

RIGHT TO KNOW ADVISORY COMMITTEE

Monday, September 23, 2024
1:00 p.m.

Location: State House, Room 228 (Hybrid Meeting)
Public access also available through the Maine Legislature's livestream:
<https://legislature.maine.gov/Audio/#228>

1. Introductions
2. Subcommittees and topics for full committee review
3. Statutory requirements and guidance regarding public employee use of personal email
4. Update from Brenda Kielty, Public Access Ombudsman
5. Committee discussion of unfulfilled requests
6. Public Comment: focused on suggested topics for RTKAC to consider in 2024
7. November meeting date: November 18th?
8. Adjourn
 - Next meeting: Monday, October 7, 2024, 1:00 pm

Right to Know Advisory Committee

2024 Subcommittees and Topic Lists

Subcommittee Name	Public Records Exceptions Subcommittee	Public Employee Disciplinary Records Subcommittee	Burdenome FOAA Requests Subcommittee	Additional Issues/Topics Full Committee
Subcommittee Issues to Consider	<ul style="list-style-type: none"> Review of existing public records exceptions of Titles 25 and 32 in accordance with 1 MRS §433(2-A) Review of request for a new public records exception for “personally identifiable information” received by the Permanent Commission on the Status of Racial, Indigenous, and Tribal Populations Review of Public Law 2023, ch. 618 (LD 1937), An Act Regarding the Transportation of Hazardous Materials by Railroad Companies 	<ul style="list-style-type: none"> Consider issues raised in letter dated May 10, 2024 from the Judiciary Committee to the RTKAC 	<ul style="list-style-type: none"> Consider responses to RTKAC survey regarding examples of burdensome public records requests and situations that the responding entity believes represent an abuse of the FOAA process, as well as suggested statutory changes 	<ul style="list-style-type: none"> Follow up regarding Maine Chiefs of Police Association meeting regarding reporting on or releasing information related to public safety incidents and ongoing criminal investigations Unfulfilled FOAA requests – requestor perspectives Public employee use of personal emails
Members & Staff	<p>Cheryl Saniuk-Heinig, Chair Jon Bolton Lynda Clancy Jen Lancaster Erin Sheehan</p> <p><i>Staff: Sam Senft & Anne Davison</i></p>	<p>Judy Meyer, Chair Amy Beveridge Jon Bolton Anne Carney Julie Finn Brian MacMaster Cheryl Saniuk-Heinig</p> <p><i>Staff: Lindsay Laxon & Elena Roig</i></p>	<p>Kevin Martin, Chair Amy Beveridge Julie Finn Betsy Fitzgerald Brian MacMaster Judy Meyer Kim Monaghan Cheryl Saniuk-Heinig Connor Schratz Eric Stout</p> <p><i>Staff: Elena Roig, Sam Senft, & Anne Davison</i></p>	



Maine State Legislature
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MEMORANDUM

TO: Members, Right to Know Advisory Committee
FROM: Lindsay J. Laxon, Legislative Analyst
DATE: September 23, 2024
RE: Personal emails under the Freedom of Access Act (FOAA)

At the August 12, 2024, meeting of the Right to Know Advisory Committee, a member raised a question regarding the treatment of personal email and other communication methods under FOAA. This memo seeks to provide an overview of the issue; however, for specific information, please see the applicable statutes.

Government & Public Records

Section 408-A of FOAA provides that a person has the right to inspect and copy any public record unless it is made confidential by other law.

FOAA defines "public records" as "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 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. . .¹" and establishes a list of exceptions to what is a "public record."

The definition of "public record" in Maine law is not limited to those records contained in business email accounts or other employer-established communication methods. An electronic communication, such as a text message or email, could be a public record if it is within the custody of the agency, public official, or association and its purpose is for use in connection with, or it contains information relating to, the transaction of public or governmental business. This could include emails on personal email accounts (e.g., Gmail, Yahoo), text messages on personal phones, or other communications regardless of the messaging application used for the sending of these messages (e.g., WhatsApp, Signal).

Record Retention

Maine law requires that state agency and local government records be retained in accordance with records retention schedules (RRS) established by the State Archivist². The law does not establish an exception for government records that are stored on personal devices or accounts – if the record retention schedule requires the record to be retained, it must be retained in accordance with that schedule.

¹ See 1 MRSA §402(3).

² See 5 MRSA §§95-B(7) & 95-C(2)(A)(3).

Examples of Guidance Related to Agencies and Public Officials

Information related to use of personal email and other electronic communications is available online through a number of sources.

- I. The state [Freedom of Access website](#) includes a frequently asked question³ that addresses the use of personal email:

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record. 1 M.R.S. § 402(3) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.

- II. The introduction to the [Maine State Archives 2022 Revised General Schedules](#)⁴ addresses electronic records generally as well as text messages.

Electronic records Records retention schedules apply to records regardless of their physical format. Therefore, records created or maintained in electronic format must be retained in accordance with the minimum retention requirements presented in these schedules.

...

Remember, all state government employees are responsible for maintaining the integrity of records whether those records are stored electronically or in hard copy. Information must be accessible to the appropriate parties until all legal, fiscal, and administrative retention periods have been met, regardless of the medium.

Text Messages Text messages about the work of the agency are public records. Texting on personally owned devices about the work of the agency are still public records. Retention of text messages is the responsibility of the agency and is based on the function/content of the message, not its format. Like social media, using text messages for government communication complicates the process of capture and preservation. There is currently no capture tool in place for text messaging and the Maine State Archives does not recommend using text messaging for more than transitory communications. In the instance that a text message becomes a state record, the Maine State Archives recommends sending the text message content to a state email address for retention. Agencies must clearly understand the limits of using third-party tools and the potential risks of using text messaging for anything other than transitory messages.

- III. The [Maine State Archives Requirements for Digital/Electronic Recordkeeping](#)⁵ outlines requirements applicable to all state agencies and to all public records that are (a) created or received in an electronic/digital format (born-digital) or (b) digitized images of analog records (scans of hard copies). It includes the following as agency requirements for digital/electronic recordkeeping:

Agencies must ensure continued access to digital/electronic records while protecting their authenticity, reliability, integrity, security, and usability throughout the record life cycle and in accordance with the appropriate record retention schedules.

Maintain ownership and responsibility for digital/electronic records created or received by the agency, regardless of where the record originates or is stored, including but not limited to, commercial applications, cloud computing services, cloud-based storage, and social media sites.

³ <https://www.maine.gov/foaa/faq/index.shtml>

⁴ Available at: <https://www.maine.gov/sos/arc/records/state/GSmarch2022.final.pdf>

⁵ Available at: https://www.maine.gov/sos/arc/records/digitalrecordsguidance_2023.pdf

STATE OF MAINE OFFICE OF THE ATTORNEY GENERAL

Aaron M. Frey, Attorney General



PUBLIC ACCESS OMBUDSMAN ANNUAL REPORT FOR 2023

January 31, 2024

Brenda L. Kielty, AAG, Ombudsman

TABLE OF CONTENTS

	Page
SUMMARY	1
ANSWERING INQUIRIES & RESOLVING DISPUTES	2
OUTREACH & TRAINING	8
STATE AGENCY ANNUAL FOAA REPORTING	9
RECOMMENDATIONS	11
APPENDIX.....	12
5 M.R.S. § 200-I	

SUMMARY

Maine's Freedom of Access Act (FOAA) recognizes that government must be accountable to the people and provides a statutory right of access to public meetings and public records. While the principles of open government, transparent deliberations and access to public information are fundamental to FOAA, these interests must be balanced with the need for government to maintain the confidentiality of information to protect personal privacy, security and other legitimate interests.

In 2007 the Legislature created the public access ombudsman position within the Office of the Attorney General. The statute authorized the ombudsman to educate the public and government officials about the requirements of the State's freedom of access law, provide dispute resolution services, answer inquiries and make recommendations for improvements to the law. In 2012 the Legislature funded a full-time ombudsman position.

The ombudsman performs an unusual role in government. Although the ombudsman receives complaints from the public, the ombudsman's job is not to be either an advocate for the complainant or a defender of the government. An ombudsman is an impartial intermediary who provides information, who informally resolves disputes and encourages full compliance with the spirit and the letter of the law.

Program Trends

The ombudsman activity involving question and complaint resolution has grown over the course of the program. A total of 619 contacts were received in 2023 from FOAA requesters and agencies seeking assistance. The number of inquiries and complaints is an increase from the 2022 total of 610.

Like the activity in previous years, the bulk of the contacts were inquiries from private citizens regarding access to public records held by municipal government agencies.

State Agency Annual FOAA Reporting

The Ombudsman Report for 2023 includes data on the annual number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies. Although incomplete data was reported on some of the indicators, this snapshot of FOAA activity should help inform policy makers and the public on how each agency is generally responding to FOAA requests over the course of a year. This data also illuminates the volume of FOAA requests for these state agencies collectively.

I would like to thank the state agency public access officers for their time in compiling the data necessary for this report and their continued dedication to providing access to public records.

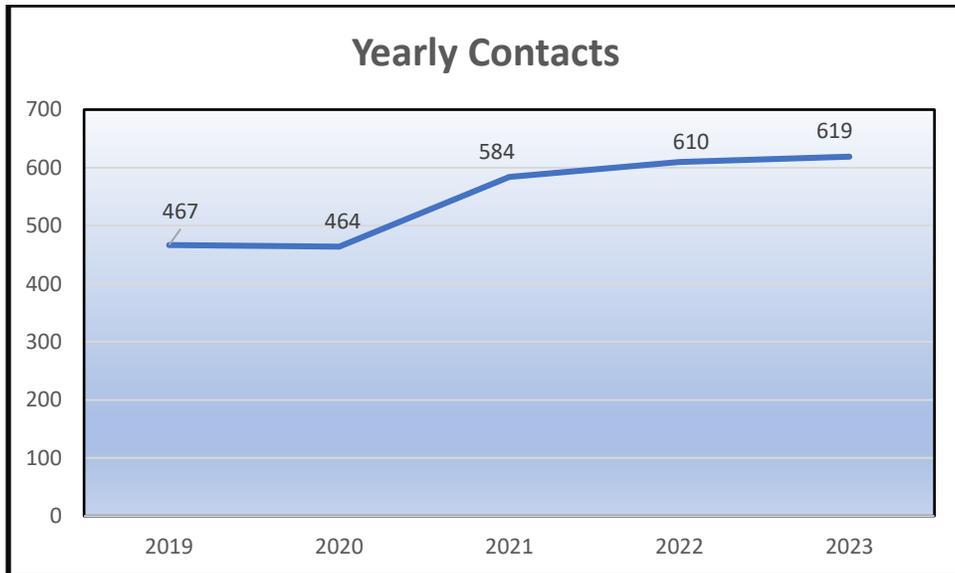
Brenda L. Kielty, Public Access Ombudsman

ANSWERING INQUIRIES & RESOLVING DISPUTES

“The ombudsman shall respond to informal inquiries made by the public and public agencies and officials concerning the State’s freedom of access laws; and respond to and work to resolve complaints made by the public and public agencies and officials concerning the State’s freedom of access laws.” 5 M.R.S. § 200-I(2)(A) and (B).

