

Right to Know Advisory Committee
Legislative Subcommittee
October 21, 2011
Meeting Summary

Convened 11:07 a.m., Room 438, State House, Augusta

Present:

Judy Meyer, Chair
Shenna Bellows
Mike Cianchette
Richard Flewelling
Mal Leary
Bill Logan
Kelly Morgan
Linda Pistner
Bruce Smith (for Harry Pringle)

Absent:

Ted Glessner
Harry Pringle

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Judy Meyer, subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

LD 1465, An Act to Amend the Laws Governing Freedom of Access: Form and format of responses

The Subcommittee discussed whether governmental agencies should be required to provide a copy of a public record in the form requested. The members agreed that a copy of a record should always be available in the form the record is kept. There was also agreement that security, memory, compatibility and training concerns related to installing the requestor's software were significant, and that it would be inappropriate to require governmental agencies to do so. However, there should be nothing that prohibits a public records custodian from voluntarily installing or using the software requested by a requestor. The Subcommittee agreed to support a requirement that any technology purchased or developed in the future should ease public access and allow data to be easily exportable. The members reviewed statutory language from other states, and directed staff to develop language for discussion at the next meeting. The draft should include a requirement that copies should be provided in requested format if can reasonably be done, with the caveat that confidential information must be protected. The North Dakota and Connecticut statutes provide useful language for several aspects of the Subcommittee's proposal.

Problems experienced by requestors and governmental agencies under the Freedom of Access laws

The Subcommittee invited six people to provide five minutes each of comments, and as much written testimony as they wanted to provide, about the problems they have faced either in make public records requests or in responding to such requests.

Sam Adolphsen, Maine Heritage Policy Center (written testimony)

- Cape Elizabeth agreed to provide data in Excel if the MHPC paid \$800 for software. The MHPC did so, and the town regularly exports the data requested
- Statute should require that when updating software, public access and redaction must be easily accommodated
- Onus should not be on the requestor to continue asking for information if agency is not responding quickly; responsibility should be on the governmental entity to get the data out
- Working with Superintendent of Schools in Biddeford and received nothing for one month while Superintendent was on vacation
- Received information on paper when data kept in electronic form: Bangor, Standish, Naples, Richmond
- Important to have a Freedom of Access person designated in each office to be responsible, trained
- Ombudsman is key - smaller problems will be resolved by Ombudsman
- Not right to have to hire an attorney to pursue a public record

Michael Doyle, resident of Falmouth (written testimony)

- Continuous overbilling by the town
- Answers included lying, and yet paid for by the requestor
- Continuous denial of the free hour for each request by inappropriately treating new requests as one continuous request
- Have to ask questions numerous times in order to get answers
- Have to guess at the name of records in order to get a copy

Dr. Dwight Hines, resident of Peru

- Sex offender information available, but information about abused women is not available
- Need oversight
- Needs to be enforcement, and the Attorney General has never enforced
- Audit report - same report, just copied from previous year
- Access to complete and accurate data is not happening
- Should reward towns and counties for doing well
- Five days is too short to file an appeal in court when public record access is denied
- Costs requested are too much
- Maine Municipal Association is giving bad advice
- We will have to do what they did in the South - go to federal court

Dana Lee, former Poland Town Manager (written testimony)

- Ironic that five days is not enough to file a complaint but okay to require a record immediately
- Providing copies of public records is not always a fast process; even takes time to come up with a cost estimate
- In Sumner, 69 years of Selectmen quit because of FOAA abuses
- Got into government to do good work for communities but would never consider serving again in today's corrosive atmosphere
- Resigned as town manager due to existing version of FOAA, much less the LD 1465 version
- No need for further "weaponizing" of FOAA
- One resident submitted 4 or 5 requests daily; on track to cost the town \$14,000 in staff time (not including legal costs)

- FOAA requests filled with snide insinuation, defaming, slanderous comments - no protection for government employees
- The message is that no government employee can be trusted
- Why would a FOAA request be so important that government needs to stop what it is doing
- Which of the two ladies behind the counter in a small town should be the “Freedom of Access Officer?”
- There are people out there who will show up with this law in hand and bully their way to the front of the line for a FOAA request, just to be rude and disruptive
- If give out a government document, it should be unalterable; if they want to manipulate government data, re-enter it
- Practical implications of FOAA request in a small town
- UK term called “vexation” that sets a limit on abuses uses of FOAA, copy provided
- Should focus on limiting the damage that can be done to government by FOAA abusers
- Every system needs a check and balance: FOAA - even as it stands today - has virtually none

Peter Merrill, MaineHousing (written testimony)

- FOA requests - can be time-consuming, can be complicated, but can get to a reasonable place
- MHPC requested information for last 13 years
- Redaction a huge problem
- Tried to figure out how to get our data into the requested format
- Estimated original request at \$8-9,000, not including copying costs
- Fee is a governor on the scope of request and number of requests
- Lots of practical issues that people of good will can work out

Nathan Poore, Falmouth Town Manager (written testimony)

- 10 years from now we won’t have this problem because software will make happen automatically
- Just recently started keeping track of time spent
- System is working and can work, but open to abuse
- Never any opportunity to provide accurate response to disinformation
- Shouldn’t allow people who act in certain ways to use FOA
- Disruption of work and workplace relationships
- Clever combination of requests and abusive language
- Law is not perfectly clear
- Actual costs would probably be five times what is charged at \$10/hour

Mike Cianchette, Governor’s concerns

- \$10 cost too low - does not reflect actual cost; serves as a negotiating tool
- Records specifically related to Blaine House - details too intrusive
- Vexatious requests - while Governor’s office working on budget, busy with legislative session
- Like working paper confidentiality in North Dakota law, apply to Governor for legislative proposals
- Ombudsman - need hard number for actual cost

Discussion

Bruce Smith commented that he runs into abusive and vexatious requests. Just the courts have authority to prohibit people who file frivolous suits from filing additional lawsuits, there should

be restraint on filing vexatious requests again and again. Ms. Meyer noted that the \$10/hour fee was put in place partly to limit frivolous requests, and the provision that allows charging in advance addresses the problem of the same requestor not picking up prior requests responses. Shenna Bellows said she has reservations about adding “vexatious” provisions - who becomes the arbiter of what is “vexatious”? Mr. Smith noted that bad faith and malice are used in the law and judges apply the concepts all the time. There has to be a check on government officials making these decisions. Bill Logan expressed his reservations, as well; judges often lenient in dealing with a person in court who is not represented by an attorney. He is also concerned about requiring response “immediately” - different burden on a large agency than on a small town. Mr. Cianchette agreed with the concerns about requiring an immediate response, and would like to move away from hard deadlines. Mr. Cianchette is in favor of making the government provide a real estimate of how long it will take to comply so can’t delay, delay, delay; but also no “gotcha” because six hours late.

Ms. Meyer asked the Subcommittee to think about all the comments and the LD 1465 proposals. She also pointed out the list of subcommittee responsibilities, and asked the members to be prepared to talk about them at the next meeting.

Future meetings

The Bulk Records Subcommittee and the Legislative Subcommittee will meet jointly on Thursday, November 10, 2011, starting at 1:00 p.m.

The meeting was adjourned at 12:50 p.m.

Future Scheduled Meetings:

- Thursday, November 10, 2011, 1:00 p.m., Joint Meeting: Bulk Records Subcommittee and Legislative Subcommittee
- Thursday, November 17, 2011, 9:00 a.m., Public Records Exceptions Subcommittee
- Thursday, November 17, 2011, 1:00 p.m., Right to Know Advisory Committee
- Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid