

Right to Know Advisory Committee
Legislative Subcommittee
September 16, 2009
Meeting Summary

Convened 12:37 pm in Room 438, State House, Augusta.

Present:

Chris Spruce, Chair
Shenna Bellows
Karla Black
Robert Devlin
Suzanne Goucher
Linda Pistner
Harry Pringle

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Subcommittee Chair Chris Spruce convened the Legislative Subcommittee.

LD 1353, An Act Regarding Salary Information for Public Employees

At the previous meeting, the Subcommittee directed staff to prepare draft legislation that would protect the names of public employees who participate in the Address Confidentiality Program administered by the Secretary of State, from release in connection with salary information. A draft was circulated before the meeting.

Before discussing the draft, the Subcommittee heard from Nicole Ladner, Special Project Director, in the Office of the Secretary of State. She explained that the purpose of the Address Confidentiality Program is to protect victims of domestic violence, stalking or sexual assault, and that participants are recommended to the program by domestic violence programs as part of the safety planning for victims.

Linda Pistner noted that the proposed legislation is different than the ACP program - if an abuser knows where the victim works, then a blank in the name field for data for a particular agency would be almost the same as including the name. Mr. Spruce agreed that the ACP and the purpose of the proposed legislation is not an exact match.

Harry Pringle questioned language that was in the original bill and was carried into this draft, which creates confusion. He recommended that the law allow the withholding of names and other information if the situation meets a high standard, such as serious personal safety issues. Karla Black agreed, although she noted that the draft does not address the law enforcement officer safety issues originally raised in the Judiciary Committee. Bob Devlin agreed with Mr. Pringle's approach. Ms. Pistner noted that the ACP already has a high standard. Mr. Spruce supported the notion of not piggybacking on the ACP, but developing a separate standard appropriate for this situation.

Suzanne Goucher expressed concerns about moving to a subjective standard for determining whose information would be protected. She likes connecting the protection to an existing program with a

similar but unrelated purpose. Ms. Goucher agreed that the position title may provide too much information to track someone in the ACP, so recommended keeping that confidential as well as the name. Shenna Bellows agreed, and reiterated that this discussion is about public employees and there is a public interest in knowing who they are and their jobs. Ms. Goucher recommended using the current draft, but cover any information that identifies the participant.

Mr. Devlin voiced his concerns about the ACP being too narrow to protect some people that have legitimate safety needs but don't fall into the ACP categories. Mr. Spruce liked the idea of leaving the decision to the employer, but raised the concern that a commissioner could claim that all law enforcement personnel deserved the name protection. He suggested that the draft start with the ACP, and then be expanded over time as it is determined where gaps lie. Ms. Pistner recommended that the representatives of the domestic violence programs should work with the Judiciary Committee on this issue, but she did not have a problem with linking the protection with the safety planning as currently required in the ACP.

Chris Parr, staff attorney for the Maine State Police, questioned whether the term "salary information" as used in the draft is clearly defined. It is not clear if that term includes benefits as part of an employee's "salary." Staff also noted that the placement of the draft, as originally proposed by LD 1353, is within the State Civil Service law which may be difficult to apply to public employees other than State employees.

Ms. Bellows noted that the ACP protects name and location, while there is a public interest in knowing the salary. Mr. Parr, as a public employee, agrees that pay for an individual position is appropriately public information, but tying it to the employee's name is not necessary.

Mr. Pringle suggested that the protection of public employees' names in specific circumstances could be appropriately located in the Freedom of Access laws as an exception to public records. Ms. Goucher noted two benefits in doing so: first, it shows there is a presumption that the information is public; second, it protects the information that appropriately deserves nondisclosure. Maybe include a statement that the intent of the State is that this information is public, with these exceptions? Ms. Bellows requested an alternative draft that is based on the ACP.

Staff will draft and circulate two proposals - one narrowly tailored to the ACP and one based on Mr. Pringle's suggestion. The Subcommittee will present these recommendations to the full Advisory Committee on September 23rd.

LD 757, An Act to Improve the Transparency of Certain Hospitals

LD 757 would require public access to meetings of an organization if the organization receives over \$250,000 annually in public funds for medical services and provides medical services as its primary function. Staff provided a summary of state laws that have addressed the issue of open meetings laws as they apply to public and private hospitals. A copy of the letter from the Maine Association of Nonprofits was provided, as well. Mr. Pringle recommended that the Subcommittee not recommend a change in the law as proposed by the bill. He mentioned Maine's history of nonprofits and their invaluable contributions to the welfare of the State. Ms. Goucher agreed. Mr. Spruce voiced his concerns about the proposal, including his belief that there is no compelling reason for making the meetings open. He noted that the \$250,000 threshold is arbitrary, and the requirement would be a challenge for many nonprofits. This would be a first step, and the demands for access would creep into other types of organizations and services.