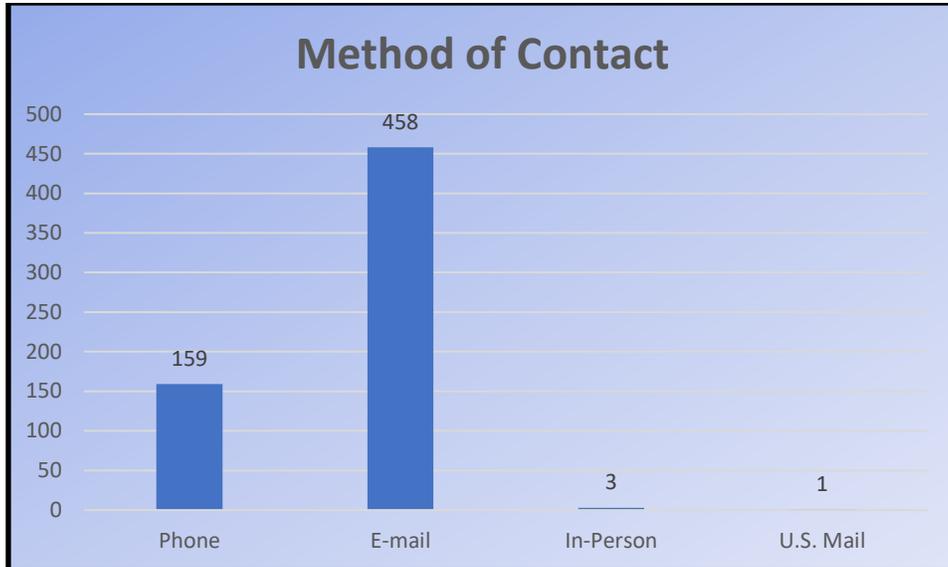
2023 Contacts with the Ombudsman

In 2023 I logged 619 inquiries and complaints. Requests for help ranged from questions about how to file a FOAA request to more complex inquiries regarding situations in which the FOAA issues were only part of a larger dispute or where some fact-finding was necessary before appropriate advice could be given.



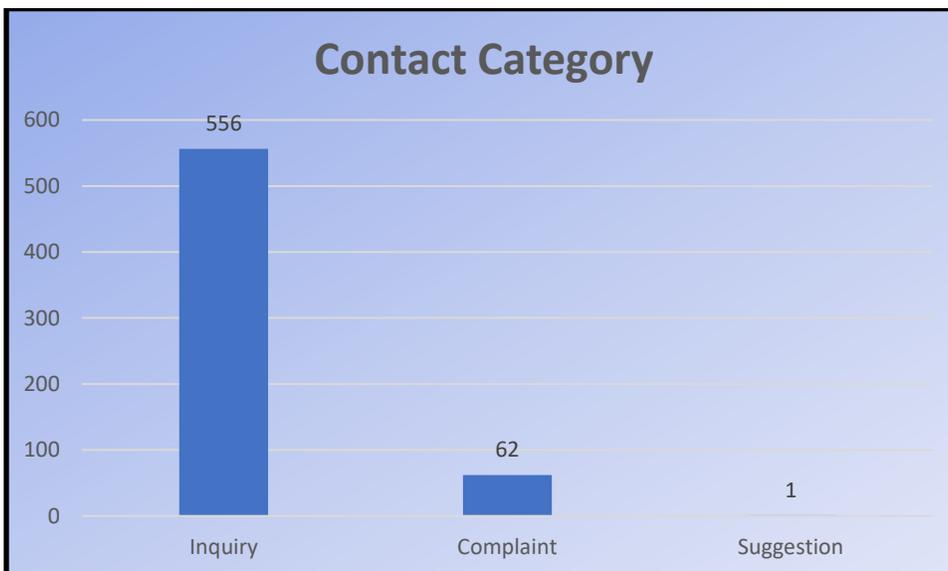
Method of Contact

The bulk of initial contacts was by email (458) followed by telephone (159) U.S. Mail (1) and in-person (3).



Contacts Included Inquiries, Complaints and Suggestions

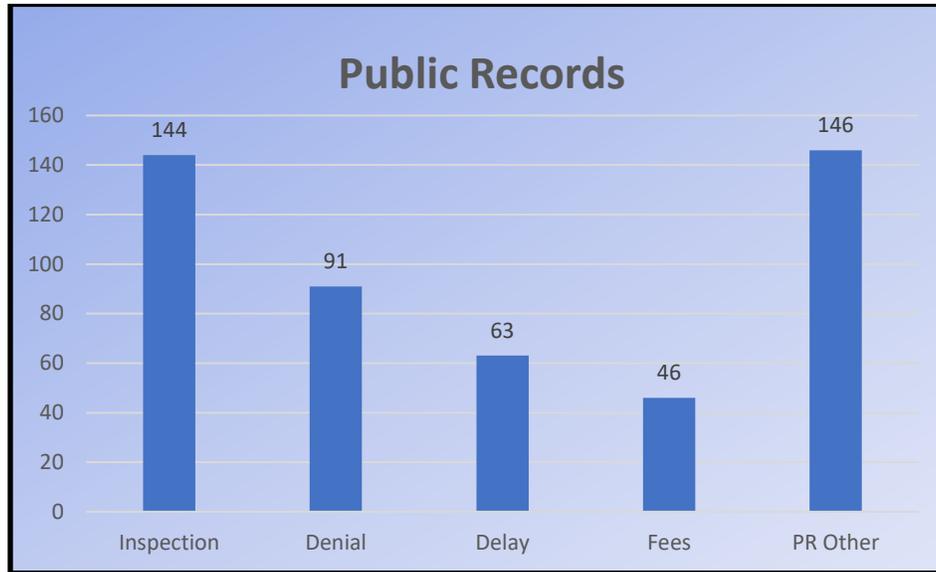
The 619 contacts included general inquiries (556), complaints (62) and suggestions (1). Contacts that were characterized as complaints involved a substantial controversy between the parties with specific relief or remedy sought by the complainant.



Contacts Concerning Public Records

Of the contacts about public records (488), the most common questions concerned:

- Basis for a denial
- Confidentiality exceptions
- Reasonable response times and delay
- Production or inspection of public records
- Fees and costs for public records



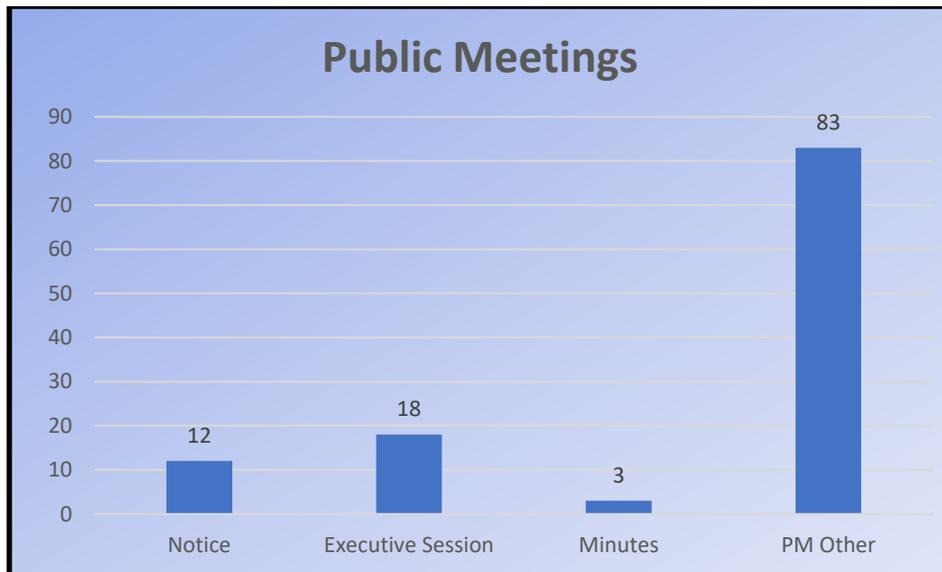
All other public records contacts concerned either a combination of issues or a narrow subset of the listed categories. The “Other” category includes the following kinds of questions:

- Retention and destruction of records
- Confidentiality of specific documents prior to a FOAA request being made
- Access to records normally part of discovery
- General information on making a FOAA request
- Mandatory FOAA training for officials
- Whether an entity is subject to FOAA
- Asking for a document rather than asking for the answer to a question
- Legislation and case law
- Asking an agency to compile data or create a document
- Burdensome FOAA requests
- Due diligence of an agency in searching for records

Contacts Concerning Public Meetings

Of the contacts concerning public meetings (115), most questions concerned:

- Use of executive session
- Remote participation notice and attendance
- What constitutes a meeting

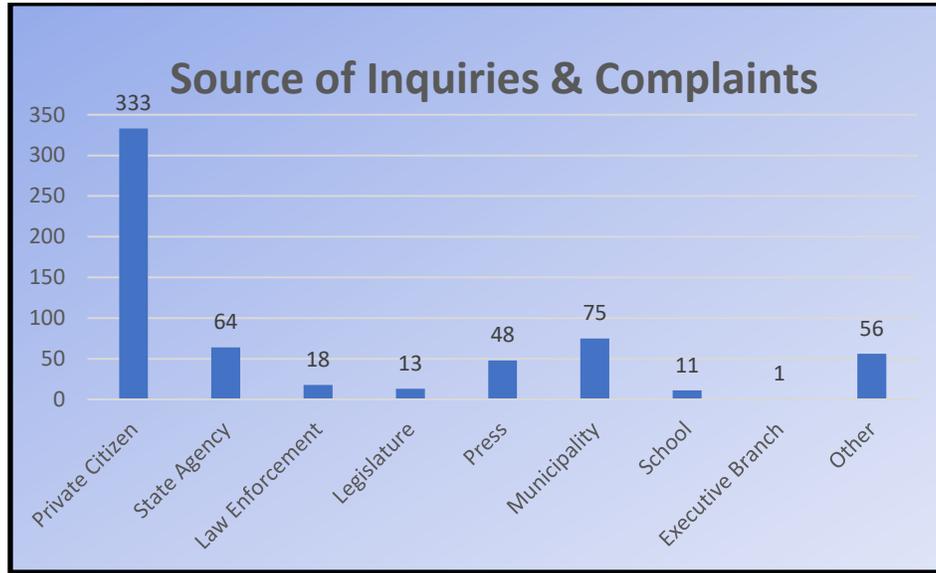


All other public meetings contacts concerned either a combination of issues or a narrow subset of the listed categories. The “Other” category includes the following kinds of questions:

- Whether an agenda is required
- Public comment period during public meetings
- What entities are subject to FOAA

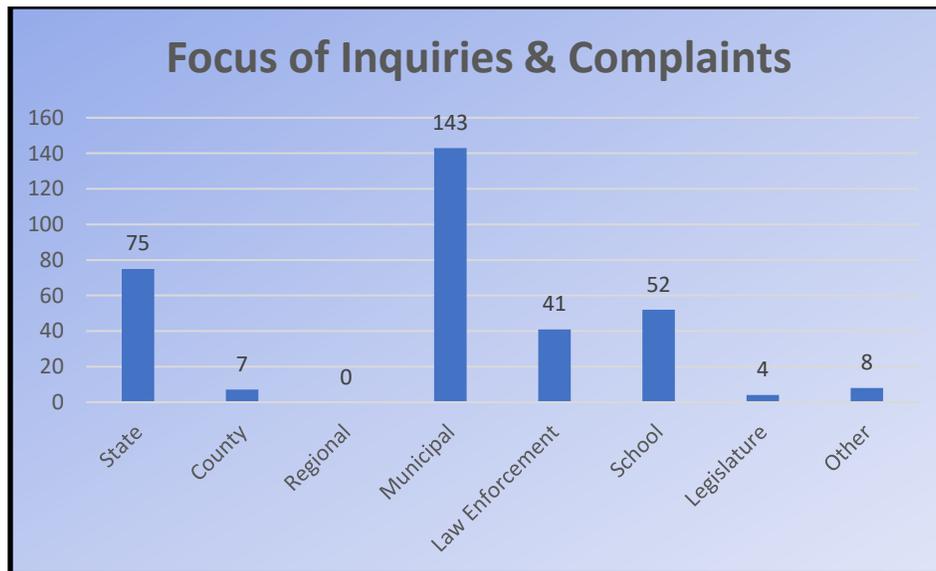
Source of Inquiries, Complaints and Suggestions

