



**COVERSHEET
STANDARD OPERATING PROCEDURE**

Operation Title: Freedom of Access Law Responses
Originator Name: Peter J. Carney

APPROVALS:

Bureau of Air Quality Director:

Melanie Loyzim
Print Name

Melanie Loyzim
Signature

Date: 6/27/11

Bureau of Land and Water Quality Director:

Teco Brown
Print Name

Teco Brown
Signature

Date: 6/29/11

Bureau of Remediation and Waste Management Director:

Robert E. Oja
Print Name

Robert E. Oja
Signature

Date: 7/7/11

QMSC Chair:

Malcolm Barber
Print Name

Malcolm Barber
Signature

Date: 6/23/11

Deputy Commissioner on behalf of SMT:

Patricia W. Rho
Print Name

Patricia W. Rho
Signature

Date: 7/8/2011

DISTRIBUTION:

() Bureau of Air Quality	By: _____	Date: _____
() Bureau of Land and Water Quality	By: _____	Date: _____
() Bureau of Remediation and Waste Management	By: _____	Date: _____
() Office of the Commissioner	By: _____	Date: _____
() Quality Management Steering Committee	By: _____	Date: _____



1. **APPLICABILITY.** The Maine *Freedom of Access* law ("FOA"), 1 M.R.S.A. §§ 401–412, requires state agencies to make "public records" as that term is defined in the statute available for inspection and copying to any person.
2. **PURPOSE.** Establishing a standardized method for responding to FOA requests ensures that all public records are produced in an efficient, consistent, verifiable, and credible manner. This document describes Maine DEP's procedure for responding to such requests.
3. **DEFINITIONS.**
 - 3.1 **BRWM FILE ROOM.** The term *BRWM File Room* means the file storage and review area maintained by the Bureau of Remediation and Waste Management.
 - 3.2 **BUREAU FOA COORDINATOR.** The term *Bureau FOA Coordinator* means the bureau employee designated to resolve issues concerning records flagged as confidential or privileged and to consult with the Department FOA Coordinator on FOA matters affecting their respective bureau. For purposes of this SOP, the Office of the Commissioner is considered a bureau.
 - 3.3 **CUSTODIAN.** The term *custodian* means the Department employee having possession or custody of a record.
 - 3.4 **DEPARTMENT FOA COORDINATOR.** The term *Department FOA Coordinator* means the administrative staff person from the Commissioner's Office designated to receive, track, route, and invoice all FOA requests.
 - 3.5 **EXCEPTIONS LOG.** The term *exceptions log* means the form used by Department employees to document confidential, privileged, and redacted information removed from records subject to a FOA request.
 - 3.6 **FOA DATABASE.** The term *FOA database* means the Department database maintained to track FOA requests and responses.
 - 3.7 **FOA DISTRIBUTION GROUP.** The term *FOA Distribution Group* means the Bureau Director, Division Directors, and any central file room manager within each of the Department's bureaus and in the Office the Commissioner, Deputy Commissioner, assistants to the Commissioner and Deputy Commissioner, Regional Office directors, unit managers, and the Board of Environmental Protection's Executive analyst. In addition, the Department FOA Coordinator shall include other bureau staff upon specific request by a bureau.
 - 3.8 **FOA REQUEST.** The term *FOA request* as used in this SOP means any communication from the public that: a) specifically asks for access to records pursuant to the FOA, b) is not necessarily made pursuant to the FOA but the requested records are likely to contain privileged or confidential information and procedures are not already in place for the staff person to easily address those records simply and directly, or c) from which it is apparent that the requestor intends that a full and complete search of Department records be made.



