



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

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

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

MEETING SUMMARY
April 11, 2014

CALL TO ORDER

The Chair, Sen. Cain, called the Government Oversight Committee to order at 2:06 p.m. in Room 437 State House.

ATTENDANCE

Senators: Sen. Cain, Sen. Katz, Sen. Burns, Sen. Craven and Sen. Youngblood
Joining the meeting in progress: Sen. Johnson

Representatives: Rep. Kruger, Rep. Davis, Rep. Boland, Rep. Cotta and Rep. Peterson
Absent: Rep. Harvell

Legislative Officers and Staff: Beth Ashcroft, Director of OPEGA
Wendy Cherubini, Senior Analyst, OPEGA
Maura Pillsbury, Analyst, OPEGA
Etta Connors, Adm. Secretary, OPEGA

INTRODUCTION OF GOVERNMENT OVERSIGHT COMMITTEE MEMBERS

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

SUMMARY OF THE MARCH 28, 2014 GOC MEETING

The Meeting Summary of March 28, 2014 was accepted as written.

NEW BUSINESS

• **GOC Consideration of New Request for OPEGA Review of Gambling Control Board**

Chair Cain reported that the sponsor of the request for an OPEGA review of Gambling Control Board could not attend the meeting and requested that it be tabled until the next Government Oversight Committee meeting.

Chair Cain moved to **UNFINISHED BUSINESS, Further Consideration of Pending Requests for OPEGA Reviews**

- **Further Consideration of Pending Requests for OPEGA Reviews**

- **Charter School Commission**

Chair Cain said because OPEGA did not have a chance to notify the sponsors regarding the Pending Request for Review of the Charter School Commission, this matter will not be discussed at the meeting.

UNFINISHED BUSINESS

- **OPEGA's Report on Healthy Maine Partnerships' FY13 Contracts and Funding**

- **Consideration of Information Gathered Through GOC Inquiry**

Chair Cain reminded the members of their discussion at their last meeting about the types of information they might want to have in order to determine what their next steps would be.

Director Ashcroft said the transcript of the testimony at the March 14, 2014 GOC meeting has been given to Committee members and anyone else who requested it. She said OPEGA also prepared a Summary of Testimony, Interviews and Documents of the Healthy Maine Partnerships' FY13 Contracts and Funding. The Summary breaks out the testimony around the different discussion areas and lines of questioning the GOC had explored with the witnesses that day. It starts with the individual's testimony and then OPEGA went back to the prior interviews they had with the person and if there was additional information in the interview that was either inconsistent with what was heard in their testimony, or had additional detail in it that might be useful context around what members' heard in testimony, it was pulled into the Summary. Lastly from some of the documents that OPEGA had, if they thought it was relevant to the testimony that was heard, either in terms of being inconsistent with the testimony or corroborating that testimony, that was noted. The Summary is organized around the different discussion areas.

Sen. Burns said he knows the Summary will be valuable, but because the documents were not sent to him until yesterday, he has not had the opportunity to review the information.

Chair Cain asked Committee members if it would be helpful to go through the document with Director Ashcroft at the meeting, or did they want to take the document with them to review and then do the analysis. Sen. Craven thought it would be helpful to have Director Ashcroft summarize the information. Other members did not object.

Director Ashcroft briefed the GOC on the OPEGA Summary of Testimony, Interview and Documents. (A copy is attached to the Meeting Summary).

Sen. Johnson thinks the instant messaging between DHHS employees has been looked in to and it was found there is no way of getting any record of Blackberry instant messaging. He asked if there was a way to find out the volume of messages as opposed to the content of the messages and whether the suggestion that staff do not, and did not, engage in that is true or not. Director Ashcroft did not know, but could ask about that, however needed to get clear the difference between texting, instant messages, etc. Sen. Johnson said it is an area of stark disagreement and it would be helpful knowing whose account is accurate. Director Ashcroft will get that information.

Chair Kruger asked Director Ashcroft if there was anything in OPEGA's records from the Archives Office that talks about the records retention policy and the way they interfaced with DHHS or CDC that would conflict with anything the GOC heard from the CDC senior staff. Director Ashcroft said back when OPEGA

first started the process, State Archives had provided a lot of information to the GOC, including the Records Retention Schedules and the training power points available on the State Archive's website. OPEGA did not have detailed discussions with anyone about what occurred at the CDC training in April, 2013, but thinks the observation all the way around is that even the current records retention schedule and guidance may not speak to retaining working documents, or drafts, in the clearest and most straight forward way possible. Chair Kruger asked if there was anything in OPEGA's records of Archives giving OPEGA information that is in conflict with the information the GOC has. Director Ashcroft said no.

Sen. Johnson said it sounded like Director Ashcroft was saying that at the August 15, 2011 CDC Senior Management Team meeting mentioned in OPEGA's Summary there was an awareness that the practices in the Department could well not be in compliance. Although it does not quite say that in OPEGA's Summary, anyone involved at that point in a management team should have seen, particularly when the lack of appropriate awareness, policies or practices for records retention had been red flagged previously as an area of concern. It bothered him that the GOC did not hear from anyone that there was any such discussion about what needs to be kept. Director Ashcroft wanted to be clear that the meeting minutes she referred to is not something that OPEGA had during the course of their review, but was information provided subsequently. During OPEGA's review they did not explore to a great extent what Archives had been, or not been, telling CDC. OPEGA did ask CDC what they had for policies around record retention and got very little information back from them. She said the information on this meeting is new to OPEGA. Sen. Johnson said that sheds a very different light to the credibility of the supposed unawareness of whether retention should be asked about as an issue. He thinks it deserves follow-up now that is known.

Sen. Johnson referred to the shredding or destroying of documents and said someone made the document in question, that was supposedly in Ms. Leahy-Lind's files, disappear, and you have to wonder who told them to do that. He said there is a missing piece that obviously occurred, and somebody is not telling the whole story. Director Ashcroft said from her recollection of interviews OPEGA conducted with individuals other than those that came before the GOC, her recollection was Ms. Leahy-Lind's files really would have been accessible to anyone, so it is hard to say who might have taken the document.

Sen. Johnson referred to the Survey Monkey questions and results and said one cannot promise that information used to make a decision administratively as a matter of public record, will be kept confidential without the legal grounds for doing so. He said there are several ways that could have been remedied. The Survey Monkey results could have been destroyed to keep it confidential and then removed as being any part of the evaluation process. It would have still run afoul of not keeping public records they should, but would not have run afoul of using it to make a determination and decision regarding contracts and expenditure of money if it was not information they were prepared to make public to be subject to that review for that purpose. There seem to be several failings by people of poor judgment and he cannot understand someone in administration failing to understand the importance and the incorrectness of such actions. He doesn't know how that can be followed-up on, but it is an area of importance and people are mistaken or ill-informed to think that such actions were appropriate.

Sen. Burns said although he is intrigued by the information received, he thinks the purview of the Committee is to come to a consensus on whether errors were made, policies were not followed, or no policy was in place, and try to put forth recommendations that prevent this from happening again, but he was not clear where the GOC was trying to go with the information. If they find areas that they can put forth recommendations, or bills to improve those situations, that is what the GOC is about.

Sen. Katz agreed with Sen. Burns. He thinks Committee members will all come to the same general conclusion of what happened and does not want to invest anymore staff time in the investigation. The GOC does not have the ability to fine anybody, to fire anybody, or to charge anybody with anything and hopes the Committee will not task OPEGA with any further time consuming activity on the matter.

Chair Cain agreed with both Senators. She said she thinks the Committee has always had the goal of trying to see whether or not this was specific actions of individuals despite the fact that the proper policy was in place,

whether it was knowing, or not, about the policy, or whether or not policies need to change, or things need to change in CDC, DHHS, and potentially across State government. That is why the GOC had the individuals come before them, it was not so the Committee could be the ultimate arbiter of who said what, when, and to whom. It was always so the Committee could get a better understanding of the situation so it could be understood whether it was a stand-alone situation or something that was indicative of a larger problem. Chair Cain thinks the Committee has enough information to have that conversation, but thinks it's good that they are going to take the time to digest the information received. She said the Secretary of State has been in contact with her about ideas they have come up with based on things that came out about training and from conversations with the State Archives. The GOC has to pull all those pieces together so they can make recommendations to make sure it is not going to happen again from the policy perspective. Whether or not individuals are making bad decisions, is a whole separate thing, and is not within the GOC's purview.

Sen. Craven said the Committee has spent a lot of quality time talking about the review. The frustration from the beginning was the lack of transparency, the lack of items on the table that they could speak about, the stonewalling of legislators, and lack of transparency to the media. Those are the biggest problems that the government should not be involved in. When it's public money, and that much of it, it should go through an RFP, or an RFP-like process. She hopes that those issues are addressed so in the future other people are not going to be having to do something like this to make sure that government speaks to their legislators.

Sen. Johnson said he thinks the GOC's conversations should also include possible issues with knowing how to deal with HR matters, concerns raised to direct supervisors, etc. A difficulty for him is not having enough information to know the truth of people's statements where there are conflicting accounts. If you agree with one interpretation versus another, he thinks that would go a long ways towards knowing whether or not there was a culture of flouting policy, in addition to whether there was an appropriate policy and whether there was appropriate knowledge of policy. He hopes that if the Committee does not have sufficient information on that, they place greater emphasis on proceeding with examination of the culture in general, and that would arrive in one of the GOC's other reviews.

Director Ashcroft said the GOC had laid out at the beginning of the inquiry five purposes.

1. To what extent the GOC now feels that DHHS's proposed actions on OPEGA's recommendations, or other actions they have taken, are sufficient to address the things the GOC has heard.
2. To what extent there is a need for establishing statewide laws, guidance, policies, etc. particularly around situations where there are competing entities for funding.
3. What specifically the GOC may or may not now think needs to be addressed by the staff level working group the Attorney General's Office had suggested putting together to clarify some of the records retention stuff.
4. To what extent this might represent a situation where there was intent to frustrate FOAA, or actual violation of FOAA, that warranted thinking about putting something additional in the FOAA law in terms of penalties. Chief Deputy Pistner had spoken to the GOC about the grey areas in the FOAA law.
5. To what extent there are violations of expected ethics or accountability or transparency that would warrant additional policies or guidance. The supervisory piece the GOC spoke of may fall within this purpose.

Director Ashcroft will send the previous document the GOC had stating these purposes to the members by email, so they can keep this perspective while processing the testimony and other information in the OPEGA Summary.

Sen. Burns asked what the staff level working group referred to. Director Ashcroft said Brenda KIELTY, Ombudsman, Attorney General's Office, and Chief Deputy Pistner said the AG's Office was maybe willing to

spearhead a working group that included Ms. Kielty, the State Archives, maybe folks from OIT, and other individuals involved in records retention in the agencies to talk about what needed to be done with regard to the records retention policies themselves for further clarity and training. They stand ready to get a request from the GOC.

The GOC thanked the OPEGA staff for their work in preparing the Summary.

- Further Consideration of Possible GOC Actions on Issues and Recommendations

Not discussed.

• OPEGA's Report on Public Utilities Commission

- Consideration of Request for Further OPEGA Review of the PUC

Director Ashcroft said when the GOC was talking about what actions to take on OPEGA's Recommendations in the PUC Report, Rep. Boland had expressed that she felt there was additional work that she would like to see done around some issues with the PUC. Those issues seemed to dovetail somewhat with some of the issues that OPEGA raised in its Report around potential bias and the type of culture at the PUC. OPEGA has been working with Rep. Boland to condense or bring more focus to what additional piece of work she thought would be worthwhile to do.

Director Ashcroft said Rep. Boland had specific questions of how well the PUC addressed what was tasked to them in LD 131, a Resolve that required them to do some research and present a report to the Energy, Utilities and Technology (EUT) Committee and she had expressed to the GOC before that she did not feel that the PUC had met all of the requirements that were in that Resolve. Her questions are in regard to the issues she saw absent from that report and the questions around why these things were not addressed when it seemed that the Legislature had given directive that they were interested in getting information on these matters. The questions Rep. Boland would like to have answered regarding that study are:

- Why did the PUC report required by LD 131 not include low-cost, mid-cost and upper-cost estimates for EMP?
- Why is there no time schedule for mitigation steps?
- Why, instead of performing the assigned governmental function of independent research on the electric grid, the PUC has relied on the utilities to do research for them?
- Wouldn't this result in biased research?
- Does this reflect a cultural bias on the part of the PUC in favor of utilities and away from established experts?
- If the electric utilities were experts, wouldn't the protections have been accomplished long ago?

Rep. Boland feels the PUC is relying on the electric utilities, in particular Central Maine Power, to really provide this information as opposed to doing their own independent research or listening to other national experts and studies that have been done. Director Ashcroft said there is another study that the PUC recommended in its Report to the EUT Committee which they now have underway, and it appears to be at least a piece of what Rep. Boland thought should have occurred in the original Report. The issue is was there some cultural bias as to why the Resolve was not addressed in a more complete way.

Director Ashcroft said when OPEGA looked at those questions, they came out with a broader question that does follow the issue raised in OPEGA's Report. That question is:

- To what extent the PUC is independently assessing risks and costs associated with ensuring safe, reasonable and adequate electrical service? If not to a great extent, why?

OPEGA would imagine examining that question by reviewing selected cases that would seem to call for such an assessment.

Rep. Boland said when OPEGA's PUC Report was released the issue of whether there is a cultural bias came up and then this other study was released where it looked as though they were not giving the same attention to what the Legislature passed as they should have, and were not answering specific questions in the Resolve. She is requesting to look at whether there is a cultural problem that causes the PUC to lean more towards the utilities and to have them do their work for them. Although there was an on-line docket and there was a lot of outside contribution to the on-line docket, ultimately in the end what the PUC recommended was for the utilities to do a different study that was not exactly what was asked for in the legislation and put the utilities in charge of it. Rep. Boland talked about geomagnetic storm and the fact that the PUC's follow on study is not addressing the electromagnetic pulse concern as was required in the Resolve. She said is there a culture that causes the PUC to trust more in what utilities tell them rather than what other experts do, even though at the hearing the utilities were shown to really not know that much about the subject.

Chair Cain wanted to make sure the GOC was staying within the Committee's purview because the EUT Committee has been working on these topics, and she wants to make sure OPEGA isn't tasked with determining to what extent there is a threat of EMT. She understood that was not the request. The GOC would be trying to understand in the processes and functions of State government with regard to the PUC's work, like in OPEGA's PUC Report that discussed avenues for consumers to raise concerns and possible risks of actual and perceived bias.

Sen. Katz said he assumed LD 131 went to the EUT Committee and asked if the issues Rep. Boland was concerned about went back to the EUT Committee. He asked Sen. Youngblood, a member of the EUT Committee, if the matter had been brought to the Committee's attention. Rep. Boland said the review was brought to the EUT Committee and the PUC described what its report was and it was agreed that they were acknowledging that problem now, but in the EUT Committee there was not much discussion about the Report, or accepting it. They had also been given authority to report out legislation. Rep. Boland said when she testified before the EUT Committee about her concerns, she was dismissed as being out of order in criticizing the PUC report and that was the end of the Committee meeting. To her knowledge it was decided that was the end of things and the further study the PUC was recommending CMP do would just go forward. Rep. Boland said she knew there were some EUT Committee members who thought they should discuss it more, but they were told it was not going to be.

Sen. Youngblood did not recall all of the details regarding the issues raised by the Resolve Rep. Boland was referring to, but said if you don't have this kind of expertise you have to go buy reports. You can buy a report, or an "expert" to give you information of what you want to believe. The federal government and other states have not been able to come to grips with this. He said it is not an easy subject and he does not believe the PUC said they just didn't want to bother with that. Maine is one of the first States to do some of the things that are going on.

Rep. Cotta said in a simplistic term whether it be the EUT Committee, PUC, or whomever, the GOC has to be careful if they are pulling the horse or pushing the horse. If there is vulnerability there, then the people who maintain the grid that supplies and distributes should be able to articulate what their vulnerabilities are. The GOC was not trying to prove the physics of the electromagnetic disturbance, but ask the subject matter experts, those in that business, what do you see, how do you intend on mitigating it, is it true and then let them make the case.

Sen. Johnson agreed that the GOC needed to know what the specific nature of Rep. Boland's request for additional OPEGA work would be because concerns have been voiced that could be out of the GOC's jurisdiction, as well as the EUT Committee.

In response to Chair Cain's request that Rep. Boland bring to the GOC exactly what her request was so the Committee could properly assess it, Director Ashcroft said Rep. Boland had put forth a pretty specific request

that OPEGA took in on the regular request for review form. OPEGA has treated Rep. Boland's request as a new request and put it through their process. The results of that process are what the GOC has received for information regarding the request for an OPEGA review of this matter. Rep. Boland tried to hone down what it is she is asking for to be reviewed and that information is what is expressed in the document the GOC has under the column Possible Areas of Focus. Director Ashcroft said the questions listed there are not about whether we should be mitigating or not mitigating, it is more about the PUC's responsiveness to the Legislature. In particular, around this study as a potential example of what OPEGA said in its Report of there being perceived, or actual, bias tendencies towards the utilities that were regulated. The questions in the Audit Request, particularly the broader one about what role is the PUC playing as an independent assessor of what the risks are, not just related with this topic, but smart meters and other kinds of issues that need to be flushed out in terms of at what costs are we going to try to mitigate that, or do we expect the utilities to mitigate that. The question that OPEGA helped Rep. Boland arrive at is around whether the PUC is doing a good job independently assessing those risks and taking into consideration all the different factors about those risks as they are regulating the monopolies. It goes to the idea of whether there is just more comfort at the PUC in taking the information and word of the utilities than there is reaching out, doing their own research, or getting other experts. The question OPEGA thinks Rep. Boland is asking is whether, and how, the PUC chose to address their task in LD 131 may be systematic of an expression of the culture that seems to turn to the utilities again.

Chair Cain said the question she has is in regard to the bullet of "If the electric utilities were experts, wouldn't the protections have been accomplished long ago?" She assumed that means protections related to some kind of EMP, and said that question makes a substantive assumption about the science involved. Director Ashcroft agreed and said that question should be taken off.

Sen. Katz said in respect to the first series of questions, which revolve around LD 131, he understands the matter went back to the EUT Committee and before he would be comfortable in committing any OPEGA staff resources he would first like to inquire of the EUT Committee's view.

Rep. Boland said apart from the way it was looked at in the EUT Committee, the Legislature itself voted the Resolve into law.

Sen. Youngblood said he believes the EUT Committee, in general, was satisfied with PUC's response.

Motion: That the Government Oversight Committee moves to add the review of selected cases to assess the extent to which the PUC is independently assessing risks and costs associated with ensuring safe, reasonable and adequate electrical service, and if not to a great extent why, to OPEGA's Work Plan. (Motion by Rep. Davis, second by Rep. Kruger).

Discussion: Sen. Katz said Rep. Boland is making a case that the PUC did not appropriately follow the mandate of the law because of their over reliance on the industry that they are regulating and, therefore the GOC should go ahead with a review of cases to see whether the PUC is really independent or not. He was not comfortable moving ahead until the GOC had an opportunity to hear from the committee of jurisdiction about what they think about the report that came back to them before committing staff time on a review.

Chair Kruger asked Director Ashcroft for her assessment of what OPEGA's staff resources would be for the review. Director Ashcroft said taking a few selected cases and following them through, imagining that OPEGA would have to get into case files at the PUC and review staff work, etc., she thought it would take a couple of people and would be a medium size review, but could not give an estimate of hours.

Director Ashcroft said at the last GOC meeting, members talked about what was already on OPEGA's Work Plan and the priority of those topics once OPEGA has completed the MEIF Review. OPEGA has started the Corrections Health Care Follow-up Review and the GOC really wanted OPEGA to move on the DHHS Culture and the Child Care Licensing projects. She said those are currently the GOC's priorities and those are

all full reviews that would encompass all of OPEGA's staff resources. She said if the GOC wanted to keep those priorities it would be a ways out before OPEGA could get to this additional PUC review.

Sen. Youngblood asked why the logical next step wouldn't be to get the GOC members a copy of the PUC's Report that came back to the EUT Committee and then at the GOC's next meeting have someone from the PUC attend and go through their Report as they did the EUT Committee.

Director Ashcroft said Rep. Boland is concerned about the actual things that went on with PUC's Report. From the Director's perspective the potential value of OPEGA doing any more work here is around flushing out whether there is anything more to the issues about there possibly being perceived or actual bias, since the folks who interact with the PUC have at least a strong perception that there is a bias. She said the bias expressed itself as people being concerned that the PUC was relying on, or deferring to more readily, the utilities than other information that was available. Director Ashcroft sees the audit request as a new piece of work that would be following that chain to see if there is anything more that could be done at the PUC in terms of it being independent of the utilities in the way it approaches some of the decisions that would allay the idea of bias, or not, at the PUC. She said, as pointed out in OPEGA's Report, a key factor to the PUC avoiding bias is doing good independent analysis, which they told OPEGA they have their staff do. This would be a look to see if they are doing that and how the information the utility provides versus others that are providing information play into the analysis that they do.

Sen. Johnson said receiving the PUC's Report was not the best way for the GOC to proceed with the inquiry. He thinks it is more a matter of taking a look at where the information was sought for that Report, what the resources are within the PUC to pursue these matters, and how those decisions were made. He did not think the GOC could add much more to the audit request before they have at least a preliminary investigation by OPEGA. Sen. Johnson said this review should not be put ahead of the other topics the GOC prioritized at its last meeting.

Sen. Katz asked Director Ashcroft if she thought based upon the work the OPEGA staff had done, that it might be worthwhile for the GOC to pursue Rep. Boland's review request.

Director Ashcroft said at the public hearing on OPEGA's PUC Report the GOC heard that many who testified took OPEGA to task for not going any further than saying there was perceived bias and there is concern there is actual bias. She feels if that is a real concern it would show itself in the area of focus in Rep. Boland's Audit request.

Chair Cain said the Committee received a request from Sen. Katz to get some formal feedback from the EUT Committee. She said Rep. Davis's motion to Rep. Boland's PUC audit request is to put the topic on OPEGA's Work Plan and at this time the Committee is not ranking the review or amending their current priorities, but are voting to put it on the Work Plan for potential next steps.

Sen. Katz said he does not know if anyone else agrees with him that there is merit in seeking feedback from the committee of jurisdiction because if everybody agrees, perhaps they were pushing the horse instead pulling it. If the GOC is going to ask the Committee for their input, perhaps it would make more sense to get that first before they make a decision about whether to proceed with a review.

Rep. Davis agreed with Sen. Katz that the GOC should have that information, especially hearing what the Director said about the other priorities on OPEGA's Work Plan.

Rep. Boland said the way her criticisms of PUC's Report to the EUT Committee were dismissed basically as being inappropriate and the subject closed, she does not think the GOC could expect to get any different input from them. She said the GOC is a separate committee and they were looking at a piece of legislation that was passed unanimously in the House and 32 to 3 in the Senate, and yet there were significant pieces of the legislation that was not done. The matter seems to have just been dropped. Rep. Boland thinks it is

reasonable to ask if the PUC thinks it's okay to not respond to the request in a piece of law that was passed by the Legislature.

Sen. Johnson thinks there is a question of whether the PUC is biased in how it goes about independently, or not independently, studying matters put before it, and since that was not the question put before them in the legislation he was not sure the EUT Committee could lend any information to help the GOC in deciding whether this is an inquiry worth pursuing. He said the question in the review request is not whether the PUC reported what they should have, it's about whether they went about getting the answers to report that in an appropriately independent manner.

Chair Cain checked with Rep. Davis because he made the above Motion and he also seemed interested in receiving feedback from the EUT Committee and asked if that was replacing his Motion at this time or just a separate request.

Rep. Davis said no, he merely agreed with Sen. Katz that it would be good to have that information. After listening to the Committee's conversation, he does not think this matter should be tabled.

Sen. Craven wanted to make sure that if the Review was going to be added to OPEGA's Work Plan that it should be noted it will not be started prior to the GOC's previously stated review priorities. Chair Cain said it would not be given priority unless the GOC made it priority. It would just go on the Work Plan.

Rep. Peterson said in listening to the discussion he was still struggling, process wise, with how it would not be beneficial to hear back from the EUT Committee. He hears Rep. Boland's concerns around her perceived dismissal from the EUT Committee on certain pieces that were not carried through, but process wise, how would it not be beneficial to have some representation from the EUT Committee, and to get a copy of the PUC's Report, prior to investing resources to move forward with the request for further review of the PUC. He asked for other Committee members' thoughts regarding that before moving forward with the vote.

Chair Kruger thinks on one hand the overall question is a fair one, but is a little concerned with how OPEGA will measure whether another agency doing an assessment is independently assessing risks. That concerns him. The other thing that concerns him is the work load, and although he would love to see the answer to the question, he is reluctant to commit OPEGA resources at this time.

Sen. Craven said when you serve on a Committee and that Committee comes to a decision it's hurtful to just dismiss whatever it is they are requesting because they hear all the sides of the story.

Chair Cain said she is feeling reluctance to taking a vote on the pending Motion and is trying to understand what the GOC could do to get over that because she does not want to force a question the Committee is not ready to vote on as a Committee. She said there was nothing wrong with the Committee waiting to take a vote on the Motion, but she would want to know that the GOC is going to do something because they have been talking about the matter for several months and Chair Cain would not want to wait more than one more meeting to have a decision on the review request. She asked the GOC what they wanted to know in order to take the vote.

Sen. Craven said it would be easier for her to have clarity if they heard from some people on the EUT Committee and the PUC.

Rep. Cotta said the GOC can put the request at a lower priority if the Committee wants to vote on the pending Motion, and can still request the information to see if the additional information from the EUT Committee would elevate it and justify the expenditure of resources of OPEGA's time. The information from the Committee itself may enlighten and show a different direction, or illuminate information which the GOC is not familiar with, which may either cause that question to remain dormant or identify an area to which the GOC can better direct its questions.

Rep. Peterson said he did not want to table the vote, but he was not comfortable proceeding with investing resources in the pursuit of the review without at least hearing from the EUT Committee.

Chair Cain said what she heard from Rep. Cotta was that it does not matter whether the GOC votes on the motion at this meeting, but either way, he wants to receive the information from the EUT Committee. Rep. Cotta said that was fifty-fifty. He said the GOC can vote on the review request and put it on OPEGA's Work Plan without a high priority saying that they have interest in that area to vote it in, but to give it a low priority until they receive the additional information and adjust it from there.

Vote on the above Motion: Motion passed 7-4-1. (Voting against the Motion were Sen. Youngblood, Sen. Katz, Rep. Kruger and Rep. Peterson. Absent for the vote was Rep. Harvell).

The PUC Review request will be added to OPEGA's Work Plan.

Chair Cain said there was also the additional request to get feedback from the EUT Committee and asked that Director Ashcroft contact that Committee's analyst to get that information.

- Further Consideration of Possible GOC Actions on Issues and Recommendations

Not discussed.

• Further Consideration of Pending Requests for OPEGA Reviews

- Matters Related to Legislative Non-Partisan Staff

Chair Cain said Rep. Davis has requested an OPEGA Review regarding Matters Related to Legislative Non-Partisan Staff. It is a request about an investigation of communications between non-partisan staff and members of the committees and lawmakers they serve.

Director Ashcroft said as is sometimes the case when a request comes before the Committee, there is an example of a situation that lends one to question whether there is a wider, more systemic problem and that is how she sees Rep. Davis's request. In all of those instances, and in this instance, she would say the Committee does not typically find it in their purview to address individual personnel matters. The further question of whether the situation that prompted Rep. Davis's request is indicative of something larger that the GOC might take on as a systemic issue is where she is prepared to provide input.

Rep. Davis said his request came as the result of matter reported by an on-line news outlet following a FOAA. He felt the matter needed to be looked at. Since he had requested the review he has met with Director Ashcroft, Mr. Boulter and with several other people. Over the years since he has been in the Legislature, he has always felt that the non-partisan staff has to be exactly that, nothing more, nothing less. He always felt for the most part, that it was. He said the information that came to light upset him and he did not think what was going on was appropriate. However, looking into that, and having met with various people, he does think it is more of a personnel matter than it is an OPEGA review. Rep. Davis said should this continue, or should it raise its ugly head again, whoever is here will have the opportunity to deal with it again. Non-partisan means non-partisan period.

Chair Cain agreed that non-partisan staff should absolutely be non-partisan and everyone needs to have that comfort in order to work with the non-partisan staff.

Chair Cain thought what Rep. Davis was saying is that he does not want to take action on his review request at this time, but if another incident occurs, it will come back to be dealt with.

Rep. Davis said people coming to the Legislature, as it has been seen in the last few years, control of one party or another switches, but the non-partisan staff by in large stayed the same and that is the way it should

be. He said reading the articles on a news outlet about some of the things that were going on troubled him greatly and is why he brought the request for a review forward.

Sen. Katz wanted to clarify that Rep. Davis was not making a request that the GOC approve his request for a review of non-partisan staff at this time.

Rep. Davis said he made a request initially and then he met with different individuals.

Rep. Cotta said should the issue arise again in the future, it would establish a pattern and should be reviewed.

Sen. Burns agrees it is a personnel matter and also agrees with Rep. Davis's reason and rationale for bringing the request forward. He said he could not over emphasize how important it is for everybody to understand how important it is for non-partisan staff to be non-partisan and whatever it takes for that message to be re-conveyed, it should be done. Legislators have the right to expect, as does the public, that non-partisan staff is going to be completely unbiased and work with every legislator on an equal footing and produce the best product the Legislature can. Whatever can be done to re-enforce that is valuable. Sen. Burns said he would make a motion that the GOC not go forward with Rep. Davis's request for an OPEGA review of non-partisan staff.

Motion: That the Government Oversight Committee votes that no review at this time be done on Rep. Davis's request for an OPEGA review of non-partisan staff. (Motion by Sen. Burns, second by Sen. Carven.)

Sen. Craven said she has never worked with a more professional person than the person accused.

Sen. Burns asked for a point of order. He said he thought the Committee was going to stay out of personnel matters and deal with the request as a topic rather than an individual and that is what he would like to see it kept as.

Chair Cain said from the perspective of the request and since the Committee was discussing a motion she wanted to make sure they were within that zone. The motion was a decision not to proceed and she assumed that Sen. Craven was speaking in favor of not proceeding with the motion at this time and thinks, particularly in the way it was presented she did not think the Committee should rehash all of the specifics.

Sen. Craven said she was appreciative that Mr. Boulter's letter was taken seriously and agrees that every staff member should have a confidential review of anything that happens in their work.

Vote: Motion passed unanimous vote, 11-0-1.

REPORT FROM OPEGA DIRECTOR

No report.

NEXT GOC MEETING DATE

Chair Cain recommended that Committee members be polled for their availability to meet after the session ends. She asked that if Committee members knew specific times that they could not meet during the interim, to please forward that information to Etta.

ADJOURNMENT

Chair Cain adjourned the Government Oversight Committee meeting at 4:38 p.m.

Healthy Maine Partnerships' FY13 Contracts and Funding

OPEGA Summary of Testimony, Interviews and Documents

This summary is organized around the major lines of questioning in the GOC's inquiry of current and former MCDC representatives on March 14, 2104. Information from the testimony has been captured and is described as coming from the testimony. Information from the interviews with these individuals or others was also added if the interview information differed from testimony or provided additional details that might be useful context. Information taken from interviews is identified as such. Lastly, if there were documents OPEGA reviewed that supported, contradicted or provided additional context these were noted.

The beginning of each discussion section includes a box of information that is OPEGA's observations and notes from that discussion area. Details about what was actually included in testimony, interview or documents for that topic are given below the box.

Acronyms Used in the Summary

AF – Andrew Finch, Senior Program Manager, MCDC
CZ – Christine Zukas, Deputy Director, MCDC
DW – Debra Wigand, Director of Division of Population Health, MCDC
EL – Elaine Lovejoy, Administrative Assistant, MCDC
JM – John Martins, Director of Communications, DHHS
KW – Kevin Wells, General Counsel, DHHS
LS – Lisa Sockabasin, Director of Office of Health Equity, MCDC
SLL – Sharon Leahy-Lind, Former Director of Division of Local Public Health, MCDC
SP – Sheila Pinette, Director, MCDC
ST- Steve Turner, DHHS Contract Management

DL – District Liaison
DAFS – Department of Administrative and Financial Services
OIT – Office of Information Technology
PO – Project Officer
SPDI – Support and Promotion of Developing Infrastructure

Summary of Information Gathered from Testimony, Interviews, and Documents

Related to Areas of Questioning During GOC Inquiry

I. Rationale for Proceeding Without an RFP

How idea of restructuring to nine HMPs came about and when

OPEGA notes and observations relevant to the information provided for this discussion topic:

- DW, LS, SP and CZ all testified that the plan for restructuring by reducing to nine HMPs grew out of group discussions and group consensus, either the core group or SP's Senior Management Team (SMT), and gave varying but similar descriptions of what these discussions included that eventually led them to the idea of nine HMPs. This part of their testimonies was consistent with their prior interviews with OPEGA.
- DW, LS, SP and CZ agreed in their testimony that these discussions began in January 2012 although in their prior interviews several of them said those discussions started in the Spring (March/April) or not until the budget passed.
- The testimony given by DW, LS, SP and CZ as to how the idea for nine HMPs came about and who proposed it appears inconsistent with an email string and Word documents OPEGA reviewed which indicate the idea was proposed by SP and LS while they were meeting about another matter and that CZ and DW helped put the details of the plan together at SP's direction. Based on this, it does not appear that SLL and AF were involved in the early stages of this plan which is consistent with what they described in their interviews.

Details

- DW agreed in her testimony that discussion about the HMP restructuring began in January 2012 although in her interview she had indicated those discussions began in Spring 2012 (March/April). In interview, DW said their initial interest and the criteria they were using morphed over time. There was a strong focus on efficiency, effectiveness, reducing G&A, how can we get more for the money. They were talking about who was doing a good job and how did we know whether they were doing a good job. This led to discussions around it making more sense to fund 9 HMPs instead of all. DW said that herself, SLL, CZ, LS and AF were all part of these kinds of conversations.

- LS testified that the idea of reducing to one HMP for each public health district was something that came out of discussions of the core group and agreed it was in January. She testified she didn't know who specifically proposed the plan and that the core group was all a part of that decision-making. She testified that some of the discussion was really to streamline the funds in a more efficient manner, i.e. having only nine contracts was much more efficient than having 27 or 28. In her interview, she also said the discussion was around strategies for funding HMPs and getting more money out into the communities. At one point in her interview, she said these discussions started after the budget language was introduced/passed that effectively required them to continue to fund all 28 HMPs, but they had less funding to do so. At another point though, LS said the conversations started when there were first concerns that there would not be enough money to fund all 28.
- SP testified that she was instructed by the Commissioner in January 2012 to work with her senior management team (SMT) to come up with a plan for dealing with the funding cuts in the Governor's budget. She listed the titles that were part of her SMT (these included DW, SLL, LS and CZ plus two other directors). She testified the SMT got together and their original thought was to go to nine HMPs in order to help do work across the district and make it sustainable with MCDC's mission of trying to make a healthier Maine. She said there was a consensus within the group to move forward with this plan after talking about all different ways to do it to decrease duplication, enhance collaboration and etc. SP said she spoke with Commissioner about the idea and the Commissioner was comfortable with it. In her interview, she said she thought her SMT started discussing in April what new models they might use as they were worried that if they just divided the remaining funds evenly, then none of the HMPs would have enough funding to stay open. They came up with the idea of 9 leads.
- CZ testified that she thought in January they were discussing a number of scenarios on what could potentially come out of the Legislature for the funding of the Fund for Healthy Maine, i.e. what might be done if there was a 25% cut or a full cut. They looked at the nine district idea and felt that would get the money out to the communities at a greater level because there would not be the administrative overhead of 27 contracts.
- Email dated 1/19/12 from SP to the Commissioner indicates SP and LS came up with the idea of one HMP for each public health district during a meeting where they were trying to find resources for the tribes. SP refers to it as being like the consolidation in the fall (during the last RFP) in Hancock County where they only awarded money to one HMP to provide services for the county. Commissioner email to SP dated 1/20/12 states she is interested in the idea and wants some figures on what each HMP currently receives and what the consolidation would look like. Email from SP to CZ on 1/20/12 seeking help and indicating LS had already told CZ and that DW was aware. CZ email to DW on 1/20/12 asking her if she can pull together info Commissioner has asked for.
- Word document dated 1/26/12 appears to be result of this. This appears to be an official document (with MCDC logo) that describes the HMP initiative and proposes/recommends how to absorb funding cuts by going to one HMP per Public Health District plus the Tribal District.
- Word document dated 3/14/12 appears to be an official document (on MCDC letterhead) responding to request from Sen. Rosen as to what MCDC might be able to fund for HMPs under various funding level scenarios, those scenarios being 50% of funding level, 25% of funding level and 12.5% of funding. In introductory paragraph, MCDC recommends reducing from 28 HMPs to 9 and all the funding scenarios described in the document assume there would be nine HMPs.

Who made decision to continue with nine leads and 18 supporting without an RFP even after roles and responsibilities were changing and funding cuts were only about 1/3 (about \$2.8 million) of FY12 levels with most of it coming from cutting School Health Coordinators (about \$2.1 million)? Why continue? Were other alternatives were considered, i.e. continuing with 27 HMPs with across the board cuts, for FY13 and then RFPing in next year?

Details

OPEGA notes and observations relevant to the information provided for this discussion topic:

- SP testified that the decision to continue pursuing the nine leads was made conjointly within her SMT and approved by the Commissioner. DW, LS and CZ (who are part of the SMT) testified that they did not know who made the decision to move ahead with nine leads rather than reduce funding across the board and didn't recall any specific discussions about continuing with the nine or the possibility of cutting across the board instead.
 - SP testified that dividing the reduced funding evenly among the 27 HMPs would have only given each HMP \$60,000 - \$70,000 for FY13 and MCDC had determined an HMP needed \$120,000 to keep the doors open. OPEGA observes that dividing \$4.7 million (the amount of funding available for FY13 with School Health Coord cut) by 27 HMPs is \$174,074 each. If the School Health Coordinators had not been cut, there would have been \$2.6 million available for other HMP work and that amount divided by 27 is \$96,296 each.
-
- DW testified she did not know who made the decision to move to nine lead HMPs rather than reduce funding across the board. DW testified the RFP process would have taken six months to a year, and therefore there wasn't time between the passage of the budget in May and the contract start date of July 1 to conduct an RFP process.
 - AF said in his interview that it didn't seem to him there was any discussion of alternatives like cutting the funding for all HMPs instead of going to lead structure at this time.
 - LS testified that she did not remember why they decided to continue with contracting with fewer entities. She thought they did talk about scenarios, but could not recall what the scenarios were at the time. She did not recall any specific discussion about continuing with the plan to contract with nine even though the situation had changed.
 - SP testified that when the budget language was passed, decreasing funding by 33% and requiring all 27 HMPs to be funded, this was a new problem for MCDC that they hadn't anticipated. She discussed it with the Commissioner and made a decision to pull a stakeholder group together with her SMT to discuss how to absorb the funding cuts and still fund all HMPs. She said the stakeholder group agreed with them and helped them come up with a plan. She testified the problem was that splitting the money equally among the HMPs would have given them each just \$60,000 to \$70,000 to work with and that didn't seem enough to keep each one operational given the analysis MCDC had done that each needed approximately \$120,000 to have a Director, support staff and administrative cost. There was no way there was enough

resources to give everyone \$120,000 so MCDC asked the stakeholder group how they thought that should be dealt with. All but two of the group agreed that School Health Coordinators could be cut to get the extra \$2.1 million to support the program. Later in her testimony, SP said the decision to continue pursuing the 9 leads although 2/3rds of the funding was restored was made conjointly within the SMT and then she spoke with the Commissioner who approved for them to move forward.

