

Right to Know Advisory Committee
July 24, 2013
Draft Meeting Summary

Convened 9:10 a.m., Room 438, State House, Augusta

Present:

Sen. Linda Valentino
Rep. Kim Monaghan-Derrig
Joe Brown
Suzanne Goucher
Fred Hastings
Mal Leary
Bill Logan
Mary Ann Lynch
Judy Meyer
Chris Parr
Linda Pistner
Harry Pringle
Luke Rossignol

Absent:

Perry Antone
Richard Flewelling
(vacancy)

Staff:

Henry Fouts
Colleen McCarthy Reid
Peggy Reinsch

Introductions; election of chair

The meeting was called to order and the members introduced themselves. Senator Linda Valentino was unanimously elected Chair of the Advisory Committee.

Public Access Ombudsman Update

Public Access Ombudsman Brenda Kielty provided the Committee with an update on her recent activities, and explained the First Annual Report, which was released in March of this year. At the request of Advisory Committee members, Ms. Kielty agreed to provide quarterly updates to the Advisory Committee. The members made additional suggestions with regard to fine-tuning the reported information, and to include the Ombudsman's outreach efforts in the report. Ms. Kielty agreed that the FOAA is complex, but said the one thing that could help her the most would be staff. She will be reporting on updates to the website.

The Advisory Committee members asked that Ms. Kielty continue the work requested last year concerning request for email address lists held by school districts, and requested that the scope be broadened to cover any email distribution list. Members are interested in who is asking for the lists and how often are they requested. She agreed to follow up and keep the Advisory Committee apprised of any emerging issues.

Ombudsman Kielty also spoke about the responsibilities established by LD 1511, including the requirement that requests for "information" – as opposed to "records – be tracked. The Advisory

Committee agreed that there needs to be clarity about what requests for “information” and “records” mean.

Summary of Freedom of Access actions in First Regular Session, 126th Legislature

Staff summarized the FOA legislative actions of the Legislature during the First Regular Session of the 126th Legislature.

A. The three bills proposed by the Right to Know Advisory Committee (LD 217, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships, LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies and LD 420, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions) were not enacted. The Judiciary Committee requested that the Advisory Committee continue its work related to LD 258, making sure to include in the discussion public bodies that meet through the use of telephone or video links even if their authorizing statutes are silent on the procedure. The Judiciary Committee expects the Advisory Committee to continue the review process of existing public records exceptions, and include those listed in LD 420 in this year’s review. LD 217 was not enacted because the Transportation Committee reported out LD 721, which addressed the same concern.

B. LD 1493, An Act To Revise the Laws Concerning Criminal History Record Information and Intelligence and Investigative Information was enacted and is now Public Law 2013, chapter 267. This is the culmination of several years’ work, initiated by the Advisory Committee, and taken over by the Criminal Law Advisory Commission, to make it clear what information concerning an individual’s involvement in the Maine criminal justice system is available to the public.

C. Two bills successfully amended the Freedom of Access Act, LD 104 (PL 2013, c. 339) and LD 1216 (PL 2013, c. 350) and LD 1511(PL 2013, c. 229 amended the Public Access Ombudsman statutes. Each of the three bills will be reviewed by the Advisory Committee to respond to ambiguities and issues that they created.

D. Bills were enacted that addressed the confidentiality of concealed handgun permit information (LD 576, Resolve 2013, chapter 1 and LD 345, PL 2013, c. 54), email addresses provided to the Bureau of Motor Vehicles (LD 619, PL 2013, c. 283) and veteran tax exemption application information (LD 973, PL 2013, c. 222).

E. The Judiciary Committee, pursuant to Title 1, section 434, reviewed 17 bills that contained proposed public records exceptions.

It was noted that there is no official process by which the Legislature as a whole and the Judiciary Committee in particular can receive input from the Right to Know Advisory Committee.

There was discussion about public records in general, and about whether any request for information is a request under the Freedom of Access Act, triggering the new deadlines and consequences.

Existing public records exceptions review process

Staff outlined the remaining existing public records exceptions that must be reviewed in 2013. The statute governing sentinel event reporting by hospitals and other health care facilities (Title 22, section 8754) was tabled for additional work at the end of 2012. The remaining exceptions contained in Titles 26 – 39-A must be reviewed this year. The public records exceptions that

were part of the Advisory Committee's recommendations contained in LD 420 will also be on this year's agenda.

Encryption of communications

Staff updated the Advisory Committee that the 2012 recommendation requesting the Maine Criminal Justice Academy to adopt a model policy concerning the encryption of public safety radio transmissions will need to be revised.