- 3.9 PUBLIC RECORDS. The term *public records* means records in Maine DEP's possession or custody subject to public access as set forth in the FOA, 1 M.R.S.A. § 402(3).
- 3.10 RECORD. The term *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 aural comprehension.
- 3.11 REDACT. The term *redact* means removing confidential or privileged text from a document prior to the document being released pursuant to a FOA request such that the redacted text cannot be read or otherwise seen by the requestor.
- 3.12 STAGING AREA. The term *staging area* means the location identified by the Department FOA Coordinator for collection of pulled FOA materials and the area where the records will be made available to the requestor for inspection and copying.
- 4. RESPONSIBILITIES.** This section lists the specific responsibilities of Maine DEP employees involved in responding to FOA requests. Responsibilities under this SOP may be delegated to another qualified Maine DEP employee in the event of the assigned employee's unavailability.
- 4.1 ALL EMPLOYEES. All Maine DEP employees are responsible for knowing the general content of the records they possess, maintain, manage, or control. Individual employees are responsible for producing records which they possess, maintain, manage, or control that are responsive to FOA requests and for reviewing records subject to FOA requests for confidentiality and privilege.
- 4.2 DEPARTMENT FOA COORDINATOR. The Department FOA Coordinator is responsible for receiving and logging FOA requests, routing FOA requests to the FOA Distribution Group, sending an initial response to the requestor, establishing deadlines for the production of records and notifying the FOA Distribution Group of these deadlines, being the primary contact between the Department and FOA requestors on matters concerning a FOA request, invoicing FOA requests, and returning FOA records to staff upon closing of a request.
- 4.3 BUREAU FOA COORDINATOR. Bureau FOA Coordinators are responsible for resolving issues concerning records flagged confidential or privileged in accordance with this SOP and consulting with the Department FOA Coordinator on FOA matters affecting their respective bureau.
- 4.4 OFFICE OF THE ATTORNEY GENERAL. The Attorney General's Office is responsible for consulting with Department staff and providing legal opinions to the Department concerning potentially confidential or privileged records and interpretations of the FOA statute, as requested by Department staff.
- 5. GUIDELINES AND PROCEDURES.**
- 5.1 FORM OF REQUEST. Maine DEP prefers that FOA requests be made in writing. If a Department employee receives a verbal request for records, the Department's



understanding of the request should be documented in the initial response to the requestor provided for in section 5.4 as confirmation of the Department's understanding of the subject of the request.

- 5.2 INITIAL INTAKE AND ROUTING OF FOA REQUESTS. Any Maine DEP employee receiving a FOA request shall immediately forward the request to the Department FOA Coordinator. Pursuant to 1 M.R.S.A. § 409, Maine DEP has only five working days from the Department's receipt of the request to provide written notice of refusal to inspect or copy Department records, therefore, timely response to a FOA request is an extremely time-sensitive matter. Within one working day of the receipt of the request the Department FOA Coordinator shall:

- 5.2.1 ENTER INITIAL INFORMATION IN THE FOA DATABASE. Enter initial information concerning the FOA request into the FOA database located at H:\FOA\FOA Database\FOAA.mdb as follows:

- (a) Unique identifier (number is generated by the FOA database);
- (b) Requestor's name;
- (c) Date request received by Maine DEP;
- (d) Electronic link to request letter, or link to PDF of request email;
- (e) Status (see drop-down menu);
- (f) Link a FOA Processing Form to the FOA database.

- 5.2.2 ELECTRONIC FOLDERS. The Department FOA Coordinator shall establish an electronic project folder for each FOA request in the FOA directory located at H:\FOA\FOA Requests as follows:

- (a) In the "FOA Requests" folder create and maintain a subfolder for each calendar year.
- (b) Under each of these subfolders, create a folder for each FOA request. The folder name for the FOA project folder should be comprised of three parts: (1) the unique identifier number assigned to the request by the FOA database; (2) the last name of the requestor in capital letters; and (3) a very brief description of the subject of the request. (e.g. 99 SMITH (dams))

- 5.2.3 SAVE FOA REQUEST TO ELECTRONIC FOLDER. The Department FOA Coordinator shall save the following in the FOA project folder established pursuant to a specific request:

- (a) A PDF of the request letter or email. If the request is received as a hardcopy, it must be scanned. This file should be linked to the FOA database.
- (b) Any further written clarifications to the original request. Clarifications may be received and saved by the Department FOA Coordinator, Bureau FOA Coordinator(s), or both.



