

May 6, 2024

VIA EMAIL

Lindsay Laxon
Office of Policy and Legal Analysis
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RE: Survey: Requests for public records that are burdensome or an abuse of the Freedom of Access Act process

Dear Lindsay Laxon:

Below please find Maine State Housing Authority's ("MaineHousing") response to the Right to Know Advisory Committee's survey request, dated January 17, 2024, regarding burdensome Freedom of Access Act ("FOAA") requests.

- 1. Please provide examples of the types of public records requests that your organization considers to be "burdensome" requests for public records.**

MaineHousing considers the following types of FOAA requests burdensome:

- Requests that ask for *all* records of communications between individuals, MaineHousing and third-parties dating back several years.
 - **Explanation: The system MaineHousing uses to pull communications/emails uses key words and phrases to find correspondence that is relative to a request. If a request is too generic or broad this results in tens of thousands of emails that all have to be reviewed by the public access officer and support staff to look for any confidential information that needs to be redacted.**
- Requests that ask for telephone calls, text messages, voicemail messages, etc. for several years.
 - **Explanation: The system MaineHousing uses for telephone calls, text messages and voicemails cannot pull a report for all 180+ employees and instead requires each employee to search their own records to provide the information. Additionally, any Verizon Wireless Cell Phone related correspondence would require the same action.**
- Requests that are broken down into smaller requests to avoid the fee.
 - **Explanation: The statute allows for the first two hours of time in fulfilling a request at no charge. Requestors will limit search windows and topics to make requests small enough to avoid the fee. The Maine statute does not address aggregating requests. There is some Federal guidance that suggests requests on the same topic may be aggregated.**

This would avoid having to fulfill 30 requests on the same topic at no charge.

- Requests on the same topic made by different requestors to avoid the fee.
 - **Explanation: Requestors will have family members and friends participate in making requests. The requests will be altered slightly and made in smaller increments to avoid paying the fees. This results in multiple requests regarding the same topic, that all must be acknowledged and fulfilled in a reasonable amount of time.**
- Multiple requests at the same time.
 - **Explanation: There is nothing in the statute prohibiting multiple requests at the same time from a requestor. This becomes more of a problem when family members and friends are assisting a requestor, as there are multiple requests for the same topic for different time periods, all ongoing that need to be fulfilled within a reasonable amount of time.**
- Requests for *all* proposals/applications MaineHousing receives in response to a Request for Proposals or Program Offering
 - **Explanation: MaineHousing conducts a number of Requests for Proposals/Program Offerings which can result in 20+ responses. Most companies consider the information contained in a proposal/application proprietary/trade secrets and write “confidential” on their proposals/applications. Trade secrets are not expressly exempted by the terms of FOAA. There is some guidance in the Maine Rules of Evidence that provides a privilege for trade secrets and in the Uniform Trade Secrets Act that defines trade secrets as information that derives an actual or potential independent economic value from not being generally known and not readily ascertainable. The lack of a specific exemption leads to a lot of work that can be burdensome.**
- Requests for *all* records related to a domestic violence shelter.
 - **Explanation: There are special rules associated with domestic violence shelters that require MaineHousing to redact any/all information that identifies the shelter as a domestic violence shelter and gives any indication as to the shelter’s location. This requires heavy redaction, which can be burdensome.**

2. Please provide examples of the types of public records requests or situations that your organization believes represent an abuse of the FOAA process.

MaineHousing considers the following types of FOAA requests to be an abuse of the FOAA process:

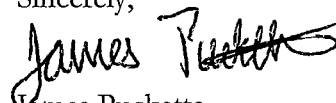
- Multiple small requests made with the purpose of avoiding the fee.
- Requests from multiple parties on the same topic with the purpose of avoiding the fee.
- Requests for blanket waivers on fees for all FOAA requests made by a specific requestor. Or the assertion that the granting of a waiver one time then applies to every FOAA request thereafter.

- Refusal to pay a bill that is followed by subsequent FOAA requests.
 - Overly broad FOAA requests.
3. Do you have any recommendations for statutory changes to FOAA to address the examples described in questions 1 or 2? If so, please describe your recommendations.

MaineHousing makes the following recommendations:

- 1 M.R.S. §402(3) Public records
 - **The addition of trade secrets/proprietary information as an exception to the term public records, with specifics on what defines this information.**
 - **The addition of records related to a domestic violence shelter as an exception to the term public records.**
- 1 M.R.S. §408-A(4) Refusals; denials
 - **Add language similar to the federal language (*See The Office of Management and Budget (OMB) Fee Guidelines, 52 Fed. Reg. at 10,019-20, and the DOJ FOIA regulations, 80 Fed. Reg. at 18,099-18,114*) stating that, without the need to file an Action for Protection, a body or an agency or official may refuse to:
 - **Fulfill multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid the payment of fees; and**
 - **Fulfill a request, where a group of requestors are acting in concert, attempting to break a request down into a series of requests for the purpose of evading assessment fees and allowing the aggregation of requests and charges to apply.****
 - **Add language to allow an agency to refuse to fulfil a request, without the need to file an Action for Protection, for any requestor who has not paid an outstanding bill.**
- 1 M.R.S. §408-A(8) Payment of costs
 - **Revision to (B)(2) changing “the first 2 hours of staff time” back to 1 hour.**
 - **The addition of a mechanism for the agency to refuse to fulfil any further FOAA requests until a requestor pays an outstanding bill.**
- 1 M.R.S. §408-A(11) Waivers
 - **Clarification that waivers are not blanket waivers and are instead request specific and the fact that a waiver was granted in the past does not mean a waiver will always be granted moving forward.**

Sincerely,



James Puckette
Public Access Officer
Maine State Housing Authority