- CZ testified that she really didn't know if there was any discussion around just cutting everyone across the board by a third. She said she didn't recall even considering that option, although they probably could have done that as there would have been time to do it. She said there were thinking about the lead HMP idea and the fact that it would require agencies to work collaboratively across the district rather than separately, and lower administrative costs.

Whether DAFS was contacted a second time after the plan changed from nine HMPs to 9 Lead and 18 supporting HMPs

OPEGA notes and observations relevant to the information provided for this discussion topic:

- The question CZ testified she asked Steve Turner (ST), when they were deciding to proceed with 9 leads, is a more specific and different question than whether or not could MCDC could go forward without an RFP given the lead vs supporting approach and the change in scope of responsibilities.
- At the time of the HMP lead selection process, ST headed up DHHS's internal contracting group which is a separate group from DAFS Purchases Division.

Details

- SP testified that CZ attempted to contact DAFS on a second occasion after their initial meeting, and when she was unable to get ahold of them, contacted Steve Turner (ST) in DHHS Contracting, who subsequently told her they could proceed with the plan to have 9 leads and 18 supporting agencies without an RFP.
- CZ testified that when the scope of service changed, where the leads would be taking on more responsibility in overseeing the subcontracts, she called DAFS, specifically Steve Turner, and asked him is it okay to require in a contract that the contractor subcontract with a specific entity, is that allowable because we're talking about leads and supporting, and he said yes. CZ said she contacted ST around June 14th; they were close to the end and there was no time for an RFP process. She wanted to be sure that they were still allowed to go forward without an RFP in adding this little piece which would change the scope for the leads and he said yes.
- The Committee clarified with CZ during testimony that the person she had contacted was ST and he is actually an employee of the DHHS Contracting Division, not DAFS. CZ agreed, saying she believed he had been at the initial meeting with DAFS. The Committee also clarified with CZ that her inquiry to ST was about whether the structure they were moving ahead with was okay from a contracting perspective not whether making such a dramatic change would warrant the need for an RFP process.

- In his interview, ST said he did not give MCDC any guidance on whether an RFP was needed – he would want to make sure DAFS approved that – and that MCDC just told he and his contracting group what was going to be done. OPEGA has not followed up on this with ST as to whether there was a subsequent inquiry to him from CZ.
- In her testimony, CZ said the subpoenaed records she provided included a June 14, 2012 email from her to SP indicating there was a phone call going on between she and ST around leads and supporting HMPs. OPEGA did not locate this email in the subpoenaed records. There are emails showing communications with ST in July 2012 seeking ST’s explanation of why MCDC did not have to do an RFP. The Commissioner was seeking this explanation as she was responding to questions after results had been announced. In that explanation, it seems ST is referencing what DAFS provided for guidance rather than any guidance or answers he had given.

II. Criteria and Scoring Methodology Changes

Who was involved in developing and deciding on the criteria to be used, why some of the initial criteria were not used, who decided not to use them and when were they dropped

OPEGA notes and observations relevant to the information provided for this discussion topic:

- OPEGA noted inconsistencies in the characterization of the involvement of some individuals in the criteria selection process. SLL testified she didn’t know why criteria were dropped and said her role ended after initial brainstorming, although others consistently characterized her as a participant or lead (along with AF) in the discussions throughout the criteria selection. Although LS and DW participated in the criteria selection discussions, they minimized their involvement in the selection.
- Information on why the initial criteria were not used was consistent, except for who the decision maker was. Some characterized CZ as being ultimately responsible, and SP said she had delegated responsibility to CZ who was tasked with overseeing the process. However, the staff consistently described it as a collaborative process. It seems there was a consensus from the group and not a specific person who made the decisions.
- Documentation OPEGA reviewed appears to corroborate testimony that DW, AF, and SLL met in early April 2012 to brainstorm criteria, and core group members met later that month to review final criteria. Documentation also included multiple drafts of the proposed criteria which showed changes being made to initial criteria up until April 24, 2012 which it seemed there was agreement on criteria and measures prior to any scores being assigned.
- Spreadsheets OPEGA reviewed (labeled exhibits D1 and D2 for the GOC inquiry) appear to be related to the iterative review of criteria and data for those criteria described by DW, AF and CZ. Based on dates associated with these spreadsheets, it appears that iterative review process was occurring up until at least May 30, 2012 if not beyond. Although there were descriptions in several testimonies that the reviews of criteria and data were done the “the group”, testimony by SLL and LS seemed to imply they were not part of this iterative review process.

Details

- DW testified there were a few people who came together to brainstorm ideas for how they might ensure the HMPs were doing efficient, effective work. DW said after the criteria brainstorming, someone (primarily AF) analyzed what it would take to produce this information, how reliable or strong it was, and whether that was practical within their timeframe. Then there were follow up conversations about what was found, whether it worked/made sense to use or not, and how they might proceed. When interviewed, DW said the core group was involved in this criteria discussion process, and SLL and AF proposed measures.
- DW testified she did not recall the details of the discussions about criteria and was not familiar with the different criteria, although she was involved. She said she could not remember anything about how the final criteria selection decisions were made or by whom, and she may or may not have been there for those conversations. DW testified she wouldn't characterize the meetings as hierarchical. In the end there may have been a consensus from the group, but she wasn't aware of a specific person who made the decisions. She said the criteria evolved over time; the purpose became more clear and changed/evolved over time when they had an actual budget.
- AF testified the original criteria were brainstormed in a meeting between himself, SLL, and DW, and then presented to the group as possible criteria and data sources to rate the effectiveness of the HMPs. When interviewed, AF described his role as supplying information for decision making; he looked for what data might be available to support the criteria they were discussing and the strengths and weaknesses of the data. He said he primarily proposed metrics.
- AF testified the criteria selection was an iterative development process; as MCDC moved forward criteria were proposed, and their suitability investigated. Those criteria were looked at and found to be suitable or unsuitable. Criteria were discarded or changed as the process moved along. When interviewed, AF said the dropped criteria had too many data problems to use. He said the core group decided on the final set of questions for the surveys and on the deployment process. There was general consensus. He said the final criteria were arrived at by the group although CZ would have had the final say. AF thought they had pretty full discussions around metrics and measures and felt the group was in consensus. He said the core group met probably 6 or more times over about two months to figure this out.
- SLL testified that she was invited to a meeting by LS and CZ where they asked AF, DW, and herself to identify criteria for how HMPs might be evaluated. The three of them brainstormed criteria for HMP selection and discussed possible measures/data. SLL's role ended and others went to see if data was available. When interviewed, SLL said they met a couple of times.
- SLL testified that AF drafted the PO and DL questions. She said CZ had tasked SLL and AF with doing this, but SLL had a lot of other responsibilities at the time. SLL did not recall if she signed off on them. When interviewed, SLL said CZ also worked with them on the questions, and AF refined the survey. She said she had no decision making authority, and CZ directed how the process would work for surveying the DLs and POs.
- SLL testified she didn't know why the first four criteria on Exhibit B were dropped, and those areas of expertise would fall in the Division of Population Health. When interviewed, SLL said they didn't know what data was available to measure outcomes and just brainstormed a bunch of ideas for things that

might represent leadership. Then they tried to think of some more quantitative criteria and thought of things like “efficiency”, the percent of general administrative expense in their budgets and how closely the HMP had adhered to the CDC contract guidelines for what staff salaries ought to be. SLL said it was left that AF was going to look at data available to see what measures they might have data for.

- LS testified she was involved in the meetings where the HMP selection criteria were discussed, but had very little knowledge of the program. She said she was not a part of the scoring, only part of the criteria selection. She was present at meetings but those with the expertise took the lead. She did not determine what the criteria or the weights ultimately were; she said she was there to consent, and took direction from DW, SLL, and AF since they had expertise. She said from her perspective, AF and SLL were in charge of pursuing the plan because they had the most knowledge. LS testified she didn’t know who reviewed and approved the changes to the criteria that occurred along the way.
- SP testified that she delegated responsibility to CZ for calling together a team to select criteria for choosing the HMPs. SP said she had never seen the criteria until June 6th, but CZ would periodically update her on the process of selecting the criteria. CZ’s testimony confirmed that she would periodically check in with SP to inform her of the progress in looking at criteria to measure the HMPs. CZ said it was more informing SP about what they were doing in looking at criteria to measure the HMPs, rather than changes made.
- CZ testified that SP asked her to pull the group together and from then on it was a collaborative process. She said her role was convening the group, looking at brainstorming, and getting/giving feedback on the criteria brought to the group by SLL and AF. She said they did some brainstorming initially. AF and SLL would come up with some recommendations, bring them to the larger group, then they would give feedback, they’d go back and rework, and from her understanding they were looking at whether there was data to support the measuring of the HMPs for this criteria. When interviewed, CZ said AF and SLL asked her to approve the Survey Monkey questions and she did so. She said they also discussed deployment of the survey but she doesn’t remember whose idea it was.
- CZ testified there was not an expectation that the criteria would remain the same from April through the final selection. It was a group where there was a lot of back and forth. There would be changes along the way until they finally agreed they had good criteria and data to support the final criteria. She had no indication anyone had a problem with continuing to change the criteria. She looked at it as an iterative process. There was some reworking based on whether there was data to support moving forward with that particular criteria. When interviewed, she said they all got to where they were comfortable with the criteria. She said it was not her role as Deputy Director to stamp an approval on something.
- OPEGA received meeting appointments related to the criteria development that indicate DW, AF, and SLL initially met to brainstorm criteria, and then the group reviewed the final criteria. These include: 4/5/12 with DW, SLL, and AF to discuss HMP criteria as assigned by CZ; and 4/23/12 with CZ, DW, LS, AF, and SLL re: HMP Criteria Final Review. In the absence of other appointments, it’s unclear who met or when in between these meetings or who was primarily involved. OPEGA also received multiple versions of the document showing the proposed criteria, possible measures for the criteria, and related notations/information, including one version dated 4/5/12 that appeared to be shared and commented on by DW, AF, and SLL from their brainstorming meeting. Other versions were dated 4/20/12 and 4/24/12. AF told OPEGA the 4/20/12 draft was sent to DW, SLL, CZ, and LS.
- Spreadsheets that OPEGA reviewed, and were labeled as exhibits D1 and D2 for the GOC inquiry, show various subsets of the original criteria from April 24th document mentioned above with data for each HMP

on each of those criteria. There are no rankings to any of the criteria (rankings were what were actually used as the scores in for the final results for all criteria except SPDI) yet assigned on these spreadsheets and SPDI was not included as a criteria. Dates associated with the properties on the electronic versions of these documents, related documents, and the data captured in them indicate D1 was likely being reviewed at some point between May 16 and May 28, 2012 and that D2 was likely being reviewed on May 30th or after.

Who was involved in the scoring and how

OPEGA notes and observations relevant to the information provided for this discussion topic:

- OPEGA noted inconsistencies in the characterization of the involvement of some individuals in the scoring process. Some individuals said SLL and AF were responsible for the scoring, while SLL said she had some involvement but CZ and AF determined the scores. CZ testified she was not involved with the scoring methodology, but when interviewed said was involved in the scoring process at a high level. AF took responsibility in his testimony for the scoring but described CZ, in both his testimony and interview, as having more understanding of the scoring than CZ implied she had. The group had characterized the criteria selection as a collaborative process, and consistently described they all met to review the final scoring.
- As noted in the OPEGA report, there is a discrepancy over who scored the Western District on the DL Survey as the other two DLs SLL mentioned as scoring it with her said they did not do so.
- Based on documents (spreadsheets) OPEGA reviewed, it is possible that AF's reference to the "scoring" he did was in fact the assignment of the rankings on each criteria as the rankings are what were totaled, and in some cases weighted, to arrive at an HMP's total score. As noted in the OPEGA report, the SPDI criteria score was the only one that was a Likert rating rather than a ranking.

Details

- DW testified that she was not involved in scoring. Exhibit E showed an email from AF to SL cc'ing DW on 7/20/12 discussing the SPDI scoring. DW testified she didn't know what this email was about, and AF had likely cc'd her because she was his supervisor and perhaps wanted to keep her in the loop.
- When interviewed, AF said he assigned the HMPs' scores using the data the core group had agreed upon, except for the survey scores which he aggregated from the ratings given by the POs and DLs. (Note, see additional details in the next section for AF's testimony on the scoring of SPDI and weighting.)
- When interviewed, SLL said she had some involvement in development of scoring, but no decision making authority. She said she also had some involvement in scoring for one criteria. She also said she was involved in a group effort with two other DLs to do the Western district DL survey because no DL was assigned at the time. SLL said she never saw the raw results of the surveys or was part of any discussions about those results. SLL said CZ worked with AF on that. SLL said that by the time she saw the scoring sheets there were concrete numbers filled in and that AF and CZ had determined these. When

interviewed, SLL said she did ask AF how he came up with the formula and he said it was the product of several data runs to see what were good measures. SLL also noted that she would not say AF was in charge, but instead doing what he was told, like she was also. SLL testified that throughout the scoring process they did not have contact with SP.

- When interviewed, SP said she was not involved in the scoring design, methodology, or score assignment. SP said she never saw anything to do with the scores until they were actually finalized. When interviewed, SP said the core group set up the scoring, and AF and SLL did the scoring.
- LS testified the scoring was led by SLL and AF.
- CZ testified she was involved with the criteria but not the scoring methodology. When interviewed, CZ said she was involved in the scoring process at a high level. Also when interviewed CZ said this was not her thing (scoring) and you have to rely on staff to do what they do – it’s their expertise.
- When interviewed, CZ said this was done over 2 -3 meetings around May/early June. They had a meeting with SP on June 6th and the first draft of the scoring was done by then. The group was looking at the criteria and scoring and whether it seemed reasonable – were they comfortable with it. The group agreed the final criteria seemed reasonable.

Why criterion called Support and Promotion of Developing Infrastructure was added, who scored it, at whose direction and when

OPEGA notes and observations relevant to the information provided for this discussion topic:

- SLL and AF each said that they deferred to the other when they worked together completing the SPDI ratings because the other had more knowledge and expertise.
- Testimony conflicted over responsible party for introducing SPDI. SLL testified that CZ instructed her to create the criterion with AF, while CZ said she did not do so and didn’t know where the idea came from. AF testified SLL told him they needed to add it. LS testified SLL and AF were responsible for bringing in SPDI.
- Testimony consistently reflected that SPDI was added late in the process just before the June 6th meeting.
- Only AF spoke to why the criterion was created. In his interview, he told OPEGA it was to allow an overall look from an administrative point of view at how well the support of public health infrastructure was done.
- Documentation OPEGA reviewed appeared to corroborate CZ’s testimony that she had to ask SLL and AF for a description of how they had come up with their SPDI ratings and this occurred after the FOAA was received.

Details

- AF testified that SPDI was not one of the original criteria and was added later in the process. He said SLL had come to him and said they needed to add another criterion, and that criterion would be SPDI. AF initially testified he did not add any criterion after the initial scoring, but then when questioned further about his previous statements to OPEGA, he agreed this additional criterion was added after the initial scoring and said whatever he told OPEGA previously would have been correct as it was more fresh in his memory at that time. When interviewed, AF said he had applied weightings before SPDI was used as a criterion. SPDI was something they added late in the process. It was a last minute add-in, which may have impacted confidence intervals, so he was forced to reweight. The weightings were on different criteria before SPDI was added. He agreed SPDI was a subjective criterion and ended up receiving a double weight.
- AF testified that the scores on the SPDI criterion were the result of discussions between SLL and himself on how particular HMPs supported the work of MCDC in developing a public health infrastructure at the community level across the State. They sat down and discussed coalition by coalition their impressions. In his interview, AF said he and SLL arrived at a ranking together. AF said he generally went with SLL's opinion because the infrastructure piece belongs to the OLPH. He didn't feel compelled to agree with SLL, but deferred to her. He said in his interview that the factors he and SLL were considering were similar to those in the DL survey questions about infrastructure support but the scores the DLs gave were not considered.
- When interviewed, AF said they created SPDI because, when the criteria were pulled together, it seemed like a piece was missing: an overall look (from an administrative point of view) at how well the support of public health infrastructure was done. He couldn't recall who had thought this hole existed, he thought CZ. AF said their intent had been to get both perspectives—that of the DLs on the ground as well as management experience.
- When interviewed, AF said SPDI was scored about 2-3 weeks before the June 14th Statewide Coordinating Council meeting when the leads were announced. AF said he thought SPDI was a criterion at the time of the June 6th meeting with SP.
- SLL testified that SPDI was not included in the initial criteria when the HMPs were scored. She said CZ told her and AF, or told her and instructed her to tell AF, to create the SPDI category at the very end, right before June 6th. The order was that they had to do it immediately. They were to rank the HMPs based on their experience. SLL said the scoring discussion was very informal and casual, that she and AF did the scoring themselves in about 20 or 30 minutes. SLL testified she relied on AF for his impression of the HMPs because he knew more of the answers to the questions than she did. She testified CZ told her to use the questions posed to the DLs and POs; however, they didn't stick to the questions because AF has a lot more knowledge. When interviewed, SLL noted it was getting close to June by the time she and AF had did the SPDI scoring.
- LS testified SLL and AF were responsible for bringing in the SPDI criterion. LS said SLL wanted the HMPs to be measured on the support they had for the local public health infrastructure, and she had a deep knowledge of the HMPs and how they supported the DLs. LS said SLL supported bringing in this criterion. It came in toward the end.
- SP testified SPDI was included in the spreadsheet presented to her on June 6th. She didn't realize it was a subjective criterion; she said "they" didn't tell her they were the ones giving those scores. They told her it was all about infrastructure so she thought it was objective.

- CZ testified it was not her decision to have the SPDI criterion that she did not direct SLL and AF to do that and did not know where that idea came from. She said she didn't know how they came up with their ratings and had to ask SLL and AF to describe how they came up with the ratings so they could document it either for the website or the FOIA request.
- Documentation OPEGA reviewed showed CZ requested a description of how SPDI was scored from SLL, AF, and also DW on 7/19/12. SLL emailed her a draft description of how SPDI was rated on 7/13/12. This document said the scores were determined by leadership in MCDC's HMP Program and the Division of Local Public Health based upon knowledge of coalition activities and progress in this area. The criteria were similar to those used for the rating of HMPs by the POs and DLs, specifically: collaborative partnership with MCDC, and ongoing support of new and developing public health infrastructure.

Why were weightings added and when, when tie breaker was added, who decided to add weightings and tie breaker and who decided what they were going to be

OPEGA notes and observations relevant to the information provided for this discussion topic:

- In his interviews, AF characterized the weighting changes as taking place over a longer period of time, starting before SPDI was added, while testimony indicated it took place between June 6th and June 13th after SPDI was already included as a criterion.
- In his testimony and interview, AF takes responsibility for doing the weighting but indicates he was discussing the meaningful difference (standard deviation) concerns with CZ as well as the weighting scenarios he was trying and the one he settled on and why. This is inconsistent with CZ's accounts in testimony and interview of her knowledge and involvement regarding the weighting and need for it.
- The account CZ gave in her interview about what transpired during the June 13th meeting with the Commissioner was inconsistent with her testimony. Her interview account characterizes them showing the scoring sheet with Bangor not the lead to the Commissioner as more intentional than it was described by SP and CZ in their testimonies, as well when she described it elsewhere as the reason for "version control". Her interview account implies that they had a discussion with the Commissioner before final changes were made to the scoring methodology and that the Commissioner approved them knowing that it would change the lead in Penquis District.
- DW indicated in her interview that she was present when the group discussed scores and weighting and using a tie-breaker and was involved in the final selection of HMP leads. However, other individuals testified that this discussion took place on June 6th, which was when DW was on vacation. During her testimony, DW also indicated she didn't remember conversations on selecting the criteria or weighting and couldn't say whether she knew what the final scoring was before her vacation.
- AF's description in his interview about why double weights were given to the PO survey and SPDI criteria conflicts with the explanation on the final scoring sheet MCDC publicly released as to why these criteria were double weighted.

- AF testified it was the group that made the decision to apply weightings. SP testified that staff suggested they double weight and she said to make sure it was uniformly applied. CZ testified she believed SP had given the directive to rework the methodology and apply it across the board.
- The June 8, 2012 date on the spreadsheet that was exhibit D3 in the GOC inquiry appears to corroborate testimony indicating that weighting was done (or at least the final weighting scenario settled on) after the June 6th meeting with SP.

Details

- DW testified that she didn't think weighting entered into the discussions about criteria when the criteria were being developed. DW said weighting scores was not an unusual practice.
- DW testified that she didn't remember conversations on selecting the criteria or weighting. Later in her testimony, she clarified that she did help with the development of the criteria and was at meetings where criteria and scoring were reviewed, but she wasn't involved in the ultimate selection of the criteria and weighting. She testified she was aware of having criteria that were analyzed but couldn't say whether she knew what the final scoring was at the time she went on vacation.
- DW said in her interview that she was on vacation for a piece of time in June (6/6 – 6/16), but was involved in the final selection of the HMP leads. She said they looked at "the spreadsheet" and at some point there was a decision to weight PO surveys more heavily than DLs, but DW couldn't remember how or when they got to that decision (whether it was before or after looking at the outliers) and thought perhaps CZ may have been more the driver on that. She said she didn't recall any score changing at the meeting she was at, but indicated she was present when the group discussed scores and weighting. She recalled at some point they had a tie and had to think about how to break that tie. She also recalled there was a close scoring in the Bangor district, but wasn't sure if it had been a tie. She remembered there being some discussion of that.
- AF testified that he said he brought his concerns that there were not statistically significant differences among some of the districts to CZ. He did not recall whether it was just her or the whole group that was shared with. He said he assumed CZ was also concerned about it since they ended up using the weighted scores. In his interview, AF said he was frustrated at one point in a conversation with CZ about the standard deviations he had calculated on scores within each district, specifically on the Survey Monkey responses. He thought it was concerning the standard deviations showed there was not much meaningful difference in the scores and she didn't think it was relevant.
- AF testified that weighting scenarios were applied in order to accentuate the differences of the final scores, to make them statistically significant. He said the group made the decision to apply the weighting scenarios. He did the weighting. He presented the different weighting scenarios to CZ and the weighting scenario he had settled on and the rationale for settling on it.
- When interviewed, AF said he started playing with the weights in early June. He said he finished the final scores and remembered meeting with CZ (just the two of them) to explain what he did to get the meaningful differences he came up with. He remembered giving CZ a copy of the results. When asked if on that document Bangor was the lead, AF said he don't know of any instances in which any other HMP

other than Bangor was the lead. He thought he finished the weighting, went over it with CZ and then they met with SP.

- When interviewed, AF said he thought he was at a meeting June 6th with SP. He said nothing was discussed around changing tools or results between then and the meeting with the Commissioner.
- In his interview, AF said there was resistance to the idea of weighting, especially from CZ. But AF emphasized there needed to be a meaningful difference by district and in the end this meant they had to weight. They didn't have time to discuss leveling the criteria so they were on the same scale, or otherwise explore how to aggregate the scales in another way. AF maintained it wasn't an exercise to achieve a specific outcome, but to achieve a meaningful outcome. He said he never felt pressure to achieve a certain outcome or to weight a certain area.
- AF testified that he tried different weighting scenarios, and discarded those which changed the final outcome; this was the criterion he used to determine whether a weighting scenario was appropriate or not—if it changed the lead. That is why the weighting ended up on the criteria it did. He said that weighting scenario did not change the outcome. The GOC further questioned AF about a spreadsheet labeled exhibit D3 which included what appeared to be a comparison of un-weighted scores with scores that had the final weighting on them. The GOC pointed out that it appeared, in going from un-weighted scores to the final weighting scenario, the lead in Penquis District changed from Katahdin Shared Services to Bangor Health and Welfare. AF said he could not speak to whether the results had changed for Bangor before and after the weighting unless he was able to further look at the spreadsheet, but that this appeared to be the case. He acknowledged that though the weighting was intended to accentuate differences, it appeared to have changed some outcomes as well.
- When interviewed, AF said once all of the scores were assigned he calculated the final total score for each HMP. His first pass was a straight aggregate, but then he wanted to know how meaningful the differences were, so he took a standard deviation. If the scores for the individual HMPs didn't fall outside of the standard deviation he thought that was concerning. When he took this analysis to the group there were two districts where all the scores fell within the standard deviation (note this is an indication there was not a statistically significant difference in the scores). It was decided that they should apply weights to some criteria in order to achieve an acceptable variation. AF said he played with different weighting scenarios to see if he could get better variation and most did not help. AF said at least once when he was playing with the weightings he brought the scores back to the group for feedback, but he didn't recall what the group did with the information and whether any of the leads changed afterward for any of the districts. AF said it was difficult to find a weighting scheme that had meaningful differences within each district. If they changed one category, other districts may shift so there was no meaningful difference. AF said as the different elements were weighted, sometimes a high score would shift, but he also said he didn't think any of the weighting scenarios changed who was in the lead except perhaps in Penquis because they were still really close. He finally hit one scenario that actually improved the variation, gave the greatest variation. It was not because certain categories were more important than others, although he thought these categories were more meaningful. It was a numbers game. The final weighting scenario double weighted two criteria: the PO surveys and SPDI.
- When interviewed, AF said even after his weightings were applied there was still one tie remaining and mentioned that the tie in Central District was difficult. AF said he introduced a new criterion for a tie breaker regarding how many milestones the HMPs had completed on schedule for tobacco and obesity. This criterion broke the tie and the group as a whole agreed with the finished methodology.

- AF testified he assumed CZ was keeping SP updated about their progress, and he didn't recall being in any meetings with SP relating to the changing of the scoring or criteria along the way, including the weighting and the tie breaker. AF testified he believed the weights were added before the meeting with the Director, but he could not recall definitively. In his interview, AF said SP reviewed the scores once they were finalized and that Bangor was the lead agency in Penquis at that time. They had "final-final" scores around the end of June or 1st weeks of July. AF wasn't aware of and hadn't participated in any discussions with Commissioner Mayhew about the final results.
- SLL testified that the initial scoring of the criteria did not include weighting.
- SP testified that the staff suggested they double weight and she said whatever you do make sure it's consistent and uniform throughout because there were other agencies aside from those in Penquis that were separated by one point.
- CZ testified she believed the directive to change the scoring methodology between June 6 and 13 came from SP. She said there was a belief that the methodology must have been flawed to have come out with results that were so unexpected, i.e. Bangor and Healthy Androscoggin not being leads.
- CZ testified she was not involved in the scoring methodology or weighting. She could not describe the weighting or how it changed, she did not decide that. She testified that once they had developed the criteria, SLL and AF "ran with it" and created the scoring methodology and matrices. She said she was not involved in that at all. CZ said she did not ask about the scoring methodology and how the results were being arrived at, particularly if they changed. She did not ask why Bangor changed to become the lead. She understood that the direction was given for the methodology to be reworked and applied across the board but didn't ask how or why. She thought it was described as the weights changed, but said she could not tell the Committee exactly how it changed. CZ said she believed SP had given this direction to rework the methodology. When asked if she was tuned into the addition of the weighting, CZ testified "not really." She said she knew changes were being made to the scoring but she was not intimately involved. She said she did not totally understand it and trusted the staff who were working on it to do it in a way that made sense. She said she didn't develop the formula and couldn't explain it.
- When interviewed, CZ said she first saw the scores and results just before the meeting with SP on June 6th. AF and SLL brought the first round of ranking results to that meeting with SP. There were two pieces of concern to SLL and AF on the initial results. CZ said SLL pointed out that Bangor was not in the lead in its district and neither was Healthy Androscoggin in its district. SLL wanted to be sure that SP knew this. CZ said that SLL said that Bangor has to be the lead and that SP agreed and added that Bangor's Director (Shawn Yardley) was head of the Statewide Coordinating Council and it wouldn't be appropriate, wouldn't look good, for them not to be the lead. CZ said SLL was fine with Healthy Androscoggin not being the lead.
- During the interview, CZ said as a result of this meeting, SP set up a meeting with the Commissioner to discuss results. CZ said they met on June 13th and that the Commissioner, SP, SLL, LS, possibly Nick Adolphsen, and herself attended the meeting. CZ said at that meeting, the group shared with the Commissioner the spreadsheet showing that Bangor was not the lead agency in its district because SP had brought that draft spreadsheet with her. CZ said that after some discussion, the Commissioner approved changing the methodology or criteria so that Bangor would come out on top. SLL and AF were directed to adjust the criteria to make that happen but there was no specific directive on what should be changed. CZ said she does not know how the formula was changed – it may have been a weighting thing. She said any new criteria was applied to all the HMPs. CZ said there was no dissention expressed at the meeting

regarding the directive to adjust the methodology as it was agreed that Bangor needed to be the lead. CZ doesn't remember exactly who issued the directive or whether it was more of a group decision.

- A spreadsheet OPEGA reviewed, the exhibit labeled D3 for the GOC inquiry, had the date of June 8, 2012 in its footer. The criteria in this spreadsheet are the final five criteria used, including SPDI, plus the tie breaker criteria. Rankings (scores) have been given to each criteria and final weighting has been added to derive the final total scores. There are also columns comparing the total un-weighted score to the weighted score and the standard deviations related to each of those scenarios.
- The final scoring sheet MCDC publicly released states that the PO survey and SPDI categories were weighted because they were deemed the most significant. Further, the document states, "These areas were selected because of Maine CDC's investment in developing the public health infrastructure at the district level. In addition, because the project officers have worked closely with the HMPs for a significant number of years and are very familiar with their respective strengths and weaknesses their input was considered key."

Reasoning for use of tiebreaker

OPEGA notes and observations relevant to the information provided for this discussion topic:

- Testimony from AF and CZ described AF as responsible for determining the tie breaker. AF said he suggested it to the group, but neither AF nor CZ provided information on who was responsible for reviewing and approving the tie breaker. SLL and CZ both said they were not involved in this decision.
- SLL said she had concerns that the tie breaker was an intentional manipulation of the outcome in the Central District based on comments made by LS about one of the HMP directors in Central District. LS implied she made no such comments.

Details

- SLL testified she had great concerns about the tie breaker because of the outcome, but she did not know why that criterion was chosen for use. SLL said she was not consulted on the additions to the criteria or the tie breaker. SLL testified that following the passage of the budget, LS told her that Joan Joy, the HMP Director for Healthy Communities of the Capital Area had "gotten to" Sen. Richard Rosen and had him insert that language requiring 27 HMPs. SLL said LS told her, regarding Ms. Joy, "she'll pay for that," and that HMP ultimately lost on the tie breaker. LS testified she had no knowledge of Ms. Joy being a problem, and knew little about the HMPs.
- AF testified he suggested to the group they use KIT data (average completion of tobacco and pan milestones) to break the tie in the Central district. That was decided along the way because it wasn't anticipated there would be a tie.
- CZ testified she was not involved in the discussion or the decision to have a tiebreaker. She understood that happened, but it wasn't part of her discussion or decision. She believed AF determined this.

III. Potential Intentional Manipulation and Missing Document

Whether, when, why and at whose direction there were intentional steps taken to make Bangor Region Public Health and Welfare the Lead in Penquis District

OPEGA notes and observations relevant to the information provided for this discussion topic:

- All testimony was in agreement that at one time Bangor was not the leading scorer, and only became the leading scorer after the scoring was adjusted.
- There are inconsistencies in the accounts of the reasons for why scoring methodology was adjusted and whether SP indicated that Bangor should be the lead in Penquis. CZ testified that SP had given the direction to revise the scoring methodology and see what leads shook out from that after there was discussion about the methodology and the Chair of the Statewide Coordinating Council. In her interview, CZ said it was SLL that pointed out Bangor was not the lead and that they needed to be, and SP agreed with her because it wouldn't look good if they weren't given Shawn Yardley's role on the Statewide Coordinating Council. SLL testified that it was SP who explained to her in a subsequent meeting that they had made Bangor the lead because they had to, it was a political decision. AF said he did not take any comments about Bangor as a directive or change anything as a result. SP denied instructing the staff that Bangor should be the lead, and said the staff felt it would be proper to rescore and then weight the results in an effort to increase variation so they would clearly know who was the appropriate lead, due to the close results. In their testimonies, AF and CZ corroborated this reasoning for the change.

Details

- When interviewed, DW said she remembered close scoring in the Penquis district and discussion around this. She testified that she could not recall scoring being changed which moved Bangor from second to first in the district, or being a part of a meeting where this was discussed. DW testified that she can't imagine there would have been any conversations about including criteria that might or might not benefit particular HMPs across the State.
- AF testified there was absolutely not a conversation about adding or subtracting certain criteria to impact how certain HMPs might do in the scoring process. He said the criteria were not manipulated with the intention of creating a certain outcome, nor selected by prejudging what the result would be. When interviewed, AF said that weightings only accentuated the differences between HMPs, but did not change the results. The weighting were not intended to change results—just to clarify results.
- AF testified there was discussion at the meeting with Dr. Pinette regarding Director Shawn Yardley of Bangor being the co-chair of the SCC, that it would be embarrassing if Bangor didn't win that district. But he did not take it as a directive, it was more of a comment, and he didn't change anything as a result. When interviewed, AF said there was no discussion of Bangor needing to be the lead in his presence, but AF he said he recalled it was assumed that Bangor would be the top performer.

- SLL testified there was a version of the scoring sheet at the June 6th meeting (with AF, LS, CZ, and SP) which showed Bangor was not the lead in the Penquis district. Copies of the spreadsheet were distributed. SLL said she commented at the meeting that Shawn Yardley, the Director of Bangor Health and Human Services and the Chair of the Statewide Coordinating Council, would be disappointed. She did not recall Dr. Pinette or anyone else making any comments about this. At the next meeting she attended with the Director and the same other individuals, approximately June 12 or 13, the scoring sheet had changed and Bangor was in the lead. She said she didn't know if any criteria, including SPDI, had been added to the new version of the scoring sheet. SLL asked at the meeting how Bangor Public Health became the lead, and said SP said that was a political decision, SY has been a wonderful partner and is chair of the SCC, so we had to give it to them.
- When interviewed, SLL said she asked how the numbers in the spreadsheets she saw were derived and CZ and AF explained the formulas behind them. She said she wasn't sure how some of the final rankings happened.
- SLL testified that in a meeting with SP in September 2012, when she was telling SP for the second time that she had been instructed to destroy documents, SLL said she told SP that she felt the data had been manipulated, and she believed CZ had instructed AF to "do things he shouldn't have done" with respect to the outcome of the leads.
- LS testified she did not specifically recall what was said at the meeting with SP but believes she was at the June 6th meeting. She was at the meetings when Bangor was discussed, but didn't remember the details of the conversation. LS said SLL was the only person who expressed the need for Bangor to become the lead because of relationships with anyone in particular in the Bangor area, that SLL was very nervous that Bangor was not getting the lead contract, and that SLL expressed this to LS in a phone conversation, not in a meeting. LS said SLL's testimony was not the same as what SLL had described to her in that call. LS said when AF gave his testimony, LS had some recollection that SP had possibly said something, but could not definitely say that was what SP said.
- When interviewed, LS said she recalled that there were two outcomes that were a "surprise", those being the scores for Healthy Androscoggin and the HMP for the City of Bangor, neither of which scored at the top for their districts.
- SP testified she recalled at the June 6th meeting that Bangor was not in the lead. She heard others discussing it, talking about how close the scores were, but her focus was on Healthy Androscoggin because they had scored so low. That immediately caught her attention. Bangor was in second. SP said she did not recall making any of the comments recounted in others' testimony. She remembers others talking, laughing and joking about it but she tried to remain neutral and professional. She said her staff were the ones who told her Shawn Yardley was in second place (she noted he doesn't direct an HMP, but she knew he was from Bangor). She said she didn't recall ever saying that Bangor had to be the lead because Shawn Yardley was a good partner.
- SP testified that at the June 6th meeting they discussed that some of the agencies had close scores, within a point or two, so she asked them whether the results were accurate. The staff said there was some subjectivity in the scoring, so they thought it was not statistically significant. She said the staff felt it would be proper to rescore and then weight them in an effort to increase variation so they would clearly know who was the appropriate lead. She said she wanted it to be as objective as possible, and whatever was done be consistent across the agencies. She said she didn't tell her staff that Bangor had to be the lead.

- SP testified that MCDC did not specifically select Bangor as the lead. She believed the weighting resulted in no other lead changes. They discussed and agreed on the weighting as a group and came to a consensus, and AF made the adjustments. She said her understanding is that AF weighted the scores of the POs and the infrastructure.
- SP testified that they were sailing through uncharted waters and didn't know a process. They weren't sure if what they were doing was appropriate, so they were trying to establish the most objective and fair criteria. She said her staff was very thoughtful about trying to do that, and brought a concern to her and suggested this was a way to increase variation of the numbers so that it was more statistically significant. She said that's how it was presented to her. In her interview, SP told OPEGA that the low scores of Healthy Androscoggin and Bangor caused her to ask the group questions as to whether these results seemed appropriate, and as a result they discussed how to create more variation in the results.
- CZ agreed in her testimony that there was a next to final spreadsheet where Bangor was not the winner. She said she first saw the scoring matrix where Bangor was not the winner on June 6 in a meeting with LS, SLL and AF. CZ said SLL expressed concern about Bangor not being the lead. CZ said they met with SP immediately after or later in the day with that score sheet. CZ said she was not familiar with or involved with the HMPs, so it was of concern to her when her Sr. Manager (SLL) came to her with grave concern about Bangor not being the lead, and she felt it was necessary to take it to SP. She said this was the first time she was ever involved with the HMPs and didn't know the players. CZ said there was discussion about the methodology and Shawn Yardley and his being the Co-chair of the Statewide Coordinating Council, and concern that the methodology must have been flawed to come out with results so unexpected. She said SP gave instruction to AF and SLL to revise the methodology and apply it across the board to all HMPs and see what leads shook out from that process. CZ agreed that someone said something to the effect that Shawn Yardley was a good partner and the scoring needed to be changed. She said she did not remember who, but it was not herself. There was concern about Bangor not being the lead. When asked if Bangor became the winner after the change in rules and double weight given to SPDI, CZ said yes as she understood it. CZ testified she did not recall discussion of the standard deviation being too small and the need to make it bigger, and stated that was a "foreign language" to her, so it would not have meant anything to her.
- In her interview, CZ said she first saw the scores and results just before the meeting with SP on June 6th. AF and SLL brought the first round of ranking results to that meeting with SP and there were two pieces of concern to SLL and AF on the initial results. CZ said SLL pointed out that Bangor was not in the lead in its district and neither was Healthy Androscoggin in its district. SLL wanted to be sure that SP knew this. CZ said that SLL said that Bangor has to be the lead and that SP agreed and added that Bangor's Director (Shawn Yardley) was head of the Statewide Coordinating Council and it wouldn't be appropriate, wouldn't look good, for them not to be the lead. CZ said SLL was fine with Healthy Androscoggin not being the lead.
- During CZ's interview, when asked if she thought the FY13 HMP contracting processes she was involved in treated all HMPs fairly, she said no due to the re-scoring of Bangor to become a lead.

What happened to the missing document

OPEGA notes and observations relevant to the information provided for this discussion topic:

- MCDC management discarded copies of the document showing a different outcome in the Penquis district in what they described as a version control effort.
- AF testified that he has no such document and it's possible the electronic version he worked with was overwritten.

Details

- AF testified it was possible such a document existed (with Bangor in the lead), but he couldn't say for certain because in the versions of the scoring he created, he wasn't paying attention to who was the lead, but rather, whether they had good data. AF also testified that it was his belief such a sheet existed, but that sheet was a previous version containing criteria that was not ultimately used as the final version. He has no such document and believes it's possible that as criteria were added and subtracted it was overwritten.
- SP testified a meeting with the Commissioner took place on June 13th with LS, CZ, and SLL after the decision to weight had taken place. She still had a copy of the June 6th version of the document in her notebook showing Bangor was not the lead in the Penquis District, so at that point the Commissioner was made aware of the weighting and the process by which the scoring had been changed. CZ provided the document to the Commissioner at that meeting and talked about version control. The difference between the two versions was that (in the later version) Bangor was in the lead, and the scores between the HMPs varied more. SP said following the meeting, CZ took her version of the document.
- CZ testified that she either shredded or recycled the document SP had given her at that meeting with the Commissioner.
- When interviewed, SP said CZ said we should get rid of the old document and not have it laying around so there was no confusion about what the final document really was. No one said anything about the destruction of documents being problematic. In the end, SP said MM agreed with the changes that had been made and understood the reasoning behind it.
- SLL testified there was a version of the scoring sheet missing from her files, which were requested via FOAA, where she had circled the lead in Penquis and made some notes. It was not produced in response to her FOAA.