- 5.2.4 **CONTACT REQUESTOR FOR CLARIFICATION.** If necessary, the Department FOA Coordinator will contact the requestor by phone or email in the following situations, where the information listed below is not otherwise known.
- (a) If the requestor provides information that is incomplete to perform a diligent search (e.g. the requestor only provides a tax lot number, property address, or land description), the Department FOA Coordinator should ask the requestor as early in the process as possible to provide names of past and present property owners, names of past and present businesses operating at the site, "911" address for the site, and GPS coordinates for the site. If the requestor does not provide additional information, the requestor must be notified in the initial response letter that the Department will only be able to search for records based on the limited information provided.
 - (b) If the requestor is out of state, contact the requestor to confirm that the requestor is willing to travel to Department offices to review materials. If the requestor is not willing to travel to Department offices, further processing of the FOA request should be suspended and a closing letter sent to the requestor advising the requestor that the Department will consider the matter closed within 30 days of the date of the Department's correspondence unless the requestor confirms that they or their agent is willing to inspect records at the Department's offices.
- 5.2.5 **ESTABLISH STAGING AREA.** The Department FOA Coordinator shall establish a staging area for receipt of public records that are to be produced for inspection and copying pursuant to a FOA request. This area will typically be the BRWM file room unless space or time considerations require the establishment of an alternative staging area. Staging areas should also be established in each of the Department's regional offices for records located in those offices.
- 5.2.6 **NOTIFY FOA DISTRIBUTION GROUP.** After completion of initial processing of a FOA request as provided for in sections 5.2.1 through 5.2.5, the Department FOA Coordinator shall send an email notification to the FOA Distribution Group and copy the Bureau FOA Coordinators. The notification must include (1) a link to the electronic copy of the FOA request and any additional correspondence concerning the request; (2) the location of the staging area; and (3) a deadline by which staff must produce records available to the public in the staging area. The deadline to produce records should provide a reasonable period of time for staff search for records, review records, create an exceptions log, and produce records and should consider the volume of pending requests, the breadth of the specific request, the anticipated volume of records to be produced, and the anticipated difficulty of confidentiality and privilege review. The deadline may be revised by the Department FOA Coordinator during the pendency of the request.



- 5.3 NOTIFICATION TO STAFF AND DEADLINES. Immediately upon receipt of a FOA request from the Department FOA Coordinator, each member of the FOA Distribution Group shall make inquiry to their staff to identify employees who may reasonably possess, maintain, manage, or control, records subject to a FOA request. Staff must be instructed to search for requested records and produce requested records in the staging area subject to the confidentiality and privilege procedures in section 5.6 in accordance with the deadline established by the Department FOA Coordinator to produce requested records.
- 5.3.1 NO RESPONSIVE RECORDS IDENTIFIED. If no requested records are identified as a result of inquiries to staff by the FOA Distribution Group, any member of the FOA Distribution Group that did not identify responsive records among their staff must notify the Department FOA Coordinator that no requested records were identified by the deadline to produce records established by the Department FOA Coordinator pursuant to section 5.2.6.
- 5.3.2 RESPONSIVE RECORDS IDENTIFIED. If requested records are identified, as soon as possible and within five working days of the date the FOA request was received by the Department, any employee that has records responsive to the request must provide the Department FOA Coordinator with an estimate of the amount of staff time that will be required to produce records so that the Department FOA Coordinator can provide the requestor with a cost estimate in the initial response letter.
- 5.4 INITIAL RESPONSE TO REQUESTOR. The Department FOA Coordinator shall send an initial response to the requestor in writing within five (5) working days of the date the request was received by the Department using the initial response letter template located at H:\FOA\FOA Templates and Examples\FOA Initial Response Letter.dot. The initial response letter may be sent via regular mail, fax, email attachment, or as the body of an electronic mail message. A copy of the initial response correspondence, signed if sent other than by email, must be saved in the project folder in the FOA Requests electronic folder.
- NOTE: Where a FOA request has been made to provide the requestor with copies of records, the Department FOA Coordinator shall advise the requestor of the public's right to inspect and copy public records in the initial response set forth in section 5.4. The Department FOA Coordinator may opt to provide copies to a requestor if it is believed to be in the best interest of Maine DEP and the requestor agrees to pay copying costs in addition to other costs recoverable under the FOA.**
- 5.5 SEARCH FOR PAPER AND ELECTRONIC RECORDS. Upon receipt of a FOA request, Maine DEP employees who may have records requested in a FOA request are responsible for conducting a diligent search of paper and electronic records which they possess, maintain, manage, or control. Managers are responsible for ensuring that records not necessarily associated with an individual employee are searched, e.g. records in the records center, prior employee records, databases.
- 5.6 REVIEW FOR RECORDS NOT SUBJECT TO PUBLIC ACCESS. Not all records in Maine DEP's possession or custody are public records subject to public access



