . . prior to the search, retrieval, compiling, conversion and copying of the public record if (a) the “estimated total cost exceeds \$100” <u>or</u> (b) the requested has previously failed to pay a fee for a public records request in a timely manner.” §408-A(10). Conflict? Although §408-A(10) suggests the two situations described above are the only situations in which the agency or official may require the requester to pay the estimated cost in advance, §408-A(8)(F) provides “an agency or official may require payment of all costs before the public record is provided to the requester.”
Within 30 days of receiving a request	If the agency or official denies the request on the basis that it is “unduly burdensome or oppressive” it must file a request for an order of protection in Superior Court within 30 days of receiving the request. §408-A(4-A).

2. **Fees charged for public records requests.** Section 408-A(8) provides the following guidance regarding fees charged by public agencies and officials for public records requests.

- “Reasonable fee to cover the cost of copying” (if 8.5 x 11 inch white paper with black ink is used, the fee may not exceed 10¢ per page).
 - *No per-page copy fee is permitted if the record is provided electronically.*
- Fee “to cover the actual cost of searching for, retrieving and compiling the requested public record” including time to review and redact confidential information from the record.
 - *The agency or official may not charge a fee for the first 2 hours of staff time per request; thereafter, the fee may not exceed \$25 per hour.*
 - *If the requester is permitted to “inspect” the record and not receive a copy of the record, the agency or official may not charge do the inspection unless staff time is required to compile or convert the record into a readable or usable format. See also §408-A(1).*
- Actual cost (a) to convert a public record into a form susceptible to visual or aural comprehension; (b) to convert the public record into a usable format; and (c) of a storage device on which the public record is stored if the storage device is given to the requester.
- Actual mailing costs to mail a copy of the record.

3. **Fee waivers.** Section 408-A(11) authorizes the agency or official to waive a fee for a public records request (a) if the requester is indigent or (b) if the release of the public record requested “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.”

4. **Denials of public records requests.** Section 408-A(4) provides that, if a public agency or official denies a public records request, it must provide a written notice stating the reason for the denial to the requester within 5 working days of receiving the request.

Appeal by requester. A requester may appeal “the refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record” to Superior Court within 30 days of receiving the notice of denial. The agency or official must file a responsive statement within 14 days

explaining the basis for the denial. If the court concludes that the “refusal, denial or failure was for just and proper cause” it may order the agency or official to disclose the record. §409.

Request for court order of protection. If the reason given by an agency or official for denying a public records request is that “the request is unduly burdensome or oppressive,” the public agency or official must also file a request for an order of protection in Superior Court within 30 days of receiving the request. The Superior Court’s consideration of this protection order request may be combined with any appeal by the requester. §408-A(4-A).

The public agency or official seeking the order of protection must provide the following information either in the complaint or at least 14 days before the hearing:

- (a) the terms of the request and any modifications to the request agreed to by the requesting party;
- (b) a statement of facts demonstrating the burdensome or oppressive nature of the request;
- (c) a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records and the resulting costs calculated pursuant to §408-A(8);
- (d) a description of the agency’s or official’s efforts to discuss the cost estimate and possible modifications of the request to reduce the burden of production;
- (e) proof that the agency or official notified the requester of its intent to request an order of protection *at least 10 days prior* to filing the complaint.

Under §408-A(4-A), the Superior Court may grant the order of protection and describe “the terms upon which production, if any, must be made” if the court finds that the agency or official “has demonstrated good cause to limit or deny the request.” If the court denies the order, it “shall establish a date by which the records must be provided to the requesting party.”

D. Penalties. Pursuant to §410 of FOAA, an “officer or employee of a state government agency or local government entity who *willfully* violates” any provision of FOAA commits a civil violation. In these circumstances, the state government agency or the local government entity (not the officer or employee) is subject to a civil penalty of:

1. Up to \$500 for the first violation by an officer or employee of the agency or entity;
2. Up to \$1,000 for the second violation by an officer or employee of the same agency or entity within 4 years of the prior adjudication; or
3. Up to \$2,000 for the third or subsequent violation by an officer or employee of the same agency or entity within 4 years of the prior adjudications.