MMA Legal Services Advice Re: American Transparency FOAA Request

We have received numerous inquiries this morning regarding a Freedom of Access Act (FOAA) request from a company called American Transparency of Boca Raton, Florida. Since all the requests received are virtually identical, MMA Legal Services has developed the following guidance on municipal rights and obligations under FOAA.

Is this company legitimate?

It is our understanding that this company is a legitimate organization, that they have been in operation for several years, and have disseminated similar blanket requests to municipalities around the country in the past. Here is a link to a recent report published by the organization: https://www.openthebooks.com/assets/1/7/OTB_SnapshotReport_MilitarizationPoliceDepts.pdf

It is important to keep in mind, however, that under the Maine FOAA, the legitimacy of an organization and the purpose of the request is irrelevant to your obligation to acknowledge receipt of the request (see below).

Do I need to reply?

Yes. Under the Right to Know Law you are required to acknowledge receipt of the request within 5 business days of receipt of a sufficient description of the record requested. Also, within a reasonable time you must give a good faith, non-binding estimate of when the response will be complete, and an estimate of the cost to process the request.

Your acknowledgement can be a simple email, indicating whether you have the information requested, whether it is in the requested format (and if not, in what format it exists) and that you will follow up with a reasonable estimate of the time in which you will respond and associated costs, if you do not yet have a reasonable estimate.

Is all the information requested public information?

It appears that all the information requested – employer name and zip code, employee name, position title, hire date, base salary amount, bonus amount, overtime amount, and gross annual wage - is public information. Although it has not been requested, remember that personal contact information of employees, appointed officials, and volunteers (home address, personal phone numbers, and social security numbers) is confidential. Any such confidential information included in the records requested must be redacted (blacked out).

Do I need to provide the answer in the requested format?

This request asks for records in .csv or .xls format. Under the FOAA, (1 M.R.S. § 408-A(6), (7)), you are not obligated to convert information to a different format, nor are you obligated to create records that do not exist. For example, if you do not have a list containing all the employee information requested, you do not have to compile it. However, if the information requested does exist in some form, you must inform the requester as to the format in which it exists. You should indicate that in your acknowledgement, and offer to provide the information in that format, subject to applicable fees. Remember that personal contact information and other confidential information must be redacted.
You must provide the records in the manner indicated by the requester (email or regular mail). A response to this request indicating that the relevant records are posted on the town website is not sufficient.

**Must we waive applicable fees?**

You are under no obligation to honor a request for waiver of fees. The FOAA authorizes charging reasonable fees associated with copying and mailing documents. Also, if the records will take some time to compile, you may charge up to $15/hour for staff time (the first hour is free). If you decide not to waive the fees as requested, this should be indicated in your acknowledgement response.

The FOAA authorizes municipalities to ask for prepayment of associated fees before initiating work on the request, but only if the costs for processing the request are estimated to be over $100. However, you may ask for payment of any applicable fees prior to delivery of the records to the organization regardless of the fee amount.