



SEN. EMILY ANN CAIN, SENATE CHAIR  
REP. CHUCK KRUGER, HOUSE CHAIR

MAINE STATE LEGISLATURE  
GOVERNMENT OVERSIGHT COMMITTEE

MEMBERS:

SEN. ROGER KATZ  
SEN. DAVID C. BURNS  
SEN. MARGARET M. CRAVEN  
SEN. CHRISTOPHER K. JOHNSON  
SEN. EDWARD M. YOUNGBLOOD  
REP. PAUL T. DAVIS, SR.  
REP. ANDREA M. BOLAND  
REP. H. DAVID COTTA  
REP. LANCE E. HARVELL  
REP. MATTHEW J. PETERSON

MEETING SUMMARY  
January 24, 2014  
Approved February 21, 2014

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 9:15 a.m. in the Cross Office Building.

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

The members of the Government Oversight Committee introduced themselves for the benefit of the listening audience.

ATTENDANCE

Senators:	Sen. Cain, Sen. Katz, Sen. Burns, Sen. Craven, Sen. Johnson, and Sen. Youngblood
Representatives:	Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Cotta, Rep. Harvell and Rep. Peterson
Legislative Officers and Staff:	Beth Ashcroft, Director of OPEGA Matthew Kruk, Analyst, OPEGA Etta Connors, Adm. Secretary, OPEGA
Executive Branch Officers and Staff Providing Information to the Committee:	William Boeschstein, Chief Operating Officer, Dept. of Health and Human Services Kevin Wells, General Counsel, Dept. of Health and Human Services Jay Yoe, Director, Office of Continuous Quality Improvement, Dept. of Health and Human Services Linda Pistner, Chief Deputy Attorney General, Office of the Attorney General

Chair Cain noted that the Committee would take several agenda items out of order and moved to **Unfinished Business, Reconsideration of Request for OPEGA Review of Matters Pertaining to Unemployment Insurance Appeals and Administrative Hearing – Update on status of federal review of unemployment compensation matters.**

Director Ashcroft reported that she has been informed by DOL that the result from their federal investigation is on hold. She will let the GOC know as soon as she receives any updated information.

## SUMMARY OF THE JANUARY 10, 2014 GOC MEETING

The Meeting Summary of January 10, 2014 was accepted as written. (Motion by Sen. Craven, second by Rep. Cotta, unanimous vote 12-0).

### NEW BUSINESS

- **Presentation of OPEGA Annual Report for 2013**

The presentation of OPEGA's Annual Report was held over until the next GOC meeting.

- **Discussion of PUC Non-Compliance With LD 131**

Rep. Boland shared with the GOC a letter describing her concerns with a study report recently submitted by the PUC to the Energy Utilities and Technology (EUT) Committee. It is a study on an urgent matter and Rep. Boland does not believe the PUC report fulfills the requirements set by the Legislature in the Resolve that directed the PUC to conduct the study. Rep. Boland said the failure to do what was asked in the Resolve is an example of issues already raised regarding a culture problem of PUC leaning too much toward the industry and not hearing independent experts. The PUC has pushed off key issues the Legislature wanted information on including the cost of mitigation for protecting the power grid from coming down for a long-term blackout and giving a time line for putting protections in. The Resolve the Legislature passed asked the PUC to do certain things in the study and they elected not to, even though there were experts that provided information to the PUC.

Chair Kruger said EUT Committee will be hearing the issues raised by Rep. Boland and that the GOC should wait to hear back from them before taking any action. Rep. Boland said there was an urgency and the main issue is to look at how the PUC deals with a Resolve where they are asked to do certain things.

Rep. Boland and the other GOC members agreed to wait until the matter had been dealt with by the EUT Committee.

### UNFINISHED BUSINESS

- **Report on Healthy Maine Partnerships' FY13 Contracts and Funding (Separate Report)**

- **Committee Work Session Continued**

The GOC had requested information at their January 10<sup>th</sup> meeting and Director Ashcroft reported back.

Director Ashcroft addressed testimony presented at the Public Comment Period on OPEGA's Report related to the Tribal HMP contract. Subsequent to that meeting OPEGA received a letter from Kristi Ricker, Director, Wabanaki Public Health District (WPHO) asking that corrections be made in the Report based on the information they had brought forward. Director Ashcroft followed-up with Ms. Ricker to find out what they felt was in error in the Report. Ms. Ricker noted two concerns:

1. The table and description that shows the contracts amounts received by the HMPs and the description preceding that (pages 22 and 23). The dollar amounts shown for the contracts of the Tribal HMP included additional funding for tribal liaisons and that is not really HMP work so they were concerned there would be a perception that they were receiving more funding for HMP work than they actually are. Director Ashcroft said OPEGA was trying to stay consistent with figures on the actual contracts which are public documents. The OPEGA report describes the funding included in that contract and its intended use the same way that Ms. Ricker has described it. Although the Director understands WPHO's concerns about perceptions, she believes the Report in this area is factually accurate and does not see a need for correction to that piece.

Chair Cain asked if members of the Committee had concerns about the way the numbers are represented in OPEGA's Report. None did.

2. The references in the report, and the information provided, about the tribal contract being handled differently, Director Ashcroft said the sentence in the Report about the HMP being handled differently is a reference to the further detail provided in Recommendation 4. OPEGA describes how the contract was handled differently and it is not meant to imply that it has anything to do with the dollar amounts in the contracts. She said Ms. Ricker was concerned about pointing out the dollar amount of the contract in Recommendation 4 without the additional footnote that OPEGA had in other places in the Report about the fact it was not all HMP funding. WPHD's other concern with the language in Recommendation 4 was where it said the Director of Health Equity had been unsure who developed the contract, although she acknowledged signing it. Ms. Ricker said the Director did not sign the contract. Director Ashcroft agreed that the Director did not sign the contract, but she did tell OPEGA she signed it so the statement is a reflection of what she told OPEGA about her role and therefore believes the sentence is accurate.

Ms. Ricker also had concerns with the final sentence in Recommendation 4 and thought it was obvious that the contracting group had seen the Tribal contract since there is an agreement administrator listed on the contract. Director Ashcroft said OPEGA did talk with the person who was the head of the DHHS Contracting group at the time these contracts were developed, but did not circle back with him to make sure OPEGA had correctly captured what he meant. The Director acknowledges this sentence in the report is not a factually accurate statement based on what was said to OPEGA and she and would propose removing that sentence from the Report. That sentence reads "Furthermore, the DHHS Contracting Group told OPEGA they have never seen the Tribal contracts although they process all the other HMP contracts."

Sen. Johnson referred to the section in the previous sentence "though she acknowledged signing it" and said that gives the impression because of the use of the word "acknowledged", that it was confirming something that occurred which is now known did not. He thought it might be worth adding something to that sentence, or a footnote, that OPEGA has since discovered that the contract had not been signed by the Director. The Director proposed changing "acknowledged" to "said".

Chair Cain said the GOC's next step is to decide if they want to amend OPEGA's Report, and if so, decide on what changes to recommend and then vote on those amendments. Rep. Boland said if the information has been confirmed that the Director of Office of Health Equity did not sign the Tribal HMP contract then shouldn't that sentence also say that in fact she did not sign the contract. Director Ashcroft said OPEGA's point in Recommendation 4 was that they were not able to get clear information from the many folks that were interviewed about who developed this particular contract. It seemed odd that the Director of the Office was not able to tell them who developed the contract even though she said she signed it, but didn't know who developed it. It is not about who actually signed the contract, it is about there did not appear to be a clear understanding of roles and responsibilities with regard to the contract. Director Ashcroft said the Director was not the only person who told OPEGA their name was on the Tribal HMP contract whose name is not on it. Chair Cain said the purposes of amending OPEGA's Report would be to eliminate the sentence which has now become clear is factually incorrect and to change some wording in Recommendation 4.

**Motion:** That the Government Oversight Committee amends Recommendation 4 of OPEGA's Healthy Maine Partnerships' FY13 Contracts and Funding Report by eliminating the final sentence and amending the prior sentence by changing "though she acknowledged signing it" to "though she said she signed it". (Motion by Sen. Katz, second by Chair Kruger, passed unanimous vote 12-0).

Director Ashcroft said other questions the GOC had at its January 10<sup>th</sup> meeting centered around the Department's response to the initial FOAA request from the Lewiston Sun Journal - what actually got requested, what got provided, etc. She prepared an expanded timeline which is attached to this Meeting Summary. She is not certain, from what is seen in the email chain and who said what in writing, where anyone got the impression that there were actually 27 scoring sheets. It is not anything that the Director of

Communications said in an email, it is not anything that the Deputy Director said specifically, and OPEGA knows from the work done on this review, that there never were 27 scoring sheets. OPEGA noted that in an email dated July 12, 2012 from the Deputy Director to several members of the core group seeking help fulfilling the FOIA request, the Deputy Director specifically points out to the Director of Communication the request for the 27 scoring sheets that he is supposed to be helping to get. At that point the Deputy Director doesn't know what is being referred to with regard to the 27 scoring sheets and asks him to explain. The first time OPEGA sees in writing mention of 27 scoring sheets is when the Lewiston Sun Journal's Managing Editor asked specifically for the 27 sheets. Director Ashcroft could not say what was said in telephone conversations, but there is nothing in the written communication to support Mr. Martins ever communicated that he knew that there were 27 sheets that he was trying to get for anyone.

Sen. Burns asked how many scoring sheets would there be and does it cover all applicants or contracts. Director Ashcroft said there are a number of different iterations of the scoring sheets provided to OPEGA and released publicly in response to a FOIA request. There never was one score sheet for each HMP that OPEGA saw. Chair Cain noted that it was during the public comment period of the Report that the GOC received information that there was some kind of exchange at some point that implied that the Director of Communications for DHHS, either in a conversation or something, implied there were 27 score sheets. That is what raised the discrepancy for the GOC at the public comment period and why it is being followed-up on. Director Ashcroft said as far as OPEGA knows, there were never 27 scoring sheets that existed to be provided.

Sen. Johnson said he had a better understanding of the muddiness, the uncertainty of what existed and the lack of evidence as to exactly what occurred and that is unsettling as well. He asked what the number of survey results would be if the results from the survey monkey were printed out. Director Ashcroft said the Project Officers and District Liaisons each responded for all of the HMPs in their district and there would have been one survey sheet for each Public Health District from each group – Project Officers and District Liaisons.

Rep. Cotta asked how many liaisons there were. Director Ashcroft thought there were eight District Liaisons' survey responses and eight from Project Officers. She will get that information and report back to the Committee.

Director Ashcroft said the GOC had asked for a better understanding of the timeline that might have been involved. OPEGA mentioned that criteria and weighting changed throughout the scoring and selection process and there was a question of when that occurred. Director Ashcroft referred the Committee to April 5, 2012 of the timeline she prepared which is when it appears the MCDC group was first brainstorming what criteria to use. Chair Cain said the biennial budget proposal was to eliminate the funding for the HMPs and through the biennial budget process, the bi-partisan budget restored some of the funding to HMPs. So it is the Chairs understanding that in April, 2012 the plan to go to only 9 HMPs is in response to the direction of the amended biennial budget. Director Ashcroft agreed and believes that in April the Department was working with the understanding that some funding was likely to be restored, but how much was still in question.

Sen. Johnson asked how, back in January, 2012, there was a strategy being developed about a possible move to 9 HMPs when at that time the only proposed budget existing was one that eliminated all funding for HMPs, and then in May it was required to fund all of them, and subsequently there was a reduced funding established. Director Ashcroft thinks there was a general sense that the Legislature was not likely to actually cut all funding to the HMPs and they had various scenarios laid out for different funding levels that might be restored. They thought there would be such a drastic cut in funding that it would not be possible to fund all 27 and there was a proposal to go to one HMP for each of the Public Health Districts, plus one for the Tribes. That is where the 9 came from.

Director Ashcroft continued with the Timeline. What she could see from some of the different iterations of the scoring matrix leads her to believe that the criteria for Support and Promotion of Developing Infrastructure

was likely added in the time period just prior to May 24 through June 13. That is the timeframe in which it seems most likely that the additional criteria and weighting changes were made to the scores. OPEGA saw the other measures MCDC started out with and reviewed and scored. The explanation OPEGA received was either they decided those measures did not differentiate enough between the different HMPs so were not meaningful, or the underlying data they were using did not feel as if it was as reliable as it could be, so MCDC dropped them at some point.

Director Ashcroft said different people told OPEGA their recollections of when the directive or advice to get rid of documents occurred and from those accounts it appears to be between June 6 and June 29. Sen. Katz asked why the Director could not be more specific about the date and she said OPEGA received inconsistent accounts of what was going on and when. He asked if she would agree that it was a question that OPEGA wanted to get some clarity on, but due to the fact that there are different versions of history, was unable to do so. Director Ashcroft agreed with that statement.

Sen. Craven noted that during her meeting on June 21 with MCDC and the Androscoggin County Delegation, she had asked for the tool used to score the distribution of funds and had asked an expert statistician to review the tool used. That expert informed the delegation that it was definitely not a viable tool to use for the distribution of the funds. The Department argued in the beginning that it was a viable tool, and later admitted that there was some fault with it. After that, it seemed to her, there were documents the delegation was not able to get. Chair Cain asked if there were any documents distributed at her meeting. Sen. Craven said she had never seen any, but apparently the statistician was able to acquire one and said it was not a viable tool to use.

Rep. Cotta referred to “viable” and asked on what basis and background the individual would be able to make that assessment and why would viability be a question. Sen. Craven said the statistician is a professor at Bates College and that is her job. She is a professional and is able to measure whether the tool that was used to distribute the funds to the HMPs was a tool that was tested, fair, and weighed all of the different pieces that were necessary.

Director Ashcroft proceeded with information she had regarding questions the GOC asked at their January 10<sup>th</sup> meeting.

In regard to not retaining working documents at MCDC, the GOC had questions about whose idea that was, whether it was part of their typical protocol, who within the management ranks knew about that discussion, who made and approved the decision to not keep some of those documents. OPEGA did gather some information, and again, has inconsistent accounts about who was involved in those discussions, or to what degree it was a well-known thing versus just known to some individuals. At the meeting with the Commissioner on June 13 the Director of the MCDC had a previous version of scoring sheets that were not the final version, and that it became evident in the meeting that she was looking at a prior version. A comment was made by someone at the meeting that she shouldn't have that document with her. Chair Cain asked if it was said that she should not have the document, or she should not have it with her? Director Ashcroft said she could not specify, the comment was that she shouldn't have it. She thinks the Director had it from the prior meetings that the Core Group all had with the Director, at least on June 6, if not subsequent to that. Director Ashcroft said that comment indicates to her that it was likely at some point there was a conversation between at least a couple of people there about not having anything but the final version.

Sen. Burns asked if Director Ashcroft was saying that it was the wrong document to be looking at, should not have it because it should have been disposed of, or shouldn't have it because it is illegal. Director Ashcroft did not know, but knows it was the document that OPEGA did not receive and is referred to in OPEGA's Report. The document existed in paper copy at least up until June 13, but was not provided to OPEGA and has not been provided in response to any FOIA request. Sen. Burns said the issue then is what the definition of that statement is as to whether it is pertinent or not. If it is an innocuous statement it has absolutely no bearing, if it is a statement trying to infer that somebody should not have something that has been destroyed that is different. He was not sure how that would be determined. Director Ashcroft said she brought it up as an example that they were not keeping working documents and was the first date OPEGA could pin point where it

appeared there had been some conversation about it. Her assumption was that something must have been said at some point prior to that meeting for the comment to have been made. Some folks said they went on to then have a fuller discussion in that meeting of keeping only final versions of the work. Others at that meeting did not recall any specific conversation about destroying documents, or not retaining documents. Sen. Cain noted that this was a central issue raised during the public comment period as well.

Sen. Johnson asked who was in attendance at the June 13 meeting. Director Ashcroft said it was a meeting of some members of the core group with the Commissioner of DHHS and from the accounts received she could definitely say the Deputy Director of MCDC, the Director of MCDC, and the Commissioner were there. She would not be able to say for certain who else was there. Sen. Johnson thought it would be useful to find out more from people in that meeting what the nature of retention is, and what was going on in terms of policy and decisions about whether the documents should be used or destroyed, who should have them, etc.

Rep. Cotta said you can read so much into a comment like “you shouldn’t have that” and he was also having a difficult time because, as previously stated by Sen. Burns, it is hard to interpret what that comment contains.

Chair Cain thought comments came up regarding the document during the public comment period and the GOC’s work session and it would clear things up if that document was available to the Committee. Director Ashcroft said OPEGA indicated in the Report that the reason the document is called out is because they thought there was a final change to the document that changed which HMP was selected as the lead. There was also indication that there was intentional manipulation of those results and the missing document would have shown different results. Sen. Johnson agreed and said it would be most valuable to get those answers from the individuals at the June 13<sup>th</sup> meeting.

Sen. Katz said apparently there was one set of criteria, changed to a different set of criteria and there is a question about whether the first set of criteria would have resulted in selection of different agencies than the later set of criteria. He asked if it was known for certain whether the change in criteria in fact resulted in different agencies being selected than would have been selected under the previous criteria. Director Ashcroft said yes, and that there were two things going on. One is the addition of a particular criteria and then the choice of weighting that was done to some of the criteria. She is not sure if both, or one of those, was the final adjustment that changed the scores. When OPEGA looked at the different possible scoring scenarios that the Department’s Office of Continuous Quality Improvement put together and then OPEGA’s own analysis, the particular additional criteria and weighting scenarios seemed to be critical to the outcome in the Penquis District that was finally achieved.

Sen. Katz asked if Director Ashcroft was going to be addressing the issue of the timing of the change in the weighting of the criteria. Director Ashcroft said that cannot be clearly determined either so she cannot say for certain when that occurred.

Sen. Burns asked if those types of actions were prohibited either by policy or law in the thousands of contractual agreements and RFPs that are done. Director Ashcroft said this process was not a formal RFP, but under any of those particular scenarios, you set your criteria and determine what weights you are going to give that criteria at the beginning of the process before you collect any scoring, or do any assessment, and that stays stable throughout. Sen. Burns asked if that would be standard operating procedure or law. Director Ashcroft did not know if it was specified in the purchasing rules, but will check and let the Committee know. He said if it is unacceptable to do that process, would those issues be vetted out in the deposition process and the ongoing litigation, or is it something separate. Director Ashcroft believes it to be something separate. Why was MCDC changing criteria, what was done at the end of the process, and was there in fact an intention for a particular outcome. Those questions are not specifically what is getting covered in the litigation.

Sen. Cain noted that this matter represents millions of dollars in funding and the fact that there is an essential piece that cannot be answered, even with the benefit of interviews and reviewing documents, shows there are serious questions about the process.

Rep. Boland asked if the GOC could invite some of the individuals involved in the process to a GOC meeting.

Director Ashcroft said another GOC question was why, when these employees mentioned to other folks in the agency, and their supervisors that they had been asked to get rid of documents, those issues were not escalated. All OPEGA got from its interviews was that the folks who were told about it did not see it as concerning. However, she did not think OPEGA asked specific detailed questions about why it wasn't escalated or concerning. Consequently, the Director could not speak to whether that means there was a culture such that this would not be seen as concerning, or if there were other factors that were involved in people not saying anything about it to anyone else.

Sen. Johnson said it is fundamental to trust in government, that people in positions within that government should care about whether they are acting in good faith and, operating transparently. It is important for anyone in the chain of command to act when someone raises a concern about somebody possibly breaking laws and rules.