under the FOA. Upon identifying records that are responsive to a FOA request, individual employees are each responsible for reviewing records subject to the request for confidentiality and privilege and removing, redacting, or segregating records containing this information from the requested records prior to producing the records for inspection and copying. Records excepted from public access are identified in 1 M.R.S.A. § 402(3). Individual employees are responsible for reviewing records responsive to a FOA request as follows.

5.6.1 REMOVAL AND REDACTION BY INDIVIDUAL EMPLOYEES. Prior to producing records for inspection and copying, individual employees are responsible for **removing or redacting** the information identified in sections 5.6.1.1 through 5.6.1.5 from records to be produced pursuant to a FOA request as follows:

5.6.1.1 RECORDS CONFIDENTIAL BY STATUTE. The FOA excepts certain types of records from the definition of "public record" pursuant to the 1 M.R.S.A. § 402(3). Maine statutes contain many provisions providing for the confidentiality of certain kinds of records. The State maintains a searchable database of "records that have been designated confidential by statute" as identified in 1 M.R.S.A. § 402(3)(A). The database can be accessed at: <http://www.mainelegislature.org/legis/foa/>. These statutes may or may not require records to be designated or marked "confidential". Records expressly designated or marked confidential are discussed in section 5.6.1.2. Because many statutes that establish records as confidential do not require that confidential records be designated or marked confidential, it is necessary to review all records for confidentiality not only those designated or marked confidential. The most commonly encountered exceptions are described in sections 5.6.1 and 5.6.2.

5.6.1.2 RECORDS CLAIMED OR DESIGNATED CONFIDENTIAL. When reviewing records Maine DEP employees may encounter records designated or marked confidential. Some statutes include provisions for protection or heightened procedures if records are designated or marked confidential by the party submitting the record (e.g. 38 M.R.S.A. § 1310-B).¹ If records are designated or marked confidential pursuant to the provisions of a statute, the records shall be protected, or the procedure provided for followed, pursuant to the requirements of the statute. In other instances, records may simply be designated or marked by the submitting party as confidential because the party believes them to be confidential. If records are designated confidential for reasons other than the statutory considerations discussed above, the party that submitted the records should be contacted in an attempt to acquire consent to release the records in

¹ Some Maine DEP statutes which contain provisions concerning records marked or designated confidential include: 38 M.R.S.A. § 585-B(6); 38 M.R.S.A. § 585-C(2)(D); 38 M.R.S.A. § 1310-B; 38 M.R.S.A. § 1661-A(4); 38 M.R.S.A. § 2307-A(5); 38 M.R.S.A. § 2309(1); and 38 M.R.S.A. § 2313(2). There are statutes other than Maine DEP statutes that contain provisions concerning records designated or marked confidential and when such provisions are encountered their specific procedures must be followed.



accordance with section 5.6.6. If consent is not obtained, the procedures in 38 M.R.S.A. § 1310-B shall be followed.

NOTE: The "boilerplate" confidentiality notices used in many fax and email messages do not alone trigger the requirements of section 5.6.1.2, however, such boilerplate notices may not be ignored. When reviewing records with boilerplate confidentiality notices staff should scrutinize the record to ensure that no potentially confidential information is contained in the record. If, after such review, staff has no reason to believe that the record contains confidential information no further procedure is necessary. However, if there is any indicium other than the boilerplate notice that the record may contain confidential information or that claim of confidentiality is being made the consent provisions in section 5.6.1.2 apply. If consent is not obtained, the procedures in 38 M.R.S.A. § 1310-B shall be followed.

