

Right to Know Advisory Committee
Bulk Records Subcommittee
September 12, 2011
Meeting Summary

Convened 9:04 a.m., Room 438, State House, Augusta

Present:	Absent:
Michael Cianchette, Chair	none
Rep. Joan Nass	
Perry Antone	
Joe Brown	
Richard Flewelling	
Judy Meyer	
Mal Leary	

Staff:
Colleen McCarthy Reid
Peggy Reinsch

Michael Cianchette, subcommittee chair, called the meeting to order at 9:04 a.m. and asked the members to introduce themselves.

Background

Staff provided an overview of the bulk records issue and called attention to the documents generated by the Judiciary Committee and the Bulk Records Subcommittee that met in 2010. The Legislature adopted legislation (PL 2009, chapter 567, section 11) directing the Right to Know Advisory Committee to examine specific issues concerning bulk records. At the same time, litigation was filed and pending that implicated the application of the Freedom of Access laws, especially the fee provisions, to requests for the databases of the counties' registries of deeds. The State and Local Government Committee of the 124th Legislature had directed the Office of Information Technology to convene a stakeholders group to examine issues that were raised in the consideration of legislation concerning fees charged by the county registries of deeds.

The 2010 Bulk Records Subcommittee held three meetings in 2010. Draft legislation incorporating cost factors was prepared and circulated for comments, but the Subcommittee did not make specific recommendations because of the complexity of the issues and because of the pending litigation involving MacImage of Maine and John Simpson against several counties. The principles the Subcommittee had agreed on were: the fact that records are requested or provided in bulk doesn't change their status as public; that bulk records are not free, and a reasonable cost can be recovered; and that personal information, which is often included in bulk records, needs to be protected.

OIT stakeholders group

Chief Information Officer Greg McNeal explained the process that the Office of Information Technology pursued to carry out the request of the State and Local Government Committee to convene a stakeholders group relating to county registry records and bulk data. Mr. McNeal provided a copy of the documents from the stakeholders group as well as his talking points. The group was directed to consider: defining bulk data transfers; evaluating the best way to handle such requests; and developing a web portal for 18 county registry offices. The group met once in June 2010 and discussed issues relating to privacy, transparency of government-held data

balanced with privacy concerns, fees and access versus ownership. The group did not meet again because of the pending litigation that involved several members of the group as opposing litigants. The Superior Court decision in that case, MacImage of Maine LLC v. Androscoggin County et al., was finally handed down in February 2011.

Discussion of scope and issues

The Subcommittee moved into discussion, using the four elements listed on the agenda as a guide: What is bulk data? Access to bulk data - costs, management and format of data, restrictions on use; balance of interests (public v. private); and development of consistent guidance for all government agencies.

Joe Brown asserted that the registry of deeds was a different issue from bulk data because the registries are open to look at and inspect all the public records within. Most other government offices, police departments as an example, don't have that type of access to their records. IN addition, registries of deeds spent lots of money to preserve deeds; deeds were digitized to preserve them, not to commercialize them, he said. Mr. Brown agreed that a definition of "bulk data" is needed for the discussion.

Chief Perry Antone explained that all of the Brewer Police Department's data is in one system. Although public information is contained in the system, he is concerned about releasing personal information, nonconviction data or intelligence and investigative information. He is not aware of any law enforcement system that allows anyone to just access the system for the public information they seek. He agreed with Representative Nass that they would need a new system and one or two new people if they were expected to provided information in the manner requested of the counties.

Mal Leary stated that we should start with the premise that all are public records, although the systems will probably contain some confidential records. Why can't the system be sorted once to filter out the confidential information, and then use that sorted data going forward? Chief Antone explained that the vendor Brewer uses is the same one used by many law enforcement agencies in the state, and it does not have those capabilities. Some reports, not just data fields, contain confidential information that must be redacted after each report is individually reviewed. Mr. Leary recommended that, going forward, all governmental data systems and programs must be easily usable for public access as well as for the governmental purpose; he is not advocating retrofitting existing systems.

