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**Right to Know Advisory Committee**  
**November 13, 2006**  
(Draft) Meeting Summary

Convened 10:15 a.m., Room 438, State House, Augusta

Present:

Rep. Deborah Simpson  
Shenna Bellows  
Karla Black  
Richard Flewelling  
Ted Glessner  
Suzanne Goucher  
Mal Leary  
Judy Meyer  
Maureen O'Brien  
Harry Pringle  
Chris Spruce  
Ralph Stetson

Absent:

Sen. Barry Hobbins  
Robert Devlin  
Sheriff Mark Dion  
Linda Pistner

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

Representative Deborah Simpson, serving as Vice Chair, convened the Advisory Committee.

Jeff Austin, lobbyist for the Maine Municipal Association, commented on the Maine Freedom of Information Coalition's public records audit conducted in May 2006, and the resulting report. He mentioned his appreciation to the MFOIC and Judy Meyer for the discussions they had and the space for his editorial on the subject, which he distributed. He noted three big problems with the audit and the report.

1. the request was sloppy - not clear what was requested
2. the request was made inconsistently from location to location, or requester to requester
3. the expression of the result was not consistent, nor was it actually reflective of whether there was compliance as required by the standard of the law.

Mr. Austin reviewed the towns considered "noncompliant" and explained that some of them complied with the law. Another request was for "an accounting of all lawyers fees paid in 2005" was confusing and ambiguous and could not be satisfied without clarifying what was actually being sought. Is there a problem that rises to the level at which the Legislature needs to react? Mr. Austin does not think so.

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Mr. Austin commented that the law is broader than common sense, meaning that some documents that one would consider private (tax information) can be public (undischarged tax liens).

Ms. Meyer responded that the University of Maine crunched the data, and that the methodology of the survey, used in many states across the country, is solid. The audit response sheets do provide more information than in the spreadsheet Mr. Austin distributed. The audit was supposed to be a snapshot of ordinary people in ordinary towns on an ordinary day. The MMA ListServe showed disrespect, and how public officials view legitimate requests for public documents.

Rep. Simpson interjected that generally, people are afraid of the Press. But just because someone is nervous when the Press comes around doesn't mean they won't provide the public documents.

Mr. Austin clarified that the ListServe mentioned by Ms. Meyer is hosted by MMA, but it is the municipal officials that have exclusive access to participation. But he agreed that it was properly used, and that the headlines after the audit bore out the fears that responses would be misunderstood.

Ms. Black mentioned that a problem with the audit and report is that they perpetuate the myth that a requested document must be supplied immediately, when the law says within a "reasonable" time. It shows a need for training. The public should bear some responsibility for knowing when a document can be seen or produced.

Mr. Pringle, who represents the Maine School Management Association and therefore school interests on the Advisory Committee, offered comments about the audit as well. Although he sees value in audits, he stated that this one did a major disservice to the hard working school employees. It is a complete misunderstanding to say the entity is not in compliance if the document is not produced immediately. The school crisis response plan is not clearly a public document, and that caused problems. Ms. Meyer clarified that both the Secretary of State's office and the law firm of Preti Flaherty had signed off on all the documents being requested as public documents. Mr. Pringle closed by saying that taking the time to make sure one is complying with the law should not be considered a violation.

### SUBCOMMITTEE REPORTS

#### Education and Training Subcommittee.

- Pre-legislative conference. Ms. Meyer reported that the Subcommittee had requested time to make an introductory presentation at the pre-legislative conference in early December. No time is available; however a packet of written materials to be distributed to all members would be welcomed. Staff is assembling the packet, which will consist of:
  1. Cover page—introduction to Right to Know Advisory Committee;

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2. Handout on Freedom of Access laws---originally prepared by OPLA and updated by AG's Office;
  3. Frequently Asked Questions from Maine State Government's Freedom of Access website---prepared by Karla Black, Governor's Office;
  4. Common Myths about FOA laws---originally prepared for Maine State Bar Association seminar by Richard Flewelling; and
  5. Letters of introduction from Right to Know Advisory Committee members. (Members who have not yet submitted their letters to Peggy and Colleen need to do so ASAP.)
- Chairs and leads training. Ms. Meyer reported that there will time available for the Advisory Committee to provide more in-depth information and answer questions at the orientation program for legislative committee chairs and leads, which will occur in January. More work will be required to pull together the presentation.
  - Does training really work? Ms. Meyer reported on the decision to survey police departments as those who have operated under the mandatory FOA training for a few years. A survey is in the works, with the cooperation of the Maine Chiefs of Police Association. Preliminary results may be available at the November 28th meeting.

### Legislative Subcommittee.

- Ombudsman recommendation. Mr. Spruce explained the recommendation to pursue the enactment of legislation creating a Freedom of Access Ombudsman in the Attorney General's office. The details of the Ombudsman authority still need to be worked out, as well as the budget. Ms. Pistner had agreed to provide the budget figures, which should be available by the November 28th meeting.
- Exception review (existing exceptions). Ms. Pistner drafted an outline of the proposal to utilize the services of law students as interns to do much of the ground work on reviewing the existing public records exceptions. She also drafted a survey sheet to be used to collect information from the record custodian in order to understand the purpose and need for the exception.
- Proposed legislation. Mr. Spruce reported that the subcommittee still needs to work out details of reviewing bills and providing assistance to the Legislature. Some of that will have to wait until the Subcommittee/Advisory Committee meets with the Judiciary Committee, which probably won't occur before January.

### Compliance and Enforcement Subcommittee.

- Ombudsman concept. Mr. Glessner reported that the Compliance and Enforcement Subcommittee supports the Ombudsman concept. The Subcommittee believes that is the appropriate first step in dealing with compliance and enforcement problems.
- Changes in law and practice. Mr. Glessner pointed out the draft questionnaire to be mailed to State FOA contacts, as well as the various organizations, to gather comments, concerns and suggestions about the Freedom of Access laws. The survey can be returned anonymously to Advisory Committee staff.
- Oversight of maintenance and use of records. Mr. Glessner noted that additional information is need from the State Archives and Records Center about the processes

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used to preserve records, make them available, and protect those that are confidential while ensuring access to those that are public.

### ADVISORY COMMITTEE ACTION - UNANIMOUS VOTES:

- Approved internship proposal.  
Mr. Pringle asked that the idea of stipends be explored.
- Approved introductory packet for legislators for distribution at Pre-Legislative Conference in December, and to conduct session at Chairs and Leads Orientation in January.
- Approved concept of survey/questionnaire for public entities; wording to be approved at meeting on November 28th (send suggestions to Colleen and Peggy).
- Approved concept of public comment opportunity, perhaps on website. Details to be explored at meeting on November 28th.

Before the Advisory Committee adjourned, staff mentioned the inclusion of a copy of the nonprofit conversion law in the meeting's materials. A member of the public is interested in both the Advisory Committee's work, as well as the nonprofit conversion law.

### FOR MEETING ON NOVEMBER 28TH:

1. Ombudsman
  - draft language
  - budget information
  - other states
2. Information from law enforcement agency survey about mandatory training
3. Mandatory training (discussion item)
  - is this a local government mandate?
  - draft
4. Enforcement: administrative action, penalties, lawsuits, attorney's fees
  - information from other states
5. Law student interns
  - what needs to happen with Law School
  - information about stipends
6. Information from Records Center and Archives re maintaining records
7. Updated survey/questionnaire instrument
8. Public comment opportunity instrument
9. Draft report

Adjourned, 11:26 a.m.

Prepared by Peggy Reinsch, Office of Policy and Legal Analysis 11/14/06

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