

Maine Freedom of Access Act: Your Right to Know

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Frequently Asked Questions (FAQ)

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GENERAL QUESTIONS

What is the Freedom of Access Act?

The [Freedom of Access Act](#) (FOAA) is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The FOAA does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the [Freedom of Information Act](#) (FOIA) applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

For more general information on the Freedom of Information Act go to:

[FOIA.gov](http://foia.gov) - [Freedom of Information Act](#)

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any [Superior Court](#) in the state to seek relief for an alleged violation of the FOAA. [1 M.R.S. § 409\(1\)](#)

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

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. [1 M.R.S. § 410](#)

What are the penalties for failure to comply with the Freedom of Access Act?

A state government agency or local government entity whose officer or employee commits a willful violation of the FOAA commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1 M.R.S. § 410](#) Under the current law, there are no criminal penalties for

failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. [1 M.R.S. § 452](#)

What is the Public Access Ombudsman?

The Legislature created a public access ombudsman position to review complaints about compliance with the FOAA and attempt to mediate their resolution, as well as answer calls from the public, media, public agencies and officials about the requirements of the law. The ombudsman is also responsible for providing educational materials about the law and preparing advisory opinions. The ombudsman works closely with the Right to Know Advisory Committee in monitoring new developments and considering improvements to the law.

How do I contact the Public Access Ombudsman?

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

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

Are elected officials required to take training on the Freedom of Access Act?

Yes. All elected officials subject to this section and public access officers must complete a [course of training](#) on the requirements of the FOAA. [1 M.R.S. § 412](#)

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

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

What is a public access officer?

A public access officer must be designated to serve as the contact person for an agency, county, municipality, school administrative unit and regional or other political subdivision for public records requests. An existing employee is designated public access officer and is responsible for ensuring that public record requests are acknowledged within five working days of receiving the request and that a good faith estimate of when the response to the request will be complete is provided.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials and public access officers can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.

Do training courses need to be certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials and public access officers certify they have completed the training?

After completing the training, elected officials and public access officers are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A public access officer must file the record with the agency or official that designated the public access officer. A [sample training completion form is available \(PDF\)](#) (This file requires the free [Adobe Reader](#)).

PUBLIC RECORDS

What is a public record?

The FOAA defines "public record" as "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". A number of exceptions are specified. (See the discussion of exemptions below.) [1 M.R.S. § 402\(3\)](#)

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The FOAA provides that "a person" has the right to inspect and copy public records. [1 M.R.S. § 408-A](#)

How do I make a Freedom of Access Act request for a public record?

See the [How to Make a Request page on this site](#).

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The FOAA does not require that requests for public records be in writing. However, most governmental bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the governmental body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely-preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within 5 working days of receipt of the request. [1 M.R.S. § 408-A\(3\) P.L. 2013, ch. 350](#)

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. [1 M.R.S. § 408-A\(3\)](#)

Does an agency have to estimate how long it will take to respond to my request?

Yes. An agency or official must provide a good faith, nonbinding estimate of how long it will take to comply with the request within a reasonable time of receiving the request. The agency or official shall make a good faith effort to fully respond within the estimated time. [1 M.R.S. § 408-A\(3\) P.L. 2013, ch. 350](#)

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. [1 M.R.S. § 408-A](#) The agency or official can schedule the time for your inspection, conversion and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. [1 M.R.S. § 408-A\(5\)](#)

Can an agency or official delay responding if my request was not directed to the agency public access officer?

No. An agency that receives a request to inspect or copy a public record must acknowledge and respond regardless of whether the request was directed to the public access officer. The unavailability of a public access officer may not be reason for a delay. [1 M.R.S. § 413\(3\)](#)

What if the agency or official does not have regular office hours?

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. [1 M.R.S. § 408-A\(5\)](#)

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. [1 M.R.S. § 408-A](#) Agencies must acknowledge the request within 5 working days of receipt. A written denial within 5 working days of receipt is required if your request is denied in whole or in part. [1 M.R.S. § 408-A\(4\) P.L. 2013, ch. 350](#)

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

A person may inspect or copy any public record in the office of the agency or official during reasonable office hours. The agency or official shall mail the copy upon request. The agency may charge a reasonable fee to cover the cost of making the copies for you, as well as actual mailing costs. [1 M.R.S. § 408-A\(1\), \(2\), \(8\)\(E\)](#)

When may a governmental body refuse to release the records I request?

The FOAA provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. [1 M.R.S. § 402\(3\)\(A\)-\(O\)](#)

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the [Statutory Exceptions List](#). While this listing may not be totally complete, it contains the vast majority of exceptions to the FOAA.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the FOAA. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Must an agency have computer technology resources that allow for maximum accessibility to public records while protecting confidential information?

When purchasing and contracting for computer software and other information technology resources, an agency shall consider the extent to which it will maximize accessibility and exportability while protecting confidential information that may be contained in the public records. [1 M.R.S. §414](#)

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the receipt of the request for inspection or copying. [1 M.R.S. § 408-A\(4\) P.L. 2013, ch. 350](#)

What can I do if I believe an agency has unlawfully withheld a public record?

If you are not satisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 30 calendar days of your receipt of the written notice of denial, to any [Superior Court](#) within the state. [1 M.R.S. § 409\(1\) P.L. 2013, ch. 350](#)

What can I do if an agency fails to provide a written denial?

If an agency withholds access to a public record and does not provide a written denial within 5 working days of the receipt of the request, this is considered a failure to allow inspection or

copying and is subject to appeal. [1 M.R.S. § 408-A\(4\)](#) P.L. 2013, ch. 350

May a governmental body ask me why I want a certain record?

The FOAA does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. [1 M.R.S. § 408-A\(3\)](#)

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request. [1 M.R.S. § 408-A\(6\)](#)

If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, 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. [1 M.R.S. § 408-A\(7\)](#)

Must the agency or official provide me with access to a computer terminal to inspect electronically stored public records?

No. The agency or official is not required to provide access to a computer terminal. [1 M.R.S. § 408-A\(7\)\(B\)](#)

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required to explain or answer questions about public records. The FOAA only requires officials and agencies to make public records available for inspection and copying.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail 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" and is not deemed confidential or excepted from the FOAA, it constitutes a "public record". [1 M.R.S. § 402\(3\)](#)

An agency or official must provide access to electronically stored public records, including e-mails, as a printed document or in the medium it is stored at the discretion of the requestor. If an agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in an e-mail, the agency is not required to provide the records in an electronic format. [1 M.R.S. § 408-A\(7\)](#)

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages. The State of Maine [E-mail and Digital Records Retention Guide](#) contains more information on electronic records.

Is information contained in a communication between a constituent and an elected official a public record?

Information of a personal nature consisting of an individual's medical information, credit or financial information, character, misconduct or disciplinary action, social security number, or that would be confidential if it were in the possession of another public agency or official is not a public record. However, other parts of the communication are public. [1 M.R.S. § 402\(3\)\(C-1\)](#)

Can an agency charge for public records?

There is no initial fee for submitting a FOAA request and agencies cannot charge an individual to inspect records unless the public record cannot be inspected without being compiled or converted. [1 M.R.S. § 408-A\(8\)\(D\)](#) However, agencies can and normally do charge for copying records. Although the FOAA does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". [1 M.R.S. § 408-A\(8\)\(A\)](#)

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The FOAA authorizes agencies or officials to charge \$15 per hour after the first hour of staff time per request. [1 M.R.S. § 408-A\(8\)\(B\)](#) Where conversion of a record is necessary, the agency or official may also charge a fee to cover the actual cost of conversion. [1 M.R.S. § 408-A\(8\)\(C\)](#)

The agency or official must prepare an estimate of the time and cost required to complete a request within a reasonable amount of time of receipt of the request. If the estimate is greater than \$30, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the FOAA. [1 M.R.S. § 408-A\(9\), \(10\)](#) [P.L. 2013, ch. 350](#)

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if the agency or official considers release of the public record to be in the public interest because it 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. [1 M.R.S. § 408-A\(11\)](#)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public agency or official is required to make available for inspection and copying, subject to any applicable exemptions, only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. [1 M.R.S. § 402 \(2\)](#)

What does the law require with regard to public proceedings?

The FOAA requires all public proceedings to be open to the public and any person must be permitted to attend. [1 M.R.S. § 403](#)

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. [1 M.R.S. § 406](#)

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same or faster means used to notify the members of the public body or agency conducting the public proceeding. [1 M.R.S. § 406](#) The requirements that the meeting be open to

the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. [1 M.R.S. § 403](#)

Can public bodies or agencies hold a closed-door discussion?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. [1 M.R.S. § 405\(1\)-\(5\)](#)

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the FOAA, such as the following: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any governmental body or agency subject to the FOAA is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. [1 M.R.S. § 405\(2\), \(6\)](#)

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any [Superior Court](#) in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. [1 M.R.S. § 409\(2\)](#)

Can members of a body communicate with one another by e-mail outside of a public proceeding?

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the FOAA. [1 M.R.S. § 401](#)

E-mail or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." [1 M.R.S. § 402](#) The underlying purpose of the FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. [1 M.R.S. § 401](#) Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. [1 M.R.S. § 403](#) In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. [1 M.R.S. § 406](#)

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. [1 M.R.S. § 402\(3\)](#) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.

Can I record a public proceeding?

Yes. The FOAA allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the FOAA. [1 M.R.S. § 404](#)

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The FOAA does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is a public body or agency required to make a record of a public proceeding?

Unless otherwise provided by law, a record of each public proceeding for which notice is required must be made within a reasonable period of time. At a minimum, the record must include the date, time and place of the meeting; the presence or absence of each member of the body holding the meeting; and all motions or votes taken, by individual member if there is a roll call.

The FOAA also requires that public bodies and agencies make a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. [1 M.R.S. § 407\(1\), \(2\)](#)

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. [5 M.R.S. § 8002\(1\)](#); [5 M.R.S. § 9059](#)

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, [1 M.R.S. § 403](#) , [407](#); [5 M.R.S. § 9059 \(3\)](#)

Credits

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