

Right to Know Advisory Committee
Ongoing FOA Issues Subcommittee
DRAFT Meeting Summary
Wednesday, September 23, 2009

Convened 11:35 a.m. in Room 438, State House, Augusta

Present:

Mal Leary, chair
Karla Black
Judy Meyer
Linda Pistner
Harry Pringle

Absent:

Ted Glessner

Staff:

Colleen McCarthy Reid
Peggy Reinsch

Ongoing Issues Subcommittee Chair Mal Leary convened the meeting and members introduced themselves.

Use of technology in public proceedings

The Subcommittee reviewed the revised draft legislation prepared by staff to address limitations on public proceedings using technology.

Although he is not an “official” subcommittee member, Harry Pringle asked about the intent of the language in subsection 2, paragraph C. Mal Leary explained that the subcommittee’s intent was not to require that all remote locations from which members participate be open to the public, but only to state that if the remote location is open to the public, i.e. in a public building, then that public remote location must be open to members of the public who want to attend the meeting as well as the member of the body holding the proceeding.

Mr. Pringle also asked about who decides whether a member of a body may participate in a meeting through telephonic, video, electronic or other communication means. Is it the body holding the meeting? Is it the individual member? Mr. Leary responded that the language is intended to make the use of technology permissible. Mr. Pringle wondered if the language would be interpreted to allow flexibility or to give public officials the authority not to attend meetings. Judy Meyer agreed with Mr. Pringle and suggested that the language be clarified to require the public body to make a decision whether to permit members to participate in meetings using technological communication means.

Subcommittee Chair Leary reminded the subcommittee that staff had asked whether the exception to the requirement that all public proceedings have a quorum of the members present at one location should be limited to State governmental bodies after a declaration of an emergency pursuant to law. Using the ice storm and other natural disasters as an example, Mr. Leary noted that there could be localized emergencies affecting certain towns or counties and the language should not restrict the ability of town selectpersons or county commissioners to meet on an emergency basis to address the situation. Linda Pistner agreed.

Chair Leary stated that the subcommittee's threshold question is whether to not to refer the draft (and the other draft proposals under consideration by the subcommittee) to the full Advisory Committee; any issues related to the specific language in the draft should be reviewed by the full committee. The subcommittee agreed to forward the draft to the Advisory Committee for their consideration.

Social Security Numbers

The Subcommittee reviewed the draft legislation. The draft does the following: 1) it amends the definition of a public record to state that social security numbers are not a public record; 2) it prohibits the collection of an individual's social security number by agencies or officials of the State or any of its political subdivisions unless specifically required by federal or State law or court order; 3) it prohibits the disclosure of social security numbers collected on or after January 1, 2011 and authorizes an agency or official to redact or otherwise refuse to disclose a social security number collected prior to January 1, 2011; and 4) it states the circumstances when an agency or official may disclose a social security number.

Linda Pistner liked the way the language was drafted, but asked whether the language in section 1 should be amended to cross-reference the new language of the proposed subchapter relating to social security numbers. Diane Godin, Register of Deeds in Somerset County, asked whether the subcommittee had considered the impact of the proposal on records maintained in the Registry of Deeds. Mr. Leary responded that Beverly Bustin-Hathaway had attended prior subcommittee meetings and brought the issues affecting Registries of Deeds to the subcommittee's attention.

Chris Parr, Staff Attorney for the Maine State Police, Department of Public Safety, said the draft raised 3 questions: 1) Is a social security number a record by itself or is it part of a record? 2) Why is an agency given the authority to redact a social security number rather than required to redact? Will this allow some agencies to redact and establish fees while others will not? 3) What is the penalty? Judy Meyer responded that the subcommittee recognized the potential for only some agencies to use the authority to redact social security numbers, but that a mandate to redact would result in increased costs. With regard to the penalty, Chair Leary said the intent was that the same penalty as for other violations of the Freedom of Access laws would apply—\$500 civil penalty for "willful" violations.

The subcommittee agreed to forward the draft to the Advisory Committee for their consideration and note the issues raised about the draft proposal during this discussion to the full Committee.

Minutes

The Subcommittee reviewed the draft legislation. The draft incorporates a requirement that a minimum record of public proceedings must be made promptly and open to public inspection unless any record or minutes is required by another provision of law. The minimum requirements as proposed in the draft include the date, time and place of the meeting; the members recorded as present or absent; the general substance of the meeting; and a record of all motions and votes taken.

Using schools as an example, Harry Pringle asked how the word "promptly" should be interpreted. Mr. Pringle noted that with school boards minutes are recorded but not approved until the next board meeting. Is the language intended to change current practice of how minutes are taken and made available? Judy Meyer responded that the intent was not to change current practice where boards are regularly keeping a record or minutes, but to require that a minimum

record of meetings be kept (not detailed minutes) for those boards that do not. Chair Leary agreed with Ms. Meyer that the intent was to make local governments, especially, meet a minimum standard for a record of their official actions.

Linda Pistner noted the subcommittee's earlier discussions related to audio tapes of meetings and suggested that perhaps the language could be amended to require that a tape be preserved until any written record is available. Chair Leary stated his belief that a written record should not be required and suggested instead that language should be added to the draft to state that an audio or video recording of a meeting satisfies the requirement to make a record available to the public.

The subcommittee agreed to forward the draft to the Advisory Committee for their consideration and note the issues raised about the draft proposal during this discussion to the full Committee.

Ad hoc internal review

The Subcommittee reviewed the revised draft legislation.

Harry Pringle suggested that the draft legislation may be too broad and needs rethinking. Mr. Pringle asked about the potential impact of the draft on an investigation of an employee's conduct or other personnel issues, noting that there was a Law Court decision involving an investigation of an employee by the Madawaska School District. Would this draft require the disclosure of confidential information about an individual employee? Linda Pistner responded that the subcommittee was not intending to require the release of confidential information used during an investigation and suggested that the language could be amended to protect against the disclosure of information designated confidential in other statutes.

The subcommittee agreed to forward the draft to the Advisory Committee for their consideration and note the issues raised about the draft proposal during this discussion to the full Committee.

Next Meeting

No additional subcommittee meetings scheduled; next full Advisory Committee meeting scheduled for Wednesday, October 21, 2009, 12:30 p.m., Room 438, State House.

Adjourned, 12:35 p.m.

Respectfully submitted
Peggy Reinsch and Colleen McCarthy Reid