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Right to Know Advisory Committee
October 18, 2006
(Draft) Meeting Summary

Convened 9:20 a.m., Room 438, State House, Augusta

Present:

David E. Boulter, Executive Director of the Legislative Council
Sen. Barry Hobbins
Rep. Deborah Simpson
Shenna Bellows
Karla Black
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
Mal Leary
Judy Meyer
Maureen O'Brien
Linda Pistner
Chris Spruce
Ralph Stetson

Absent:

Sheriff Mark Dion
Harry Pringle

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Executive Director David E. Boulter convened the meeting as required by statute. Members and staff introduced themselves, and staff briefly described the powers and duties of the Advisory Committee. Mr. Boulter pointed out the statutory restriction on the availability of Legislative Council staff while the Legislature is in regular or special session. (The First Regular Session of the 123rd Legislature convenes December 6, 2006, and staff will not be available to meet with the Advisory Committee on or after that date until adjournment sine die.)

One of the Advisory Committee's responsibilities is to meet the reporting requirements specified in Title 5, chapter 379 for boards and commissions. Mr. Boulter serves in the role of clerk for other standing commissions that operate under the Legislature's auspices, and the Advisory Committee did not object to his taking on those responsibilities for this committee as well.

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Mr. Boulter sought nominations for Advisory Committee Chair, to be selected by the members annually. Rep. Simpson nominated Sen. Hobbins, citing that an important role of the Advisory Committee is to suggest legislation, and mentioning the advantages to the Advisory Committee's proposals in having a legislator serving as chair. Mr. Leary seconded the nomination. Ms. Pistner agreed, and recommended having Rep. Simpson serve as "stand-by chair" to preside when Sen. Hobbins is absent. The election was by acclamation.

Having been selected as chair, Sen. Hobbins then presided for the remainder of the meeting. He reviewed some of the freedom of access issues that previous study committees focused on, including adequate funding for the on-going Advisory Committee to carry out its responsibilities. He mentioned the assistance the Advisory Committee will be able to provide to the Judiciary Committee in reviewing proposed exceptions to public records, and in reviewing the existing exceptions, both endeavors required by law. Sen. Hobbins also mentioned the important role the Advisory Committee as a whole, as well as its constituent members, can play in increasing the visibility of freedom of access issues as the new Legislature convenes in December.

The Advisory Committee discussed legislative training and education, and agreed to pursue having at least basic freedom of access training included in pre-legislative activities and orientation. The majority of materials prepared would also be useful to other public officials at all levels.

Mr. Leary spoke about the Texas law requiring all public officials to participate in online training within six months of starting the job. He described the exemplary materials prepared by the Texas Attorney General's Office, including videos.

Ms. Black updated the Advisory Committee on the State's Freedom of Access website (www.maine.gov/foaa) and the Executive Branch's work on training for State employees. They are working with a pilot project at the Department of Environmental Protection. The pilot project includes an online module. The first phase was completed, and improvements have been made. The biggest concerns are e-mail, and what is a "public record". The Office of Training and Development has been involved in the pilot project. The plan is to phase in the training agency by agency. Ms. Black referred questions about storage of e-mail to Chief Information Officer Richard Thompson, should the Advisory Committee want to follow up on the logistics.

Ms. Goucher suggested that the Advisory Committee tackle its work via three subcommittees: 1) Training and education, including the website; 2) Compliance and resources; and 3) Legislative, including public records exception review, and other legislation issues.

Ms. Bellows noted that the Maine Civil Liberties Union receives much assistance in its work from volunteers, including volunteer attorneys. She wondered if that type of assistance to the Advisory Committee, through an organization such as the MCLU or directly, would be considered "in-kind" contributions. Sen. Hobbins mentioned his hope

that the University of Maine School of Law would provide assistance, including providing credit for law school interns to work with the Advisory Committee.

In reference to the public record exception reviews, Ms. Pistner suggested that some of the burden of reviewing the existing exceptions should be borne by the agencies themselves. How frequently do records or information fall under those exceptions? How often is each exception cited in response to a request? She mentioned assistance from the law school would be helpful in this area.

There was some discussion about whether the Advisory Committee should be trying to raise additional funds. The consensus was that seeking additional funds may be necessary in the future, but without a specific project that needs additional funding right now, the Advisory Committee's efforts could be better directed.

There was discussion about using interns from the Law School to help with the Advisory Committee's work. Sen. Hobbins and Ms. Pistner agreed to contact the Dean to explore the options.

The Advisory Committee created three subcommittees as follows.

Education and training: To be responsible for the duties outlined in Title 1, section 411, subsection 6, paragraphs B, C, D and G. Ms. Meyer agreed to chair the subcommittee, and the following agreed to serve as members: Mr. Flewelling, Ms. O'Brien, Mr. Stetson, Ms. Pistner, Mr. Leary and Ms. Black.

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Legislative, including public records exceptions: To be responsible for duties outlined in Title 1, section 411, subsection 6, paragraphs E, F, G and H. Mr. Spruce agreed to chair the subcommittee and the following agreed to serve as members: Ms. Bellows, Ms. Goucher, Ms. Pistner, Mr. Leary and Ms. Black.

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Compliance and resources: To be responsible for duties outlined in Title 1, section 411, subsection 6, paragraphs A, G and J. Mr. Glessner agreed to chair the subcommittee and the following agreed to serve as members: Ms. Bellows, Mr. Devlin, Ms. Pistner, Mr. Leary and Ms. Black.

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The Advisory Committee discussed the schedule for the next meetings, keeping in mind that staff is not available beginning December 6th. The members agreed to meet on Monday, November 13th and Tuesday, November 28th. Both meetings will start at 9:00 a.m. and will be held in Room 438 of the State House. Audio of the meetings will be available through a link on the Legislature's website: <http://janus.state.me.us/legis/audio/> Some of that time may be available for subcommittee use, but because the memberships of the subcommittees overlap, the chairs of the subcommittees will try to establish meeting times prior to the 13th. Staff will be available at the subcommittee meetings, and can arrange meeting space.

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Mr. Leary gave an update on the latest “public records audit” by the Maine Freedom of Information Coalition, of which he serves as chair. The “Report on the Public Records Follow-up Audit” is available on the Coalition’s website: www.mfoic.org. Jeff Austin of the Maine Municipal Association was in the audience and described the audit’s findings as misleading, and stated that the report included factual errors. The Advisory Committee agreed to give Mr. Austin an opportunity to respond to the report at the next meeting.

Secretary of State Matthew Dunlap then addressed the Advisory Committee on the State-wide e-mail retention project. He spoke about the changing nature of public records, the concerns about identity theft, what constitutes a “public record”, the uses and prevalence of Social Security numbers in records. Ms. Black, who is also working on the project, mentioned that the world of records, especially e-mail, is increasingly complex. The agency records retention schedule identify what records need to be retained and for how long, but the schedules do not indicate what is “public”. Secretary Dunlap stated that the working group is open to the Advisory Committee’s recommendations.

Mr. Flewelling moved that the Advisory Committee adjourn. The motion was seconded, the vote was unanimous and the Committee adjourned.

Prepared by Peggy Reinsch and Colleen McCarthy Reid

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