Sen. Craven thinks the culture in MCDC is so important. She serves on the Health and Human Services (HHS) Committee and sees people agonize over whether they are going to have their children immunized or whether the lab is doing their work properly. It is essential that the public trust MCDC. She again spoke with two different people that would not give their names, nor would they agree to speak publicly, but encouraged the GOC to keep digging to discover what else is going on within MCDC.

Director Ashcroft said there was an earlier question about whether the lead agencies that got the additional funding had been able to effectively use all the funds that they had received. She said the DHHS Division of Contract Management provided her with information for FY13 contracts which have ended so the figures are closeout figures for all but two lead HMPs. The Director reviewed that spreadsheet with the GOC which showed the total agreement amount that was given to each of the lead agencies, including the monies that were going to be sent out to the supporting HMPs. The Director said that overall it looks like most of the lead agencies used nearly all of their funding. A few had a small amount of funds remaining that appeared to be primarily related to the programmatic work.

Director Ashcroft said the GOC was also talking about how to get clarification around what should be retained for records and she referred them to information in their notebooks that was relevant portions of the Records Retention Schedules from the State Archives website. The State Archivist also provided information and said there are training modules on Archives' website regarding retention and when to keep drafts, etc.

She said the GOC was also pondering suggestions heard during the public comment period about whether there should be additional authorities granted to the public records ombudsman that is in the Attorney General's (AG) Office and she referred the Committee members to the information received regarding that issue since their last meeting.

Chair Kruger said the question is trust and that many hear that trust in government is eroding. He thinks this is a very serious issue and the GOC's role is making sure that State government earns, and deserves, the trust. He does not want the Committee to forget the fact that they are there because people need to trust their government.

Chair Cain noted that the GOC had questions about the FOAA request laws, keeping public records and the definition of working documents. Additionally something that has been on her mind is the question of what was the process that should have been used for these contracts. There is a lot of talk about RFPs when it comes to how funds are distributed or services delivered, but no protocol around when you are reducing funds. In this case, this was a reduction in funds and there are many elements, if not all, of an RFP that should have been applied that were not. This is another area for the GOC to consider from a perspective of how government runs with a process that is clearly defined, and protocol around documentation and procedure that backs up the outcomes.

Rep. Cotta said the RFP process works best when it has an objective and known amount of funds to distribute. He hopes when the GOC has completed its work on this matter there will be a process that will react on the short term. Chair Cain agreed and said the GOC needs to talk about a hybrid of using RFP versus RFP-like procedures and the processes that go along with them even if it is not the formal RFP itself.

Chair Cain asked if the Committee wanted to take any further steps related to record retention schedules and policies. Director Ashcroft said the GOC had previously been discussing whether the State's policies are sufficient, and then is training on the policies sufficient and how do you hold people accountable for knowing and adhering to the policies. In this particular situation, OPEGA has recommended that DHHS clarify their own policies internally about what should be retained in similar situations where there is significant funding, public impact, etc. OPEGA has not yet seen what DHHS might be proposing for specific actions they are going to take in that regard. Chair Cain was referring to broader policies than just DHHS.

Sen. Johnson said another concern here is MCDC's explanation that there was a feeling that some information that should be confidential in order to protect the interest of the people who participated in the surveys used by MCDC. Are there policies needed on how to appropriately determine what may be kept confidential and classify it as such. Director Ashcroft said it was her understanding that nothing is confidential unless it is designated such in statute. In this particular instance, although they might have felt they wanted it kept confidential and did give the impression they intended the survey to be confidential, she does not think they could promise confidentiality as it was a public document that was being generated out of what they were doing. Sen. Johnson said what seems to be missing is no one was getting the right guidance or following policy that made it clear they could not treat that information as confidential, yet portrayed it as such to various parties. That is a serious problem because it creates a circumstance where the parties who completed that work believe it to be confidential and the law is clear the public has access to that information.

Sen. Craven said a survey is very subjective and should not be allowed in any kind of an RFP process. Director Ashcroft said the surveys were not completed by the HMPs themselves, but done by MCDC employees that work as project officers with the HMPs and as district liaisons to those HMPs. MCDC was surveying internal employees about their work with the various HMPs. Sen. Cain asked if that was done to come up with a criteria and Director Ashcroft said it was a criteria. How those people graded each of the HMPs in certain areas was the criteria and that was what the scores were applied to. Sen. Burns asked if that was an inappropriate action. Director Ashcroft said OPEGA did not take issue with the fact that they surveyed staff and used it as a piece of criteria, but rather took issue in the way in which those kinds of more subjective pieces became so critical to the final scores in the way they weighted them. She said the survey deployment was atypical in that the folks were read the questions over the phone as opposed to seeing the questions in writing that they could then respond to. OPEGA had copies of the survey questions and those questions are also posted publicly on MCDC's website.

Sen. Burns asked, from the Director's perspective, what was the rationale behind doing the surveys verbally. She said there were two things that OPEGA pointed out as being atypical about the survey. First, the people who were taking the survey were not told the true purpose of the survey and what their answers were going to be used for. Second, they did not get the questions in writing. On both of those counts, what OPEGA understood from MCDC is they felt they wanted as objective a response from those surveyed as possible and that is why they did not think it was necessary for them to know the purpose. They did not want them skewing their responses knowing that funding, for example, might be attached. The answer to the question of not letting them see the questions was they did not want them to get disseminated and didn't want the HMPs necessarily getting nervous around something they were doing, or asking any questions while they were still in the process of figuring out what they were doing. Sen. Burns said he feels he is looking at a puzzle with most of the pieces missing.

Chair Cain said it goes back to the entire premise that if documentation existed that showed the steps taken along the way, then all of these questions would be clear. Because documents do not exist, or at least are not available at this time, no one is able to come to clear conclusions because the puzzle pieces are missing and

that is what is exceedingly disappointing and frustrating. In an RFP process, or an RFP-like process, you would outline the steps and the reason for the steps because you want it to be clear to those engaging in the steps. While that may not be a lengthy discussion of rationale, at least that outlines intent and desired outcomes and expected criteria. It does not have to be a three month RFP process, but it can mirror the essential elements of an RFP process that lend to public trust with the outcome.

Sen. Johnson was not surprised the rationale does not exist, but the fact that no one can get the results of the survey is clearly an issue and everyone should expect that it would be part of what would be produced. Director Ashcroft said the results of those surveys have been made public. They were given as part of a FOIA request.

Rep. Boland asked who and how were answers being recorded to the survey questions if it was being done verbally. Director Ashcroft said Survey Monkey is a web based survey and each of the project officers and district liaisons were sent an email that had a link that would take them to the survey. It was arranged that all of the project officers would be on a phone call together with the Sr. Program Manager for HMPs and he is the one who administered the survey. They all clicked on the link which brought up the sheet to indicate their scores. He read the questions and they would score that question for each of the HMPs in their district. The same procedure was used by the district liaisons, but that survey was administered by the Director of the Division of Local Public Health. Director Ashcroft said the process was atypical.

Chair Cain noted that there were representatives from DHHS at the meeting and asked if there was interest by the GOC members for them to come forward to answer their questions. There was interest by the Committee.

William Boeschstein, Kevin Wells and Jay Yoe, from DHHS introduced themselves.

Chair Kruger asked if one of them wanted to clarify what the Survey Monkey was and how it worked internally. Mr. Yoe said it is a publicly available tool that is used widely and is a way to capture information on the web. Typically you see the numbers, questions and then you can check off the rating on the form. In this case a form was put together without the questions, it contained just the numbers. The questions were asked as if in an interview. He noted people do interviews all the time where they are sitting there with a sheet of questions and ask the questions and record the results. He said he has twenty years of experience in evaluation and quality processes. Doing a survey, while he would typically see the questions, it can be done differently and does not mean there was something nefarious in this case. He thinks they were trying to make the process as objective as possible in doing the surveys. He wanted to make it clear that it was not a bizarre process, they do interviews all the time and use rating forms all time.

Mr. Yoe also wanted to clarify that it was not only the Survey Monkey used to do the scoring. There were multiple criteria used and while one could argue whether it was the right criteria, it was a very abbreviated timeframe for trying to put it together in.

Chair Cain asked about the documentation of the criteria as it changed. Mr. Yoe said that was in Director Ashcroft's report and he is in agreement. He was involved in providing information based on his Office's review which was very consistent with what Director Ashcroft put forward. The consistency of a process is important, there should not be changes along the way and any researcher or evaluator is going to tell you that. You set the criteria first, you keep it consistent and you base your scores on that. Mr. Yoe said it was an abbreviated process they were conducting. They put some criteria together for it, had some concerns as they were moving along and the consistency piece, which is big, it raises questions.

Sen. Katz asked if Mr. Yoe had any first-hand knowledge of how the decision to make the scoring change was made, or if there was any intent to change the outcome. Mr. Yoe said the Office of Continuous Quality Improvement went in with a focused view on the scoring that happened and how they came up with the various criteria, and how they put the scoring together objectively. In his report he did not see objective evidence that MCDC took those scores and actually made a decision to change them in order to specifically change someone's score. There were deficits in consistency of the process and changing things along the way raises questions for the GOC, and others, of whether that could have happened. His Office did a lot of different

scoring and the scores did not shift tremendously. Did someone make a decision to do a particular scoring methodology because they wanted something to change? He does not have any objective evidence from what his Office looked at and from their discussions with the players to say yes they did that.

Sen. Katz understood that the change to the scoring did change the outcome. Questions the GOC is facing is why was the criteria changed and was the criteria changed in order to affect the outcomes. He asked Mr. Yoe, with respect to his work, could he tell the Committee what investigation, or what work, he did to reach the conclusion he stated above. Mr. Yoe said he spoke to the individuals who were responsible in capturing the Survey Monkey information, to the Deputy Director and a few of the other folks who were involved in the core team. Again, he came in after the scoring was completed and the final scoring was in place. His Office's review was focused on looking at the support, what was the criteria, and how was the data captured. He looked in depth at whether they were basing all of their decisions around the data they were reviewing and, in the scoring process there was some shifting of outcomes depending on the scoring. Mr. Yoe did not hear from anyone, or have any indication, that the scores were changed to come out with a certain outcome.

Sen. Katz asked if Mr. Yoe had asked the question about the motivation for the change in the scoring system. Mr. Yoe said he asked why the process changed along the way because it should have been kept consistent. Consistent with what Director Ashcroft said, he heard the same issues - that as they were developing the process they were concerned that they did not have enough differentiation in the scores and wanted to be able to make a cleaner distinction. Mr. Yoe said he was not advocating for the process that was used, it was not a clear process, all the criteria should be set up front and then work it all the way through.

Sen. Katz asked who Mr. Yoe questioned about the motivation for the changing of the scoring criteria. Mr. Yoe said he did not ask a question around what was their motivation for changing. He asked the questions around why did they add additional criteria. He was looking at the consistency and the integrity of the scoring process that was used so it was not focused on the motivation.

Chair Cain wanted to clarify that Mr. Yoe was only consulted after the process was completed and he said that was correct.

Sen. Burns noted that Mr. Yoe had said as they went through the process they had some concerns and apparently, as Mr. Yoe said, the concerns were that they did not have enough differentiation and needed more criteria. Mr. Yoe said, consistent with what Director Ashcroft's report points out, they used a series of methods in terms of having a score, then applying ranks to each of the scores, and then summing the ranks up - which usually would have happened at the end in a typical process. By creating ranks, they reduced the amount of variability they could have seen in the scores. He thinks what happened is that the process they started with reduced the variation, and then led them to add the other things because they were not seeing enough variation. Mr. Yoe again said that process is not a process that he would have instructed them to do. Sen. Burns said, for at least this portion of it, they may have started out with good intentions and found out the procedures they were following were not going to produce the results they needed in the scores. He asked Mr. Yoe if that was fair to say. Mr. Yoe agreed.

Sen. Johnson asked Mr. Yoe if he knew whether, with the original scoring mechanisms, there were nine HMPs who could have been picked off the top. Sen. Johnson said if anything beyond that was used in the process, then there had to be a different motivation. Mr. Yoe said in the final scoring he saw that had the rankings, the tie breaker was in it, and believes those things were put in there because there were ties and not a lot of differentiation between HMPs. His Office did add up the total rankings and came up with total scores and you could have made a selection based just on that. Again he said he did not have all the rationale for the motivations that happened all through the process.

Sen. Craven asked if Mr. Yoe knew what was used for weighting, for example did they consider population need or population size for a particular HMP. Mr. Yoe said they used a specific performance matrix that they had available for the HMPs, and he asked why they did not emphasize some of those performance criteria more in the process. They only used it as a tie breaker in this case, but it had to do with a performance around the specific objectives that the HMPs were working on.

Rep. Cotta said he understood Mr. Yoe to say that when he looked at the results, that even with the weighting and what not, it did not affect the outcome. He said MCDC should be complemented on that given the time they had to work with. Chair Cain wanted to clarify that she thought there was a discrepancy between what Rep. Cotta is saying and what was in OPEGA's Report so the GOC may want to revisit that with Director Ashcroft. Mr. Boeschstein thought that as pointed out in the Report, there were six different scoring scenarios run and there was only one district, the Penquis District that changed depending on the scenario. Three of the six scoring scenarios would have given the selection to another HMP, and the other three of them would have been given to the HMP who in fact won that district. There were differences between the different models for one district.

Rep. Boland said she is having a hard time dealing with them saying there was little change, and yet in the one instance, there was remarkable change having to do with the two partnerships whose awards changed dramatically. Mr. Yoe said he was not saying that the scoring decisions that were made didn't have impacts. That is a different question. He was saying that in the several different scoring scenarios the selections in most districts weren't impacted in the Penquis District there was because all the HMPs in that district were pretty close so the top scorer shifted a little bit with the different scenarios. He is looking at what it did to the scores and said he was expecting to see more changes there than what was seen. Chair Cain thinks the GOC's frustration is that there were changes made, and whether they affected the outcome or not, the motivation or rationale for doing so cannot be identified and that is important when you are talking about millions of dollars. Sen. Johnson added that there was no indication that there was a substantive reason for changing it. If indeed the original scoring accomplished having nine top scoring HMPs, then he cannot believe there was any appropriate reason for changing the scoring.

Sen. Craven asked if Mr. Boeschstein had put any measures in place to correct the problems and what the Department was doing now to make sure something like this does not happen again, such as shredding of documents and also making sure that the Legislature, as well as the general public, would have access to the process and to make sure that everyone can trust what is going on inside DHHS. Mr. Boeschstein said this process was flawed, they recognize that and Mr. Yoe went in and evaluated the process used. Weaknesses were identified in the process, normally the Department runs under an RFP process so this ad hoc process is not regularly used. There were flaws in the selection process, which they acknowledge, so Mr. Yoe has been working with MCDC, as well as with other offices within the Department, to identify all of their processes and how they may be improved. Were this to happen again, they would encourage Mr. Yoe to go in upfront, work with the appropriate office to establish the criteria to make it more of an RFP-like criteria and to ensure that the criteria was stuck to from the start to the finish of the process.

Mr. Boeschstein said with respect to documentation retention, DHHS has retention schedules, but do not necessarily have a defined retention policy and thinks part of the process, should they do it again, would be to clearly identify that documents needed to be kept. Sen. Craven asked if those processes were going to be in rules and will the Legislature have access to them. Mr. Wells thought it was too early to say, but said beginning next week DHHS has training scheduled with the State Archives Office. They have worked with all the office directors to make sure they have identified appropriate records officers for their programs and will begin training the records officers. DHHS will be looking for guidance from the Archives Office in how the Department goes about developing appropriate policy. Sen. Craven was concerned that even the FOIA request process has no consequences, misconduct inside the Department had no real consequences either even though it is very disruptive to people in the State and she is hoping that what comes out of it is that there is going to be some recourse down the road that when something like this happens, people will be held accountable and appropriate action will be able to be taken.

Sen. Katz said looking forward there are two separate issues regarding document retention. One is what is going to be permanently maintained that is an Archive issue, and is separate from what is the document retention policy during a process and how long after the process is completed do those documents need to be maintained before destroying. With respect to the document retention he asked if DHHS was in the process of trying to develop a written policy that will guide the process in knowing with more specificity what kinds of

documents they are supposed to keep. Mr. Wells agreed there were two different retention schedules. There is the document retention schedule which tells you if you have this type of document, this is how long and where to keep it and the other, for example any documents created by the Commissioner, will be all of the Archival nature and would be permanently kept and archived. The other aspect is what documents do you actually need to create during a process and what sort of documents you need to keep during a process. Sen. Katz asked if DHHS was in the process of creating written guidance on the subject. Mr. Wells said that would be what he would expect and where they need to go, but they are in the very beginning of the process. The first step is to make sure they have appropriate record officers, that they understand the basic principles of records management, they start inventorying the types of records DHHS has and how they are created and then based on that, working with the Archives Office on appropriate policies. There will be general policies Department wide and there is also going to be specific policies for individual programs because different programs create different types of documents. Sen. Katz asked if Mr. Wells had an approximate date of when that process would be complete. Mr. Wells was not sure he could give a date at this point other than to say DHHS is at the very beginning of the process.

Sen. Burns referred back to the inference that documents were intentionally and wrongfully destroyed and wanted to know what has been learned about that. Mr. Wells did not think the Department could comment because those are issues that are directly relevant to the litigation the Department is involved in. Sen. Burns said he needed to have confidence that those issues were going to be looked at, vetted out appropriately and asked if there were going to be consequences for misconduct, if misconduct is determined. He hopes if misconduct is discovered that there will be consequences and if there were mistakes that happened, then you correct those mistakes. He asked Mr. Wells if that was what could be expected. Mr. Wells thought that was a fair statement and it begins with setting clear policies for employees and setting clear performance expectations for employees. If they do not follow policy and do not follow it as it is clearly articulated, or do not follow clearly articulated performance expectations, then yes, there should be consequences. Sen. Burns thinks that should also be for going back. If there is clear evidence that there was intentional misconduct, will people be held accountable? Mr. Wells said, posing Sen. Burn's hypothetical, if all of that is clear, than absolutely yes. But part of the process is identifying whether there was clear policy, expectations, and law on any of those issues. Assuming that is true then, yes.

Sen. Katz asked who the parties are in the litigation and the current status of who is representing whom. Mr. Wells said the parties are the Department, and Director of MCDC in her personnel capacity. At the moment the Department is still currently represented by the AG's Office, but is in the process of seeking outside counsel as he understands the Motion to Withdraw has been granted by the Court prospectively. He believes Dr. Pinette has retained independent counsel.

Chair Kruger wanted to remind the Committee that with any inquiry almost always the first question is what happened and if the answer is we don't know, he would submit that was not good enough and that they really need to be able to answer that in a better way.

Mr. Boeschstein said they work every day as a Department Senior Management team to try to earn the trust of the taxpayers and citizens of Maine. They accept that there are flawed processes among the many processes that are engaged in by the Department in the conduct of their business and delivery of Health and Human Services. They work every day to continuously try to improve those processes to ensure that they continue to earn the trust of the people of Maine.

Chair Cain said the GOC would want to talk with Mr. Boeschstein, Mr. Yoe and Mr. Wells again. The Committee thanked them for being at this meeting to answer questions.

## **RECESS**

Chair Cain recessed the Government Oversight Committee meeting at 11:50 a.m.

## **RECONVENED**

Chair Cain reconvened the meeting at 12:50 p.m.

