



Daniel Billings  
Chief Legal Counsel  
Office of the Governor  
1 State House Station  
Augusta, ME 04333  
[Dan.billings@maine.gov](mailto:Dan.billings@maine.gov)

January 28, 2011

Dear Mr. Billings:

On behalf of the Conservation Law Foundation, and pursuant to Maine's Freedom of Access Law, 1 M.R.S.A. § 401, *et seq.*, we request that the Office of the Governor release the following public records in its possession, custody, or control:

1. All public records related to the so-called "red tape audit" or "red tape workshop" meetings that have been held in the past month or that are scheduled to occur in the future.
2. All public records related to the document entitled "Phase I of Governor's Regulatory Reform Proposals" (a copy of which is attached).
3. All public records related to the nomination of Darryl Brown to the position of Commissioner of the Department of Environmental Protection.

In responding to this request, please consider "public records" requested under this Freedom of Access Act request to include 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 including, but not limited to: field notes, reports, studies, databases, photographs, video or audio recordings, correspondence (including electronic email), memoranda, licenses and permits, meeting notes and minutes, drafts and working papers, notes and summaries of conversations and interviews, and any other forms of written or recorded communication, including internal agency staff memoranda.

As provided by the open records law, your office must respond to this request within five business days. If you choose to deny this request, please provide a written explanation for the denial including reference to the specific statutory exemptions upon which you rely. Also, please provide all segregable portions of otherwise exempt material. CLF



agrees to pay any reasonable copying and postage fees of not more than \$250. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

Thank you for your cooperation in this matter, please feel free to call me or e-mail me at [gcunningham@clf.org](mailto:gcunningham@clf.org) if you have any questions in this regard.

Respectfully,

A handwritten signature in black ink, appearing to read "G M C", is written over the typed name and title.

Greg Cunningham  
Senior Attorney



STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

PAUL R. LePAGE  
GOVERNOR

(VIA E-MAIL)

February 4, 2011

Greg Cunningham, Esq.  
Senior Attorney  
Conservation Law Foundation  
47 Portland Street, Suite 4  
Portland, Me 04101

**Re: Response to Freedom of Access Request**

Dear Mr. Cunningham:

I am writing in response to your letter dated January 28, 2011, which requests on behalf of the Conservation Law Foundation ("CLF") the "release" of documents pursuant to Maine's Freedom of Access Law, 1 M.R.S. § 401, *et. seq* ("the FOAL"). We assume that CLF is requesting the right to inspect and copy documents in accordance with the FOAL.

The Governor's Office has begun the process of gathering documents which: a) meet the statutory definition of "public records"; and b) are responsive to your request. We will make these records available for inspection and copying within a reasonable time. The broad scope of your request, however, will lengthen the time needed for gathering the documents. Moreover, that broad scope will increase our burden for retrieval and copying, resulting in costs that will be passed along to CLF. Based on the current request, we cannot represent that the retrieval and copying costs that will be assessed against CLF will be limited to \$ 250.

Accordingly, this process could be expedited and made less costly if the CLF could narrow its request. For example, the request could specify senders and recipients of documents for which access is sought. The request could place a more precise temporal limit on the documents sought. Without further clarification, we are assuming that you are requesting documents received at the Governor's Office regarding the subjects listed at any time from January 6, 2011 to February 4, 2011. Item 2 in your subject matter list is particularly broad and will require

extensive searches for documents. Perhaps CLF would prefer to be more specific in terms of regulatory reform proposals for which documents are sought.

In light of this information, please let me know whether or not CLF plans to modify its FOAL request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel I. Billings". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Daniel I. Billings, Esq.  
Chief Legal Counsel

Daniel Billings  
Chief Legal Counsel  
Office of the Governor  
1 State House Station  
Augusta, ME 04333  
[Dan.billings@maine.gov](mailto:Dan.billings@maine.gov)

February 4, 2011

Dear Mr. Billings:

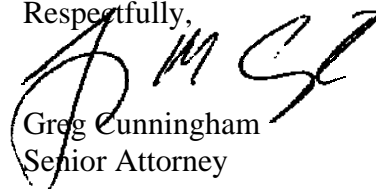
Thank you for your letter of this afternoon responding to my January 28, 2011 request for access to public documents in the possession of the Governor's Office.

Your response suggests various means by which CLF could narrow its request in order to reduce the cost of production of these documents or to limit the burden on the Governor's Office. These suggestions, and the implication that a response to this request could take some time, come as a surprise given the already limited nature of the requests- relating as they do to activity that has taken place only over the past eight to ten weeks and to an administration that has been in office for only one month.

Unfortunately, placing further limiting parameters on this request would compromise the intended scope of the records sought. As a result, I ask that your office please respond to our original request, with the exception that you disregard the limitation on cost prescribed therein.

Thank you for your help with this matter and please do not hesitate to contact me with any questions.

Respectfully,



Greg Cunningham  
Senior Attorney



PAUL R. LePAGE  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
1 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001

(VIA E-MAIL)

February 7, 2011

Greg Cunningham, Esq.  
Senior Attorney  
Conservation Law Foundation  
47 Portland Street, Suite 4  
Portland, ME 04101

**Re: Freedom of Access Law**

Dear Mr. Cunningham:

I am writing in response to your letter dated February 4, 2011, which replied to my letter of the same date.