Of the 619 inquiries, complaints and suggestions, 333 came from private citizens, 64 from state agencies, 18 from law enforcement agencies, 13 from the Legislature, 48 from members of the media, 75 from municipal officials, 11 from school districts, 1 from the executive branch and 56 from others including attorneys and commercial requesters.



Focus of the Inquiries, Complaints and Suggestions

Most of the inquiries and complaints concerned municipalities (143) and state agencies (75). The remainder concerned school administrative units (52), law enforcement agencies (41), county agencies (7), regional agencies (0) and the Legislature (4). Others (8) concerned individual requesters, commercial requesters, and various quasi-municipal and public entities. The focus of the inquiries and complaints continues to be dominated by municipalities, as could be expected based on the number of municipal entities in the state.



Outcomes Reached as Result of Contact with Ombudsman

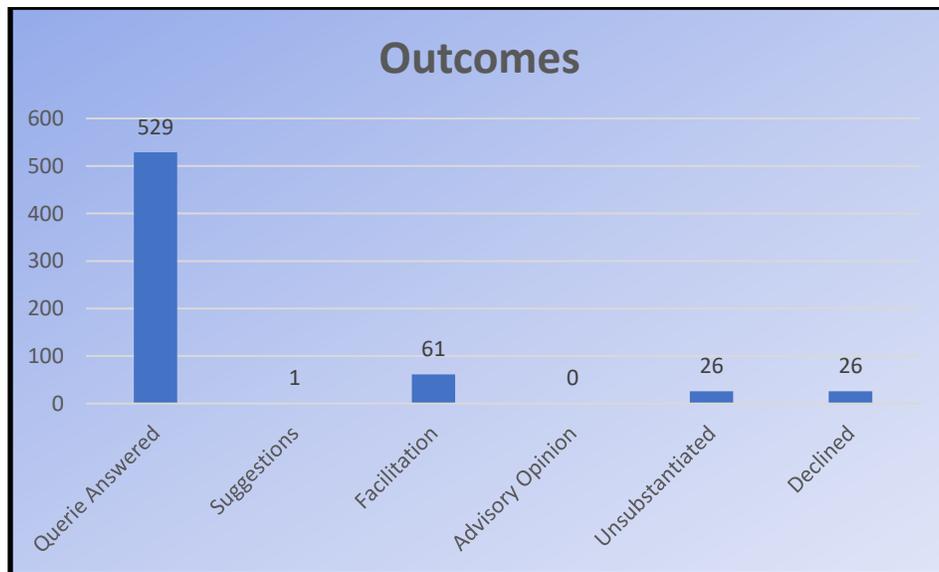
A contact may be logged as “resolved” for the following reasons:

- Complaint was deemed unsubstantiated
- Informal discussions or facilitation resulted in an agreement on how to proceed
- Agency offered an acceptable remedy
- Complaint was withdrawn
- Complainant failed to produce requested information
- Ombudsman determined there was other good cause not to proceed

A contact may be logged as “declined” if the subject of the dispute was outside the scope of authority of the ombudsman or related to a matter that was the subject of an administrative or judicial proceeding. In 2023 a total of 26 cases were declined.

Many of the inquiries were answered either immediately or within a matter of days. The 619 contacts included 529 answers to inquiries and 61 facilitated resolutions.

There were no advisory opinions issued in 2023.



OUTREACH & TRAINING

I provided remote and in-person FOAA trainings and presentations to a variety of governmental entities, such as Inland Fisheries & Wildlife, the Maine Water Utilities Association, Maine Library Association and the Maine Public Utilities Commission. As with last year, there was more demand for one-on-one training resources this year and those are logged as inquiries in the data.

I continue to serve as the Attorney General's designee to the [Maine Archives Advisory Board](#). The Board serves in an advisory role to the Maine State Archivist and reviews proposed records retention schedules and issues related to proper records management for both Maine state and local government. The right of access to public records provided in the Freedom of Access Act is dependent on the capture, preservation and management of public records. I am grateful to be able to participate in the work of ensuring that our records management systems serve the needs of not only government and persons seeking records today, but also future generations who will witness in the permanent archival collections the aspirations and challenges of our era.

STATE AGENCY ANNUAL FOAA REPORTING

Pursuant to [5 M.R.S. § 200-I\(2\)\(F\)](#) the Ombudsman report for 2023 includes data on the number of FOAA requests, average response time and the costs of processing FOAA requests for each of the executive branch State agencies.

Method

Each reporter was asked to submit data on key FOAA response indicators and include any other explanatory information relevant to their FOAA program. The absence of uniform FOAA tracking across agencies, variations in data collection and incomplete reporting limit the accuracy of the compiled data for some indicators.

Although the statute refers to “requests for information” which could include a set of data much broader than FOAA requests, reporting was limited to requests that were processed within an agency’s FOAA procedures. This does not include the large volume of requests for information that agencies handle in the normal course of business and that do not implicate the FOAA response procedures.

The “average” response time was reported based on the set of timeframes listed below.