The Committee continued the work session on the Healthy Maine Partnerships FY13 Contracts and Funding Report.

Chair Cain recognized Chief Deputy Pistner.

Sen. Katz asked the status of the representation for the Department and the Director of MCDC in the civil lawsuit. Chief Deputy Pistner said the AG's Office was representing both the Department and Dr. Pinette and has filed to withdraw as counsel for both. The motion was granted conditioned upon the parties getting other counsel which she believes Dr. Pinette has already done and the Department is in the process of doing. There is a timeline on the withdrawals and the new counsels have to be in place by a certain date so the case can move forward. Sen. Katz asked if the State was going to pay the fees of the two counsels in both cases. Chief Deputy Pistner said yes, Risk Management provides coverage to all State agencies for these kinds of claims; To the extent that personal liability is asserted, that is a different issue.

Sen. Katz asked if there were reasons stated for the withdrawal requests. Chief Deputy Pistner said the reasons are confidential, even from opposing counsel, and they are not known to her. The motion does not contain the reason.

Sen. Katz asked if the GOC agrees to go forward and either ask or subpoena some of the players in this matter to appear before the Committee so they can ask questions, is there a concern on the part of the AG's Office that the GOC's participation in a process like that would have a negative impact on the State's ability to defend itself with the underlying litigation. Chief Deputy Pistner said at present she thinks that the AG's Office would have to defer to the counsel representing those parties. She said there have been some broad and general allegations made about things being involved in the litigation which is at an early stage. The GOC could look at the complaint if they wanted to see what the assertions are there. There is also a motion to dismiss filed by the AG's Office prior to their motion to withdraw that will explain why the AG's attorneys thought the case should be dismissed. Sen. Katz asked what the Chief Deputy's advice to the GOC would have been a week ago if the GOC did not want to move forward on something that would prejudice the State's ability to defend itself in the litigation. Chief Deputy Pistner thinks that if the parties are represented by counsel they can make their decisions about what they want to say to the GOC. She was not as familiar with the details of the complaint so the Committee may draw its own conclusions from looking at that.

Sen. Katz said if the GOC asks people questions who are not under oath, they can choose to answer or not, but if they were under oath, while there are certain privileges that witnesses can claim, I don't want to answer is not one of them. He said the GOC was looking for her guidance before they decided to ask staff involved in DHHS to a Committee meeting. Chair Cain said her understanding for the GOC's role was that if they, at any point, were to move ahead with having people subpoenaed and brought under oath then the Committee has to vote to change the nature of its work. Chief Deputy Pistner said the GOC would have to have a majority vote to issue subpoenas. By issuing subpoenas, the GOC becomes an investigating committee and subject to both the GOC statute and also the chapter in Title 3 that governs investigating committees. Chair Cain said an alternative to that is for the GOC to invite any number of people to come before the Committee and they can choose to come or not come and have counsel or not. That would not be under oath and would be just for the purpose of the GOC continuing its discussion, which is more like the Committee's customary work. After that the GOC could make a determination of whether they felt it was necessary to move to a higher level of formality.

Rep. Harvell thought if the Committee brought people before them and there is an ongoing litigation advice counsel would likely give any of them would be to say on the advice of counsel they could not answer the question and the GOC would be right where they are now. Chief Deputy Pistner said if you are talking to people informally, and they are not under subpoena or oath, then they can just say they do not feel comfortable answering that. If you are talking about a subpoena and under oath situation, that would be different. The person may have an attorney representing them and their attorney may go to court to try to squash a subpoena.

Director Ashcroft thought the territory that is covered in the complaint and the civil suit versus the questions the GOC has about the process does not overlap to the degree that the Committee couldn't legitimately ask some of the questions they have about why the Department decided they were not going to retain working documents, who was part of that discussion, what was the rationale, and why was the scoring criteria changed. She said when she read the Complaint she did not see those questions in what is being decided. If the GOC asked questions where information provided might be perceived to be relevant, it is possible they would choose not to answer. She did not think that the ground was so completely overlapping that they would not be able to ask some of the questions they have been asking. Chief Deputy Pistner said the Director made a good point and the Department's representatives answered a lot of the Committee's questions earlier in the meeting that they were comfortable answering. There are differences between the issues the GOC is interested in and what the court would be considering.

Sen. Burns said it appears the GOC still had questions and needed to have answers and asked if there was any downside or reason why Director Ashcroft couldn't pursue the same things outside of a GOC meeting forum. Chief Deputy Pistner said when you get complications like this it is going to stretch the limits of statute. The statute assumes that there is a confidentiality wall between the Director and the GOC so virtually everything OPEGA receives is on their side of the wall. The information received by OPEGA is put into a Report for the GOC, and the GOC can have under their statute, anything that is public record, or anything they are allowed to get under the investigating committee statute, which does not apply now because the GOC is not an investigating committee at this point. The GOC now has the Report and wanting answers to more questions is consistent with the process that has been ongoing, in one sense. Sen. Burns said it seemed consistent with the Committee's process and done in the past when the Committee received an OPEGA report and then decided they needed more in depth information and OPEGA has gone back to get those answers for the GOC. He asked if there was any reason why they couldn't use that procedure now. Chief Deputy Pistner said you would lose the ability to ask any questions that the Committee might have that are different.

Sen. Johnson said as informative as that potentially would be, the questions would be what information from that could be shared with the Committee given the confidentiality that would undoubtedly be necessary for the person to disclose information that was not obtained in the first case. He asked the Director if she believed there would be information of value that would be possible for her to report to the Committee based on a further inquiry. Director Ashcroft said under normal circumstances the Committee would want to be asking questions of the agency that was involved in whatever they were doing just as a matter of course. The GOC has heard from DHHS, but have not heard from anyone who is actually involved in the process yet. She is not certain if the Committee is having the difficulty they are here because they know there is a civil suit going on and that is changing what would normally be their course of action, or if it is a resource issue and they would rather OPEGA did the leg work and bring back what they find. She said OPEGA can do that to. She was struggling with what it is that the Committee thinks they are treading on that they haven't already treaded on as a Committee in the past that would be different in this case. The GOC has questions of some individuals and want answers. Sen. Johnson asked if there was value, as a Committee, in asking OPEGA to continue their investigation. He agreed that he would not even be asking that if there was not pending litigation.

Chair Kruger said it was important to appreciate that what the Committee is after is good government and are not on a parallel track with any kind of litigation or civil complaint that may or may not be going on. The GOC needs to get answers of how to run the shop better and the litigation side will be taken care of in the courts.

Rep. Cotta agreed and said the Committee was trying to improve the process and maintain the integrity and the trust. He said they know who they want to talk to, Director Ashcroft knows of some inconsistencies, and for clarity and confidentiality could go back and look at that. He thinks both can be done.

Rep. Davis said if they, as a Committee, invite those individuals involved to a meeting, you never know where the questions will lead. If the GOC becomes an investigative committee does that cause them to become part of the litigation? Chief Deputy Pistner said if members became witnesses in the litigation the AG's Office would represent them and would try to keep that from happening because there are other ways for the same information to be obtained. Legislators have immunity and again the AG's Office would represent them. It is not an appropriate response of parties to sue legislators if they do not like what they do as a legislator.

Sen. Burns said he was concerned about personal reputations. He does not have a problem pursuing an investigative process if it is necessary and appropriate and will bring forth more information that the Committee cannot otherwise get, but he is not convinced it is necessary at this point. Once you invite, or subpoena, somebody into the public forum you automatically have tainted their reputation, no matter what the facts reveal. It is a different forum than being interviewed in an office about specifics from somebody who knows most of the facts of the situation. He said there is a great difference between the rank and file worker as compared to somebody who is the head of an agency.

Sen. Katz thought Sen. Burns raised a good point. He believed the Committee took up the review in the first place because there were concerns about how the program was evaluated and moved forward. He thinks there are four questions the Committee needs answers to.

1. We know that the procedure was faulty and don't know if it was because people did not know what the right thing to do was or, if they knew, and just chose not to.
2. There are questions about what documents were retained. The Committee does not know if they were not retained because that is the general philosophy of the Office or if they were not retained because someone was trying to cover something up.
3. We know there were changes to the scoring criteria and the weighting of the criteria, but do not know when it was done, who decided to do it, and whether the reason was benign or to change the outcome.
4. We don't know really what happened regarding shredding of documents. What were the circumstances, it may have been benign, or designed to suppress something important.

The reason the Committee does not know the answers to the questions is because they have not had any people from MCDC at a meeting. In pursuit of the GOC's mission it is perfectly appropriate to at least ask them to come to a meeting to give their perspective about what happened and answer Committee questions. Sen. Katz thinks the Committee members are all frustrated with where they find themselves in the process. The Committee was set up specifically to be bipartisan, no matter who is governor, and he would be in favor of taking the next step.

Chair Cain agreed and said they had reached the point in their work with OPEGA's Report, where the documentation they have available to them has answered some questions, but also identified some serious issues. Based on what the Department has said, they are addressing those prospectively. She said that was not, however, a complete resolution to the Report and concurred that it was in the best interest of the Committee to seek more answers. Chair Cain agreed the GOC should move ahead and invited people to come to a meeting to answer their questions. She agreed that the Committee did not need to move into the investigatory level at this point, but just to ask people to come to a meeting. She felt the GOC has and will maintain a level decorum and respect for whoever comes before them. She asked for other Committee comments before they formalized any next steps.

Sen. Youngblood thought all points raised on both sides of the argument were valid arguments, but still thinks you might get more answers to the questions if they were posed to the Department by OPEGA rather than putting individuals on display in public.

Rep. Boland agreed with Sen. Katz and Chair Cain and said the Committee can do their job and invite people to a meeting. If, after the fact there still seems to be answers needed, OPEGA can follow-up. She thinks it is their duty to the public to proceed as in any other review.