Law school extern

Linda Pistner shared the resume of the 2013 Law School Extern who will be working with the Right to Know Advisory Committee and the Public Access Ombudsman. Stephen Wagner will be helping the Advisory Committee once the fall semester starts.

Activities, Subcommittees

The Advisory Committee established a list of responsibilities, using suggestions from Chris Parr and Brenda Kielty as well as the earlier discussion, and distributed them to three subcommittees. The three subcommittees are: Public records Exceptions Subcommittee, Legislative Subcommittee and Bulk Records Subcommittee.

The members of the subcommittees are as follows:

Bulk Records Subcommittee

Chris Parr, Chair
Joe Brown
Fred Hastings
Judy Meyer
Harry Pringle
Linda Pistner
Sen. Valentino*
Rep. Monaghan-Derrig*

Legislative Subcommittee

Judy Meyer, Chair
Joe Brown
Suzanne Goucher
Mal Leary
Bill Logan
Chris Parr
Harry Pringle
Luke Rossignol
Sen. Valentino*
Rep. Monaghan-Derrig*

Public Records Exception Subcommittee

Suzanne Goucher, Chair

MaryAnn Lynch
Linda Pistner
Sen. Valentino*
Rep. Monaghan-Derrig*

*denotes ex officio status, do not count for a quorum

Not assigned as of 7/24/13: Perry Antone
Richard Flewelling

Subcommittee responsibilities:

Bulk Records Subcommittee issues

1. “Abuse” of the Freedom of Access Act (FOAA);
2. Whether restrictions should be placed on requesters;
3. Whether the payment in advance threshold of 1 MRSA § 408-A(10) ought to be lowered, at least in some cases;
4. As a matter of transparency, whether persons making FOA requests should be able to do so anonymously;
5. Whether the FOAA ought to be able to be used as an additional tool of discovery when a formal adjudicatory proceedings is already pending;
6. Whether the FOAA ought to focus solely on the public accessibility of records, and not on the public accessibility of information;
7. Whether FOAA requests made for commercial purposes ought to be subject to the fee restrictions of 1 MRSA § 408-A(8);
8. Whether government records containing personal information about private citizens ought to be generally protected from public disclosure (overlapping issue with Legislative Subcommittee); and
9. The unintended, adverse impacts of the FOAA (for example, on the preservation of historical information and on the efficiency of communications in government).

Legislative Subcommittee issues

1. Issues raised in LD 258, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies;
2. Issues raised by enacted amendments to FOAA & Ombudsman laws:
 - LD 104, An Act to Amend the Laws Governing Public Records (PL 2013, c. 339);
 - LD 1216, An Act to Amend the Freedom of Access Act (PL 2013, c. 350); and
 - LD 1511, An Act Regarding Coordinated Access to Public Records of State Agencies (PL 2013, c. 229);
3. Encryption of emergency communications – see letter from Maine Criminal Justice Academy;
4. AFA Committee Meetings---party caucuses during budget discussions?
5. Whether government records containing “personal information” that is protected under 10 MRSA Chapter 210-B, Notice of Risk to Personal Data, also ought to be protected from public disclosure;
6. Whether the Maine Revised Statutes also ought to be reviewed at regular intervals to determine whether currently publicly accessible records ought to instead be protected from public disclosure due to personal privacy-related concerns;

7. In light of the United States Supreme Court's recent decision in *McBurney v. Young*, 569 U.S. ____ (2013), whether the FOAA ought to be clarified to state that it is available for use by Maine citizens/residents as a means to access Maine, county, and municipal government records and proceedings;
8. As a matter of clarification of policy, whether the exceptions listed in the definition of "public records" are intended to be permissive or mandatory;
9. Whether the law needs to be made clearer that public employees' date of birth information is not subject to public disclosure;
10. Whether a formal, standardized policy ought to be developed governing the storage, retention, and disposition of government emails; and
11. Whether government records containing personal information about private citizens ought to be generally protected from public disclosure; (overlapping issue with *Bulk Records Subcommittee*).

Public Records Exceptions Subcommittee

1. Title 22, section 8754, reporting of sentinel events, tabled in 2012;
2. Exceptions in Titles 26 – 39-A; remaining tabled items on yellow chart; and
3. Process for continuing review of exceptions

Future Meetings

The Advisory Committee will meet at 1:00 pm, Room 438, State House on the following days:

- Thursday, October 3, 2013
- Tuesday, November 12, 2013
- Tuesday, December 10, 2013

Subcommittees will be scheduling their meetings soon.

The meeting was adjourned at 12:04 p.m.

Respectfully submitted,
Peggy Reinsch, Colleen McCarthy Reid and Henry Fouts