

Are electronic meetings legal? With the 2021 passage of LD 32, An Act Regarding Remote Participation in Public Proceedings, the Maine Legislature authorized certain public bodies subject to the FOAA to conduct proceedings by remote methods if the body adopts a policy that meets certain requirements.

“Remote methods” means telephonic or video technology allowing simultaneous reception of information and may include other means necessary to provide reasonable accommodation to a person with a disability. The law specifically prohibits conducting public proceedings by text-only means, including but not limited to email, text messages and chat functions.

The public body must make all documents and other materials considered by the public body available, electronically or otherwise, as long as additional costs are not incurred by the public body.

Town meetings and regional school unit budget meetings may not be conducted using remote methods. The provisions do not apply to the Legislature or to public bodies whose proceedings are specifically addressed by statute.

How much notice is required? The statute does not set a firm deadline, but notice must be in “ample time” to allow public attendance. Notice must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media must be notified of the meeting, whenever practical, by the same or faster means used to notify the members of the agency conducting the public proceeding.

Are minutes of public meetings required? Public bodies must record minutes of each public meeting and make the minutes available to the public on request. Minutes must be prepared within a reasonable period of time after the proceeding and must contain (A) the date, time and place of the public proceeding; (B) the members of the body holding the public proceeding recorded as either present or absent; and (C) all motions and votes taken, by individual member, if there is a roll call.

Are records related to a public meeting available? Yes. Except for records prepared for use during a lawful executive session, all meeting materials, handouts, reports, minutes, agendas, and the like are public records.

May I record a public meeting? Yes. Any person attending a public proceeding has a right “to make written, taped, or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings.” An agency may promulgate reasonable rules or regulations governing recording.

TIPS FOR WHEN YOU'RE IN THE FIELD

Don't take “no” for an answer. Ask, “show me where it says that.” Ask the agency to redact a record to remove confidential information, but disclose the remainder. Get the response in writing. Ask for a supervisor if you're getting the run-around. If you expect an illegal meeting, object early and often – and consider getting a court order before the meeting. If you expect a problem getting a record, wouldn't it be nice to know the law going in?

MAINE FOAA RESOURCES

Freedom of Access Act: mainelegislature.org/legis/statutes/1/title1ch13sec0

Right to Know Frequently Asked Questions (FAQ): maine.gov/foaa/faq/index.shtml

Statutory Exceptions to FOAA: maine.gov/foaa/law/exception

Maine Citizen's Guide to FOAA: maine.gov/legis/opla/Citizens%20Guide%202013%20Update.pdf

Maine Legislature Right to Know Advisory Committee: maine.gov/foaa/advisory/index

State Freedom of Access Act Contacts: maine.gov/foaa/contactlist/index.htm

Maine State Agency FOAA Policy Resource: preti.com/freedom-of-information/maine-foaa-policy-resource

Reporters Committee for Freedom of the Press Open Government Guide: rcfp.org/open-government-guide

The Guide to Maine's Freedom of Access Act brochure is courtesy of the Maine Press Association and Sigmund Schutz, an attorney with Preti Flaherty, and who represents the news media in First Amendment matters, defamation and privacy, state and federal freedom of information, news-gathering and cyber law.

It's Your....

RIGHT TO KNOW

A Citizen's Guide to the Maine Freedom of Access Act

OPEN MEETINGS PUBLIC RECORDS

State Agencies * Town Boards and Committees
City Council * School Boards

**What are YOUR Rights?
What can YOU Do?**

Public business is the public's business

The people have a right to know

Citizens of a self-governing society must have the legal right to examine and investigate the conduct of its affairs, subject only to those limitations imposed by the most urgent public necessity.

This pamphlet summarizes the right to know under Maine law to help journalists “continuously, vigorously, fearlessly and justly” exercise that right.

The place to start in understanding the right to know what government is up to is the Maine Freedom of Access Act (the “FOAA” or the “Act”), codified as Sections 400 to 414 of the Maine Revised Statutes Annotated.

The Act governs public access to state, county, local, and quasi-government records. The default rule is that all public records related to the transaction of governmental business are available to the public on request. A record is off limits only when it is specifically made confidential by statute.

The same default rule in favor of public access applies to meetings of the Legislature, state, county, and municipal boards and bodies, and others listed by statute.

The public generally has a right to ample advance notice of public meetings (whether remote or in-person), and to attend and record them. A portion of a meeting may be held in secret – an executive session – but only where a specific statutory basis exists to discuss certain topics (and no others) in private.

Public bodies must formally and in open session move to enter an executive session, must state the precise nature of the business of the executive session and cite the legal authority permitting the executive session, and the motion must carry by a public recorded vote of 3/5 of the members of the body. Public bodies may consider only those matters identified in the motion and may never take final official action in executive session.

PUBLIC RECORDS

Is it a public record? Any record in the possession, custody or control of the state, county, or local government or any public official relating to the “transaction of public or governmental business” is a public record. Drafts, notes, working papers, and electronic records (such as email and text messages) are all “public records.”

Is it exempt? Only records specifically called out as confidential by statute are exempt; common exemptions include: certain personnel records, material used in preparation for labor negotiations, trade secrets, certain privileged records, and certain law enforcement records. When a record request is denied always ask “show me where the law says so” and review the referenced basis in law for a denial. Always check for yourself whether the request was denied for just and proper cause under state law.

What if only some information in a public record is exempt? The agency must excise the exempt information and disclose the remainder. Just because some information in a record is confidential does not make all other information in the same record secret. Always ask an agency to remove confidential information contained in a public record and disclose all of the remaining information.

If a document is a “public record” and not “exempt” how do you get it? Just ask. A request may be made verbally or in writing, and no reason for the request need be stated. However, it is best practice to make a written request, unless the request is simple. There are no required forms but you should be as specific as possible when describing the records requested. You may request that the record be provided in the format in which it is maintained by the agency (e.g., in a digital format, such as Excel, PDF, etc.) and the agency must honor the request for a record in a particular format if it is capable of providing the record in the requested format.

How long to wait? All public officials have a statutory obligation to respond to public records requests, are subject to civil penalties for failing to respond, and should devote the necessary resources to promptly respond to requests.

In practice some public agencies respond more quickly and completely than others. The FOAA requires that an agency deny a request within 5 working days. All other requests must be acknowledged within 5 working days and agencies must provide within a “reasonable” period of time a good faith nonbinding estimate of the time by which the agency will comply with the request. The agency must make a good faith effort to fully respond within the estimated period of time.

How much will it cost? An agency generally may not charge to inspect a public record, but may charge a reasonable fee to copy a record. The statute does not contain a fee schedule. Actual copy fees vary. The cost of response can often be negotiated by narrowing the scope of a request, better understanding the ways in which the request is time consuming for the agency (and modifying the request accordingly), or through discussion. The FOAA is not meant to be a profit center for government.

PUBLIC MEETINGS

What constitutes a meeting? The Act defines “public proceedings” as “the transaction of any functions affecting any or all citizens of the state” by a number of public bodies identified by statute, including the Legislature and its committees and subcommittees, any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System, and any board, commission, agency or authority of any county, municipality, school district, any regional or other political or administrative subdivision of government, among others.

The Act requires advance public notice of any “meeting” of a body or agency consisting of 3 or more persons. The term “meeting” is not defined in the Act. Without question, a duly noticed meeting of a quorum of a public body constitutes a meeting. The Act does not actually require that a quorum be present, however, and a gathering of three or more members of a public body in the absence of a quorum to transact “any functions affecting any or all citizens of the State” may constitute a public meeting under the FOAA.

Who may attend? Any person is permitted to attend a public proceeding.