

Right to Know Advisory Committee
Bulk Records Subcommittee
August 23, 2012
Draft Meeting Summary

Convened 11:08 a.m., Room 438, State House, Augusta

Present:

Michael Cianchette, chair
Perry Antone
Judy Meyer
Richard Flewelling
Mary Ann Lynch
Kelly Morgan

Absent:

Mal Leary

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Introductions

Michael Cianchette, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves. Mr. Cianchette also welcomed Mary Ann Lynch, who has replaced Ted Glessner as the Advisory Committee's representative of the Judicial Branch.

Review of Law Court Decision in MacImage Care and Legislative Response

Mr. Cianchette explained that the Advisory Committee requested that the Subcommittee revisit the issue of bulk data in light of the Law Court's decision in the MacImage case to close the "loop" on the discussion and determine whether additional action and/or recommendations on the issue are needed. Last year, the Bulk Records Subcommittee did not make a specific recommendation related to bulk data given the unresolved court case.

Staff summarized the Law Court's opinion in the MacImage case decided March 27, 2012 and provided a copy of the law enacted by the Legislature (PL 2011, c. 518) which makes permanent the statutory fees determined to be reasonable by the Law Court. The Law Court found that the specific statute in Title 33 regarding the registries controlled the dispute over the reasonableness of the fees charged by the registries—not the general language of the FOAA. Staff also distributed an outline of the Bulk Data Services offered by InforME on behalf of several state agencies, including information about the number of requests, fees for access, and the number of records sold.

Mr. Cianchette opened the discussion, noting that the Law Court's decision has settled the issue with regard to the Registries of Deeds but did not provide any particular guidance for the State and local governments with regard to requests under FOAA for bulk records. Mr. Cianchette also noted that representatives of the Registries of Deeds are happy with the decision. Susan Boulay and Diane Godin, 2 registers of deeds attending the Subcommittee, agreed, and said they were satisfied with the status quo. Rep. Brad Moulton, who serves on the State and Local Government and Judiciary Committees, told the Subcommittee that the deeds issue is only one symptom of what the State is facing. Rep. Moulton encouraged the Subcommittee to continue its

consideration of bulk records issues to establish a policy for all state and local government agencies. Ms. Lynch told the Subcommittee about the experience of the Judicial Branch with requests for bulk records. Ms. Lynch stated that the courts face similar issues and struggle with finding the resources to respond to requests in the spirit of openness while maintaining the court's ongoing operations.

Richard Flewelling reminded the Subcommittee of the recent legislative changes (endorsed by the Advisory Committee) that clarify an agency's responsibility under FOAA is to provide information in the medium in which it is stored. Mr. Flewelling stated he believed the amendment to the law may assist agencies in fulfilling requests for bulk records. Judy Meyer and Mr. Cianchette agreed that the new law seeks to strike the appropriate balance for both the person making the request for records and the agency fulfilling the request.

Mr. Cianchette remarked that the State will face continuing issues related to bulk data, but wondered whether there was a way forward to specifically address the issue. Mr. Flewelling stated that he was not sure there is a clear way forward; he was not particularly interested in pursuing the same approach as some other states that distinguish between requests for bulk data made for commercial and non-commercial purposes. Chief Perry Antone agreed that it would be difficult for agencies to determine the purposes for which FOA requests are made.

Mr. Cianchette told the Subcommittee that the current law and structure seems to be working for state agencies; he is not aware of any issues or concerns. State agencies do make available various categories of bulk data through InforME and establish fees for access to that data through rulemaking.

Chief Antone made a motion that no changes are needed and Ms. Meyer seconded the motion. The Subcommittee unanimously agreed to take no action; additional statutory changes are not needed at this time.

Future Meetings

The Subcommittee agreed that additional meetings are not needed.

Other scheduled Subcommittee meetings:

- Public Records Exception Subcommittee will meet on Thursday, September 13, 2012, starting at 9:00 a.m.; and
- Legislative Subcommittee will meet on Thursday, September 13, 2012, starting at 1:00 p.m.

The full Advisory Committee will meet:

- Thursday, October 11, 2012 at 1:00 pm, Room 438, State House;
- Thursday, November 15, 2012 at 1:00 pm, Room 438, State House; and
- Thursday November 29, 2012 at 1:00 pm, Room 438, State House.

Mr. Cianchette adjourned the meeting at 11:30 a.m.

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid