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Right to Know Advisory Committee
June 30, 2009
(Draft) Meeting Summary

Convened 12:40 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Karla Black
Robert Devlin
Ted Glessner
Mal Leary
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

| Absent:

Shenna Bellows
Sheriff Mark Dion
Richard Flewelling
Suzanne Goucher

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Barry Hobbins convened the Advisory Committee and welcomed everyone to the first meeting of 2009.

Summary of 124th Legislature's FOA actions in 2009

Staff reported on the Legislature's consideration of LD 1199 that resulted from the recommendations of the Advisory Committee and distributed a copy of the enacted law (Public Law 2009, chapter 2400. Staff noted that all of the Advisory Committee recommendations were adopted without change except that Section 15 of the bill related to teacher confidentiality was removed as LD 1191 considered by the Education Committee sought to amend the same provision. Linda Pistner also pointed out that a provision to remove the sunset date on the authorizing statute for the Public Access Ombudsman was added to LD 1199 by the Judiciary Committee.

Staff also summarized the proposed public records exceptions reviewed by the Judiciary Committee during the session and distributed copies of the relevant provisions of the enacted laws.

Discussion of Legislative Process and Role of Advisory Committee

When reviewing the list of proposed public records exceptions enacted into law, Mal Leary noted that LD 1191 which was considered by the Education Committee was not formally reviewed by the Judiciary Committee as required by law. Mr. Leary expressed his concern that the bill was not reviewed given the discussions of these provisions related to teacher confidentiality by the Advisory Committee. Sen. Hobbins explained that LD 1191 was reported out of the Education Committee at the end of the legislative session and moved very quickly. Staff also reminded the Advisory Committee that LD 1191 does not create a new public record exception and, based on that fact, the Judiciary Committee was okay with the bill being enacted without review. Sen.

DRAFT

Hobbins suggested that the Advisory Committee may want to review the provision as enacted in LD 1191. He also expressed his opinion that overall the process for reviewing exceptions has improved as committees are becoming more aware of the process and analysis done by the Judiciary Committee.

Chris Spruce asked about the outcome of LD 679 related to attorneys' fees in actions pursuant to the freedom of access laws. Staff explained that the bill was enacted as Public Law 2009, chapter 423 and allows the recovery of attorneys' fees by the substantially prevailing plaintiff in appeals of freedom of access actions if the court determines that the refusal or illegal action was committed in bad faith. Harry Pringle expressed concern about the committee process in considering LD 679. He stated that he did not believe the Right to Know Advisory Committee was provided adequate notice of the bill and reminded the Advisory Committee of the history of the Advisory Committee's discussions of the attorneys' fees issue and the Advisory Committee's lack of consensus. Mr. Pringle explained that he believed the Judiciary Committee did not have adequate knowledge of the Right to Know Advisory Committee's discussion of the issue. Mr. Pringle also stated his belief that the function and role of the Right to Know Advisory Committee is to provide comment on legislation related to freedom of access issues and that the Advisory Committee should have notice of proposed legislation in a timely manner so that comments can be provided. Mal Leary agreed and suggested that the Advisory Committee have an opportunity to comment on every FOA-related bill to the Legislature. Chris Spruce remarked that, given the nature of the legislative process, he wasn't sure how more notice and involvement from the Advisory Committee could be achieved. Linda Pistner noted that, because the Advisory Committee was waiting for the appointment of new legislative members, there was no opportunity for the Advisory Committee to meet with the Judiciary Committee. Sen. Hobbins and staff expressed the hope that the Judiciary Committee would be more engaged with the Advisory Committee next session. Mr. Pringle reiterated the need for a process for the Advisory Committee to provide input to the Legislature given the time and effort spent on these issues by the Advisory Committee.

Requests from the Legislature

Staff reviewed the 3 requests received from legislative committees for further review of certain issues by the Advisory Committee:

- Review of LD 757, An Act to Improve the Transparency of Certain Hospitals, requested by the Health and Human Services Committee;
- Review of LD 1353, An Act Regarding Salary Information for Public Employees requested by the Judiciary Committee; and
- Review of standard language currently in statute used to protect information in an application for State funding or other assistance, requested by the Judiciary Committee.

The Advisory Committee agreed (by consensus) to review these issues.

Request from Maine Press Association

The Advisory Committee also reviewed a request by the Maine Press Association to consider the issues raised in LD 1271, An Act to Generate Savings by Changing Public Notice Requirements, particularly the statutory requirement for public notice in newspapers. Attorney Dan Walker representing the Maine Press Association explained their concerns about legislative efforts similar to LD 1271 to shorten or eliminate the requirement for newspaper notice. He noted also

DRAFT

that the context for the legislative debate has been the State's fiscal crisis. Attorney Walker asked that the Advisory Committee review the issue in a manner that balances the financial issues with the underlying principles of open government. The Advisory Committee discussed Attorney Walker's request. Chris Spruce and Mal Leary expressed concern about the lack of statewide online access and that the manner of providing public notice will be an ongoing issue. Sen. Hobbins agreed that this is an appropriate issue for the Advisory Committee to consider. Upon a motion by Mr. Leary (seconded by Judy Meyer), the Advisory Committee agreed to review this issue.