The “costs” of processing requests could include multiple criteria to assess the use of agency resources. As a baseline the data included the amount billed as fees for FOAA requests.

Agencies that could calculate the actual hours spent responding to FOAA requests included that data.

Key FOAA Response Indicators

1. Number of FOAA requests received in 2023
2. Response time 0 – 5 days
3. Response time 6 – 30 days
4. Response time 31 – 60 days
5. Response time greater than 60 days
6. Response time greater than 6 months
7. Response time greater than 1 year
8. Amount of fees and costs for FOAA requests
9. Amount of agency hours spent responding to FOAA requests

STATE AGENCY 2023 FOAA REPORTING

AGENCY	FOAA REQUESTS RECEIVED	RESPONSE TIME 0-5 DAYS	RESPONSE TIME 6-30 DAYS	RESPONSE TIME 31-60 DAYS	RESPONSE TIME >60 DAYS > 6 Months > 1 Year	FEES CHARGED	AGENCY HOURS TO RESPOND	PENDING 2023 REQUESTS
Administrative & Financial Services								
Agriculture, Conservation & Forestry	153	97	41	9	510	\$3675	375	0
Corrections	80	29	36	8	121	\$184	n/a	0
Defense, Veterans & Emergency Management	3	2	1	0	000	n/a	4	0
Economic & Community Development	18	8	7	1	000	\$112	Average 0.93 per request	0
Education	184	51	78	25	1810	n/a	231	0
Environmental Protection	208	108	61	19	6130	\$ 900	533	15
Health & Human Services	459	149	133	75	73112	\$ 4,213	783	0
Inland Fisheries & Wildlife	53	15	22	6	532	\$ 213	91	0
Labor	29	16	10	2	1000	\$150	27	0
Marine Resources	28	4	10	5	121	\$ 525	80	0
Professional & Financial Regulation	89	40	44	5	000	n/a	169	0
Public Safety	1562	885	290	159	2014910	n/a	820	0
Transportation	70	14	30	7	1210	\$ 425	n/a	3
TOTALS	2,936	1,418	763	321	3228316	\$ 10,397	3,130	18

RECOMMENDATIONS

The ombudsman is in a unique position to suggest improvements to the FOAA process and is mandated by statute to make recommendations concerning ways to improve public access to public records and proceedings.

Remote Participation

There is a developing need to examine whether the current remote participation provisions serve the contemporary needs of both the public and governmental agencies. This portion of the statute has evolved since the COVID-19 pandemic as the expectations of the public and members of public bodies, as well as the technological capacity of agencies, have changed.

In 2022 the section 403-B provision, enacted a year earlier, that a remote meeting policy include the expectation that members be physically present unless not “practicable” was removed. While the local policy may impose expectations for individual member in-person attendance and reflect the local sentiment that face-to-face meetings are preferable, the statute no longer favors that policy choice.

The statute now allows the entire body to meet remotely if there is an “emergency or urgent situation” that warrants providing no in-person option for either members or the public. Should the “emergency or urgent situation” language be repealed to more accurately reflect the prevailing acceptance of electronically conducted public meetings? If the statute is neutral as to the reasons why an individual member of a public body participates in a public proceeding, should the statute be mute as to the reasons the entire body would choose to do the same?

Public meetings in Maine are now conducted as either in-person, fully remote, or hybrid. Members of the public are offered a remote option only if any of the members of the body participate by remote methods. There is no requirement to offer a hybrid meeting with no remote participation by members, even though there may be a need and desire by members of the public to attend remotely. Should the statute require, across all governmental agencies in the State, that every meeting be hybrid to the extent that the public is always allowed to attend remotely, if this is within the technological capacity of the governmental body?

APPENDIX

5 M.R.S.A. § 200-I

§ 200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created within the Department of the Attorney General the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13¹. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as “the ombudsman,” to administer the division.

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right to Know Advisory Committee established in Title 1, section 411;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor and the parties involved;

E. Make recommendations concerning ways to improve public access to public records and proceedings; and

F. Coordinate with the state agency public access officers the compilation of data through the development of a uniform log to facilitate record keeping and annual reporting of the number of requests for information, the average response time and the costs of processing requests.

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential to make a recommendation concerning whether the public agency or official may release the records to the public. The ombudsman's recommendation is not binding on the public agency or official. The ombudsman shall maintain the confidentiality of records and information provided to the ombudsman by a public agency or official under

this subsection and shall return the records to the public agency or official when the ombudsman's review is complete.

5. Report. The ombudsman shall submit a report not later than January 15th of each year to the Legislature and the Right to Know Advisory Committee established in Title 1, section 411 concerning the activities of the ombudsman for the previous year. The report must include:

- A.** The total number of inquiries and complaints received;
- B.** The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C.** The number of complaints received concerning respectively public records and public meetings;
- D.** The number of complaints received concerning respectively:
 - (1)** State agencies;
 - (2)** County agencies;
 - (3)** Regional agencies;
 - (4)** Municipal agencies;
 - (5)** School administrative units; and
 - (6)** Other public entities;
- E.** The number of inquiries and complaints that were resolved;
- F.** The total number of written advisory opinions issued and pending; and
- G.** Recommendations concerning ways to improve public access to public records and proceedings.

6. Repealed. Laws [2009, c. 240, § 7, eff. June 2, 2009.](#)

Credits

[2007, c. 603, § 1; 2009, c. 240, § 7, eff. June 2, 2009; 2013, c. 229, §§ 1, 2, eff. Oct. 9, 2013.](#)

Footnotes

[1 M.R.S.A. § 401 et seq.](#)

5 M. R. S. A. § 200-I, ME ST T. 5 § 200-I

Current with legislation through the 2021 First Regular Session of the 130th Legislature.