Sen. Craven agreed and commented she was also still upset about the process and the barriers that are set up when there is a FOIA request.

Sen. Johnson understands the concern about bringing people before the Committee, but he is not sure the Committee is in a situation where that can be avoided. At today's meeting he heard the names of people involved so their names are already out there and may be an opportunity for them to tell what really happened.

The Committee discussed who should be invited to come to a GOC meeting. It was agreed that the Chairs and Leads would meet to discuss who would be best to answer their questions and a letter will be sent from the Committee to those individuals.

**Motion:** That the Government Oversight Committee moves to proceed to continue the inquiry including the invitation of certain people they identify to ask them to come and talk with the Committee about the HMP lead selection process. (Motion by Chair Kruger, second by Rep. Boland).

**Discussion:** Chair Kruger said what is supposed to come out of the GOC is not prosecution, but legislation and that is the intent as he sees it. From what he has heard at the meeting, members have an interest in strengthening the FOAA issues, etc.

Sen. Burns thought the Committee was premature in asking individuals to a meeting and did not see the similarities to the Maine Turnpike or the Land Sale at Thomaston reviews so would not be supporting the motion, but he will work with the process.

**Vote on the above motion:** 9-2-1. Motion passed. (Sen. Burns and Sen. Youngblood voting against the Motion and Rep. Davis absent for the vote.)

The Committee moved to the FOAA request issues.

Sen. Craven asked how the public records ombudsman's authority could be strengthened to ensure that, when there is a FOAA request made, she can follow-up and make sure it is responded to as opposed to setting barriers. Chief Deputy Pistner said it is a complicated question. She said the ombudsman has been very successful in her first year because she works collaboratively with people and that brings everyone along. You may have to wait awhile to get documents, but in the cases where documents have been delayed for a long time, she has gotten involved and keeps on people until information is produced. If you put a person who is trying to make things work in a position where she also has a hammer to penalize you if you do not do enough, then it is less likely that that collaborative process is going to work as well. The Chief Deputy said if you add more authority to the ombudsman office then she does not see how one person can do it by themselves. Another thing to look at as an alternative to a stronger ombudsman is some other kind of a penalty and that is something the Right to Know Advisory (Advisory) Committee has touched on. Nobody wants to put people in a position of having to pay a fine if they make a mistake, but there are cases that go beyond just mistake to really resistance of compliance with the law, but where you cannot actually prove an intentional and knowing violation. She is not sure what the answer is, but it is something that has not really been studied yet.

Sen. Katz asked what the composition of the Advisory Committee is as he thought they may be a better group to be reviewing FOAA requests issues than the GOC. Chief Deputy Pistner said the members are: Senator and Representative from the Judiciary Committee; a representative of municipal interest appointed by the Governor; a representative from the county or regional interest appointed by the President of the Senate; a representative with school interests appointed by the Governor; a representative of law enforcement appointed by the President of the Senate; a representative for the interest of State government appointed by the Governor; a representative from a statewide coalition of advocates of freedom of access appointed by the Speaker; one representative from the newspaper and other press interests appointed by the President; one representative of newspaper publishers appointed by the Speaker, two representatives of broadcasting interest one each appointed by the President and Speaker; two public representatives, one each appointed by the President and Speaker; and the Attorney General or designee. Chief Deputy Pistner said the Advisory Committee just recommended to the Judiciary Committee, and they accepted, the recommendation that they add an IT expert.

Sen. Youngblood asked if all the position were filled on the Advisory Committee and filled by people who participate. Chief Deputy Pistner said it is the best Committee she has ever worked with because members care about it and some members have served on it since its inception.

Chair Cain said the question of records retention and being able to track FOAA requests and whether the requests are reasonable is connected to the response time. She asked if it would be beneficial for the GOC to hear from the

Ombudsman Brenda Kielty directly, or if that would be getting into the weeds too much. Chief Deputy Pistner said Ms. Kielty would be the best person to ask questions regarding her ombudsman position and she thought Ms. Kielty would be happy to come to a meeting. She said it is generally the case with ombudsmen that they do not have direct authority to act, but they are people who sit a little outside of the system and look at how it is working and try to make it work better.

Sen. Johnson asked for Chief Deputy Pistner's thoughts on what to do about a gap between the ombudsman role in the AG's Office and doing what needs to be done to address the lack of follow through that is still occurring without burdening the ombudsman in taking on a role that would be detrimental to their current function. Chief Deputy Pistner said you can't write everything down, that you need to have some good judgment and faith in how agencies operate and that they will do the best they can. In defense of agencies, some FOIA requests can be extremely time consuming and is not part of your job, as you think of it, until it comes to your desk and you are told that you are one of the people who have to review all your files on a certain subject in order to find those things that might address the issues.

Sen. Johnson asked if she had any insight as to what the missing piece is to make the follow through more effective than it currently is, given how it has been brought to the GOC's attention that there are problems. He agreed with some of the observations of it not being helpful to add the role of enforcement to the ombudsman's position. Chief Deputy Pistner said she would like to have the opportunity to think about the questions and go back to the AG's Office and talk with her colleagues about it to get their ideas. She thinks from time-to-time you are going to see an area, and perhaps contracting without an RFP process is one, where you want to tweak the law to be clear that information relates to that should be kept because it is important, as opposed to trying to find a definition of documents that ought to be retained that you can apply across the board so it may be there is a targeted approach for the particular problem that you are looking at here. As far as the enforceability of the law, that is something she would be happy to talk to others about and make suggestions. Chair Cain said, to Chief Deputy Pistner's point, if there are some people not responding, you don't want to build the laws around just that kind of situation. She thought it would be very helpful for the Chief Deputy to talk with others in her office.

Chair Cain asked when the Advisory Committee's next meeting was. Chief Deputy Pistner did not think the Committee itself will meet until after the end of session. Chair Cain said if there is a meeting coming up soon, the GOC may want to pose some questions to the Advisory Committee in a form of a letter. She asked Director Ashcroft if she would find out when the next meeting was and draft the questions as being outlined by the GOC.

Rep. Boland suggested that the ombudsman have the authority to determine that there has to be a deadline for getting documents in, and if there is a problem asked if it was possible to give an anticipated time that it would be completed. Chief Deputy Pistner said the law now requires all agencies to notify the person making the request that they have received the request, and to tell them how long they think it might take and identify requested things that are confidential that they will not be able to produce. There is a lot of information for the public on the AG's website, the State's website on FOIA requests and Sen. Cain's bill has caused them to look at how to make that website more usable. Chief Deputy Pistner said if the ombudsman sets deadlines she would also have to hear requests for extensions, reasons why people could not comply with the deadline, etc. so she thinks it would be time consuming. It is more complicated than what appears on the surface.

Sen. Katz said the GOC may want to think about coming up with a list of their concerns about the way the law works now, maybe make suggestions that the ombudsman office and enforcement be strengthened to make the FOIA requests more effective. He is not sure they have the expertise on the GOC to do anything regarding that, but the Advisory Committee does. He thinks it would be a better path to send a list of the GOC's concerns to that Committee and ask them to look at it and report back.

Chair Cain asked if Director Ashcroft, for the next GOC meeting, could pull together the list of questions that the Committee has identified related to FOIA requests at this meeting, as well as from the prior meeting, for the Committee to review and formalize a letter to the Advisory Committee and to the ombudsman. She also asked if Chief Deputy Pistner could talk with her colleagues about ideas that may come forward and share that information at the next GOC meeting. Sen. Youngblood wanted to know if the GOC could get information about how big the problem really is, are the problems with State government or other government entities, etc. Chair Cain said the

ombudsman has been starting to keep records and suggested that the Committee could request information in writing, about how big the gap around FOAA requests not being responded to is. Sen. Youngblood wanted to know what percentage of the total requests are really a problem and who is creating the problem that would help the GOC decide where they want to go. Chief Deputy Pistner said she will talk with the AG's ombudsman, but she does not believe they have information about the total number of FOAA's compared to the number of complaints about FOAA responses. There is information about the source of the complaints and the AG's Office has been trying to track that even before the ombudsman's position was filled.

Sen. Johnson said there may be an opportunity for the process to be improved with regard to municipalities, outside of what is done to strengthen the follow-up and enforcement, in working with the Maine Municipal Association, or others, to improve training or identification of retention policies. Chief Deputy Pistner said the AG's ombudsman has gone out and made presentations and works with the MMA with presentations. They do excellent training as well. They do specific training where people feel the need and education is something that the Advisory Committee has always been focused on to the extent that they have resources.

The Committee thanked Chief Deputy Pistner for answering their questions.

- **Committee Vote**

The GOC did not take a vote on OPEGA's Healthy Maine Partnerships' FY13 Contracts and Funding Report.

• **Update on HHS Committee Consideration of OPEGA Recommendations in MaineCare Children's Outpatient Mental Health Report**

Director Ashcroft reminded members that she met with the Health and Human Services Committee to review the recommendations that were in the 2009 Report. The Committee had indicated that they wanted more time to consider the recommendations and they do expect to get back to the GOC. Sen. Craven, Chair of the HHS Committee, said the Committee has discussed several children's programs, but not outpatient mental health programs and is something they need to add to their schedule. She will let Director Ashcroft know if the item should be added to the next GOC meeting agenda.

• **OPEGA Follow-up on Healthcare in the Corrections System and MPAC Letter to GOC Requesting OPEGA Review**

Chair Cain noted that the MPAC is the Maine Prisoner Advocacy Coalition and are a group that, in addition to American Civil Liberties Union of Maine, the Maine Council of Churches and the NWACP of Portland, have sent a letter to the GOC in relation to an OPEGA Report in 2011 about healthcare services in the Maine State Correctional Facilities.

