

Right to Know Advisory Committee
Legislative Subcommittee
September 13, 2012
Meeting Summary

Convened 1:08 p.m., Room 438, State House, Augusta

Present:
Judy Meyer
Mike Cianchette
Richard Flewelling
Bill Logan
Mary Ann Lynch
Kelly Morgan
Harry Pringle
Linda Pistner

Absent:
Mal Leary

Staff:
Peggy Reinsch
Colleen McCarthy Reid

Introductions

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

Linda Pistner introduced the newly-appointed Public Access Ombudsman, Brenda Kielty. Ms. Kielty expressed her enthusiasm for the new position and joined in the discussions with the Subcommittee

PL 264: email and other communications of elected/public officials

The Legislature asked the Advisory Committee to provide guidance for legislators and other elected officials in storing and retrieving emails and other communications that are public records. At the last meeting, the State Archivist David Cheever explained that all governments are struggling with the best ways to identify and keep emails and other correspondence. His office has prepared materials that are posted online that should provide some assistance to local government officials in handling records. Staff provided a copy of the “general schedules” for records common to most or all agencies (on the Maine State Archives webpage), as well as sample records retention schedules for specific agencies (the Bureau of Forestry, Maine State Archives, Office of the Governor and the Legislature). Staff also provided proposed updates for the Frequently Asked Questions (on the State’s FOAA webpage) concerning the keeping of public records, and whether emails are public records. The proposed language includes links to the materials on the Maine State Archives website.

Ms. Meyer suggested that the Advisory Committee request that the Legislature revise its record retention schedules to specifically mention “correspondence” as that category of records appears to have been omitted. The Subcommittee agreed to recommend to the full Advisory Committee that the Legislature revise its training and education for legislators to include an explanation of the benefits of using the State-provided email addresses. The Legislature’s information

technology resources can provide email storage and search functions that are not as easily available to legislators using personal email addresses for legislative work. The training should still continue to make clear that emails about their legislative work are most likely public records, regardless of which email address is used.

Status of email addresses collected by schools and towns

The Subcommittee reviewed the draft, originally prepared by Harry Pringle, but revised in the last subcommittee meeting (divided report) that would make parents' email addresses and other personal information confidential when collected by school administrative units. The changes from the original version limited confidential telephone numbers to those that are unlisted.

Mr. Pringle reminded the Subcommittee how the issue arose, and that the issue was brought forward because the federal law isn't specific about protecting parents' email addresses. He started with the protection of personal contact information of public employees as a model, and noted that it didn't matter whether email addresses or phone numbers are available from other sources, the public employer is not required to release the information about the public employees. Mr. Pringle thought the same protection was appropriate for parents' personal contact information, as well. Going forward with the latest draft may produce lists of telephone numbers that are not necessarily associated with useful information as names, addresses and other personal information would not be included. The harder we work at this, he said, the worse it becomes. He would protect all telephone numbers, not just those that are unlisted.

Linda Pistner expressed her concerns that the draft would create more problems than it solves, and she did not agree that parents of public school children should be treated like public employees with regard to personal contact information. She emphasized that making pieces of data confidential increases the costs of responding to public records requests because of the close review and redacting that must take place.

Bill Logan supported the draft; if parents are required to provide personal contact information then it is not right to make that information available to the public. Email communications with the school board can be handled separately

Ms. Meyer reminded the Subcommittee that the issue being considered is before the Subcommittee because of one town and one particular person. Maybe it is not a widespread problem? Perhaps no action should be taken until information about whether it is a problem can be gathered, then revisit the issue next year. Public Access Ombudsman Kielty said that would right up her alley, and suggested that the Advisory Committee outline the research request in writing to her, and she will report next year.

Use of technology in public proceedings (participation in proceedings from remote locations)

Staff provided copies of the new draft legislation developed by the Subcommittee to govern the ability of public bodies to allow the use of technology for remote participation of a member. The draft deletes the paragraph that allows a member of a board or commission to participate from a remote location only if actual physical attendance is "not reasonably practical," but includes language indicating that the board's or commission's policy can establish the requirements for participating remotely. The Subcommittee members had requested that change, but Mr. Pringle

opposed the deletion, believing that the standard is good and appropriate. He would like to maintain the historical tradition of meeting face to face. Richard Flewelling recognized that tradition, but pointed out that those who had commented on the draft believed that the standard was problematic. He preferred to trust boards to decide on their own whether the participation is in good faith.

Mr. Logan recommended deleting the paragraph prohibiting a member from voting if he or she does not have the same materials as those who are physically present if those materials would influence the member's vote. Mr. Pringle agreed, noting that the language could lead to a lot of appeals based on what materials were provided at what time. Mary Ann Lynch agreed, saying that the limitation was too prescriptive, and that we should trust our public officials. She also noted that it would be legal malpractice to NOT provide last minute documents that could not be shared in order to upset a vote that was going in the unwanted direction. Richard Flewelling thought the most important and necessary protections are included in paragraph B: requiring the physical presence of any member participating in a quasi-judicial or judicial proceeding. Ms. Pistner and Ms. Meyer disagreed, finding that it is important to be present and have the public see you participating in any proceeding.

Mr. Logan thought the fact that the requirement that each board would have to adopt a policy that establishes when remote participation is allowed will eliminate most of those problems. Ms. Lynch said she likes that requirement but doubts whether most towns will take advantage of the provision. Kelly Morgan asked why the voting limitation is there. If the benefit of remote participation is a more full discussion including all members, then just prohibit voting if you are not physically present.

The Subcommittee voted 4-3 to delete subsection 2, paragraph A (In favor: Ms. Lynch, Mr. Cianchette, Mr. Logan and Mr. Flewelling; Against: Ms. Pistner, Ms. Meyer, Ms. Morgan).

The Subcommittee then discussed whether to keep the prohibition on use of remote participation in public hearings. Ms. Meyer remembered earlier discussions in which the idea of members of the public participating remotely was considered. The Subcommittee agreed that this provision focused only on members of boards and commissions; extending it to the public would be difficult to police and logistics could be difficult. The Subcommittee voted unanimously to strike the limitation on public hearings.

The Subcommittee voted 5-2 to recommend the revised draft to the full Advisory Committee for a full discussion (In favor: Ms. Lynch, Mr. Cianchette, Ms. Morgan, Mr. Logan, Mr. Flewelling; Against: Ms. Pistner, Ms. Meyer; Abstain: Mr. Pringle).

Templates for drafting specific confidentiality statutes

Staff provided draft templates for drafting specific confidentiality provisions concerning records provided by individuals and businesses to governmental agencies. Bill Norbert of the Finance Authority of Maine had provided suggested additions for clarification as to what information submitted by an applicant would be public.

The Subcommittee agreed to recommend to the Advisory Committee that the template be used as guidance for drafting new statutes.

Future Meetings

The Subcommittee members determined that all projects assigned to the Subcommittee have been completed. The Subcommittee will not meet again before the full Advisory Committee meeting on October 11th.

Other scheduled meetings:

The Public Records Exception Subcommittee will meet on Thursday, October 11, 2012, starting at 9:00 a.m.

The 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.

Ms. Meyer adjourned the meeting at 2:50 p.m.

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid

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