

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
November 13, 2015
Meeting Summary

Convened 10:00 a.m., Room 208, Cross State Office Building, Augusta

Present:

Sen. Burns
Rep. Monaghan
Luke Rossignol
Linda Pistner
Mary Ann Lynch

Staff:

Craig Nale
Henry Fouts

Introductions

The meeting was called to order and all members introduced themselves.

Public records exceptions review discussion

Additional results of completed surveys from the public bodies administering the relevant public records exceptions were brought to the group for its consideration and discussion. As always, agency representatives had been invited to attend in person. During this meeting the Subcommittee reviewed the public records exceptions further detailed below.

(Note: Reference numbers below refer to the spreadsheet of public records exceptions created by staff and distributed at this meeting. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.)

Ref# 20 - 27: 8 MRSA §1006, sub-§1, ¶¶A-H, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information; would be unwarranted invasion of privacy of key executive, gaming employee or another person; key executive or gaming employee compensation; financial, statistical and surveillance information related to the applicant; creditworthiness, credit rating or financial condition of person or project; information from other jurisdictions conditioned on remaining confidential; information designated confidential under federal law; specific personal information, including Social Security number, of any individual

Ref# 28: 8 MRSA §1006, sub-§3, relating to records and information developed as part of a suitability requirement to select an operator of a central site monitoring system, held by the Gambling Control Board and the Department of Public Safety

Ref# 29: 8 MRSA §1006, sub-§4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Department of Public Safety

Ref# 30: 8 MRSA §1007, sub-§2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement

Ref# 31: 8 MRSA §1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052

Ref# 32: 8 M.R.S. §1052, relating to reports, information or records compiled by the Gambling Control Board and Department of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive

The Subcommittee voted 5-0 to recommend no modification to all of the above provisions concerning the Gambling Control Board. The group reviewed the tabled Gambling Control Board exceptions and earlier questions posed by the Subcommittee regarding the regulation and publicly accessible slot machine payout information. Staff reviewed relevant statutory language and relayed information communicated by Mr. Fleming, the Executive Director of the Gambling Control Board, as well as input from the Oxford and Bangor casinos. Additionally, Mike Mahoney appeared before the Subcommittee on behalf of the Bangor casino regarding the public records exceptions and answering Subcommittee questions regarding the industry's data privacy needs and existing regulatory oversight of slot machine payout data in particular. He noted that these 2005 public records exceptions had been well vetted by the Judiciary Committee, balancing the public's right to know with the casinos' legitimate business needs to keep some sensitive information confidential. Ms. Pistner corroborated that the Judiciary Committee had worked hard to narrow these exceptions, noting that this is best left as a policy decision for the Legislature and that she felt confident in the current process.

Ref# 5: 1 M.R.S. §402, Sub-§3, ¶P, relating to geographic information regarding recreational trails on private land held by the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry

The Subcommittee voted 5-0 to recommend no modification. The Department of Agriculture, Conservation and Forestry supports this exception – without it landowners may not be willing to permit a recreational trail system on their land.

Ref# 43: 20-A M.R.S. §13004, Sub-§2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel and administered by the Department of Education

The Subcommittee voted 4-1 to recommend changes to this public records exception, as proposed by the Department of Education. Mr. Burns cast the dissenting vote, and cited his concern that parents did not have adequate access under the existing law, or the proposed amendment, to investigations into complaints about alleged teacher misconduct.

The Department of Education presented draft language to amend this existing exception, stating the Department's intent to clarify the exception and to eliminate redundant language in order for the exceptions to better fit with the original intent of the provision. The DOE representative noted that while records regarding the investigation are confidential, a final written decision to discipline are public.

Ref# 12: 4 M.R.S. §1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services

The Subcommittee voted 5-0 to recommend no modification. John Pelletier, Executive Director of the Maine Commission on Indigent Legal Services, addressed the Subcommittee, pointing out that the records covered by the exception contain highly personal information, including individuals' personal contact information (including date of birth and social security number) sensitive details about case litigation, performance evaluations of individual attorneys and information privileged under the attorney-client privilege. The Commission is very supportive of keeping the exception in statute as is.

Ref# 8: 1 M.R.S. §538, Sub-§3, relating to InforME subscriber information

The Subcommittee voted 5-0 to recommend no modification. During the discussion, Ms. Lynch noted that the Judicial Branch uses this system, for example in the public's paying of fines, and that this information is indeed best kept confidential.

Ref# 14: 5 M.R.S. §17057, Sub-§3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff

The Subcommittee voted 5-0 to recommend no modification.

Ref# 15: 5 M.R.S. §17057, Sub-§4, relating to Maine Public Employees Retirement System private market investment activity

The Subcommittee voted 5-0 to recommend no modification. MePERS in its written response pointed out that without this exception it could not make private market investments, and that it does post public information regarding private market investments on its website.

Ref# 16: 5 M.R.S. §17057, Sub-§5, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information

The Subcommittee voted 5-0 to recommend no modification. MePERS noted that it has never received a public request relating to this information.

Ref# 17: 5 M.R.S. §90-B, Sub-§7, relating to the Address Confidentiality Program administered by the Secretary of State

The Subcommittee voted 5-0 to recommend no modification.

Ref# 18: 7 M.R.S. §1052, Sub-§2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers to the Department of Agriculture

The Subcommittee voted 5-0 to recommend no modification. There was some concern on the Subcommittee regarding how the public would know whether they were near a GMO crop, given the risk for cross-contamination with regular crops. The Subcommittee decided that the concerns were not necessarily germane to this exception, and that other sections of the statute seemed to meet some of these concerns.

Ref# 19: 7 M.R.S. §2231, Sub-§3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes

This exception has been repealed, so review is unnecessary.

Ref# 33: 8 M.R.S. §270-A, relating to records and information included in application or materials required for issuance of commercial track license by the Department of Agriculture

The Subcommittee voted 5-0 to recommend no modification.

Ref# 34: 9-A M.R.S. §6-105-A, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions and administered by the Department of Professional and Financial Regulation

The Subcommittee voted 5-0 to recommend no modification.

Ref# 48: 22 M.R.S. §1494, relating to occupational disease reporting information held by the Department of Health and Human Services

The Subcommittee voted 5-0 to recommend no modification.

Next meeting

The Subcommittee decided to meet one more time this year, on Dec. 1, immediately after the full Committee meeting. While the reviewed items will not be submitted to this year's Committee for inclusion in the January 2016 report, they will be included in the 2017 report when the review of all the scheduled exceptions is due.

Adjournment

Rep. Monaghan adjourned the meeting at 12:31 p.m.