

A2.5

Access to Public Records Under the Maine Freedom of Access Act**1. SCOPE AND APPLICABILITY.**

This policy applies if a request for information is made in which the requester specifically states that their request is made pursuant to the Maine Freedom of Access Act (FOAA) (1 M.R.S. chapter 13, subchapter 1), or if it is apparent that the requester intends that a full and complete search of records potentially held by Inland Fisheries & Wildlife's (IFW) be made. This policy also applies whenever an IFW employee has any reason to believe that the records requested by the member of the public contain confidential or otherwise protected information. *This policy does not apply to the routine requests from a customer for information that is readily available, such as copies of licenses, permits, law books, educational material or other readily available published information that is provided to the public daily, or for specific questions asked by any person. The policy will apply when the request submitted is more formal or makes reference (either explicitly or implicitly) to FOAA requirements, or when circumstances suggest a formalized process would be in the interests of the requestor or IFW. In the majority of interactions with the public where a request for information is made employees shall try to answer questions, provide access to readily available and non-confidential documents, and direct them to the right person who can provide the information.*

2. PURPOSE.

It is the purpose of this policy to provide standard guidelines for employees of IFW who are responding to records requests and to ensure that all public records requested are produced in accordance with State law.

3. DEFINITIONS.

- a. **Public Access Officer ("PAO"):** Means an employee assigned and responsible for coordinating the response to FOAA requests for the department as well as providing training and support regarding FOAA law.

- b. **Public Record.** Means 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 audible 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 for records that are excluded from the definition of public records under FOAA law, such as records designated confidential by statute, records that would be within a scope of a privilege against discovery or used as evidence recognized by Maine courts in civil or criminal trials if the records were sought in the course of a court proceeding, and other specific types of records listed in FOAA.

4. RESPONSIBILITIES.

This section lists the specific responsibilities of employees involved in responding to FOAA requests.

- a. **All Employees:** All employees shall be knowledgeable about this policy and know the basic content of the records they possess, maintain, manage or control.
- b. **Public Access Officer:** The Commissioner shall designate a Public Access Officer (“PAO”) for the entire agency who shall coordinate FOAA responses and maintain a database where all agency FOAA requests and responses must be tracked.
- c. **Bureau of Warden Service Access Officer (“WSAO”):** The Warden Service Colonel shall designate staff who handles the requests unique to the law enforcement bureau of the agency. The staff designated by the Colonel shall be knowledgeable of FOAA law, the Warden Service policy on FOAA that is specifically written to address law enforcement and investigative records, and, except as otherwise provided in this policy, shall coordinate responses to all warden service related FOAA requests. Reference Appendix #4: Warden Service Freedom of Access Act Policy.
- d. **Attorney General:** In the event there are any questions about what is or is not a FOAA, what an appropriate response might be, or whether any record is public or not, the public access officer should consult with an Assistant Attorney General (“AAG”) as appropriate.

- e. **Office of Information Technology:** The Office of Information Technology (“OIT”) should be considered when estimating costs for FOAAs and to assist with the search for records particularly when the search is large, complex and involves email and other electronic documents. OIT may also assist with search criteria, development of search terms, record retrieval, organizing the compilation of records and process to provide records to the requestor upon approval of the Commissioner or the Commissioner’s designee.

5. PAO PROCEDURE AND GUIDELINES FOR RESPONDING TO FOAA REQUESTS.

- a. **Intake of FOAA Request.** All employees should immediately forward a FOAA request to the PAO or the WSAO so that a response to the requester can be made within the timeframe required under FOAA. IFW has five (5) working days from receipt of the FOAA request to provide written notice if IFW is going to deny access to any or all of the records requested.
- b. **Initial Response to Requester.** Upon receipt of a FOAA request, the PAO shall acknowledge receipt of a request in writing within five (5) working days and may ask for clarification concerning what public records are being requested.
- c. **Refining the Scope of the Request.** The PAO, the WSAO or staff person who maintains records may work with the requestor to narrow the scope of the search in an effort to respond more efficiently, including expediting production, and reducing the cost and burden of compiling and preparing the records for disclosure.
- d. **Denial of Records.** If any requests for records are denied, in full or in part, a written notice of the denial will state the reason and provide the statutory exception or reason for the denial. Except when the request is for confidential Criminal History Record Information or Intelligence and Investigative Record Information the Department may not confirm the existence or nonexistence to any person or public or private entity that would not be eligible to receive the information in compliance with 16 M.R.S. §705.
- e. **Denial of Records for Overly Burdensome Request.** A request for inspection or copying may be denied in part or in whole if the request is unduly burdensome and the department follows proper procedures as outlined in FOAA law and this

policy. The PAO or WSAO shall consult with an AAG if this seems an appropriate course of action.

