

PUBLIC RECORDS

The Maine Freedom of Access Act (“FOAA”) grants citizens a broad right of access to public records while protecting legitimate governmental interests and the privacy rights of individual citizens. As a quasi-state agency, the Trust is subject to FOAA rules.

The FOAA defines "public record" as "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, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". ([1 M.R.S. § 402\(3\)](#).) Note that a public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of a request. ([1 M.R.S. § 408-A\(6\)](#)) If the public record is electronically stored, the agency or official subject to a request must provide the public record either as a printed document or in the medium in which the record is stored, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file. ([1 M.R.S. § 408-A\(7\)](#))

The FOAA specifies a number of exceptions, including things like social security numbers, personal contact information, and “records that have been designated confidential by statute.” ([1 M.R.S. § 402\(3\)](#)) The Efficiency Maine Trust Act expressly designates certain records as confidential for purposes of that Act, including energy usage profile information of an identifiable customer of a utility and competitively sensitive information, as determined by the Board. (HYPERLINK "<https://www.mainelegislature.org/legis/statutes/35-a/title35-Asec10106.html>"35-A M.R.S. § 10106(1)).

The Trust's [Confidential Information Management Systems \[CIMS\] Policy](#) builds upon the statutory language in the FOAA and EMT Act, providing a comprehensive definition of “Confidential Information” that is exempt from disclosure as a public record. It captures:

1. Information that is designated confidential by Maine statute or otherwise is within an exception to the definition of “public records” in the Maine Freedom of Access Act, [1 M.R.S. § 402\(3\)](#);
2. Individual customer information provided by a public utility, including but not limited to, a customer’s name, mailing address, e-mail address, telephone number, electricity or gas usage, or payment history, where the customer has not provided his, her or its consent to the utility’s disclosure or transfer of that information to a third-party (65-407 CMR Chapter 815, Section 4);
3. Information that is subject to an Order or Protective Order of the Maine Public Utilities Commission or state or federal court restricting the use or disclosure of designated information; or,
4. Information obtained or developed by Efficiency Maine and is designated a “confidential record” under [35-A M.R.S. §10106](#), including but not limited to: (a) a record obtained or developed by

Efficiency Maine that (i) a person, including Efficiency Maine, to whom the record belongs or pertains has requested be designated confidential and that the board has determined contains information that gives the owner or a user an opportunity to obtain a business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; or; (ii) contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and (b) a financial statement or tax return; and the social security number, address, telephone number or e-mail address of a customer that has participated or may participate in a program of the trust; provided however, that the record or information is not Confidential Information where an exception exists because (i) the Board determines confidentiality has been satisfactorily and effectively waived; (ii) the otherwise confidential information has already lawfully been made available to the public; or, (iii) it is impersonal, statistical or general information.