IV. Limited Documentation/Working Documents Not Retained

Whether and when there were discussions generally about limiting documentation and not retaining working documents during the HMP selection process and whether doing so was common practice at MCDC

OPEGA notes and observations relevant to the information provided for this discussion topic:

- SLL testimony and interview and AF interview are consistent with each other on whether there was specific intent and direction to limit documentation on the HMP lead selection process, but their accounts are inconsistent with LS testimony.
- During the review, OPEGA noted that there were very few emails from the time period during the HMP lead selection process, and none after the initial round of criteria brainstormed between DW, SLL and AF that had any documents attached. Documents reviewed by the core group generally do not appear to have been shared via email.
- None of those testifying described any specific discussion among members of the core group generally about what documentation would or would not be kept on the HMP lead selection process. SP and CZ testified there was some discussion of version control in the meeting with the Commissioner on June 13th.
- SLL in her testimony and interview, and AF in his interview, indicated that what occurred with documentation and communication on the HMP selection process was different than what normally occurred at MCDC.
- In their testimonies, LS and CZ both indicated it was common practice at MCDC to only keep current or final versions of documents. CZ also testified that there was no expectation they needed to create documentation to describe their process, they don't normally do that.

Details

- DW testified she did not recall a specific conversation about what should or shouldn't be tracked or kept for documentation during the HMP selection process, or a specific conversation where someone was assigned responsibility for tracking documents.
- AF testified there was not a central repository for the working documents for the HMP selection process. Each person that contributed to the process, if they contributed documents, kept those documents on their personal computers and drives.
- In his interview, AF said there was very little email traffic because of the environment – there was a perception that one or more of the HMPs had become aware that MCDC was thinking about going to nine HMPs and were lobbying legislators. The development of the metrics (some of which had been previously considered before it became an exercise in selecting lead agencies) took place in a paranoia environment. He said there was strict direction that this was confidential and not for public discussion, that they were keeping things tight and information was not to be shared.

- SLL testified that, as was typical for meetings, she, DW, and AF took notes and kept minutes at the beginning of their criteria brainstorming process, but then that stopped. She recalled someone telling her there was no need to take minutes of this process but SLL didn't recall whether she was specifically asked to stop taking minutes. SLL said communication was done in person or by phone, rather than via email, about the HMP selection process. SLL said CZ would tell her what to email to CZ and there was no email around this particular process.
- SLL testified that when they initially implemented the surveys with POs and DLs, as OPEGA had reported, they read them an introduction to the survey stating that the information collection was confidential and would not be shared with anyone. It was just a way to sort of assess the performance of the HMPs and they would not be identified as having provided this data. SLL said CZ made the decision to tell the POs and DLs it would remain confidential. SLL said when the process was over and it was known that the data was going to be shared, posted on the MCDC website, the DLs were extremely upset and she arranged a phone call meeting with CZ and the DLs.
- In her interview, SLL said it was made very clear that there was to be no paper trail for this entire effort. SLL never got electronic documents and only ever got hard copies occasionally, and then they were always taken back except for at one meeting when they were discussing final scores and she was able to keep 2 or 3 documents in her possession. SLL said she would get pulled into meetings unscheduled and she had to read the introduction to the survey participants (DLs) over the phone because she was told that nothing was to be done in email. SLL said her prior experience with documentation and conduct in general at MCDC was entirely different than this. There was usually great focus on creating a paper trail, people normally communicated openly via email, got meeting notices in advance and stayed involved throughout a process.
- LS testified she did not agree with the characterization that there was an air of secrecy or intentional effort to limit documentation. She said there were conversations about the confidentiality of the DL and PO's survey responses, but no directive was ever given, nor did she give one, to limit emails. LS did not recall any discussion of document retention for this process, but she said the practice was generally only to keep the most recent version, so she recycled her earlier versions. It was her understanding that normal business was to keep the final document or current version being worked on and she did not see a problem with that. They worked from hard copies at the HMP selection meetings, not on computers. LS only kept the hard copy if it was a final version. In her interview, LS remembered that there were lots of papers and spreadsheets and said she kept advocating for keeping things electronic.
- SP testified that she was not aware it was commonplace to only keep final versions until it was explained to her when she first found out about the directive to destroy documents. SP testified that she was not part of any conversation about limiting email communication on the HMP process. She was, however, present at a June 13th meeting with the Commissioner when final results were being discussed and, because SP had the prior version of the scoring sheet, the Commissioner was made aware of the changes made to the scoring methodology. SP said that during that meeting CZ talked about version control as they went through the process. In her interview, SP said that, when CZ recognized that SP was looking at the old sheet, she told SP, in front of the Commissioner, that SP should not have that previous spreadsheet. She also said in her interview that no one at the meeting said anything about the destruction of documents being problematic.

- CZ testified it was never an expectation that they create a track record or have a description of the process. She said they don't normally create documents to describe the processes they go through. She said in hindsight, she believed a change to the methodology that took place that affected the outcome should have been a matter of public record, but at the time she did not. She didn't feel she was doing anything improper when she gave the instruction to shred documents. CZ said the final document described how the winners and losers were determined. The scores in the grid would show the winners and losers, how it was determined. CZ said it was her practice, and that of many others in DHHS and MCDC, to only keep the final version of documents. To avoid confusion she felt earlier versions of the document should be destroyed. She said she no longer throws anything away and her email archives are very large.

Whether MCDC otherwise engages in efforts to avoid FOAA of information

OPEGA notes and observations relevant to the information provided for this discussion topic:

- SLL had initially called text messaging instant messaging and clarified that after everyone's testimony was concluded; not sure whether the other individuals also meant text messaging or instant messaging.
- SLL's description of being told in a meeting with LS and CZ to use text messaging instead of email conflicts with LS's testimony that this conversation never happened. The Committee did not specifically ask CZ whether or not this conversation occurred, but did ask CZ whether she instant messaged on her Blackberry, to which she said No.

Details

- SLL testified that in January 2012, shortly after starting her new position, LS and CZ called her into the office they shared on a matter related to disciplining an employee and told her never to communicate with them via email, but instead via instant message (text message) on her Blackberry. SLL said CZ said this is the way that she, LS and SP communicated because anything on instant message can't be FOAA'd and doesn't have to be released. SLL said CZ took her Blackberry and programmed the capability in.
- LS testified that she was never instructed to avoid using email for work purposes so it would not be FOAA'd. LS said she does not instant message on her Blackberry, and has no idea where that came from. She did instant message with CZ four or five years ago when they first got their Blackberries, but did not with SLL or SP. SLL would call her on her personal cell phone. LS testified that she never participated in a conversation about instant messages not being subject to FOAA because she believed they would be. LS said the conversation SLL described with LS and CZ about this "never happened."
- SP said she was not aware of any practice at MCDC where instant messages or other communication methods are used to avoid FOAA.
- CZ said the only instance where she has had the directive not to communicate something by email is when they do not want to disclose an individual's name or health information in email. CZ said she does not use her Blackberry for instant messaging.

Whether there is general awareness and understanding of records retention policies at MCDC

OPEGA notes and observations relevant to the information provided for this discussion topic:

- The Meeting Minutes for MCDC Senior Management Team meeting on August 15, 2011 indicate that SP, LS, and CZ were present for a discussion about Records Retention and actions that were to be taken then that at a minimum included assigning records retention officers.

Details

- DW said she had attended a training in April 2013 and learned a little bit about it but it is still not clear to her, she finds it confusing and the idea of retaining working documents is not really addressed at all.
- AF said he had not ever participated in training on document retention or related State policy. AF said he recently received an email from the Secretary of State requesting that he read through a large amount of material and sign off indicating he had read and would comply. He said he had not done so because there was so much material, it was difficult to remember, contradictory, and outdated. He felt it would be impossible to comply with.
- SLL said when she started at MCDC, and periodically throughout her employment there, staff received reminders that all records, including emails and paper, are property of the State. She believed the Deputy Director was the privacy officer and the point person responsible for public information.
- LS said in April 2013 she received training on records retention that she believed DW had referred to. Previously the only training she received in this regard was about the RFP process and keeping documents for that. She believed EL was the Public Information Officer.
- SP said she had never been trained or oriented in records management at MCDC. She was not aware that it was commonplace to only keep final versions until that information was later relayed to her. Since that time, she ordered MCDC would have training, and two trainings (in March and April 2013) have taken place. SP said DHHS overall is going through records management/archiving training headed by Attorney Kevin Wells and they have assigned record retention officers on every single floor.
- CZ said she had not participated in any training on document retention until April 2013. She said State Archives, which conducted the training, said there was no expectation that working documents would be retained.

- OPEGA reviewed Meeting Minutes for MCDC Senior Management Team meeting on August 15, 2011 which include discussion of Records Retention. The minutes note that MCDC was not fully in compliance with records retention policies for State Government. It was decided that a representative from each division would be named the records associate. This group would receive training and then update the MCDC records retention schedule and assist in developing a records retention policy. Division Directors were supposed to send the name of their division representative to CZ by September 5, 2011. The minutes indicate that SP, LS, and CZ were present at this meeting. There are no specifics about what in particular MCDC was not compliant with.

V. Directive/Advice to Shred

Reasoning for directive to shred/destroy documents, which documents in particular, and when the directive was made

OPEGA notes and observations relevant to the information provided for this discussion topic:

- CZ's testimony that she asked for the documents to be destroyed after the meeting with the Commissioner on June 13th is inconsistent with SLL's testimony that CZ told her to shred all documentation related to the HMP lead selection between June 6th and June 13th, possibly June 6th, and AF's testimony that CZ told him to do it on June 6th.
- SP and CZ testified that the persons in the meeting with the Commissioner on June 13th were the Commissioner, SP, CZ, LS and SLL. SLL testified she did not recall if she was present, but in her interview SLL indicates she was not there when the results were communicated to the Commissioner.
- CZ's testimony that she asked SLL to destroy documents in a phone call is also inconsistent with SLL's testimony that CZ directed her to destroy documents in the hallway at MCDC offices. SLL also described in her testimony a second encounter and directive to destroy documents that CZ indicated in her testimony did not occur.
- SLL's submission to the Maine Human Rights Commission gave June 6, 2012 as the first date she was told to destroy documents and July 18, 2012 as the date of the second directive from CZ that she described in her testimony as having occurred sometime in July. In her testimony, SLL said that the second directive from CZ came in conjunction with CZ telling her about a FOAA requestor CZ was in conversations with. Emails between Lewiston Sun Journal and CZ show that CZ was in conversations with LSJ about a FOAA request in the time period July 2 – 17, 2012 and the LSJ gave CZ go ahead to proceed with revised FOAA request on July 17, 2012.
- As detailed in the next section, "Who was informed and when", SP testified that CZ told her on July 3, 2012 about the directive she (CZ) had given to destroy the survey monkey documents. OPEGA notes that the survey results are part of what is requested in LSJ's initial FOAA request of July 2, 2012 and were also still part of the revised request on July 17th.
- SP also testified that July 18, 2012 was the date SLL first told her that CZ had directed her to destroy documents. SLL testified that she first told SP the first part of August. SLL's Maine Human Rights Commission response gives the date as August 22, 2012.
- CZ testified that the only other time she had discussed destroying documents with SLL was a time when SLL and AF were in her office and SLL was expressing concern about maintaining the confidentiality of the DL and PO survey results. In CZ's interview, this is the only discussion about destroying documents that she described, she did not describe the phone call asking SLL to destroy documents. Neither SLL nor AF in either their testimony or their interviews mentioned this conversation with CZ about the confidentiality of survey results and CZ advising that if they wanted them to be confidential they should not keep them.

- There are some inconsistencies in regard to what documents CZ asked or directed should be destroyed. SLL testified that she was directed to get rid of all her documents/files related to the HMP awards. AF testified he was asked to purge his files for all the working documents from the development of the criteria. CZ testified that she asked SLL to destroy working documents, and in her interview she said she told AF he should get rid of the draft scoring documents. SLL also testified that CZ told her she was going to have Elaine Lovejoy (EL) destroy the Survey Monkey results and that she (SLL) had heard from LS that CZ had done that. SP's testimony in next section "Who was informed and when" also infers that CZ had directed that Survey Monkey results be destroyed. In her interview, however, EL said she was not asked to destroy any documents.
- OPEGA observes that "version control" does not seem to make sense as a reason to destroy "all documents" or even all "working documents" and would not seem to apply to Survey Monkey results as there were not multiple versions of those. The Survey Monkey questions and results would have been a final document and it seems evident they would be considered a public document, not confidential, that was part of this process.