In your February 4 letter the Conservation Law Foundation ("CLF") declined my suggestion that its request for documents under the Freedom of Access Law ("FOAL") could be narrowed in order to expedite the process of document retrieval and copying. Accordingly, the staff of the Governor's Office is in the process of attempting to gather all public record information encompassed by the request set forth in your letter of January 28, 2011. It may take some time to complete this process.

The documents that will be made available for inspection and copying are those generated during the period from January 5, 2011 until February 4, 2011. If CLF is seeking documents generated prior to the Inauguration of Governor LePage, we respectfully deny that portion of its FOAL request. The Governor-Elect's Transition Team was not a governmental entity and was not engaged in the transaction of governmental business. The work of the Transition Team was akin to that of an advisory body or task force which, unlike those subject to the FOAL, was **not** established or organized under any statute, rule or executive order. Accordingly, it is our belief that documents generated during the transition period are not "public records" within the definition contained in 1 M.R.S. § 402(3).

Feel free to contact me if you have further questions concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel Billings", with a long, sweeping horizontal flourish extending to the right.

Daniel I. Billings, Esq.  
Chief Counsel

Daniel Billings  
Chief Legal Counsel  
Office of the Governor  
1 State House Station  
Augusta, ME 04333  
[Dan.billings@maine.gov](mailto:Dan.billings@maine.gov)

February 8, 2011

Dear Mr. Billings:

I received your letter of February 7 indicating that the Governor's Office is working on the Conservation Law Foundation's January 28 Freedom of Access Act (FOAA) request. In that correspondence you state that you intend to limit the scope of the response to our request to "documents generated during the period from January 5, 2011 until February 4, 2011" and you explicitly deny our request to the extent that it seeks records generated prior to the inauguration of Governor LePage.

Your response is concerning on several levels. First, its exclusion of records generated during Governor LePage's transition period is strikingly at odds with the Governor's own characterization of that process as "the most transparent transition process in Maine history." More important, it is inconsistent with Maine's Freedom of Access law, which is designed to shed light on the operations of government.

Indeed, Maine's Law Court has been unequivocal and consistent in identifying the purpose of FOAA as "to open public proceedings and require that public actions and records be available to the public." *Dow v. Caribou Chamber of Commerce and Industry*, 2005 ME 113, ¶ 9, 884 A.2d 667, 669 (quoting *Town of Burlington v. Hosp. Admin. Dist. No. 1*, 2001 ME 59, ¶ 13, 769 A.2d 857, 861). Consistent with the plain language of the FOAA, the Court has found that "to promote such objectives, FOAA must be liberally construed." *Citizens Communications Co. v. Attorney General*, 2007 ME 114, ¶ 9, 931 A.2d 503, 504 citing 1 M.R.S. §401. As a consequence of this liberal construction, "[t]he burden of proof is on the agency or political subdivision to establish just and proper cause for the denial of a FOAA request." *Dow*, 2005 ME 113, ¶ 9, 884 A.2d 667, 669-70 (quoting *Town of Burlington*, 2001 ME 59, ¶ 13, 769 A.2d at 861).

CLF's FOAA request seeks the disclosure of public records from the Governor's Office. The Freedom of Access Act defines "public records" to mean those records that are 1) in the possession or custody of a public official and 2) have been received or prepared for





use in connection with the transaction of public or governmental business or contain information relating to the transaction of public or governmental business.1 M.R.S. § 402(3).

There can be no argument that records related to the “red tape audits” or “red tape workshop” meetings, the Governor’s Regulatory Reform Proposals and to the nomination of Darryl Brown to the position of Commissioner of the Department of Environmental Protection were “received or prepared for use in connection with the transaction of public or governmental business,” irrespective of when they were generated. Any such records were clearly created in the preparation of the Governor’s agenda and the establishment of his executive staff. Consequently, *any* such records that are now in the possession of the Governor’s Office - even if prepared by non-governmental employees, organized privately and using private monies - are public records that must be made available unless otherwise protected by law.

This question has been addressed in opinions of the Maine Attorney General. For example, the Attorney General has opined that although Maine’s Blue Ribbon Commission on Corrections was not a “state agency or authority” for FOAA purposes at the time that it was in operation, “upon the formal transmission of any report of the Commission to the Governor, such a document would lose its character as an internal Commission document; and, because it would then be in the possession of a ‘public official of this State,’ it would become public at that time.” Op. Me. Att’y Gen. 85-19. Similarly, in Op. Me. Att’y Gen. 79-139, the Attorney General opined that a policy review committee’s documents, that were not public records when generated, became public records once transmitted to a public official.

For these reasons, I would respectfully request that the Governor’s Office reconsider its denial of our request for records responsive to our January 28 letter, including records prepared or generated prior to the Governor’s inauguration. In order to preserve our rights to seek judicial redress under the FOAA, I would appreciate it if you could provide a formal response to this letter no later than February 10, 2011. Thank you for this consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "G M C", is written over the typed name and title of Greg Cunningham.

Greg Cunningham  
Senior Attorney