

Right to Know Advisory Committee  
Bulk Records Subcommittee  
September 23, 2010  
DRAFT Meeting Summary

Convened 10:38 a.m., Room 438, State House, Augusta

Present: Bob Devlin, Chair; Richard Flewelling; Judy Meyer; Karla Black

Staff: Carolyn Russo & Marion Hylan Barr

Bulk Records Subcommittee Chair, Bob Devlin, convened the meeting of the Bulk Records Subcommittee of the Right to Know Advisory Committee at 10:38 a.m. and asked the members to introduce themselves.

**Review of proposed draft**

The Subcommittee reviewed draft language prepared at the request of members from the July 21st meeting that outlines the same process for determining reasonable fees for copies as was enacted into the Register of Deeds laws in Title 33, §751, sub-§14 pursuant to Public Law 2009, c. 575. The draft incorporated language like that in Title 33 into Title 1, §408, sub-§3 dealing with payment of costs for records under the freedom of access laws. Ms. Meyer reminded the Subcommittee that the trial involving MacImage and the counties would begin in about a week, and that one of the issues that the court would be looking at is what are “reasonable fees” (both under the old standard and the new standard). Because no one knows how long the litigation will take or how soon the court will issue an opinion, Ms. Meyer asked if it would make sense to wait before recommending another statutory change, since the court’s decision might require that the RTKAC revisit the issue all over again.

Mr. Devlin noted that the draft language also enacted in Title 33 was in response to another court case, and that unless the court establishes a specific formula to determine fees, this language just directs that reasonable fees must be established. At the direction of the State and Local Government Committee, the Office of Information Technology convened a working group to look at bulk data requests, but that group’s work has been put on hold because of the litigation against the counties. Mr. Devlin sees the RTKAC Subcommittee on Bulk Records as having a more global purpose – looking at all public records, not just registry deeds.

Because of the litigation, Ms. Meyer again suggested waiting and asking the Judiciary Committee to introduce a bill later in the session. The Subcommittee agreed to provisionally approve the language as drafted but to wait to move forward with it pending the outcome of the court case. (Mr. Flewelling made the motion; Ms. Meyer seconded; all members supported.) The Subcommittee’s intent will be communicated to the full RTKAC and the Legislature. Staff will help identify options that may be used to move the draft language forward when it becomes appropriate (i.e., unallocated language giving Judiciary Committee authority to introduce bill after the court issues an opinion).

Mr. Devlin also asked interested parties in the audience to comment on the draft. Beverly Bustin Hathaway, Register of Deeds for Kennebec County, believes that the Subcommittee should

recommend the change to the whole committee and propose legislation for the Judiciary Committee to consider. Chris Parr, attorney for the Maine State Police, noted that he was not comfortable commenting on a draft he had just received but that something needed to be done regarding how to respond to bulk data requests. Mr. Parr noted that there is confusion about what constitutes a public record - is an entire database a record or are there many records within one database? Ms. Black agreed with Mr. Parr and suggested that the Subcommittee slow down and be thoughtful; bulk data is an important and difficult issue. She suggested that the Subcommittee meet again in a couple weeks after doing some work to find:

- Examples of definitions of “bulk data” and “bulk records”; and
- Responses from agencies and other governmental entities impacted – is the reasonable fee draft helpful? Will it create unintended consequences? Is the language missing something?

Mr. Flewelling was persuaded by Ms. Black’s suggestion to slow down and do some fact finding before going forward. He withdrew his motion and Ms. Meyer withdrew her second and further discussion ensued. Kelly Hokkanen who administers InforME provided the Subcommittee with a handout that summarizes InforME’s Bulk Data Services. She explained that there are different kinds of requests ranging from individual records to batches of records, whole databases, and regular records updates to subscribers. Ms. Hokkanen also raised another issue: because most agency fees are set by rulemaking, would the new language defining “reasonable fees” affect fees already set by rule? She and the Subcommittee agreed that this is another question to pose to agencies and entities that would be affected. John Smith from the Secretary of State’s Office thought that the language and the regulatory authority in statute for rulemaking may work okay together but should be reviewed to ensure that is true. Mr. Devlin commented that the issue should not be just how much the fee is, but how the agency reached a “reasonable fee” and that an agency is authorized to charge a fee as long as it is reasonable. This came up in the context of persons who request a record under the freedom of access laws when the record is currently available for a fee under InforME.

