

**TOWN OF YARMOUTH
MAINE FREEDOM OF ACCESS ACT
COMPLIANCE POLICY**

1. 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), 1M.R.S., §§ 401-410, or if it is apparent that the requester intends that a full and complete search of Town of Yarmouth records be made. This policy also applies whenever a Town of Yarmouth 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 that come into the town offices for copies of licenses, deeds, bills, etc. It is the sincere hope and intention of the Town of Yarmouth and this policy that in the overwhelming majority of interactions with public requests for information that the employee, officer or committee members to whom the request is made shall provide answers or access to documents that satisfy the information needs of the requester and/or refers them to another employee or officer who can better provide that information. Yarmouth hopes to continue its long standing practice of assisting residents with information needs or curiosities, including assisting them to refine the nature of the inquires and providing contextual understandings for information or documents provided, when and the public member wishes to receive such assistance. This policy will normally apply when the request submitted are more formal or make reference (either explicitly or implicitly) to FOAA requirements, or when circumstances suggest a formalized process would be in the interests of the requestor or the Town.*

2. PURPOSE.

The Town of Yarmouth believes the public has the right to know of the activities of the Town. In this spirit, many public documents are posted on the Town website (www.yarmouth.me.us). This policy is set forth to provide a standardized method for responding to FOAA requests and to ensure that all public records sought are produced in an efficient, consistent, verifiable and credible manner in accordance with State law.

3. DEFINITIONS

A. FOAA COORDINATOR. The term *FOAA Coordinator* means the Town of Yarmouth employee responsible for coordinating the response to a FOAA request. Except for records created, stored and managed by the Yarmouth School Department and unless otherwise established, this person shall be the Town Manager and in his/her absence, the Town Clerk.

B. FOAA REQUEST. The term *FOAA request* refers to any communication from the public that asks for access, pursuant to the FOAA, to public records within the Town of Yarmouth's possession or custody. The individual or group making the FOAA request will be asked to complete the Town of Yarmouth FOAA Information Request Form (Appendix A).

C. PUBLIC RECORD. The term *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 aural comprehension in the Town of Yarmouth's possession subject to public access as set forth in the FOAA, 1 M.R.S.A. § 402(3) as amended from time to time.

4. RESPONSIBILITIES. This section lists the specific responsibilities of Town of Yarmouth employees involved in responding to FOAA requests.

A. ALL EMPLOYEES. All Town of Yarmouth employees are responsible for knowing the general content of the files they possess, maintain, manage, or control. Any affected employee must follow this policy when responding to a FOAA request.

B. FOAA COORDINATOR. The Town Manager shall be designated as the FOAA Coordinator and shall be responsible for ensuring that responses to FOAA requests are made pursuant to the procedures outlined herein. In the absence of the Town Manager for a period of three working days or longer, the Town Clerk shall act as the alternate FOAA Coordinator. The FOAA Coordinator may designate alternates at the Public Works Garage, the Public Safety Building, and the Library.

C. TOWN ATTORNEY. The Town Attorney shall be consulted regarding requests for information that may be privileged, confidential or otherwise believed to be not subject to public access.

5. GUIDELINES AND PROCEDURES. The FOAA requires municipalities to provide public access to public records. Certain types of records, however, are not considered public records under FOAA, 1 M.R.S. § 402(3), and therefore, are not subject to public access. Records which are not public records include records that have been designated confidential by statute, records that would be within the scope of a privilege against discovery or use 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 the FOAA.

A. FORM OF REQUEST. The Town of Yarmouth encourages that each formal FOAA request be made in writing. Informal requests made verbally or in writing that are day-to-day occurrences that all Town employees should promptly respond to while also being sure that the requester knows that they will receive only the limited information asked for. Any informal requests for records containing confidential or protected information, however, must be processed in accordance with the policy herein.