Details

- AF testified that it was CZ who told him to purge his files. He said that it was a bit of both an instruction and a request. He testified the reason given was to make sure that there were only the final documents available to prevent confusion from occurring from accidental release or the use of previous versions of the scoring document. He said he believed he received this instruction on June 6, 2012 after the meeting with Dr. Pinette and that he put the documents he had in his possession on a disc and removed them from his computer. The disc was provided to OPEGA. AF testified that he had never before been asked to destroy or get rid of documents during his 18 years as a State employee.
- In his interview, AF said it was at a meeting (CZ, SLL, LS, and AF present) that CZ said that they shouldn't keep all the working documents and it was partly directive and partly suggestion. She said that if someone asks all you want to be able to produce is the final product. AF thought he recalled that this meeting occurred as the scores were being released and said it was the only time he was told to destroy docs. He did not destroy the documents as CZ requested in the meeting. AF said that after the meeting with CZ, he burned a disc of electronic files and brought them home along with paper files. AF didn't think there was a known FOAA request at the time but said that "they" knew they could be asked.
- SLL testified that she was told to destroy documents sometime between June 6-13, 2012, (she said the date was in her Maine Human Rights Commission response and believes it might have been June 6th) between the two meetings where she noted the differences in the Penquis rankings. She said CZ approached her in the hallway at the MCDC offices and told her to shred all her documents/files related to the HMP awards. SLL said CZ also told her to go tell AF to do the same, and she (CZ) would have EL destroy the Survey Monkey results. SLL said she would not tell AF, and CZ said she would tell AF herself. SLL said CZ mentioned that the information was going to be requested in a FOAA but SLL was not sure that it had been FOAA'd at that point. In her interview, SLL said she was given this directive around June after the funding decisions had been announced at the Statewide Coordinating Council meeting.

- SLL testified that on another occasion, after a meeting sometime in July 2012, again in the hallway, CZ asked her if she had destroyed the documents, and when she said no, CZ grabbed her arm aggressively and told her to take the documents home and destroy them there. In her interview, SLL indicated that this encounter occurred in conjunction with CZ letting her know that she was in conversations with a FOAA requestor and she would let SLL know when it became official.
- SLL testified she knew that EL was also given a direction to destroy the online Survey Monkey with the data related to the Project Officer and District Liaison surveys because LS had called her and told her that CZ had notified SP that she had shredded documents and had had EL destroy the survey monkey. SLL said LS contacted her the following day and told her EL had been able to recover the Survey Monkey data and it wasn't completely deleted after all.
- CZ testified she called SLL on June 13th after the meeting with the Commissioner and asked SLL to destroy the working documents. She denied saying anything about a FOAA, and testified she had no way of knowing then there would be a FOAA request. CZ testified that **the only other time** she recalled discussing destroying documents with SLL was when SLL and AF were both in her office around the time of the survey monkey for the DLs and POs. She said SLL was very concerned about maintaining the confidentiality of the DLs' responses. She was concerned that if the Healthy Maine Partnerships knew how they were scored on each of the questions being asked the DLs, it would make it very difficult for them to maintain relationships, depending on how the DLs scored them. CZ told SLL at that meeting in her office that if she was concerned about that then she might want to not keep the questions. CZ said she did not direct SLL, did not order and at no time did she follow-up with her to make sure she did that.
- CZ testified that her order to destroy older versions of documents resulted from SP having an older version at the meeting with the Commissioner on June 13th. CZ had concerns about confusion when that happened, though they eventually got to discussing the June 13th version and the Commissioner understood the final scoring. CZ testified that at the end of the meeting they talked about version control and she said to the Commissioner that we have a final product and we will not be keeping the previous spreadsheets. CZ testified that she left the meeting with the Commissioner believing the Commissioner basically agreed with keeping only the final version, which was the impetus for her call to SLL and ask her to destroy documents.
- CZ testified that she has never before directed anyone at MCDC to get rid of prior versions of documents. She also said it did not ring an alarm bell for her when she did ask that documents be destroyed. She did not think she was doing anything improper.
- In her interview, CZ did not mention the occasion on which she called SLL to ask her to destroy documents. She only mentioned a conversation which CZ said she had with SLL because SLL was expressing concern about the confidentiality of the survey results and the possibility they could be made public. CZ said she told SLL if she wanted it to be confidential then she would have to shred them. Also in her interview, CZ said that at the meeting with the Commissioner on June 13th she (CZ) said that the draft document should be shredded because it was not the final and that neither SP nor the Commissioner disagreed with her suggestion to shred. In her interview, CZ's account of what occurred in the meeting with the Commissioner was different than her testimony. See Section on Criteria and Scoring Methodology changes related to weighting. In conjunction with that description CZ also said, in her interview, that after the meeting with the Commissioner, she (CZ) talked to AF, because she didn't remember him being at the meeting, and told him that if he and SLL were revising the criteria then he should get rid of the draft scoring documents.

- Emails between DHHS, MCDC and the Lewiston Sun Journal (LSJ) show that LSJ first began asking questions and seeking information about the HMP selection process on June 21, 2012. The LSJ filed a formal FOAA request on July 2, 2012 which was followed by communications back and forth between LSJ and CZ regarding the time and cost estimate for filling LSJ's request. Because of the cost, LSJ revised its FOAA request on July 9, 2012 and CZ provided a revised cost and time estimate on July 12, 2012. On July 17, 2012, LSJ emails CZ giving go ahead to proceed with FOAA request based on revised cost estimate.
- SLL's formal written response to the Maine Human Rights Commission request for information and documents in the case she filed with the Commission states June 6, 2012 as the first date CZ told her to destroy documents and July 18, 2012 as the date of the second directive from CZ.

Who was informed of the directive to shred/destroy, when and what action was taken

OPEGA notes and observations relevant to the information provided for this discussion topic:

- AF and SLL testimonies regarding their conversation about being told to destroy documents are inconsistent in that AF indicates their conversation was after SLL was told but before he was told, and SLL indicates their conversation occurred after AF had also been told.
- There is inconsistency between SLL's testimony and DW's testimony regarding SLL telling DW about the directive to shred documents. SLL testified that she called DW when DW got back from vacation and told her about it. DW testified that she did not recall conversations with anyone other than AF about whether anyone else had been told to destroy documents. DW, in her interview, said that no one else had told her about a demand to destroy documents, but she also said she was unsure if she knew, at the time that AF told her, that SLL had also been asked.
- SLL testified that LS was present at two different meetings when she told SP about being directed to destroy documents and also about her concern that there had been manipulation of the data. SLL also testified that SP had told to go get DW and AF on the second occasion. This is new information to OPEGA. LS, DW and AF did not mention this in their testimonies but were also not asked directly about it.
- There is inconsistency within SP's testimony as to whether it was she or CZ that asked EL to see if EL could recover the Survey Monkey results. In her interview, CZ said it was she (CZ) who realized the results would still be on line.
- As noted in the previous section, SLL's Maine Human Rights Commission response gave July 18th as the date of the second time CZ told her to destroy documents. SP testified that July 18, 2012 was the date SLL first told her that CZ had directed her to destroy documents. SLL testified that she first told SP the first part of August. SLL's Maine Human Rights Commission response gives the date as August 22nd.
- Emails between the LSJ and CZ show that LSJ gave the go ahead to proceed on its revised FOAA request on July 17th.
- In her interview, CZ said that either EL or SP gave her the FOAA when it first came in and then she told SP that she had told others to destroy stuff. Emails between LSJ and the John Martins (DHHS Communications) shows the original official FOAA was submitted to him on July 2nd. SP testified that CZ told her on July 3rd about the directive she had given to destroy documents.

Details

- DW testified that AF told her he had been asked to destroy documents after she went to his desk to check with him about something else. She believed this conversation was sometime after she returned from vacation in mid-June and she believed he was telling her about this situation that occurred while she was on vacation. DW said AF told her he was not comfortable destroying anything and didn't do it. DW testified that she couldn't remember if AF told her who told him to destroy documents. She knows it was CZ but she can't recall if this is because of reading that in OPEGA's report. In her interview, DW said AF told her CZ asked him to destroy them. DW testified she did not recall any other conversations with anyone about whether there had been suggestions that documents should be destroyed.
- DW testified she saw it as AF was informing her of something that happened and he had made his decision about what he was going to do, or not do. He had not destroyed any documents and she wasn't going to ask him to, so she didn't see a point in bringing up anything beyond that. She thought we each need our own compass of how we will act. In her interview, DW said it didn't seem like a big thing at the time AF told her but it made her feel uncomfortable in retrospect. DW said she didn't think she needed to take any action in response to AF's revelation. No one else told her of any demand to destroy documents, and she's unsure of whether she knew at the time that SLL had also been asked.
- DW testified that when AF told her he was asked to destroy documents she saw it as a version control issue because when there are different spreadsheets that look similar and multiple people working together and trying to respond to requests, it can be challenging to have so many different versions. She said she didn't even consider there was an attempt for concealment or anything like that as it wasn't part of what she would expect from MCDC. DW testified that she could not recall another time when someone had been asked to destroy documents, but that certainly there were times we they would need to make sure they were tracking the right version or during RFP processes documents would be collected.
- AF testified that, as DW had described, he told her about being asked to destroy documents when she stepped into his office to discuss another topic. He said after that he recounted to her that he had been asked to purge his files for all the working documents from the development of the criteria and that he had not done so. He believed this conversation took place within a day or two of her being back from vacation because he was very concerned. AF said he told DW that CZ had given him this instruction so she (DW) was aware that he would not comply with it. He was not asking her to take it anywhere or take further action. He was concerned because it had never happened before. AF testified that he did not believe he told anyone else besides DW about this, although he and SLL had a conversation about this **prior** to him receiving the directive.
- SLL testified that when she was first told to shred documents she told Valerie Ricker, the Assistant Director of the Division of Population Health, because DW was on vacation and Ms. Ricker was the Acting Division Director (and AF's supervisor) in DW's absence. SLL said she told Ms. Ricker that CZ had ordered her to shred public documents, and CZ was on her way downstairs to tell AF to do the same. SLL testified that she also told LS during a phone conversation that evening, and either that afternoon or the next day she went to AF's office and asked him if CZ had ordered him to get rid of documents. He said yes but that he didn't do it. SLL testified that she also called DW and told her, she believes it was the first day DW was back from vacation because it was weighing heavily on her mind.

- SLL testified that she told SP on two occasions that CZ had told her to destroy documents – the first time was approximately the first week of August and, the second was the first week in September 2012. SLL said at the second meeting she also told SP that it had become clear to her (SLL) that there was manipulation of the data, that she believed CZ had ordered AF to do things he shouldn't have done. SLL said LS was present on both of those occasions, and on the second occasion SLL was told to go and invite DW and AF to join them based on what SLL had said about manipulation. SLL said SP told SLL she would go to the Commissioner regarding the order to shred documents. (Note: it was unclear from SLL's testimony at which meeting SP said this.)
- LS testified that SLL told her CZ had called her and instructed her to shred documents and to tell AF to do the same. LS did not recall the date but she did recall that SLL told her this in an evening phone call. LS testified that at the time, she (LS) was very clear that the intention from an administrative perspective was version control and working off the same document, not to hide anything. LS told SLL to put the documents away rather than shredding them if it made her uncomfortable. In her interview, LS said she thought SLL's phone call to her about the shredding took place around the end of June because she was out of town. It was after the scoring was done because the concern was that the scores would become public.
- SP testified that CZ told her on July 3rd that she had made a directive for documents to be destroyed. That was the first SP knew about it. CZ believed that the Survey Monkey documents had been destroyed and could not be provided in response to the FOAA. SP testified that CZ said this was an effort at version control and explained to SP about version control and about the privacy of the DLs and POs because they had been promised confidentiality. SP said CZ only mentioned the survey documents. SP also said when interviewed that CZ had been concerned about notes SLL took related to the survey and had wanted them destroyed. SP testified that she immediately contacted John Martins, then the Commissioner, and finally Kevin Wells (when the prior two were not available) about this to discuss how to proceed. KW instructed them to call OIT to see if they could retrieve the documents. SP also testified that the next morning she contacted Paul Gauverau in the AG's Office about it.
- SP testified that she continued to try to contact the Commissioner after CZ notified her of the directive to shred and they did talk at 7 pm that night. The Commissioner was surprised initially and asked why CZ would do that. SP relayed to the Commissioner what CZ had explained to her about government being able to practice version control, and it causes confusion and to protect the identity of the DLs and the POs as they had been promised. SP said it was her understanding from CZ that this was something they commonly do in government. SP told the Commissioner CZ was a seasoned employee, and she's been working over 27 years for the State of Maine.
- SP testified it was her understanding that no documents were ever destroyed, but she didn't know for sure whether the order was carried out. SP said that apparently by the next morning after CZ told her, CZ had spoken to EL and they were able to recover the documents because they were never shredded. CZ was able to retrieve the survey results with EL's assistance. Later in her testimony, SP said that after KW told her to see if OIT could get the documents she went to her secretary at ten of four in the afternoon and asked her to try to retrieve those documents. SP said her secretary did and by the next morning they had the documents. (Note: OPEGA believes SP's secretary at this time was EL.)
- SP testified that on July 18, 2012, SLL notified her that she had been directed to destroy records.

- In her interview, CZ said that either EL or SP gave her the FOAA request as soon as it came in and she went in to SP and confessed that she had told folks to get rid of stuff. CZ said SP called Kevin Wells and Paul G. (from the AG's office) talked to CZ and said not to worry about it because they had not destroyed stuff in anticipation of a FOAA. CZ said that then she realized that the Survey Monkey results were on line. AF no longer had the Survey Monkey questions but SLL did because she had not shredded the documents after all. CZ said she was glad to hear that because it would have been embarrassing for the Dept. not to have that. CZ said she sent a request out to staff asking for all docs they had.