




DIRIGO SAFETY, LLC
PUBLIC SAFETY ADVOCATES

PUBLIC ACCESS TO PUBLIC RECORDS

*The Police & Maine's
Freedom of Access Act*

1



DIRIGO SAFETY, LLC
PUBLIC SAFETY ADVOCATES

This is training, not legal advice . . .

- This is training, specific to law enforcement agencies, in the practical application of the requirements of Maine's Freedom of Access Act.
- Dirigo Safety™ is an independent professional training and consulting organization, not a law firm or State agency. We do not provide legal advice regarding individual cases nor accept clients for the purpose of legal practice. The information provided in any training or consultation is strictly for educational purposes and is not intended to provide, and does not constitute, legal advice.
- For advice regarding specific fact patterns, suggested actions, or pending cases, please consult with your legal counsel.

2

About your instructor . . .

- Brian MacMaster is very well-versed in the laws governing public access to law enforcement records. He is a principal architect of sound law enforcement policy and practices in Maine and is recognized as highly skilled in the practical application of legal standards applicable to law enforcement agencies and officers.

- brian.macmaster@dirigosafety.com
- (207) 441-0671



3

Wud lq lq j #R emfwlyh

- This training session is intended to achieve a basic working understanding of the workings of the Freedom of Access Act and the various statutes that restrict public access to certain documents and records. The training will provide the information needed to accomplish the appropriate analysis of what is public and what is confidential.
- The training will focus more on substance and less on processes and procedures, although there is information in the handbook that sets out a step-by-step process when receiving and responding to a Freedom of Access Request.
- There is also information in the handbook to assist agencies in responding to requests for topical information, as opposed to documents and records.



4

What's in the Handbook?

PUBLIC ACCESS TO PUBLIC RECORDS The Police & Maine's Freedom of Access Act



5



The Starting Point

- This training is specific to law enforcement records for which there are specific confidentiality statutes, but the starting point for access to any government records, law enforcement or otherwise, is the Freedom of Access Act (FOAA), which is contained in Title 1 of the Maine Revised Statutes.
- **Think of FOAA as the umbrella for all other statutes affecting the public nature or confidentiality of documents or records.**
- While there are statutes specific to certain law enforcement records, always start your analysis with the Freedom of Access Act.

6

The Default

- All documents and records of the government are public . . .
- Unless there is a specific statute declaring the documents and records confidential



The Exceptions

- “Confidential” only means documents and records are not publicly accessible, not that they are totally inaccessible to others outside the agency.



7

The Nature of Our Minefield

- Let’s try to put all of this into some perspective. . .
- **All records are public, unless they are confidential, which means they are not accessible to the public, but there must be a statute declaring the particular records to be confidential, but there are almost always exceptions to the confidentiality of the records, in which case the particular records are public, or there may be an exception to the confidentiality only in certain circumstances, in which case the particular records are not publicly accessible, but accessible to some persons for whom they’re not confidential.**



8

More on the Minefield

- Government compliance with the Freedom of Access Act is most difficult in law enforcement.
- Like most matters law enforcement, there are few black-and-white rules.
- While the requirements are oftentimes easy to explain, they are difficult to apply to real factual patterns.
- Our goal is to balance our legal obligations of transparency with the legitimate privacy interests of individuals and the integrity of investigations. Achieving this balance is particularly difficult when processing FOAA requests for law enforcement records where the laws governing access to such records are inherently discretionary and subjective.

9

Some History

- What we now know as the Freedom of Access Act in Maine has been around since 1959 in one form or another when most all states adopted similar so-called “sunshine laws.”
- Provisions of the Act are the subject of frequent change, but the core purpose remains the same – “let the sun shine on government operations.”
- Think of government records as belonging not to you or your agency, but to the citizens; you are merely the custodian of the records.
- Although substantially similar, the Freedom of Access Act (FOAA) is not the Freedom of Information Act (FOIA). FOIA is the federal counterpart.
- While sometimes a lofty premise, the core purpose of sunshine laws is to shed light on an agency’s performance of its duties. Any “public interest” is specifically limited to this purpose.



10

Some Initial Notes

- FOAA does not require you to produce information; it requires the production of public records.
- You are not required to create a record if none responsive to the request exists.
- You are not required to provide access to a computer file if you do not have the ability to separate or prevent the disclosure of confidential information.
- You are not required to provide a requester with access to a computer terminal.
- Avoid asking “who are you?” and “why do you want it?”
- There is no requirement for requesters to identify themselves, or to state the purpose or reason for their request.
- Avoid asking “who are you?” and “why do you want it?”
- Cannot make a request form mandatory, but it’s a good idea.
- When receiving a request, identify the nature of the records or documents being requested.


11

What is being requested?




- As an initial matter – this is important – identify the nature of the records or documents being requested.
- Is it Criminal History Record Information (CHRI), Intelligence & Investigative Record Information (IIRI), juvenile records, personnel records, or some other record?
- The rules on public dissemination are different depending on the nature of the record.
- Easily confused, for example, are CHRI and investigative records. These categories are mutually exclusive; one cannot be the other.


12

 DIRIGO SAFETY, LLC
PUBLIC SAFETY ADVOCATES

**PUBLIC ACCESS
TO
PUBLIC RECORDS**
The Police & Maine's Freedom of Access Act




2022


Dirigo Safety, LLC
2022

BRIAN MACMASTER
brian.macmaster@dirigosafety.com
(207) 441-0671

13



- **Brian MacMaster**
- Chief Law Enforcement Consultant
- Dirigo Safety, LLC
- brian.macmaster@dirigosafety.com
- (207) 441-0671
- 95 Main Street, Suite 3
- Auburn, ME 04210
- **Brenda Kielty**
- Public Access Ombudsman
- Office of the Attorney General
- brenda.kielty@maine.gov
- (207) 626-8577
- 6 State House Station
- Augusta, ME 04333

14

Questions?



15

THE END

16