Director Ashcroft said MPAC had sent the GOC a letter on December 10, 2013 that the Committee reviewed. Their concerns are that, as one of several advocacy organizations, they continue to get complaints from inmates at the various correctional facilities with regard to healthcare. They have serious concerns about what the ultimate impacts are of the kinds of complaints they receive. MPAC is asking the GOC to have OPEGA do additional work to further look into the quality and timeliness of care at those facilities. In December, the GOC discussed whether it was an issue that was more for the policy committee and had questions about how things had changed in terms of the complaints MPAC had received since the new correctional healthcare provider had come on board. OPEGA asked MPAC to go back and line out more specifically the categories of complaints they were receiving. MPAC has come back, in coalition with the ACLU, the Maine Council of Churches and NWACP, and prepared the letter included in the Committee's notebooks which categorizes and outlines what the various issues are that are showing up in the inmate complaint letters. They are asking for an additional OPEGA review that involves some extensive work, either by surveying or interviewing a portion of the inmate population with regard to their healthcare. They question why they are getting all of the complaints if healthcare is alright.

Director Ashcroft said OPEGA has been following up with the Department of Corrections around the actions that they were going to be taking from OPEGA's Report. The most recent meeting with Corrections was yesterday, January 23<sup>rd</sup>, to try to get a clear understanding of the specific steps they now have in place for monitoring the contractor's performance, both in terms of quality and timeliness of care, etc. From that meeting Director Ashcroft thought Corrections had a much improved relationship with this particular healthcare vendor that the lines of communication are very open and the vendor is responsive to issues they bring up. They are closely watching costs of healthcare and now have an electronic medical records system that allows the health services administrator to look at the quality of care issues. However, they do have some resource constraints and are in the process of trying to fill another position so they have someone, in addition to the one person who is currently there, that can spend more time in the facilities and spend more time looking at the exception reports that are available in the electronic medical records system with regard to things like timeliness or different kinds of care. She did not hear anything in the meeting that told her that Corrections was doing such a level of monitoring that all of the issues categorized by MPAC would necessarily get captured in the monitoring they are doing. She did share MPAC's letter with Corrections and let them know she was going to be talking about it with the GOC. She asked particularly, from their experience and what they think they are on top of, whether the categories of concerns reflected in the letter matched what they perceived to be the situation. Director Ashcroft did not have an answer to that yet because it was just shared with them. Corrections did say that sometimes when an advocacy group is trying to intervene on behalf of a family member of an inmate, or an inmate themselves, the Department's hands are tied in terms of being able to talk with that advocacy organization because the inmate will not give a release for them to share information. There may be some legitimate cases where the advocacy organization is hearing one thing from the inmate and the Department would have information that would say the situation is otherwise, but they are not at liberty to inform the advocacy organization about what the situation is.

Director Ashcroft said in reviewing the categories, some are the same issues that were raised in OPEGA's Report. She got a lot of good information from the Department and it is not a case of them not wanting to be monitoring the vendor. She does not know where the root of the continued concerns is, whether there is lack of information about what is going on or if it is more systemic. MPAC would like to see OPEGA do work that is beyond its normal follow-up work on a review if OPEGA were to try to sort out what the situation is in terms of inmate healthcare with regard to the complaints. The GOC's decision is whether they want to assign OPEGA a special follow-up review that would encompass the larger body of work. Alternatively, if the Committee has interest in the issues, maybe the first step would be to ask the Department to come to a meeting and give their perspective on why they think the kinds of concerns advocacy groups are getting are showing up in those numbers. She said OPEGA could take a sample of the 400 letters and ask the Department to share with OPEGA what the details of the actual situations are. OPEGA could look at case files themselves and talk to inmates. Director Ashcroft said this work would need to be a formal follow-up project on OPEGA's work plan as opposed to the Office's regular follow-up. MPAC's request does not have a legislator sponsor at this point, but OPEGA brought it forward to the GOC because OPEGA does have follow-up work in progress on the related past review.

Chair Cain said the GOC's next step is how they want to proceed with the request, whether to treat it as a new request and require a legislator sponsor, or invite people from the Department of Corrections to a meeting to discuss the issues in the context of OPEGA's 2011 Report as part of follow-up.

Chair Kruger asked if the Board of Visitors has taken a look at the same questions because he does not want to duplicate their work. Director Ashcroft said she did not believe so because MPAC and groups have met with the Board of Visitors at the Maine State Prison recently to discuss what they are seeing as issues. The Groups' concern is that it is not in just one institution, it crosses the whole Department of Corrections, so even if they go to the Board of Visitors at one institution, they think they are seeing are more systemic across the system than that. They are reaching out to the Board of Visitors, but they still believe that a more umbrella-like look is warranted. Chair Kruger would be interested in having senior staff from DOC attend a GOC meeting to talk and perhaps a member of the Board of Visitors, especially on the issue of monitoring structure and the way that is ongoing. He is interested in the monitoring process, not necessarily the GOC doing it if somebody else can do it and is better suited like DOC.

Sen. Johnson said he would like to have a better understanding of what the whole story is, what the level of occurrence is and that could be more efficiently determined by OPEGA reviewing records than the Committee asking the Department questions. He asked the Director what the process would entail to do a sampling of records. Director Ashcroft said, because it would involve a decent amount of time, she would prefer that it was made a project on OPEGA's work plan so there is a specific beginning and end product to bring back to the GOC. Given that, Sen. Johnson said he was inclined first then to ask questions of DOC staff.

Rep. Boland said she has heard about problems with the availability of medication, or not getting the medication on a timely schedule. She thought they had records that tracked exactly when each prisoner came for what and when so she thought those records would be easy to obtain. Director Ashcroft said that is an electronic system also and the way it was described by MDOC is that it should not have as much opportunity in it for lapses as there might have been with the old paper-based system. She does not think it is information that would be able to come forward specifically to the Committee because it is health related information those and would be confidential records. OPEGA could review it as part of a case file.

Rep. Boland said during the previous presentations and follow-up discussions regarding OPEGA's Report, staff from DOC, and others, attended GOC meetings to make their presentations. She thought what was missing was the input from several inmates at the prison and asked if that was a possibility for further discussion of this issue. Chair Cain said that feeds into the questions of how the Committee with this. proceeds in answering the questions.

Chair Cain said she would be comfortable inviting MDOC and someone to represent the facts behind the MPAC's letter to come to a GOC meeting, not for a debate but so the GOC could get a sense of their assessment. She thinks it is important that MDOC have the opportunity to respond to MPAC's letter. If the Committee agrees, this could be put on the next GOC meeting agenda. She believes there are good intentions on both sides to fix the problems and wanted to make sure they all have the opportunity to respond.

Sen. Johnson thought it was possible, without violating any confidential requirements, for them to bring statistics of what the numbers look like from their perspective, not only just a narrative of how they believe things are going.

Rep. Cotta said both the areas of medical information inaccurately recorded and the untimely delivery of care have had recent changes. There is a new provider and electronic records. He would be interested in a report since the new service provider came on board and started instituting the electronic records, of how the current report through October compared to an earlier one given about the same population. That might set another course. Director Ashcroft was not sure MPAC has done a similar report in the past and this analysis is based on letters that they have received since the new vendor started on July 1, 2012. The electronic medical records system went in sometime in 2013. OPEGA has not looked at all the detail behind the complaints to know exactly what is in each category and whether an electronic medical records system would be relevant to the issues.

Sen. Youngblood referred to numbers referred to in MPAC's letter and asked whether they are the number of letters they received or the number of complaints they received. Director Ashcroft said they are the tally of the different complaint issues that were included in 400 letters that came from 310 inmates.

Sen. Katz recommended that this issue not be at the next GOC meeting because of other items that will be on that agenda. He suggested it be added to the GOC meeting agenda at the end of February. Other Committee members agreed.

## **REPORT FROM OPEGA DIRECTOR**

- **Status of Projects In Progress**

Director Ashcroft wanted to make the GOC aware of the status of the draft legislation with regard to the Tax Expenditure Programs that they reviewed at the last meeting. She did attend the Taxation Committee meeting when they discussed the legislation and that Committee felt like they would like any proposed legislation on a process to come out of the Taxation Committee. They currently have a bill, LD 1463 which is Rep. Rotundo's concept draft, and they are considering incorporating the draft legislation reviewed by the GOC at its last meeting into that bill. The Taxation Committee is in the process of working on that and was having discussions about what they thought about the process that had been outlined. Director Ashcroft thought she would attend the meeting to explain how the GOC arrived at the process and asked if members of the GOC wanted to be informed. Chair Cain asked the Director to notify the GOC by email when Taxation schedules its next work session on the bill and Committee members will see if one or two can attend to help inform the Taxation Committee of the GOC's work.

## **NEXT GOC MEETING DATE**

The next Government Oversight Committee meeting is scheduled for February 14, 2014 at 9:00 a.m.

## **ADJOURNMENT**

Chair Cain adjourned the Government Oversight Committee meeting at 2:27 p.m.

