

DRAFT

Right to Know Advisory Committee
November 28, 2006
(Draft) Meeting Summary
Room 438, State House, Augusta

Present:

Sen. Barry Hobbins
Rep. Deborah Simpson
Karla Black
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
Mal Leary
Judy Meyer
Maureen O'Brien
Linda Pistner
Harry Pringle
Chris Spruce
Ralph Stetson

Absent:

Shenna Bellows
Sheriff Mark Dion

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Senator Hobbins convened the Advisory Committee at 9:10 a.m.

Pre-Legislative Conference materials

The Advisory Committee reviewed the packet of materials the Advisory Committee is providing for distribution to all legislators at the Pre-Legislative Conference (December 4-6, 2006). The members discussed whether the FOIA laws summary should include information about party caucuses. The draft language is consistent with the advice the Attorney General's Office gives to legislators (that the law is not clear, but the position is defensible: that Parties have an existence separate from the Legislature so that their caucuses are meetings of the Legislature and therefore probably not subject to the FOIA laws). However, there are no court decisions on the subject. The Advisory Committee's discussion made it clear that the issue is broader than just the Legislature. The Advisory Committee agreed to remove the draft language. The Advisory Committee also agreed to clarify in the summary that Executive Sessions must be adjourned when discussions are ended; the summary was silent as to that point.

The Attorney General will be leading the Ethics Training component during the conference, and will take that opportunity to at least highlight Freedom of Access issues.

Sen. Hobbins and Rep. Simpson will be adding a letter to the packet of materials.

Maine State Archives: Treatment of Confidential Records

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Jim Henderson, Director of the Maine State Archives, presented a description of how the Maine State Archives handles confidential records. Maine State Archives stores records in two different ways. It maintains a storage service for agencies at the Records Center. Agencies still own the records, and who may access them is determined by the agency. Archival records of the State are owned and managed by the Maine State Archives. If an agency declares that records turned over to the Archives are confidential, it must provide the statutory authorization for such treatment. The Archives then maintains that status as determined by statute. Unless otherwise provided by statute, however, each confidential record in the possession of the Archives becomes public 50 years after it was created.

Archives and Archives Advisory Board work with agencies (state and local) to develop “schedules” for records retention and disposition. The schedule identifies whether the records are confidential and how long they are to be maintained. There may be a period during which the record is maintained in the agency, then a period in the Records Center, and then the record is transferred to the Maine State Archives for permanent retention. Or records may be scheduled for destruction after the appropriate length of time stored in the agency or at the Records Center. The Archives cooperate with the Legislative Branch with regard to legislative records. The Maine Supreme Judicial Court adopts rules for the retention of Judicial Branch records, with which the Archives comply.

If an agency wants to maintain authority over records, the agency should keep them in the Records Center and not send them to Archives. This method allows the agency to review records and redact confidential information in order to release the nonconfidential parts of the record. Records owned by the Archives are either confidential or non confidential; parts are not redacted to make a record or part of a record accessible to the public.

The Archives defines all records having to do with the functioning of the government to be “public records”. The determination of whether a public record is confidential or not is based on statutory directive.

Chairs and Leads Orientation

The Legislative Council has agreed to provide the Advisory Committee an opportunity to make a presentation and provide information at the Chairs and Leads Orientation scheduled (tentatively) for January 16, 2007. Judy Meyer, as chair of the Education and Training Subcommittee, will be working with subcommittee members and others to finalize plans.

RECOMMENDATIONS

Ombudsman

The Advisory Committee voted to recommend the creation of an Ombudsman position in the Attorney General’s Office, with appropriate funding. The preliminary funding estimate for a half-time position to carry out the Ombudsman role was identified by the Attorney General’s Office as \$52,693. The Advisory Committee asked for a review of that amount, because additional printing, mailing and travel costs would probably be attributable to the specific work the Ombudsman will do. (The revised estimate is \$56,423.) The Advisory Committee discussed the possible options for enforcement, and concluded that an advisory opinion from the Ombudsman would have significant weight; no other enforcement authority is necessary. Court action would remain a final option.

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The Advisory Committee authorized Senator Hobbins as Chair to send a letter to the Governor urging inclusion of Ombudsman funding in the Governor's budget. The Advisory Committee agreed to support the proposal even if it is not included in the budget.

Mandatory training

The Advisory Committee discussed whether to recommend that training be mandatory for all or certain governmental official. The letter from the Chiefs of Police Association, and the survey of police departments that are required to have a policy and conduct basic FOA training, indicates that the benefits of training far outweigh any burdens. (The Advisory Committee requested that staff send thank you notes to all of those who participated in the survey, and especially Brian MacMaster and Bob Schwartz for their review and facilitation contributions.) Recognizing that some questions about the content and the process of the training still need to be ironed out, and after much discussion, the Advisory Committee decided to recommend, as a first step, mandatory training for "chief" elected officials; that is, those who are policy makers: selectmen, county commissioners, city council members, those who make budget decisions, etc.

Enforcement options

The Advisory Committee reviewed the summary of options from other states, and agreed that no changes would be appropriate before the Ombudsman proposal can be put into place.

Exception review process

Sen. Hobbins reported that Dean Pitegoff of the University of Maine School of Law is interested in pursuing a relationship between the Law School and the Advisory Committee to help the exception review process. Details are being worked out.

The Legislative Subcommittee will meet with the Judiciary Committee of the 123rd Legislature as soon as possible to determine the most beneficial process for review of exceptions.

Agencies and Officials Survey

The Advisory Committee supported the FOA laws and process survey to be made available to all State agency contacts and all other governmental officials through cooperating organizations (MMA, MSMA, etc.) The survey form will also be posted on the Advisory Committee's website. The surveys may be returned anonymously.

Public Comment Instrument

The Advisory Committee also supported making the survey available to the public through the website. Advisory Committee members will make known the opportunity for the public to comment, and a press release will be prepared.

Report

The Advisory Committee approved of the draft report, and indicated the recommendations to be included with updated language:

- Establish an ombudsman position within the Attorney General's Office

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- Recommend mandatory training for “chief” elected officials and the designation of a public information officer or other point person as resource for FOA questions and inquiries
- Develop survey of state agencies, officials and the public to solicit feedback and comments on FOA issues

Additional discussion

Sen. Hobbins recommended that future meetings set aside some time at the end to allow members of the public to make comments.

Mr. Capron provided a handout to the Advisory Committee about WatchDog Maine. He also donated a book to the Advisory Committee: Litigation Under the Federal Open Government Laws 2004. After an opportunity to review the book, it will be placed in the Law and Legislative Reference Library for the use of the public as well as the Advisory Committee.

Future schedule, things to look forward to:

- Coming in the mail from staff:
 - Timeline of Advisory Committee’s activities for next several months
 - Final draft of report and legislation - with deadline for comments
- Education and Training Subcommittee will meet to prepare for Chairs and Leads Orientation (probably early January)
- A time will be scheduled for the Advisory Committee to brief the Judiciary Committee (sometime in January)
- Legislative Subcommittee will meet with the Judiciary Committee to discuss the exception review process
- Update on Internship

The meeting was adjourned at 11:45 a.m.

Prepared by Peggy Reinsch, Office of Policy and Legal Analysis 12/01/06

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