



Maine State Legislature
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MEMORANDUM

TO: Members, Right to Know Advisory Subcommittee on Burdensome Requests
FROM: Subcommittee Staff
DATE: September 23, 2024
RE: Survey regarding examples of burdensome public records requests or requests that may represent an abuse of the FOAA process

In its 18th Annual Report, the Right to Know Advisory Committee (RTKAC) recommended distributing a survey seeking examples of burdensome public records requests and situations that a responding entity believes represent an abuse of the FOAA process, as well as suggested statutory changes, for consideration by the Advisory Committee next year. Staff distributed the survey to state agency FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioner's Association, the Maine Town and City Manager Association and the Maine Town and City Clerks' Association and asked that responses be provided by July 1, 2024. Staff sent a follow up email to those entities that had not yet responded on June 25, 2024. More than 15 responses were received.

The following entities did not have any unresolved examples or suggestions to share:

Maine Ethics Commission
Maine Department of Labor
Maine Human Rights Commission
Department of Economic and Community Development
Department of Defense, Veterans, & Emergency Management
Maine Town and City Manager Association
Maine Office of the State Treasurer
Office of the State Auditor
Maine Bureau of Consumer Credit Protection
Bureau of Financial Institutions
Maine Bureau of Insurance
Bureau of Licensure for Professional Engineers

Attached is a chart that summarizes recurring themes across the responses, as well as recommendations that were suggested. The agency responses are also attached in full for your review.

2023-24 Survey Responses: Identifying Burdensome/Abusive FOAA Requests & Possible Solutions

| Problem Identification from Respondents | Recommendations from Respondents |
|--|---|
| <p><i>Volume/Scope</i></p> <ul style="list-style-type: none"> • Requests that ask for “all” records on a topic • Requests that require a lot of staff time to redact confidential information • Requests for records that the agency does not create nor aggregate • Vague requests | <ul style="list-style-type: none"> • Allow for longer response time • Limit number of FOAA requests for a single citizen • Require more specifics in requests – timeframe, subject matter, etc. • Create a uniform submission form |
| <p><i>Fees</i></p> <ul style="list-style-type: none"> • Multiple small requests on a similar topic, possibly with intent to avoid fees – sometimes made by one person or multiple people working in concert • Refusal to pay fees | <ul style="list-style-type: none"> • Allow an agency to aggregate similar requests and treat them as one • Increase fees overall |
| <p><i>Intent</i></p> <ul style="list-style-type: none"> • Broad requests made by private entities for commercial purposes • Requests from attorneys for discovery or for the purpose of seeking out business opportunities • Requests sent with intent to disrupt/tie up office operations | <ul style="list-style-type: none"> • Prohibit requests for commercial purposes/for commercial use by private enterprises |
| <p><i>Requestor Communications</i></p> <ul style="list-style-type: none"> • Repeated/excessive phone calls regarding FOAA requests • Intimidation and harassment of staff, both in person and over the phone | |
| <p><i>Other</i></p> <ul style="list-style-type: none"> • Ambiguity in statute for some records • Third party services used to anonymously send complex requests • Requests seemingly targeting specific municipal employees | <ul style="list-style-type: none"> • Provide more latitude – and a simpler process overall – for an agency to deny a request • Expand ombudsman office to potentially develop a way to resolve FOAA disputes outside the court system • Define “person” in 1 MRSA §408-A • Clarify how employee records are treated at the municipal level (Title 30-A) |

Responses from agencies received between January-July 2024; chart compiled by OPLA staff. Please note this chart does not touch on every item raised in survey responses, only recurring themes.