<b>Timeline of Relevant Events Related to HMP Lead Selection (Expanded from Table 1 in OPEGA's Report)</b>	
<b>Time Frame</b>	<b>Description</b>
November 2010	Bidders conference held to begin RFP process for FY12 HMP award.
July 1, 2011	Contracts awarded to 26 HMPs as a result of RFP process. Tribal HMP contract also awarded.
December 2011	DHHS proposes cuts to HMP program in FY13 Emergency Supplemental Budget.
January 2012	MCDC begins strategizing about possible move to nine HMPs.
February 29, 2012	MCDC core group members meet with DAFS Purchases for guidance on whether an RFP process is needed to reduce the number of HMPs.
April 5, 2012	MCDC's Director of Division of Local Public Health, Director of Division of Population Health and HMP Senior Program Manager meet to brainstorm criteria for determining best performing HMPs – a task that appears to have been assigned by the MCDC Deputy Director. They initially draft 4 core criteria and seven measures for those criteria. Those measures include four of the five categories/criteria HMPs were ultimately scored on: Cost of Operations – G&A expense %, Salary Guide Compliance and Surveys of the Project Officers (PO) and District Liaisons (DL) – as well as others.
April 23, 2012	The MCDC Core Group, including the Deputy Director and Director of the Office of Health Equity, meet on HMPs. The meeting is subject is given as “HMP Criteria Final Review”. It appears that resulting from that meeting the group agreed on five “Core Criteria for Assessment” with eight related “Measures”. Those measures still include four of the five category/criteria HMPs were ultimately scored on – as well as others. The category/criteria of Support and Promotion of Developing Infrastructure (SPDI) is not included as a measure. It appears the group also agreed on the survey questions for the POs and DLs as well as the language for the Introduction to the Survey.
May 3, 2012	MCDC conducts surveys of District Liaisons.
May 8, 2012	Provision requiring MCDC to fund all 27 HMPs is added to the budget.
May 16, 2012	FY13 Supplemental Budget passes, including one-third cut in HMP funding, from \$7.5 million to \$4.7 million, and requirement for MCDC to fund all 27 HMPs.
May 16, 2012	MCDC conducts surveys of Project Officers.
Late May 2012	Purpose of HMP selection shifts from choosing nine HMPs to choosing nine lead HMPs.
May 24, 2012	MCDC Core Group meets. Subject of the meeting is given as “HMP Assessment Results”.
May 29, 2012	MCDC meets with stakeholders from the Friends for a Fund for Healthy Maine to solicit input on the planned changes.
June 1, 2012	MCDC Core Group meets. Subject of the meeting is given as “HMPs”.
June 6, 2012	Some MCDC Core Group members meet with the Director of MCDC to present the results of their lead selection process.
June 13, 2012	Director of MCDC and core group members meet with the Commissioner of DHHS to present the results of their lead selection process.
June 14, 2012	Director of MCDC announces new HMP structure, funding distribution and lead selection at State Coordinating Council meeting.
June 18, 2012	MCDC has contacted lead HMPs who have agreed to serve in that role and is in process of contacting supporting HMPs.

June 21, 2012	Lewiston Sun Journal (LSJ) reporter contacts DHHS Director of Communications by phone with questions about the change in HMP structure, funding decisions and process for selecting lead agencies. Asks to speak with the Commissioner. Director of Communications responds via email with explanations similar to information DHHS released publicly but not scoring results. Explains Commissioner is unavailable and arranges for reporter to speak with MCDC Deputy Director instead. Appears Deputy Director and LSJ reporter do speak by phone.
June 21, 2012	Senate Democratic Majority Office Aide emails DHHS Director of Legislative Affairs formalizing Senator Craven's request for a meeting with DHHS Commissioner and Director of MCDC.
June 25, 2012	DHHS Director of Legislative Affairs responds via email to the Senate Democratic Majority Office Aide stating Commissioner is unavailable until July and offering an earlier meeting with MCDC Director.
June 26, 2012	LSJ Managing Editor-Days contacts DHHS Director of Communications via email following up on LSJ reporter's story. States that MCDC Deputy Director told the LSJ reporter there were score sheets used to narrow to the nine selected lead agencies. Requests copies of the score sheets for all 27 HMP Coalitions and asks if DHHS would like this formalized as a FOAA request. Director of Communications responds that he will work with MCDC and get back to LSJ as soon as he can.
June 27, 2012	MCDC Director and Deputy Director and DHHS Director of Legislative Affairs meet with Sen. Craven, Reps. McClellan and Beaulieu, and representatives from Healthy Androscoggin.
June 29, 2012	LSJ Managing Editor-Days contacts DHHS Director of Communications via email asking for status of getting the score sheets. Director of Communications responds, apologizing for the delay and stating the scores were posted to the web the previous day. Sends the link to the score sheet on the website which includes the scores by criteria for all 27 HMPs.
July 1, 2012	Contracts awarded to nine lead HMPs, terminated with 18 supporting HMPs.
July 2, 2012	LSJ reporter sends email to DHHS Director of Communications with LSJ's initial Freedom of Access Act request. Requests 1) a copy of the underlying RFP, salary guidelines and salaries used to judge salary compliance for each HMP; 2) actual Likert scores each HMP received in the infrastructure category and the PO and DL scores for each question posed to them; 3) the POs and DLs who scored the HMPs and how long they have been serving in that role; 4) any written or electronic communications between Commissioner Mayhew and Director Pinette or their staff members on the entire process – specifies the timeframe of January 1, 2012 to June 30, 2012 (if a timeframe is needed).
July 3, 2012	MCDC Deputy Director sends email to LSJ reporter with attached letter that is agency's response to the FOAA. Letter estimates having the documents available by July 25, 2012 with an estimated cost of \$500.
July 9, 2012	DHHS Commissioner, MCDC Director and Deputy Director and DHHS Director of Legislative Affairs meet with Senators Craven and Rotundo, Reps McClellan, Beaulieu and Lajoie and representatives from Healthy Androscoggin..
July 9, 2012	LSJ Managing Editor-Days emails MCDC Deputy Director regarding the agency's July 3 <sup>rd</sup> response to the FOAA request. States she finds the cost estimate preposterous, considers it an effective denial of the LSJ's initial request and requests to trim the FOAA request to eliminate the email communications. Reiterates that LSJ still wants to receive the other information requested. Also requests a) the 27 score sheets the DHHS Communications Director said he would work with MCDC to provide and which LSJ has not received and b) copies of all FOAA requests DHHS has received for the same information the LSJ is requesting and the Department's responses to those FOAAs.
July 10, 2012	MCDC Deputy Director forwards the LSJ's July 9 <sup>th</sup> email to several members of the MCDC Core Group involved in the HMP selection process and asks them for an estimate of the time needed to address the specific items requested in the FOAA. In this same email, she also asks the DHHS Director of Communications to explain what the Managing Editor's reference to him working on getting the 27 "score sheets" is about.

July 12, 2012	MCDC Deputy Director sends email to LSJ Managing Editor-Days with attached letter that is agency's response to July 9 <sup>th</sup> revised FOAA request. Letter states information can be provided within two weeks of LSJ go ahead and that cost estimate is \$60. Also states there have been no other FOAA requests for information the LSJ is seeking.
July 17, 2012	LSJ Managing Editor-Days emails MCDC Deputy Director with go ahead to proceed with revised FOAA request at the \$60 cost estimate but asks the fee be waived given she believes there are legislators asking for the same information.
July 25, 2012	MCDC Deputy Director emails LSJ Managing Editor-Days with several documents requested in the FOAA. These are: 1) HMP salaries and the part of the RFP related to salaries; 2) PO and DL scores for each question for each HMP by District and a link to the web documents that contains the actual wording of the questions. The email explains the scores for the infrastructure category are those in the original scoring document on the CDC website. These scores were provided by Andy Finch and Sharon Leahy-Lind; 3) The names of the POs and DLs scoring the HMPs, which districts they serve, and how long each has served in that capacity. The email explains how three people scored the HMPs in the Western District in a collaborative manner. DHHS also waived the fee.
April 2, 2013	MCDC Director of Division of Local Public Health files complaint with Maine Human Rights Commission. Complaint alleges unlawful discrimination in retaliation for not complying with a directive by the MCDC Deputy Director to shred public records related to the HMP lead selection "before a certain FOIA request was made by the LSJ". Complaint states "The records in question showed the scoring results for all Healthy Maine Partnerships purportedly used to designate the nine "lead" programs that got substantially more funding than the others. What was described as an "objective" test was in fact manipulated so certain HMPs were favored over others."
April 3, 2013	LSJ runs a story on the filing of the Human Rights complaint which states that, through her lawyer, the MCDC Director of the Division of Local Public Health also said that the official scoring results posted on CDC's website differed from the scoring results she was told to shred.
April 3, 2013	LSJ reporter files two FOAA requests via email to DHHS Director of Communications. The requests are seeking 1) copies of all drafts of the scoring results associated with the Healthy Maine Partnerships scoring change and 2) all emails between the MCDC's Deputy Director, Director of Office of Health Equity and Director of the Division of Local Public Health (FOAA names the individuals specifically) between 5/1/12 and 8/1/12 regarding HMPs and/or FHM.
April 3 - 10, 2013	Email exchanges between LSJ reporter and DHHS Director of Communications where Director is responding to various questions posed by the reporter.
April 10, 2013	DHHS General Counsel emails LSJ reporter with Department's initial response to FOAA request stating that Department should be able to provide documents within approximately one week at no cost.
April 19, 2013	DHHS General Counsel emails LSJ reporter providing all emails retrieved by the MCDC to date between the MCDC's Deputy Director, Director of Office of Health Equity and Director of the Division of Local Public Health (FOAA names the individuals specifically) between 5/1/12 and 8/1/12 regarding HMPs and/or FHM. General Counsel also explains he has asked Office of Information Technology to also do a search and has received no estimate of timeframe on that yet.
April 19, 2013	DHHS General Counsel emails LSJ reporter re: her FOAA request for copies of drafts of scoring results stating they have not yet located any directly relevant documents. It is his understanding that the master Excel spreadsheet was updated and overwritten periodically and no versions appear to have been electronically transmitted. He has asked DHHS Internal Audit to conduct search of files for paper copies and OIT is already searching for emails. He will keep reporter posted.

April 26, 2013	DHHS Office of Quality Improvement Services completes report on the HMP selection process identifying multiple issues.
May 14, 2013	DHHS Director of Communications drops off documents to LSJ reporter in response to FOAA request for copies of draft scoring results. Via subsequent email in response to LSJ reporter question about contents of package, Director of Communications confirms these are any drafts they were able to recover and some additional emails she had not previously received. Says they are still working on one person's communications and having OIT do an independent search.
July 1, 2013	Contracts renewed with nine lead HMPs for FY14.
Source: As determined by OPEGA from interviewee accounts and documentation reviewed.	