



Plaintiff's initial complaint did not name the Risk Pool as a defendant, but Plaintiff received leave to amend by court order on October 25 and later served an amended complaint on the Risk Pool.

**ARGUMENT:**

**The complaint against the Risk Pool is untimely.**

The FOAA sets a 30-day deadline to appeal from the denial of a request for inspection or copying of a record:

Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal, denial or failure *within 30 calendar days of the receipt of the written notice of refusal, denial or failure* to the Superior Court within the State for the county where the person resides or the agency has its principal office.

1 M.R.S. § 409(1) (emphasis added). The Law Court has strictly enforced the deadline for appealing from denial of FOAA requests. In *Bangor Pub. Co. v. Bangor* the Court held that FOAA complaints filed outside the statutory deadline for appeal are “time-barred” and should be “dismissed.” 544 A.2d 733, 735 (Me. 1988) (newspaper’s FOAA complaint filed outside statutory time limit for appeal “was time-barred and should have been dismissed”). The Court reinforced “a strict application of the plain language of the statute” in *Guy Gannett Pub. Co. v. Maine Dep't of Public Safety*, holding that “a party may seek judicial review of any denial only within the time period clearly established by section 409(1).” 555 A.2d 474, 476 (Me. 1989). The Court held that a FOAA claim by the by the Kennebec Journal filed 12 days after the then-applicable statutory deadline in section 409(1) “should have been dismissed as untimely.” *Id.* at 475.

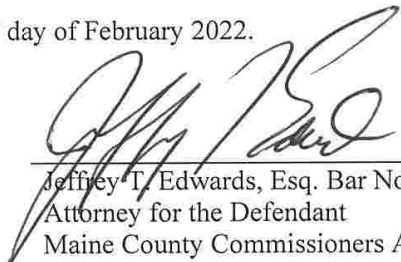
The deadline for Plaintiff to have filed a FOAA claim against the Risk Pool was August 5, which is 30 days after the Risk Pool’s July 6 response to the second FOAA request. (Compl.

Ex. 9.) The Risk Pool's July 6 e-mailed response was definitive, final, and left no doubt about the Risk Pool's position that no further response would be provided. (*Id.*) The Plaintiff did not file a FOAA claim against the Risk Pool within 30 days. Plaintiff's proposed amended complaint adding the Risk Pool as a party is dated in October, and the Court granted leave to amend that same month. Plaintiff's claim as to the Risk Pool is therefore outside the 30-day deadline established by section 409(1) and should be dismissed.

**CONCLUSION**

WHEREFORE, the Risk Pool respectfully requests that the Court grant its motion to dismiss for failure to state a claim.

Dated at Portland, Maine this 28<sup>th</sup> day of February 2022.

  
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**IMPORTANT NOTICE**

**PURSUANT TO RULE 7(c) OF THE MAINE RULES OF CIVIL PROCEDURE, YOU MUST FILE ANY OPPOSITION TO THIS MOTION WITHIN 21 DAYS AFTER THE DATE OF THE FILING OF THIS MOTION UNLESS ANOTHER TIME IS SET BY THE COURT. FAILURE TO FILE A TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THIS MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.**