

Office of the Commissioner
Freedom of Access Act (FOAA) Policy

Policy #: DHHS-02-12

Issue Date: 11/7/12

I. SUBJECT

Freedom of Access Act (FOAA) Policy

II. POLICY STATEMENT

It is the policy of the Department of Health and Human Services that employees shall make every reasonable effort to fully comply with the requirements of the Freedom of Access Act by following the procedures set forth below when they receive a request for Department records.

III. RATIONALE

A fundamental principle of democracy is a citizen's right to obtain information about their government and, accordingly, the Legislature has, pursuant to the Freedom of Access Act, provided the public with a general statutory right to obtain public records.

IV. PROCEDURE

- A. Employees shall immediately notify the Public Access Officer of any request for Department records. The Public Access Officer shall then be responsible for the coordination of the Department's response to the request.
- B. Employees shall not directly respond to any request without the permission of the Public Access Officer.
- C. If the Public Access Officer determines that a request is a routine request or is otherwise a request to which an employee may directly respond then, unless otherwise directed by the Public Access Officer, the employee (or other designated person) shall acknowledge the request within a reasonable period of time, provide a good faith estimate of the cost of complying with the request and of the time within which they will comply with the request, and make a good faith effort to fully respond to the request within the estimated time. A good faith effort must not delay or inconvenience the regular activities of the Department and does not require the creation of a record that does not exist.
- D. If a request is denied then a written notice, stating the reason for the denial, shall be provided to the requestor within 5 working days of the request.

- E. Unless a waiver of costs has been approved, a response to a request shall be conditioned upon the requestor's agreement to pay the estimated cost of complying with the request if the estimated cost exceeds \$30 (or other statutorily specified amount) or upon the requestor's payment of the estimated cost if the estimated cost exceeds \$100 (or other statutorily specified amount). The estimated cost shall be based on the rate of \$15 per hour after the first hour (or other statutorily specified rate) plus the actual cost of postage and copies.
- F. When responding to any request, employees must be mindful of their obligation not to disclose any information that is confidential or otherwise not subject to public disclosure. Any question regarding whether information is confidential or otherwise not subject to public disclosure shall be directed to the Public Access Officer.
- G. Any inspection of records must take place under the supervision of responsible staff within the Office involved with the request and is subject to the feasibility of separating or preventing the disclosure of any confidential information contained in the records.

V. DEFINITIONS

Department records: 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 the Department, and has been received or prepared for use in connection with the transaction of Department business or contains information relating to the transaction of Department business.

Freedom of Access Act (FOAA): 1 MRSA § 400 *et seq.*

Public Access Officer: General Counsel

VI. DISTRIBUTION

All Staff via e-mail and posting on the DHHS Intranet.

VII. ATTACHMENTS

Sample "5-day FOAA letter"

11/7/12

Date



Mary C. Mayhew
Commissioner

RESPONDING OFFICE LETTERHEAD

Date:

Re: Freedom of Access Act (FOAA) request dated ____ , for ____

Dear :

On behalf of the Department of Health and Human Services (“Department”), I am responding to your above-referenced request. The Department will produce the requested records to the extent that such records are “public records” as defined by the Freedom of Access Act (the “Act”). The Department denies your request to inspect, copy or abstract any requested records to the extent that such records are confidential, otherwise protected from disclosure, not in the possession or custody of the Department or otherwise outside the scope of the Act.

The Department will strive to make public records available to you as soon as possible. Pursuant to the Act, however, the Department requires a reasonable period to ascertain which of its records, or parts thereof, relate to your request, identify which records are subject to public investigation or copying, and determine which records, or portions thereof, are confidential, otherwise protected from disclosure, or otherwise outside the scope of the Act. Also pursuant to the Act, the Department will schedule inspection, translation and copying of responsive records to occur so as to not delay or inconvenience its regular activities. Pursuant to the Act, you may be charged for retrieving, compiling, translation, and copying of responsive records. You may inspect public records, without charge for copying, if it is feasible to separate or prevent the disclosure of any confidential information contained in the records. You will be provided with a good faith, non-binding estimate of the time and cost of complying with your request. Finally, please note that the Department will not proceed to comply with your request without your agreement to pay the estimated cost if the estimate exceeds \$30 and will not proceed to comply with your request without payment of the estimated cost if the estimate exceeds \$100.

Sincerely,

Cc: Kevin Wells, General Counsel