5.6.1.3 **IDENTITY OF INFORMANTS.** Maine DEP considers the names and other identifying information concerning informants requesting anonymity to be confidential information not subject to public access. Maine Rule of Evidence 509 recognizes that the State has a privilege to refuse to disclose the identity of a person who has furnished information relating to an investigation of a possible violation of law to a law enforcement officer. Maine DEP views its staff as law enforcement officers for the purposes of Rule 509.

5.6.1.4 **PERSONAL CONTACT INFORMATION CONCERNING PUBLIC EMPLOYEES.** Pursuant to 1 M.R.S.A. § 402(3)(O), personal contact information concerning public employees is confidential. Personal contact information means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number. "Public employee" is defined in 14 M.R.S.A. § 8102(1), except that "public employee" does not include elected officials.

5.6.1.5 **PERSONNEL RECORDS.** Certain information related to State employees including, but not limited to: medical information, performance evaluations, personal history of the employee's immediate family, social security numbers, and other information provided for in 5 M.R.S.A. § 7070.

5.6.2 **FLAGGING RECORDS FOR FURTHER REVIEW.** Prior to producing records for inspection and copying, individual employees are responsible for **segregating records** that are responsive to a FOA request which may reasonably contain the information in sections 5.6.2.1 through 5.6.2.3 **and providing the segregated records to the assigned Bureau FOA Coordinator for further assessment** in accordance with the procedures below.

5.6.2.1 **WORK PRODUCT DOCTRINE.** Documents prepared in anticipation of litigation or for trial may be considered "work product" that is



protected from public access, particularly if such documents contain the mental impressions, conclusions, opinions, or legal theories of an attorney or agency representative concerning ongoing or potential litigation.

5.6.2.2 ATTORNEY-CLIENT PRIVILEGE. The attorney-client privilege protects confidential communications made for the purpose of facilitating professional legal services. The privilege protects communications between and among the client (e.g. Maine DEP), their attorney (e.g. an Assistant Attorney General Representing Maine DEP), a representative of the client, and/or a representative of the lawyer. For the privilege to apply in the context of Maine state government, the communication must concern a pending investigation, claim, or action and public access would seriously impair the ability of the agency to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest.

5.6.2.3 TRADE SECRETS. Under the Maine Rules of Evidence, a person has a privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person. If requested records contain trade secrets, Maine DEP must deny access to such records. The Maine Rules of Evidence do not define the term trade secret, but the Maine Supreme Judicial Court has looked to the definition in the *Uniform Trade Secrets Act*, 10 M.R.S.A. § 1542(4), as a useful guidepost. Certain DEP statutes also allow trade secrets to be protected from public access.

5.6.2.4 CONSULTATION WITH ATTORNEY GENERAL. Upon receipt of records from Department staff flagged as potentially confidential or privileged pursuant to section 5.6.2, the respective Bureau FOA Coordinator must consult with the Attorney General's Office as to whether the information sought to be protected appears to meet the appropriate legal standard for protection unless the Bureau FOA Coordinator has received previous guidance from the Attorney General's office concerning certain categories of records that is applicable to a current matter or it is otherwise known to the Bureau FOA Coordinator that a record is confidential or privileged based on prior experience or practice.

5.6.3 REMOVAL OF CONFIDENTIAL OR PRIVILEGED RECORDS. As the review process described in section 5.6 is conducted, if confidential or privileged records are removed it must be indicated where a protected or potentially protected item was removed from a file using a numbered Protected Document Sheet for which a template is located at H:\FOA\FOA Templates and Examples\FOA Protected Document Sheet.dot. A second Protected Document Sheet with the same identification number is attached to the removed item. One sheet may serve as a placeholder for several items together if they were found in the same location in the file. However, each item needs to be separately listed in an exceptions log. Protected Document



Sheets should be bright in color so they are easily identifiable in groups of records.

- 5.6.4 ROUTING OF RECORDS FOLLOWING CONFIDENTIALITY/PRIVILEGE REVIEW. Following completion of the procedures in section 5.6, records that are not confidential, privileged, or otherwise protected must be sent to the staging area identified by the Department FOA Coordinator by the deadline for production of records established by the Department FOA Coordinator. Records sent to the staging area must have a completed FOA Production Cover Sheet attached to the records. A template for the FOA Production Cover Sheet is located at H:\FOA\FOA Templates and Examples\FOA Production Cover Sheet.dot
- 5.6.5 EXCEPTIONS LOG. If records are removed or redacted pursuant to section 5.6, the individual employee if removed or redacted pursuant to section 5.6.1, or the Bureau FOA Coordinator if removed or redacted pursuant to section 5.6.2, must list those records removed or redacted in an exceptions log. An exceptions log template is located at H:\FOA\FOA Templates and Examples\FOA Exceptions Log.dot. The person responsible for completing the exceptions log shall forward the log to the Department FOA Coordinator no later than ten working days after the deadline established by the Department FOA Coordinator to produce records pursuant to a FOA request. If additional time is needed to complete the exceptions log, the person responsible for completing the exceptions log must notify the Department FOA Coordinator before the expiration of the ten-day deadline. Any records removed from production pursuant to section 5.6 shall be segregated and maintained by the custodian to be until the conclusion of the FOA request, at which time the records must be re-filed in accordance with Department guidance for filing confidential records. If records are withheld, after the deadline for receiving exceptions logs from staff, the Department FOA Coordinator shall provide a hard copy or PDF copy of any exceptions log(s) to the requestor and copy the Bureau FOA Coordinators. If the requestor has questions about withheld records, the requestor should be referred to the respective Bureau FOA Coordinator.
- 5.6.6 VOLUNTARY DISCLOSURE. Maine DEP staff may attempt to acquire consent from a party who submitted records that are or may be protected to disclose such records to a requestor. Maine DEP staff may also propose that the person who submitted records that are or may be protected reach an agreement with the requestor that portions of records be disclosed while other portions be protected from public access. In the case of a unilateral decision by a person who submitted the record, or agreement between the person who submitted the record and the requestor, with or without conditions, to allow Maine DEP to disclose records previously claimed to be protected, Maine DEP must obtain the consent or agreement in writing, which may be in the form of an email and response, for inclusion in agency records.
- 5.7 FOA PROCESSING FORM. Upon completion of their responsibilities under this SOP, employees with responsive records shall complete the FOA Processing Form,



located at H:\FOA\FOA Templates and Examples\FOA Processing Form.dot, and forward the form to the Department FOA Coordinator by the deadline to produce records.

- 5.8 PRODUCTION OF RECORDS. Following the expiration of a deadline for Department staff to provide exceptions logs to the Department FOA Coordinator, the Department FOA coordinator shall contact the requestor and schedule a time and place for the requestor's inspection and copying of produced records. The inspection and copying of records must take place in an appropriately secure location such as the BRWM File Room. Department records may only leave Department offices for purposes of inspection and copying by authorization of the Commissioner.
- 5.9 COST RECOVERY. The FOA permits Maine DEP to charge a reasonable fee to cover the cost of copying and a fee to cover the actual cost of searching for, retrieving, and compiling requested records. Maine DEP may not charge for inspection. Maine DEP employees shall maintain a record of their time, copies made, and other costs related to a FOA request on the FOA Processing Form. The Department FOA Coordinator shall compile the information necessary to bill the requestor from the reporting forms received by staff and, when necessary billing information is complete, invoice the requestor in accordance with the procedures below.
- 5.9.1 COPYING COSTS. The Department's charge for photocopies is 15 cents per copy if made by the requestor on a Department copy machine, and 25 cents per copy if made by Maine DEP employees on the requestor's behalf. The quantity of self-service copies may be tracked by Department key counter or manually by the requestor. The number of copies made by Department staff shall be tracked by Department staff. The number of copies shall be reported to the Department FOA Coordinator by Department staff or the requestor. For copies of records made to other media, such as CD, DVD, memory stick, the Department charges the actual cost of the other media. The Department only charges for copies of records taken by the requestor. For example, printouts of electronic records that Department employees may make in order to produce records pursuant to a FOA request are not billable copies, unless they are provided to, and taken by, the requestor.
- 5.9.2 STAFF TIME FOR RECORDS COMPILATION. The Department charges a fee to cover the actual cost of searching for, retrieving and compiling requested records of up to \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.
- 5.9.3 TRANSLATION. The charge for translation, if necessary, is the actual cost of translation.
- 5.9.4 PAYMENT IN ADVANCE. Pursuant to the FOA, Maine DEP may require a requestor to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling, and copying of