NOTE: Any Town of Yarmouth employee who receives a verbal request for records pursuant to the FOAA shall advise the requesting party that the Town of Yarmouth encourages FOAA requests to be in written form. Whether the request is submitted in writing or not, the Town of Yarmouth employee shall endeavor to cheerfully comply pursuant to this policy. The requester shall use the "Town of Yarmouth Freedom of Information Request Form" attached as Appendix A to this policy or submit the request in letter format (FOAA Request). All requests should include the date, specific information being requested, name, complete address, phone number, fax number (if applicable), email address (if applicable), and signature of the requester. All requests should also include the preferred delivery format for the information, i.e. mail hard copy, fax copy, digital (email or disk), etc. If digital copies are requested, the Town will make every effort to provide the information in a format convenient and practical for use by the requester. It is not necessary for the Town to produce any reports, written or computerized, in any format other than that already maintained by the Town.

B. ROUTING OF FOAA REQUESTS.

1. INITIAL INTAKE OF FOAA REQUESTS. Any Town of Yarmouth employee receiving a FOAA request shall immediately forward the request to the FOAA Coordinator. Pursuant to 1 M.R.S. § 409, The Town of Yarmouth has only five (5) working days from receipt of the FOAA request to provide written notice if the Town of Yarmouth is going to refuse access to a public record. As such, response to a FOAA request is an extremely time-sensitive issue.

2. INITIAL RESPONSE TO REQUESTER. Upon receipt of a FOAA request, the FOAA Coordinator shall make all reasonable efforts to respond to the requester in writing within five (5) working days. The FOAA Coordinator must make a written response within five (5) working days if access to records may be denied. The response shall identify the type of information that the Town of Yarmouth then knows it intends to withhold from public access by way of statute, privilege, or other exception; this identification will generally include the date of the record, subject matter, number of pages, and reason for withholding. The response shall also provide the requester with the name and telephone number of the FOAA Coordinator. The response shall advise the requester to contact the FOAA Coordinator to arrange for inspection and copying of any public records. If it is certain that the Town of Yarmouth has no responsive records, the requester shall be so advised in the initial response.

C. IDENTIFYING STAFF POSSESSING RESPONSIVE PUBLIC RECORDS. The FOAA Coordinator is responsible for making inquiries to identify employees who might have responsive records in their possession, or are otherwise aware of responsive records. The FOAA Coordinator shall request each employee with responsive records to produce the records pursuant to the procedures outlined in this policy. The FOAA Coordinator 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 FOAA Coordinator shall establish a deadline by which employees will produce the requested records.

D. SEARCH PROTOCOL FOR ELECTRONIC DOCUMENTS AND FILES. Town of Yarmouth employees who might have responsive records shall adhere to the following procedures:

- a. PAPER RECORDS. Each Town of Yarmouth employee is responsible for the diligent hand-search of paper records in their possession or control.
- b. ELECTRONIC MAIL. Each Town of Yarmouth 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 Town of Yarmouth employee has access and which are used for communication of Town business must be searched.
- c. OTHER ELECTRONIC RECORDS. Each Town of Yarmouth employee is responsible for searching any personal directories and shared directories, and querying any Town of Yarmouth database where data is recorded, on which the employee may have saved responsive information.
- d. FORMAT OF ELECTRONIC RECORDS. The Town of Yarmouth must provide public records in a form capable of interpretation by the requester. The Town of Yarmouth employees in possession of records requiring translation into a useable format shall be responsible for oversight of the translation.

E. IDENTIFYING RECORDS NOT SUBJECT TO PUBLIC ACCESS. Not all records in the Town of Yarmouth's possession are public records subject to public access under FOAA. Individual employees are each responsible for reviewing records subject to a FOAA request for confidentiality and privilege. Records excepted from public access are identified in 1 M.R.S. § 402(3). Individual employees are responsible for flagging any responsive record in their possession that they believe to be considered as a confidential document. The FOAA Coordinator will determine if any responsive records produced by Town of Yarmouth employees is exempt from disclosure. When assessing claims of, privilege, confidentiality or other protections, the FOAA Coordinator must consult with the Town Attorney as to whether the information sought to be protected appears to meet the appropriate legal standard for protection. Given the strict timeframes contained in the FOAA, such consultation must occur as soon as possible. This is particularly important when the Town of Yarmouth intends to release information designated as confidential or when a FOAA request for information may be denied in whole or in part.

F. FORM OF PRODUCTION. The FOAA states that the public has the right to "inspect and copy" public records during regular business hours. Once responsive records are identified, the

FOAA Coordinator is responsible for contacting the requester and arranging for inspection and/or copying of the records.

NOTE: The Town of Yarmouth often receives FOAA requests that simply ask that the Town to provide the requester with copies of records. Where such a request has been made, the FOAA Coordinator shall advise the requester of the public's right to inspect and copy public records in the initial response set forth in § B (2). Where a FOAA request has been made to provide the requester with copies, the FOAA Coordinator may opt to provide copies to a requester if it is believed to be in the best interest of the Town of Yarmouth and the requester willing to pre-pay anticipated copying costs.

1. **TIMELINESS OF RESPONSE.** Pursuant to 1M.R.S. § 408(1), the Town of Yarmouth has a "reasonable period of time" after receipt of a FOAA request in which to allow the requester to inspect or copy public records. The determination of a "reasonable period of time" is a fact specific determination based on the circumstances of the individual request. Such a determination will typically be **made** by the FOAA Coordinator.

2. **COST RECOVERY.** The FOAA permits the Town of Yarmouth 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. Compiling the public record includes reviewing and redacting information not subject to public access. The Town of Yarmouth may not charge for inspection. Town of Yarmouth employees shall maintain a record of their time, copies made, and other costs related to a FOAA request. The FOAA Coordinator shall be responsible for compiling the information necessary to bill the requester. The FOAA Coordinator will coordinate all billing associated with a FOAA request through the Town Finance Department.

a. **COPYING COSTS.** The charge for photocopies is the current copy rate as printed on the Town of Yarmouth "price list". All copies will be made by a Town of Yarmouth employee.

The Town may waive copying/printing fees for requests involving five or fewer pages. Fees established by law or ordinance will take precedence over this policy. If a third party is required, the Town will charge the same costs it incurs to provide the copies. If information is provided by mail, the actual cost of postage will be charged. If information is provided by fax, the charge for photocopies per page transmitted will be charged. Only requests that have five or fewer pages will be sent via fax. Information is provided by CD or a flash drive, the actual cost of the media will be charged.

b. **STAFF TIME FOR RECORDS COMPILATION.** The Town of Yarmouth may not charge for the first hour of aggregate staff time per FOAA request. After the first hour, the charge per hour for aggregate staff time is as allowed in MRSA 1§407 as amended from time to time.

c. **TRANSLATION.** The charge for translation, if necessary, is the actual cost of translation.

d. **COST ESTIMATE.** The FOAA Coordinator shall provide the requester with an estimate of the time necessary to complete the request and of the total cost. If the

estimate of the total cost is greater than the amount established in MRSA 1§407 as amended from time to time, the Town of Yarmouth shall inform the requester before proceeding.

e. PAYMENT IN ADVANCE. The Town of Yarmouth may require a requester to 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 if the estimated total cost exceeds the amount established in MRSA 1§407 as amended from time to time, or the requester has previously failed to pay a properly assessed fee under the FOAA in a timely manner.

f. WAIVER. Fees may be waived where the requester 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 requester.

G. REPORTING FORMS. Upon completion of their responsibilities under this policy, the FOAA Coordinators, and employees with responsive documents shall complete the appropriate reporting form set forth in Appendices B and C.

NOTE: This guidance document provides general guidelines for the Town of Yarmouth's standardized method for responding to FOAA requests. This guidance does not create or affect any legal rights of persons submitting information to the Town of Yarmouth or of persons submitting FOAA requests to the Town of Yarmouth, all of which are determined by applicable statutes and law.