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Right to Know Advisory Committee
September 26, 2007
(Draft) Meeting Summary

Convened 1:00 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Deborah Simpson
Shenna Bellows
Karla Black
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
Maureen O'Brien
Linda Pistner
Harry Pringle
Chris Spruce

Absent:

Sheriff Mark Dion
Mal Leary
Judy Meyer
Ralph Stetson

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Hobbins convened the Advisory Committee and reminded everyone that audio of the meeting was being made available online through the Legislature's website.

Sen. Hobbins reviewed the recommendations made by the Advisory Committee in its first annual report issued in January 2007. Sen. Hobbins asked staff to provide an update on the status and outcome of the Advisory Committee's recommendations.

Training for Legislature

Advisory Committee staff reported on the success of the training materials provided to Legislators. Informational packets on the FOA laws were distributed to all Legislators. Staff also described the presentation and Q&A session provided by the Advisory Committee (Sen. Hobbins, Rep. Simpson and Judy Meyer) as part of the Committee Chairs and Leads Orientation at the start of the 1st Regular Session.

Internship to work on review of existing public records exceptions

Sen. Hobbins reported that the Advisory Committee's inquiry last January was too late to attract interest, but that he thought the Dean of the Law School would be very interested in pursuing the internship again for the upcoming spring semester. There was discussion about renewing the Advisory Committee's efforts to establish an internship through the University of Maine Law School. Advisory Committee staff reported that the Law School's timeline for internship requests for Spring 2008 was the end of October. Ms. Pistner indicated that the AG's Office would again provide supervision for the work of the intern. The Advisory Committee briefly discussed the scope of work for the intern and the Advisory Committee's timeline for reviewing exceptions in current law in 2008 and 2010. Mr. Spruce suggested that the intern could assist the Advisory

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Committee with review of pending legislation in addition to the review of existing exceptions. Rep. Simpson remarked that the intern could also be helpful to the Judiciary Committee as that committee considers bills during the Second Regular Session. The Advisory Committee agreed to pursue the internship for the Spring semester.

Ombudsman (originally in LD 1822, then in LD 1923)

Advisory Committee staff reported that the legislation to create an ombudsman position (now in LD 1923) was carried over to the 2nd Regular Session after being recommitted to the Judiciary Committee from the Special Appropriations Table. Funding for the half-time position in the Attorney General's Office (at a cost of approx. \$40 K annually) was not available last session. Sen. Hobbins reiterated the interest (echoed by Rep. Simpson) of the Judiciary Committee members in seeing the legislation enacted and securing funding for the ombudsman position. Sen. Hobbins remarked that he would continue to work with Ms. Black and others in the administration on funding the position through any budget bills from the Governor.

Mandatory training for elected officials (LD 1822, PL 2007, c. 349)

The Advisory Committee's recommendation to require mandatory training on FOA issues for elected officials was adopted by the Legislature with some amendments. The law (Public Law 2007, chapter 349) requires that elected officials complete a mandatory training course beginning July 1, 2008 within 120 days of taking elected office. Those serving in elected office on 7/1/08 must complete training by 11/1/08. The Advisory Committee is required to approve the training course and maintain records of those elected officials who have completed the training. The Advisory Committee discussed its role in implementing and administering the law. Sen. Hobbins noted that the Education and Training Subcommittee is meeting on October 3rd to discuss the mandatory training law and that the subcommittee would work to develop recommendations to the full committee to consider at the next meeting. He also asked that any member who had ideas or comments on the mandatory training provision to forward those comments to Judy Meyer, chair of the Education and Training Subcommittee.

Survey of public employees

Advisory Committee staff reviewed the responses received in January 2007 from the survey and made note of some of the common themes and issues highlighted in the responses. The Advisory Committee asked for input on any practical problems experienced with compliance with FOA laws, suggestions for areas of the FOA laws that needed to be clarified and suggestions for changes in the laws or for the development of best practices. There were 35 responses to the survey: 9 from state government, 2 from the public, 1 from the media and 23 from school administrators. Several of the respondents took advantage of the opportunity to respond anonymously. Staff distributed a chart outlining all of the responses.

The Advisory Committee discussed and commented on the results of the survey. Sen. Hobbins asked whether the committee should attempt to survey again. Mr. Spruce agreed and said that it would be nice to have had a bigger response. Ms. O'Brien suggested that the committee should make sure that the surveys get to the right person to ensure the best chance for a response. Mr. Pringle remarked that he believed 35 responses was pretty good and noted that the responses were consistent in identifying issues. Ms. Bellows proposed that the committee make specific requests to certain entities. Ms. Black noted the difficult position of state agencies---agencies may be reluctant to identify problems for fear of appearing like an obstructionist. She emphasized the

importance of allowing anonymity for those responding to the survey. Ms. Pistner echoed the comments of Ms. Black and said that the survey results listed the problems. She suggested that the Advisory Committee elicit more comments from public officials—maybe a discussion group—as the Advisory Committee goes through the process of reviewing the existing exceptions.

Update from Secretary of State

Secretary of State Matthew Dunlap then updated the Advisory Committee on the activities of his office and State government on a few fronts. He spoke about the State-wide e-mail retention project headed up by Ms. Black and Donna Grant, Deputy Secretary of State, and noted that the RFPs seeking technical solutions were being reviewed now. He remarked that Maine is the first state to issue an RFP and is being watched nationally. He explained why the project is focusing on e-mail as the first building block, but explained that a digital archive of all records is the ultimate goal.

Secretary Dunlap spoke about being named by the national association of Secretaries of State as an at-large member of the National Electronic Commerce Coordinating Council (EC3 group). He also explained that he hosted a recent symposium in Portland focusing on the redaction of private information in public records. He said that one of the products of the symposium will be a “white paper” to assist policy makers in addressing this issue since it appears to be more of a policy issue than a technical one. Secretary Dunlap told the Advisory Committee that the technical solutions for redacting private information are available and gave an example of a company doing such work for the International War Crimes Tribunal in the Hague. He noted the continuing concerns about identity theft.

Secretary Dunlap also described the efforts of the State Archives with regard to private information contained in public records. He reminded the Advisory Committee that 90% or more of records held in Archives are readily accessible to the public. He stated that he is willing to work with the Advisory Committee to develop strategies to engage the public in a dialogue about what is “private” information and what is “public” information.

Discussion of LD 1881, An Act to Improve Transparency and Accountability in State Government

The Advisory Committee reviewed LD 1881 which has been carried over by the Judiciary Committee. Ms. Bellows noted that the Maine Civil Liberties Union supports the bill which she believes is modeled on Texas law. She suggested that it would be appropriate for the Legislative Subcommittee to review the bill and come back to the full committee. Mr. Pringle said that it was difficult to figure out the purposes behind many of the provisions when reviewing the bill. Sen. Hobbins suggested that Sen. Weston, the sponsor of the bill, be asked to communicate in person or in writing with the subcommittee or full committee her explanation of the purpose and intent of the proposed legislation. He cautioned that he did not want the bill to become a political football. Ms. Bellows remarked that there may be some merit to establish guidelines for responses to FOA requests. Ms. Black cautioned against “hard” deadlines. Ms. Pistner remarked that the “reasonableness” standard in the current law was appropriate and that if one can’t limit the scope of the request, one shouldn’t have a limit on the response time. The Advisory Committee agreed to refer the bill for review by the Legislative Subcommittee.

Future Meetings

October 29th. The Advisory Committee will meet on Monday, October 29th at 1:00pm. The education and training subcommittee should be ready to report with recommendations for how to proceed with the implementation of mandatory training for elected officials as required by Public Law 2007, c. 349. The committee also plans to discuss training for legislators. Senator Hobbins inquired about the use of IT resources for training. It was suggested that the committee contact the Information Technology Office for the Legislature to determine what IT resources may be available with regard to online training.

Also, on October 29th, the Legislative Subcommittee will meet beginning at 9:30 am. The subcommittee will discuss the process for the review of existing exceptions and LD 1881, An Act to Improve Transparency and Accountability in Government, which was carried over by the Judiciary Committee.

December 5th. The Advisory Committee will meet on December 5th, time TBA. The committee also reserved the possibility of scheduling a subcommittee meeting prior to a meeting of the full Advisory Committee. The Advisory Committee identified the following issues for discussion: (1) private information embedded in public documents, including social security numbers and records maintained in the Registry of Deeds; (2) recent Portland School Committee court decision relating to executive sessions; and (3) report back and recommendations from Legislative subcommittee on process for review of existing exceptions and recommendations to Judiciary Committee on LD 1881.

Ms. Goucher also mentioned that one of the issues raised during the legislative training with committee chairs and leads was whether partisan party caucuses were required to be open to the public and how the “rule of 3” related to meetings of Legislators applied. Ms. Pistner responded that the AG’s office has provided informal advice that political party caucuses are not a “creature” of the Legislature as a public body and that it is within the discretion of each party whether a caucus is open or closed to the public.

The Advisory Committee also discussed the need for scheduling additional meetings ---possibly in February or March---but no specific dates were reserved. The statute governing the Advisory Committee requires that the committee meet at least 4 times per year.

Prepared by Peggy Reinsch and Colleen McCarthy Reid

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