- f. Public Right to Inspect and Copy Records.** A person has a right to inspect and copy any public records within a reasonable time and during normal business hours. IFW may not charge a fee for inspection unless the record must be converted into a form that the requester can understand or when the records need to be compiled and reviewed for redaction of non-public record information. *NOTE: This does not include access into computers, databases or records systems that may contain confidential information.*
- g. Identifying Employees Possessing Responsive Public Records:** The PAO or WSAO is responsible for making inquiries to identify employees who might have responsive records in their possession or are otherwise aware of responsive records. The PAO or WSAO shall request each employee with responsive records to search for and produce the records pursuant to the procedures outlined in this policy. The PAO or WSAO shall summarize each FOAA request where necessary in order to ease the burden on affected employees in understanding the request and provide a copy of the summary and FOAA request to each employee identified as likely to have responsive records. The PAO or WSAO shall suggest a deadline by which employees will produce the requested records considering all other work demands.
- h. Estimate of Timeframe and Cost.** Within a reasonable time of receiving the request, the PAO or WSAO shall provide a good faith, nonbinding estimate of the timeframe within which IFW will provide responsive public records, as well as the cost to produce them. Please see Paragraph 6. *Guidelines to Estimate Cost of a FOAA for more information.*
- i. Response When There Are No Responsive Records.** If the department knows there are no public records responsive to the request prior to having to conduct a search, the response shall advise the requester that there are no records responsive to their request.
- j. No Requirement to Create New Records.** The department has no requirement to create a record that does not exist in order to satisfy a FOAA response.

6. PAO OR WSAO GUIDELINES TO ESTIMATE COST OF A FOAA.

- a. **Estimates Greater than \$30:** Before proceeding with a search for records, the PAO or WSAO must receive confirmation from the requester that she/he wishes the search to proceed if the estimate is greater than \$30.
- b. **Establishing a Cost Estimate to Search:** When assessing a request, the PAO or WSAO shall make an effort to provide a good faith estimate of cost in as consistent a manner as possible from one request to another. Considering that every FOAA request is unique; the following parameters shall serve ONLY as a guideline in formulating an estimate of costs for each area.
 - i. **Number of employees effected:** .5 hour per an employee for 1 search term.
 - ii. **Number of search terms identified:** .5 hour per one search term, for every individual media type. (Example: .5 hour to search email for the search term: "Resident Junior Lifetime License" and .5 hour to search a paper file folder for the same search term, for a total of 1 hour.)
 - iii. **Number of years in the scope of the search:** 1-2 hours for every additional year the scope increases, per each search term.
 - iv. **Number of physical locations in the scope of the search:** 1 hour for each search term for each location to be searched.
 - v. **Specific Documents Named:** .5 hour for each specific document named.
 - vi. **Need for OIT Technical Assistance:** 1 hour for the OIT employee and 1 hour for the IFW employee when OIT is necessary in assisting in a search for electronic documents.
- c. **Cost Estimate for Multiple Requestors Requesting Identical Information:** If the department receives more than one request for the same information to be searched for and compiled, prior to the information being produced for a requestor, the department may choose to divide the total cost to produce the records among all requestors evenly. (Example: 3 different requests come in over a period of 2 months asking for all electronic communication between January 1 and March 31, relating to Captive Wildlife, for 5 specified employees. The total cost result is \$300 so each requestor is subsequently billed \$100.) If the cost estimate is provided to one requestor and subsequent requests come in afterwards, the final cost can be adjusted based on the amount of requests that were made during the time it took to search and compile the records. If, however a request is made, the bill is paid and the information is provided but an additional request or requests for the same information are made that information shall be provided at no cost to the requester.

7. STAFF GUIDELINES TO SEARCH FOR RECORDS.

- a. **Paper Records:** Each employee is responsible for the diligent hand-search of paper records in their possession or control.
- b. **Electronic Mail:** Each employee is responsible for applying the following protocol for identifying responsive emails. The software's most expansive find features must be utilized to search both message subjects and text. Incoming and outgoing active folders, archive folders, and any other folder(s) that may contain responsive emails must be searched. Reasonable spelling variations must be accounted for when conducting a search. All e-mail accounts to which the employee has access and which are used for communication for department related business must be searched.
- c. **Other Electronic Records:** Each employee is responsible for searching any personal drives, shared drives, cellular phones, answering machines and for querying any database where data is recorded, on which the employee may have saved responsive information.

8. PAO OR WSAO REVIEW FOR CONFIDENTIAL INFORMATION CONTAINED WITHIN RECORDS.

- a. **Thorough Review of Records:** There must be a thorough review of every document found in response to the FOAA request to identify any confidential or privileged information that must be redacted. The initial review shall be conducted by the bureau's appointed staff person who reviews records for confidentiality. A secondary review shall be conducted by the PAO or WSAO and in the event there are any questions whether any record is public or not the PAO shall consult an AAG.
- b. **Denial of a Record When Most of the Information Contained in the Records is Confidential:** If a responsive record cannot be redacted in a manner that retains substantive public information it may be withheld in its entirety subject to consultation with an AAG. (Example: a department policy which describes enforcement procedure for the Bureau of Warden Service which has potential to create safety issues for the wardens or compromise the integrity of case work due to the release of the information.)

9. PAO OR WSAO GUIDELINES ON BILLING THE REQUESTER.

- a. FOAA permits the department to charge a reasonable fee to cover the cost of copying and a fee of \$25 per hour after the first two hours to cover the actual cost of searching for, retrieving, and compiling requested records. Compiling the public record includes searching for, locating, reviewing and redacting information not subject to public access. The department may not charge for inspection. Department employees shall maintain a record of their time, copies made, and other costs related to a FOAA request and provide this information to the PAO for compilation of the invoice. The PAO will send the invoice to the requester and make the department aware of the invoice being sent. All employees who work on a FOAA must track their billable and non-billable time on a FOAA search via the department's tracking mechanism for time worked. The department may retain any fees or costs charged related to the request. Please see Appendix 3.
- b. **Copying Costs Per Page for Paper Copies:** The department shall charge .10 cents./a page for any paper copy of a record. A per-page copy fee may not be charged for records provided electronically. State sales tax must be assessed in addition to the copying fees.
- c. **First Two Hours of Records Compilation is Free of Charge:** The agency may not charge for the first two hours of staff time per each FOAA request. After the first two hours, \$25/ hour of time to search, compile and review records may be billed to the requestor.
- d. **Payment in Advance:** The department may require a requester pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling, and copying of the records.
- e. **Waiver:** Fees may be waived where the requester is indigent or when release of the public records requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the department and is not primarily in the commercial interest of the requester. The Commissioner shall determine when a fee waiver shall be granted.
- f. **Payment and Closing of FOAA:** Once all public records responsive to the request have been provided and payment has been received or if the requester does not want to move forward with a search due to the cost estimate or other reason the FOAA request shall be considered closed.

1. BILLING EXCEPTIONS TO FOAA, UNIQUE TO THE DEPARTMENT:

This is separate and aside from the \$25 per hour after the first two free hours of staff time per request that can be charged to cover the actual cost of searching for, retrieving and compiling the requested public record.

- a. Lookup Cost for License, Permit or Registration Records:** Requests to lookup a license, permit or registration record(s) whether it is provided electronically or in hard copy either notarized or not shall be provided at a cost of \$5.00 per a lookup.
- b. Cost for Lists of Names, Address, City, State, and Zip Code in Electronic Format:**
 - i. Requests for electronic copies for one time use by individuals or organizations shall be provided at a cost of three (\$.03) cents per name, plus the cost of the electronic media used, up to a maximum charge of \$1,500. A minimum charge of \$25.00 will be applied to each request.
 - ii. Requests for electronic copies for reuse or sale by individuals or organizations shall be provided at a cost of five (\$.05) cents per name, plus the cost of the electronic media used. A minimum charge of \$25.00 will be applied to each request.
- c. Cost for Warden Service-Related Crash Records:**
 - i. Examples include requests for crash reports, the investigation records relating to the crash and / or Boat Accident Report Database reports if they are available. There shall be a \$10.00 fee assessed to provide this information whether it is in electronic or hard copy and no additional cost for hard copies shall be assessed.
 - ii. If the person states that they are making a FOAA request or they ask for additional information such as witness statements, photographs, notes, communication relating to the crash or other records this shall be considered a FOAA and after the first two free hours the \$25 per an hour charge will be assessed. If hard copies are requested an additional charge of ten cents (\$.10) per a copy shall be charged.
- d. Cost for CDs, DVDs, Flash Drives or Other Means to transfer electronic Records to a Requester:** The cost of CDs, DVDs and Flash drives shall be in addition to other costs related to the search and compilation of records. CDs shall cost \$2.00 each, DVDs shall cost \$2.00 each, and the actual cost of a Flash Drive shall be added to the invoice because there are varying needs for storage amounts depending on the amount of records to be provided electronically.

2. DOCUMENTATION OF FOAAS.

The department shall maintain a database which compiles FOAAs and tracks their status. This is a mechanism required by law performed to provide statistics to the Attorney General's Office FOAA Ombudsman annually.

AUTHORITY.

- 1 M.R.S., §§ 401-410. Maine Freedom of Access Act
<http://www.mainelegislature.org/legis/statutes/1/title1sec408-A.html>
- 16 M.R.S., chapters 8 and 9.

REPORTING FORMS FOR DEPARTMENT AID IN PROCESSING FOAAS:

- **Appendix 1: FOAA Process Flow Chart**
- **Appendix 2: FOAA Public Access Officer Request Procedure Form**
- **Appendix 3: FOAA Request Form for Employee Search**
- **Appendix 4: Warden Service FOAA Policy**

LINK TO FOAA LAW: www.maine.gov/foaa

LINK TO FOAA EXCEPTION SEARCH SITE: <http://www.mainelegislature.org/legis/foa/>



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Judith Camuso
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