Right to Know Advisory Committee
August 12, 2024 (Hybrid: Zoom and Room 228)
Meeting Summary

Convened 1:09 p.m. in person and remote on Zoom; public access on Legislature's website at:
<https://legislature.maine.gov/audio/#228?event=91619&startDate=2024-08-12T13:00:00-04:00>

Present in Room 228:

Rep. Erin Sheehan
Sen. Anne Carney
Julie Finn
Brian MacMaster
Kevin Martin
Eric Stout

Remote:

Lynda Clancy
Betsy Fitzgerald
Jen Lancaster
Judy Meyer
Kim Monaghan
Tim Moore
Cheryl Saniuk-Heinig

Absent:

Amy Beveridge
Jon Bolton
Justin Chenette
Linda Cohen
Connor P. Schratz

Staff:

Lindsay Laxon
Anne Davison
Elena Roig
Sam Senft (vacation)

Welcome and introductions

Rep. Erin Sheehan convened the meeting and all members introduced themselves and identified the interests they were appointed to represent on the Advisory Committee. Kate McBrien, the Maine State Archivist, was also present and introduced herself.

Election of chair

Sen. Anne Carney nominated Rep. Erin Sheehan to continue as chair. The motion was seconded by Julie Finn. Rep. Sheehan agreed to continue in the role. She was unanimously elected by all present members.

Review of duties

Staff reviewed the Advisory Committee's statutory duties and the annual written report due date (January 15th).

Remote participation policy

Staff reviewed the Advisory Committee's Remote Participation Policy, adopted October 26, 2021.

Review and discussion of the Eighteenth Annual Report of the Right to Know Advisory Committee and actions related to those recommendations

Staff reviewed the recommendations of the Advisory Committee that are contained in the 18th Annual Report from January 2024.

These recommendations are as follows:

- Amend certain provisions of law in Title 22 relating to previously enacted public records exceptions
LD 2215, An Act to Implement the Recommendations of the Right to Know Advisory Committee Regarding Public Records Exceptions was enacted as Public Law 2023, ch. 637.
- Provide an explanation to the Blue Ribbon Commission to Study Emergency Medical Services in the State of why the RTKAC did not recommend amending Title 32, section 98, to establish a public records exception for financial information provided by applicants for Emergency Medical Services Stabilization and Sustainability Program grants
Staff sent a letter on behalf of the Advisory Committee to the chairs of the Blue Ribbon Commission providing this explanation.
- Reinforce the importance of following the statutory requirements applicable to public bodies and agencies going into executive session
Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the state FOAA contacts, the Maine School Management Association, Maine Municipal Association, Maine County Commissioner's Association, the Maine Town and City Clerks' Association as well as the RTKAC interested parties list.
- Request that the Public Access Ombudsman include more guidance regarding the Freedom of Access Act's (FOAA) requirements for public bodies and agencies going into executive session on the Maine Freedom of Access Act website
A copy of the 18th Annual Report including this recommendation was sent to the Public Access Ombudsman.
- Send a letter to Maine School Management Association confirming that FOAA allows a public body to create an internal form for responding to public records requests and that the Public Access Ombudsman can assist in the development of such a form
Staff sent a letter on behalf of the Advisory Committee sharing this recommendation to the Executive Director of the Maine School Management Association.
- Solicit from entities within the State responsible for responding to public records requests examples of burdensome public records requests and situations that the 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 a survey requesting this information 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. Many responses have been received.
- Send a letter to Maine Chiefs of Police Association requesting that it coordinate with the Maine Sheriffs Association, Maine State Police, Maine Office of the Attorney General, Maine Press Association and Maine Association of Broadcasters to convene a meeting to share information among stakeholders regarding the pressures and constraints experienced by both members of the media and law enforcement when reporting on or releasing information related to public safety incidents and ongoing criminal investigations
Staff sent a letter on behalf of the Advisory Committee to the Executive Director of the Maine Chiefs of Police Association sharing this recommendation.

- Propose that the Joint Standing Committee on Judiciary report out a bill in the Second Regular Session of the 131st Legislature to create a legislative study group to develop recommendations related to public employee disciplinary records, taking into consideration progressive discipline structures and employee incentives across different types of public employment
The Judiciary Committee received a presentation on the 18th Annual Report. The Judiciary Committee issued a letter dated May 10, 2024 responding to the Advisory Committee's recommendation.

Review of new public records exceptions enacted or amended in 2024

Staff directed committee members to a chart of exceptions enacted or amended in 2024.

Discussion of issues and topics for 2024

- **Review of existing public records exceptions**

Staff summarized the Advisory Committee's role in reviewing all existing exceptions in Titles 25 to 32 during the 132nd Legislature.

Staff have begun preparing for the review. Consistent with past practice, FOAA contact persons for each agency or governmental entity will be asked to submit input, through a questionnaire, on each of the FOAA exceptions pertaining to their agency/entity. September 20th is the proposed deadline for contacts to return the surveys.

As in past years, staff noted that the review of the exceptions may be initially completed through a subcommittee. The Advisory Committee decided to form a public records exception subcommittee to address this topic. Lynda Clancy suggested that the subcommittee also discuss the public records exception amended by Public Law 2023, ch. 618 (LD 1937), An Act Regarding the Transportation of Hazardous Materials by Railroad Companies.

- **Public records exception for the Permanent Commission on the Status of Racial, Indigenous and Tribal Populations**

Staff suggested that if the committee opts to form a subcommittee on public records exceptions, the committee may wish to refer this exception to the subcommittee. The members agreed to refer this item to the public records exception subcommittee.

- **Survey responses with examples of burdensome public records requests**

Staff, who are in the process of compiling responses, noted that responses were received from 22 agencies and more than 20 Maine Municipal Association members, and that some responders included recommendations for statutory changes in their responses. The Advisory Committee decided to form a subcommittee to consider the survey responses and discuss this topic.