Law School Externship

The Advisory Committee discussed the Law School externship that was recently completed by Heidi Pushard. Linda Pistner reported that Ms. Pushard enjoyed the experience, but noted the difficulty in providing direct supervision and interaction with the Advisory Committee during the legislative session. Ms. Pistner suggested that having an extern during the Fall semester might provide a better opportunity for interaction with the Advisory Committee and staff. The Advisory Committee asked staff to contact the Law School about the possibility of placement for the Fall semester and, if not, will seek an extern for the Spring semester.

Education and Training Activities

Staff reminded the Advisory Committee of its role in education and training activities. Staff also gave an overview of the training activities provided by the Maine Municipal Association which were described in an email from Advisory Committee member, Richard Flewelling.

Discussion of additional FOA issues and activities

Staff also reviewed the list of ongoing issues and projects identified by the Advisory Committee: 1) social security numbers in public records; 2) use of technology in public proceedings; 3) minutes and records of public proceedings; and 4) records of advisory panels conducting reviews of internal activities of state agencies or officials (follow up on Abbott decision). The Advisory Committee agreed to keep working on these issues.

Discussion of Subcommittees and Structure of Subcommittees

Given the nature of the issues recommended for consideration by the Advisory Committee, the Advisory Committee agreed to change the subcommittee structure to more evenly distribute the tasks. Ted Glessner noted that the Compliance and Resources Subcommittee had not met as often as the Legislative Subcommittee or the Education and Training Subcommittee and suggested that the issues be distributed more equitably among the subcommittees. Chris Spruce suggested that the work of the Legislative subcommittee could be divided into one subcommittee focused on review of public records exceptions in current law and one subcommittee focused on specific issues raised in proposed legislation. Mal Leary suggested that the ongoing issues identified by the Advisory Committee could also be assigned to a subcommittee. After some discussion, the Advisory Committee proposed 4 subcommittees: (1) Education and Training Subcommittee; (2) Public Records Exceptions Subcommittee; (3) Legislative Subcommittee; and (4) Ongoing FOA Issues Subcommittee.

The charge and issues assigned to the subcommittees are summarized below. Members are asked to review the suggested subcommittee assignments and let staff know if they are interested in

DRAFT

another subcommittee assignment or are interested in serving on additional subcommittees. In keeping with past practice, Sen. Hobbins and Rep. Hill are assigned to each subcommittee and will attend subcommittee meetings as they are able.

Public Records Exceptions Subcommittee (Central charge is to review existing public records exceptions and make recommendations to keep, modify or repeal)

Chair:	Shenna Bellows (<i>suggested in absentia</i>)	Issues identified for 2009:
Members:	Linda Pistner Chris Spruce Suzanne Goucher Harry Pringle Sen. Hobbins Rep. Hill	<ul style="list-style-type: none">• Remaining exceptions• Teacher discipline confidentiality• Standard language currently in statute used to protect information in an application for State funding or other assistance

Legislative Subcommittee (Central charge is to respond to requests from the Legislature)

Chair:	Chris Spruce	Issues identified for 2009:
Members:	Karla Black Linda Pistner Bob Devlin Sen. Hobbins Rep. Hill	<ul style="list-style-type: none">• LD 757 - including non-governmental entities in the Freedom of Access laws• LD 1353 - public access to names, positions and salaries of public employees• Providing public notice (raised by Maine Press Association, LD 1271)

Ongoing FOA Issues Subcommittee (Central charge is to work through FOA issues that are more global and long-range)

Chair:	Mal Leary	Issues identified for 2009:
Members:	Judy Meyer Ted Glessner Sen. Hobbins Rep. Hill	<ul style="list-style-type: none">• Social Security numbers• Use of technology in public proceedings• Taking and keeping minutes/records of public proceedings• Classification of records of advisory panels conducting reviews of internal activities of public agencies or officials

Education and Training Subcommittee (Oversees training requirements)

Chair:	Judy Meyer	
Members:	Karla Black Richard Flewelling Sheriff Mark Dion Mal Leary	Linda Pistner Harry Pringle Sen. Hobbins Rep. Hill

Appointments; vacancies

DRAFT

The Advisory Committee noted that there are 2 vacancies on the committee due to the resignations of Maureen O'Brien and Eric Conrad. Staff reported that they have been in contact with appropriate staff of the President and Speaker about filling those vacancies. In addition, it was noted that members currently serving on the Advisory Committee were appointed for 3-year terms due to end in November 2009. The law does not limit the number of terms of Advisory Committee members and members may continue to serve until a successor is appointed. Sen. Hobbins asked that Advisory Committee members interested in being reappointed let staff know so that information can be forwarded to the President and the Speaker; he also indicated that members should forward along any suggestions to fill the vacant positions representing broadcast interests and newspaper publishing interests respectively.

Future Meetings

The Advisory Committee expects to meet at least 3 more times before the end of the year. The Advisory Committee has scheduled 2 meetings to be held on:

- **Wednesday, September 23rd at 12:30 pm; and**
- **Wednesday, October 21st at 12:30 pm.**

Subcommittee meetings will be scheduled during July and August; subcommittees are expected to make a preliminary report to the full Advisory Committee on September 23rd. Dates for subcommittee meetings and additional Advisory Committee meetings for November or December are not determined at this time. Staff will consult with subcommittee chairs on possible dates for subcommittee meetings and schedule those meetings by email.

The meeting adjourned at 2:25 p.m.

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

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