### **Social Security Numbers (private information in public records)**

The Subcommittee then discussed Social Security numbers (SSNs) that may be buried in public documents everywhere. The Subcommittee reviewed the recommended language of the Legislative Subcommittee that establishes a presumption that SSNs are not a public record (period). Mr. Devlin thought that there needs to be an exception for registries of deeds, since per statute they need authority to redact a SSN through a request from the individual to whom the SSN belongs. Ms. Black noted that there are SSNs in other documents besides deeds (i.e., financial records, licensing records) and although she agreed with the policy of excepting SSNs from public records, she had concerns regarding the costs and burden on staff to deal with redaction, especially in bulk data requests. Ms. Meyer also pointed out the number of SSNs that end up in court filings and records. Ms. Black would like to see responses and concerns of those agencies that would be affected. Mr. Devlin agreed and added municipalities to the list, and Ms. Meyer added individuals as well. She recommended that the subcommittee consider having a public hearing in order to provide an opportunity to hear everyone’s concerns. Ms. Black agreed, noting that it was inappropriate to send the recommendation to the RTKAC with so many questions that need to be resolved before a bill is put forward. The Subcommittee will discuss the public hearing idea with the full RTKAC.

### **Public access and formatting; responding to requests for public records in bulk**

The committee then discussed the format of public records, access and what are the obligations of agencies to provide access to data. Although agencies do not have to create documents that do not exist, they do have to provide what the requester seeks and provide it in a manner that is useable. Greg McNeal from the Office of Information Technology (OIT) said that he thought that formats are pretty standard; records are provided on disk, thumb drives, by email and in paper form. Ms. Bustin Hathaway raised the concern that some registries do not have the capacity to respond to a requester in a certain format. Ms. Hokkanen also pointed out that if data is in its original form (proprietary database or software), a requester may be unable to do anything with the records, so what is an agency's obligation to decipher codes and fields and provide documentation? Mr. McNeal added that there are times when the meaning of data is lost, and the only one that can make sense of it is the custodial agency. OIT and others are constantly looking at bulk data management and formatting changes to meet the needs of agencies. They are also constantly working on retention policies and ways to access and manipulate documents whose formats change over time. One of OIT's jobs is to ensure that the operational system is responsive to requests. If an agency has to have staff go back more than a year to find records, \$10/hour for that service can add up fast.

Ms. Hokkanen explained that for simple data sets, there already exists an enterprise data catalog created by InforME that is free and searchable by category and key word. This service might be a solution for simple requests for straightforward data sets. Ms. Bustin Hathaway noted that she has been looking at other states' work in the area of creating and implementing bulk data policies and concluded that it takes years to accomplish.

Ms. Black also recognized and thanked Ms. Hokkanen for all of her help creating the existing Maine Freedom of Access website at <http://www.maine.gov/foaa/>

### **In summary, the issues raised/ information needed for next meeting(s) include:**

- Examples of other states' definitions of "bulk data" and "bulk records";
- Input from agencies and other governmental entities regarding the proposed draft for reasonable fees;
- Explanations from agencies and other governmental entities regarding their statutory authority to set fees by rulemaking and whether the proposed language would conflict with their existing authority; and
- List of concerns, problems, costs, questions from agencies, municipalities and individuals regarding proposed change in law that excepts SSNs from public records under the freedom of access laws (may require public hearing).

Staff will work with the chair to schedule future meetings.

Meeting adjourned at 11:30 a.m.