- **Letter from Judiciary Committee regarding retention of and public access to public employee disciplinary records**

Staff drew the Advisory Committee's attention to the Judiciary Committee's request that the RTKAC reconsider some of the issues that the Advisory Committee previously referred to the Judiciary Committee. The Advisory Committee decided to form a subcommittee to discuss this topic.

- **Other suggested issues and topics**

The members discussed other issues that could be considered through a subcommittee or by the full committee. This included the results of the recommendation from the 18th Annual Report asking the Maine Chiefs of Police Association to convene a meeting related to the release of information regarding public safety incidents and ongoing criminal investigations. The members also discussed challenges and

burdens faced by persons making FOAA requests, particularly FOAA requests that are not fulfilled. Though membership has not been finalized and Rep. Sheehan suggested that other subcommittees could be formed if necessary, the committee formed three subcommittees; chairs were chosen for each. Subcommittees and chairs are as follows:

- 1) Public records exceptions (Cheryl Saniuk-Heinig)
- 2) Public employee disciplinary records (Judy Meyer)
- 3) Abusive and burdensome requests (Kevin Martin)

Staff will follow up by email to provide members, including those who were not present at the meeting, with the opportunity to volunteer to participate in one or more of the subcommittees.

Public comment

The Advisory Committee heard public comment from three individuals.

Future meeting dates and requests

The Advisory Committee confirmed the proposed meeting schedule.

- Monday, September 23, 2024 @ 1:00 p.m., location State House, Room 228
- Monday, October 7, 2024 @ 1:00 p.m., location State House, Room 228
- Monday, October 21, 2024 @ 1:00 p.m., location State House, Room 228

Rep. Sheehan suggested that the members consider Monday, November 18, 2024 @ 1:00 p.m. as a 5th meeting date (TBD).

Rep. Sheehan expressed interest in hearing from the Maine Chiefs of Police Association as well as Public Access Ombudsman, Brenda Kielty, at the Advisory Committee's next meeting. Kevin Martin requested that when Ms. Kielty comes to present, she bring examples of unfulfilled FOAA requests with her.

Rep. Sheehan also raised the issue of personal email usage under FOAA and suggested this be a discussion point at a future meeting.

The meeting was adjourned at 3:11 p.m.

Below are excerpts from 3 State of Maine policies regarding use of email
(see yellow highlights)

Reference #1:

<https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/RulesofBehavior.pdf>

NOTE: This policy is on the public website of www.maine.gov, and references the 2 internal website policies below.

**State of Maine
Department of Administrative and Financial Services
Office of Information Technology (OIT)
Rules of Behavior (PL-4)**

....

6.2. General Rules (PL-4, PL-4(1))

6.2.1. All users MUST:

....

6.2.1.3. Read and comply with the State of Maine Personal Use of Social Media Policy, 1 the State of Maine Policy and Work Rules Concerning the Use of State Information and Technology (IT) Equipment and Resources, 2 the State of Maine E-Mail Usage and Management Policy(intranet only), 3 and the State of Maine Policy Against Harassment.4

1 <https://www.maine.gov/bhr/state-hr-professionals/rules-policies/policy-practices-manual/Personal-Useof-Social-Media>

2 https://www.maine.gov/bhr/sites/maine.gov.bhr/files/inline-files/DAFSITPolicy_0.pdf

3 <http://inet.state.me.us/dafs/policies/emailsystem.html>

4

https://www.maine.gov/bhr/sites/maine.gov.bhr/files/inlinefiles/Policy_Statement_Against_Harassment_July_2011.pdf

Reference #2:

https://www.maine.gov/bhr/sites/maine.gov.bhr/files/inline-files/DAFSITPolicy_0.pdf

NOTE: The full document is posted on the internal website available only to State employees and contractors, not on the public website of www.maine.gov

**STATE OF MAINE
POLICY AND WORK RULES CONCERNING
THE USE OF STATE INFORMATION AND TECHNOLOGY (I.T.) EQUIPMENT AND
RESOURCES**

**Amended Work Rule
EFFECTIVE DATE: March 2, 2015**

....

MAINE FREEDOM OF ACCESS ACT

The State of Maine “Freedom of Access Act” (1 M.R.S.A., §401-410) clearly provides that any and all written, printed or graphic matter or any mechanical or electronic data compilation (files, notes, records, copies, etc.), regardless of the media used to store or transmit them (paper, film, microfiche, recordable media, electronic media, etc.) in public offices received or prepared for use in connection with the transaction of public governmental business is public property. As such, the public may have access to those materials for examination. The law places some very narrow restrictions on the public access, such as personnel files, certain investigation files, etc. but most materials are subject to public viewing. Employees are advised that there should be no expectation of privacy when using any State-owned I.T. or related communications equipment or resources.

WORK RULES

State-owned I.T. equipment and resources are made available to employees to conduct official State of Maine business. Use of I.T. resources, such as e-mail, Internet, social networking media interfaces such as YouTube, Facebook and blogs, etc., are intended to be used for State business purposes. **The Department’s employees are provided with a maine.gov email account through which to conduct state business.** All State employees using state-owned I.T. equipment and resources are expected to comply with the following work rules:

....

3. State employees shall not conduct state business through personal email accounts (e.g., Yahoo, Hotmail, and G-mail)

Reference #3:

<http://inet.state.me.us/dafs/policies/emailsystm.html>

NOTE: The full document is posted on the internal website available only to State employees and contractors, not on the public website of www.maine.gov

**State of Maine E-Mail Usage and Management Policy
Effective September 13, 2004**

- **All e-mail messages including personal communications** may be subject to discovery proceedings in legal actions.
- **All e-mail messages sent or received and which are not otherwise protected by law, are public documents and may be released to the public under the Freedom of Access Law.**