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## **Legislature amends Freedom of Access Statute – Yet again**

*By Harry R. Pringle*

Once again this past session, the Legislature made several changes to Maine's Freedom of Access statute. Three of those changes in particular are of importance to Maine school units, and are briefly summarized below.

### **Clarification of record requests**

1 M.R.S.A. § 408 (1) gives every person the right to inspect and copy public records. Not infrequently, however, public record requests can be unclear or confusing, and as a consequence much time and expense can be spent retrieving records which do not contain the information that the requestor was seeking to obtain.

In an attempt to solve this problem and facilitate an interactive discussion between the person requesting a record and the public body, § 408 (1) now specifically provides that an agency or official "may request clarification concerning which public record or public records are being requested ..." It is thus now clear that if a school is not certain what public records are being requested and what information is actually being sought, it is perfectly appropriate to ask for clarification in order to save time and effort for both the individual and the school unit.

### **Acknowledgement of record requests**

The second change made to 1 M.R.S.A. § 408 (1) was to add a requirement that when a request for public records is received, "the agency or official shall acknowledge receipt of the request within a reasonable period of time." The "reasonable period" standard was adopted rather than a hard and fast time period, in order to provide flexibility for school units. It is important to remember, however, that § 409 (1) of the Freedom of Access statute still requires that if access to a public record is *denied*, the denial must be made in writing within five working days of the request. As a practical matter, therefore, while acknowledgement of requests for documents need not be made within five working days, it is nevertheless good practice to provide a written acknowledgment within that period of time if at all possible.

## Training for elected officials

The final major change to Maine's Freedom of Access statute amended §§ 411 and 412 of the statute to provide for mandatory training for all *elected* board members in Maine school units. As applied to school units, the statute now provides that:

- Beginning July 1, 2008 all elected officials of Maine school units must complete a course of training on the requirements of the Freedom of Access statute.
- The mandatory training must be completed not later than the 120<sup>th</sup> day after the date that an elected official takes an oath of office to assume their duties. For elected officials serving in office on July 1, 2008, the required training must be completed by November 1, 2008.
- The statute contains minimum requirements for the training, which must be designed to be completed in *less than* two hours. The training must cover public records and public proceedings, requests for public records, and penalties for failure to comply with the statute.
- To make training as simple as possible, the statute provides that the training requirement is met by a thorough review of the information made available by the State of Maine on the Frequently Asked Questions portion of the State's Freedom of Access website, which can be found at [www.maine.gov/foaa/faq](http://www.maine.gov/foaa/faq).

As written, § 412 is ambiguous with respect to whether elected officials must complete the required training within 120 days after they take the oath of office only when first elected, or each and every time they subsequently are elected and take the oath of office. Our recommendation is that Maine school board members take the training and sign a new Certificate of Completion within 120 days of taking the oath of office each and every time they are elected as a school board member. Given the frequent changes to the Freedom of Access statute, we believe ongoing training makes good sense.

## Certificate of completion

Finally, § 412 requires that after completing the required training course, an elected official must make a written or electronic record attesting to the fact that the training has been completed. The record must identify the date of the completion, and must either be kept by the elected official or filed with the public entity to which the official is elected. As a practical matter, we strongly recommend that elected officials sign and complete a hard copy of a formal Certificate of Completion, keeping a copy of that Certificate for their own records and providing one to the office of the Superintendent for filing as well. ■