Mr. Cianchette drew attention to Christopher Parr's draft submitted last year that focused on a definition for bulk records, establishing that bulk data and electronic information go hand in hand. Mr. Leary noted that when a database is structured, the confidential information should be easy to segregate. The real issue, Mr. Leary said, is going to come down to commercial versus personal (or noncommercial) use. For example, a company downloading 90,000 records as opposed to an individual asking for IF&W's fish stocking database.

Mr. Brown again drew a distinction between county registries and other databases. Anyone can inspect the deeds in Hancock County for free. You need to pay only if you want an official copy. Chief Antone explained that law enforcement is making changes; some departments have accident reports online where the vendor has structured the program so confidential information is not included in what is accessible. He noted funding issues to make that happen.

Mr. Cianchette agreed with Mr. Leary about the distinction between commercial and noncommercial. He emphasized that this Subcommittee does not need to explore the content or define what is confidential. He asked for ideas about the definition of bulk records, and reviewed the forays into definitions attempted by other states. Staff noted that Ohio has taken a step by defining “bulk commercial special extraction requests” and defining “commercial” as meaning “profit-seeking production, buying, or selling of any good, services, or other product.” Mr. Cianchette asked staff to continue research in this area, and recommended it as a topic for public comment.

Mr. Leary expressed his disappointment with the Legislature’s changes to the fees provisions for county registries of deeds, explaining that the new law is so broad it can include any costs. He explained that a fee could be set so high so as to result in “constructive denial” of access. He said the Maine Freedom of Information Coalition has filed an amicus brief in the appeal of the MacImage decision to the Maine Supreme Judicial Court. There needs to be a way to establish what is a reasonable charge.

Chief Antone reminded the Subcommittee that records custodians are prohibited from asking why a person wants a public record, but if a distinction will be drawn between commercial and noncommercial use, then that question will have to be asked. Mr. Leary agreed, and said that is why it is so important to write the law carefully and make people declare that the information is for a commercial use; don’t put the burden of discerning that on the government employee. We need to look at other states’ experience to determine what is a reasonable fee. The best legislation would allow rulemaking but within set limits. A lot of factors will have to be factored into the equation.

Public hearing

Mr. Cianchette sought consensus on holding a public hearing to collect comments and suggestions about handling bulk data requests. He identified three questions: 1) What is bulk data and how should it be defined? 2) What is the appropriate method of determining the cost that a requestor must pay? And 3) To what format and access should a requestor be entitled?

Mr. Cianchette allowed comments about the public hearing concept from those in the audience. Members of the public raised questions about defining “commercial,” about proprietary and nonproprietary systems, about bad management resulting in high costs for copies, about defining how bulk data is defined, and the need for the protection of personal privacy. Representative Terry Hayes raised the distinction between access and ownership. As a member of the public, she said, she can access for free; but if she wants to own the information, then she should have to pay for it. She said she sees it like the reference section in the library.

Judy Meyer agreed with Mr. Cianchette that the discussion needs to be kept at a high level, and not devolve into talking about just county deeds charges. We provide commercial entities with all sorts of resources: realtors access deeds records, Cabela’s buys the IF&W’s list, and there’s a company that takes water from Lake Auburn and sells it for a large profit. She would like to see a consistent approach.

Mr. Leary moved that the Subcommittee hold a public hearing, Richard Flewelling seconded. The Subcommittee voted unanimously to hold a public hearing on the three questions listed above, plus a fourth question about drawing a distinction in treatment for public records sought for commercial versus noncommercial use. Staff will work with Mr. Cianchette for the specific wording of the notice for the hearing. The members agreed to hold the public hearing on Friday, October 14, 2011, starting at 9:00 a.m.

Future meetings

In addition to the public hearing on October 14th, the Subcommittee agreed to hold a meeting on Friday, October 21, 2011, starting at 9:00 a.m.

The Subcommittee meeting was adjourned at 10:28 a.m.

Future Scheduled Meetings:

- Thursday, September 29, 2011, 9:00 a.m., Public Records Exceptions Subcommittee
- Thursday, September 29, 2011, 1:00 p.m., Right to Know Advisory Committee
- Thursday, October 6, 2011, 12:00 noon, Legislative Subcommittee
- Friday, October 14, 2011, 9:00 a.m., Bulk Records Subcommittee PUBLIC HEARING
- Friday, October 21, 2011, 9:00 a.m., Bulk Records Subcommittee

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid