



Maine Municipal Association

## **Response Time of Freedom of Access Act Requests**

Maine Municipal Association

October 2022

By request of the Right to Know Advisory Committee in December 2021, Maine Municipal Association surveyed its member municipalities on the number of FOAA requests that can be searched for, retrieved and compiled within two hours. The data collection period spanned from January 1 through September 30, 2022.

### **MMA's 1% Assumption**

In order to capture the essence of this committee's request and without disrupting the ordinary workflow of municipal officials, MMA made one informed assumption and offered a degree of individual interpretation to those fulfilling this request.

From the outset, MMA assumed that almost all FOAA requests are performed within two hours and simply part of the ordinary workflow for municipal officials. Since requests for real estate or property information, public proceeding meeting notes, communication like emails or letters between public servants, and questions about municipal services and hours of operations are all included under FOAA, municipal officials are factually performing such responsibilities on a daily or hourly basis. The remainder of this report assumes that approximately 1% of all FOAA requests are beyond the normal effort to perform a public records request.

Municipal officials confirmed this assumption within moments of being informed of the survey by expressing practical limitations to recording every FOAA request performed. Here is the sentiment of one town manager in Cumberland County:

We don't track all request[s] that could be deemed a FOAA request. It would be impossible... I would estimate that we might get 50 requests each month and 99% aren't what you would think of as a FOAA request. They are simply requests for an email, an old study, accident report, etc. and take just minutes to provide to the requester.

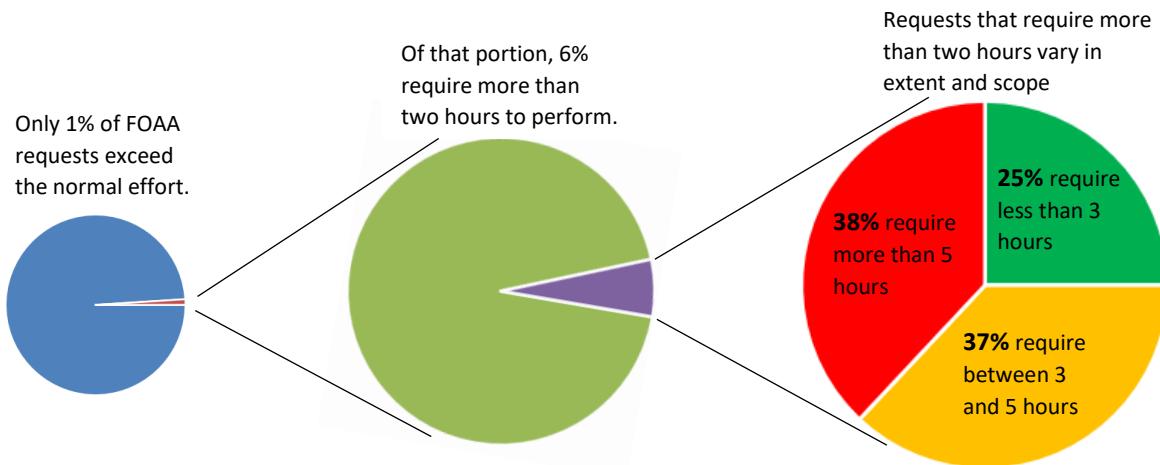
In response to similar member feedback, MMA suggested that individuals participating in this survey report only on public records requests that exceed the normal effort required to perform a citizen request.

## **Primary Findings**

Given the assumption noted above, the primary findings from MMA's survey are as follows:

- 1) On average, a municipality receives 3 FOAA requests each month, or 36 per year, that go beyond the normal effort. If municipal officials recorded requests performed as part of their daily workload, then the average municipality performs hundreds of requests per year.
- 2) On average, a municipality receives 0.2 FOAA requests each month, or 2.3 per year, that consume more than two hours to complete. This is equivalent to about 6% of all requests that are beyond the normal effort.
- 3) Of those requests that are beyond the normal effort, about 25% can be completed in less than three hours, 37% require between three and five hours, and 38% require more than five hours to perform.
- 4) The average hourly rate paid to individuals performing public records requests is \$28.
- 5) Anecdotally, the nature of nuisance requests is increasingly hostile or disruptive.

### **Illustration of Survey Results**



Requests that exceed two hours to perform are infrequent. Lengthier requests typically require creation of spreadsheets, involvement of a legal representative, redactions made by hand, report formation, or additional administrative due diligence that consumes more time than providing a specific document. Nonetheless, these lengthier requests are still deemed an essential element of the municipal workload.

At the municipal level the FOAA request process is primarily functioning smoothly, however nuisance requests, which challenge this element of local government services, are increasingly common, disruptive, and troubling.

## **Evolving Nature of Nuisance Requests**

Two years ago, MMA submitted a similar report to this committee noting an increase, albeit still the minority, of nuisance requests. At that time, those nuisance requests were characterized as third-party requests, data mining requests, or phishing requests. These types of requests are still occurring, but a much different type of nuisance request was reported during this survey period.

The types of nuisance requests revealed during this survey period were more hostile, disruptive, and concerning, and coming from individuals rather than commercial parties. The collective sentiment from survey anecdotes is that FOAA requests are volleyed as threats, intentionally extensive or onerous, or sometimes troubling to personal safety. A municipal town manager stated, “[people] are weaponizing the FOAA process.”

One Selectboard Chair in Lincoln County provided this anecdote:

What about including how towns can address being abused in this process? I've received close to 30 FOAA requests from the same person since August 17th, all with demands to have them completed within days and threats to take me to court and explain my unreasonable response times to the judge, and all designed to avoid exceeding the 2 hours per request free of charge... It would be nice to have some protection for small towns who don't have a staff. I've put in more time on this one man's harassment than I have for a whole budget season.

In the worst instances, municipal officials and municipal entities have sought legal recourse when requests devolve to repeated harassment.

Another form of nuisance requests are copycat requests. Maine Secretary of State Shenna Bellows has warned municipalities to be watching for requests that appear to be out of context or uninformed on Maine laws. According to Secretary Bellows such requests are instigated by sources outside of Maine to subvert the daily performance of municipal responsibilities. Frequently these copycat requests pertain to elections.

## **Conclusion**

Throughout the survey period, MMA staff was struck by how distraught respondents are when discussing FOAA requests. Municipal officials firmly believe in the freedom of individuals to make public records request as a fundamental tenant of government transparency, however, recently the performance of FOAA requests makes them vulnerable to workplace intimidation and harassment.

Yet even in this heightened workplace climate, municipal officials still complete nearly every public records request in a reasonable amount of time.

On behalf of Maine Municipal Association, thank you for the chance to present this report. Please contact Neal Goldberg, at [ngoldberg@memun.org](mailto:ngoldberg@memun.org), for further information.