Ms. Bellows agreed that \$250,000 is probably too low, but she pointed out that many nonprofit organizations serve a public purpose, and many public employees serve on their boards. She would like to make this apply to the nonprofits that are really public-private partnerships, although she had not developed a specific proposal at this time. Ms. Bellows also noted that the Health and Human Services Committee was looking for the Advisory Committee's recommendations with regard to unintended consequences of making the Freedom of Access laws apply to private organizations. She would like to see the letter to HHS expanded to state that there may be an opportunity to explore the application to public-private partnerships; Mr. Pringle did not support that idea, and Ms. Goucher would not without a specific proposal.

Ms. Pistner suggested that the response should be that the Freedom of Access laws are meant to apply to public entities. Although hospitals serve the public, they are not really appropriate entities to be subject to the requirements. Mr. Bearce, who requested that Rep. Adam Goode submit the legislation initially, was given the opportunity to say that the original intent was to make the big, huge entities that control health care in a wide area subject to the open meeting laws.

Mr. Spruce recommended that the proponents of the legislation indicate the information that they believe should be released by hospitals, and use that as a basis for establishing specific reporting requirements.

Staff will draft a letter that reflects the majority and minority recommendations of the Subcommittee.

Public notice requirements for rule-making (LD 1271 (SLG), PL 2009, c. 256)

The Subcommittee reviewed the letter Dan Walker had written to the Advisory Committee on behalf of the Maine Press Association. The Subcommittee recognized that the fiscal issues often color the ability of governmental entities to ensure full public access. Mr. Spruce identified the issue as representing a long-term concern that will evolve over time as technology changes and spreads. He believes the final enactment is a reasonable compromise to provide appropriate information to the public in the rule-making process.

Mr. Devlin agreed, and pointed out the difficulty in going back to local governments and telling them they have to do more than they are currently required to now that chapter 256 has gone into effect. Mr. Pringle agreed that there does not have to be further changes, and noted that those under age 27 do not use printed newspapers as their sources of information, but access and read newspapers online. Ms. Goucher agreed, pointing out that the statute (Title 1, §551) designates the Kennebec Journal as the "state paper" and yet you cannot find a hard copy of the paper in every library, although it can be accessed online.

The Subcommittee will report to the full Advisory Committee that no action should be taken.

Government Transparency website

Advisory Committee member Mal Leary had recommended that the State's website for the American Recovery and Reinvestment Act stimulus funds be used as a model to provide public access to public funding and contracts. Mr. Spruce suggested drafting a letter to the Governor encouraging him to start all State agencies along the same path. Ms. Black mentioned that it might be appropriate to hear from

Chief Information Officer Richard Thompson about the website and the resources necessary to create and maintain it. Mr. Pringle supported an expression of the Subcommittee's admiration of the website.

Staff will invite Mr. Thompson to the Advisory Committee meeting on the 23rd.

Emerging issue: Hancock County Registry of Deeds litigation

Mr. Devlin updated the Subcommittee on a Freedom of Access case, filed in Cumberland County, MacImage of Maine, LLC v. Hancock County, et al. The Cumberland County Superior Court ruled on September 1, 2009, that Hancock County must provide to MacImage electronic copies of documents without charging \$1.50 per page. The court found that the \$1.50 per page fee, set by the Hancock County Commissioners, was not a reasonable fee as authorized under Title 33, section 741, subsection 14. Mr. Devlin told the Subcommittee that a motion has been filed to clarify the application of the order, and that the several counties are deciding upon their next steps.

The Subcommittee asked Mr. Devlin to update the full Advisory Committee on the 23rd.

Next Meeting

The full Advisory Committee is meeting on Wednesday, September 23rd at 12:30 p.m. The Subcommittee will decide then whether to schedule another subcommittee meeting before the next Advisory Committee meeting on October 21st.

The Subcommittee meeting adjourned at 1:57 p.m.

Prepared by Peggy Reinsch and Colleen McCarthy Reid, Right to Know Advisory Committee staff

Scheduled meetings

Ongoing Issues Subcommittee

Wednesday, September 23, 2009
11:30 a.m., Room 438, State House

Full Advisory Committee

Wednesday, September 23, 2009
12:30 p.m., Room 438, State House

Public Records Exception Subcommittee

Tuesday, October 13, 2009
12:30 p.m., Room 438, State House