requested records if the estimated total cost exceeds \$100 or the requestor has previously failed to pay a properly assessed fee under the FOA in a timely manner.

5.9.5 **WAIVER.** Fees may be waived where the requestor is indigent or where release of the public record requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requestor.

5.9.6 **INVOICING.** Unless payment has been made in advance, upon completion of a requestor's inspection and copying of records the Department FOA Coordinator will cause an invoice to be generated and sent to the requestor for staff time and costs as follows.

5.9.6.1 **DETERMINE STAFF TIME, COPYING COSTS, AND TRANSLATION COSTS.** Based on the information provided by staff in the FOA Processing Form and/or information from Department staff or the requestor concerning quantity of copies, the Department FOA Coordinator shall establish the billable amounts for staff time, copying, and translation.

5.9.6.2 **REQUEST INVOICE.** After determining billable hours and costs, the Department FOA Coordinator will request the generation of an invoice from the Natural Resources Services Center, unless billable hours and costs are waived in accordance with 1 M.R.S.A. § 408(6).

5.9.6.3 **SEND INVOICE.** When an invoice is received from the Natural Resources Services Center, the Department FOA Coordinator shall produce a cover letter for which a template is available at H:\FOA\FOA Templates and Examples\FOA Invoice Cover Letter.dot, and send the invoice and cover letter to the requestor.

5.10 **CLOSING OF FOA REQUEST.** Within ten days following the requestor's review of records, the Department FOA Coordinator will send a closing letter to the requestor advising the requestor that thirty days after the date of the Department's correspondence the Department will consider the matter closed and redistribute produced records to the respective custodians in the Department. If the requestor objects, the matter will be held open and the FOA materials must remain intact until the requestor's objections are resolved. If no response is received from the requestor within the allotted time, the request is considered closed.

NOTE: In some cases, particularly where litigation is involved, it may be necessary to hold materials in storage for some period of time. In such cases, the Bureau FOA Coordinator will notify the Department FOA Coordinator.

5.11 **RETURN OF MATERIALS.** After a FOA is closed, the Department FOA Coordinator must return all materials to the respective custodian(s). Unless



special arrangements are made, all materials are returned to staff, regardless of whether they were labeled "copy" by staff. This is because originals and copies may have been mixed up during review by the requestor, and this will reduce the risk of disposing of original materials.

6. REFERENCES

- 6.1 *Freedom of Access law*, 1 M.R.S.A. §§ 401–412
- 6.2 *Uniform Trade Secrets Act*, 10 M.R.S.A. § 1542(4)
- 6.3 *Protection and Improvement of Air law*, 38 M.R.S.A. §§ 585-B(6) & 585-C(2)(D)
- 6.4 *Maine Hazardous Waste, Septage, and Solid Waste Management Act*, 38 M.R.S.A. § 1310-B(2)
- 6.5 *Mercury Added Products and Services*, 38 M.R.S.A. § 1661-A(4)
- 6.6 *Toxics Use and Hazardous Waste Reduction*, 38 M.R.S.A. §§ 2307-A(5), 2309(1), & 2313(2)
- 6.7 Maine Rule of Civil Procedure 26(b)(3)
- 6.8 Maine Rules of Evidence 502, 507, 509

NOTE: This guidance document provides general guidelines for Maine DEP's standardized method for responding to FOA requests. These guidelines are not rules and are not intended to have the force of law. This guidance does not create or affect any legal rights of persons submitting information to Maine DEP or of persons submitting FOA requests to DEP, all of which are determined by applicable statutes and law.

