Right to Know Advisory Committee
October 12, 2017
Meeting Summary

Convened 9:05 a.m., Room 438, Maine State House, Augusta


Absent:  Mary Ann Lynch  Luke Rossignol  Eric Stout

Staff:  Craig Nale and Colleen McCarthy Reid

Welcome and Introductions

The Chair of the Advisory Committee, Sen. Lisa Keim, convened the meeting; members introduced themselves.

Review of prior legislation affecting access to records related to licensed professionals

Staff outlined the materials provided to the Advisory Committee: a comparison of the categories of personal information protected from disclosure for public employees (State employees, county and municipal employees, and Maine State Housing Authority employees); a comparison of the discussion draft amendments to carry over bills, LD 1267 and LD 1541, related to licensed professionals; and a copy of the Federal Privacy Act and the definition of “record”, which limits the scope of the federal law to records containing information that identifies an individual.

The Advisory Committee reviewed the categories of personal information protected as confidential in State employee personnel records and were generally supportive; members wondered why LD 146 was not enacted, which would have made the personnel records law for county and municipal employees consistent with the provision for State employees. Sen. Keim explained that there were concerns about the breadth of the proposal; she and others felt additional time and consideration of the transparency and privacy issues was needed. It would be beneficial for the Advisory Committee to review the categories of personal information, including complaint information about specific individuals, protected as confidential under current law and in proposed legislation for public employees and licensed professionals.

The Advisory Committee generally discussed the potential models for addressing personal information in licensing files: 1) make all licensing information public, except for certain types of information designated as confidential, reflected in current law and in the discussion draft amendment to LD 1267; or 2) make all licensing information confidential, except for certain types of information designated as
public, reflected in discussion draft amendment to LD 1541. During the discussion, the Advisory Committee noted that the appropriate policy approach may depend on context. For the purposes of the Freedom of Access Act and transparency, the current default that records are public unless designated as confidential makes sense. But, from an administrative perspective, the alternative approach may be more practical as it seems easier to parse out specific information that can be made public rather than the more labor intensive process to redact confidential information.

The Advisory Committee discussed the privacy interests associated with personnel records and licensing files. Christopher Parr explained his view that individuals’ privacy rights are equally as important as the right of the public to know about the activities of its government, and that government has a duty to be responsible in collecting, retaining, securing, and disseminating the personal information it collects from and about individuals. Mr. Parr suggested that an additional criterion be added to the prescribed criteria for review of existing and proposed public records exceptions: “Whether public disclosure of the record or information contributes significantly to public understanding of the operations or activities of government”.

Members expressed interest in the approach taken in LD 1267’s proposed amendment as a starting point. For the next meeting, staff will outline the categories of personal information included as confidential in LD 1267 as well as additional types of personal information protected in State employee personnel records under current law. Members agreed also that the disclosure of personal information designated as confidential in the aggregate should be permitted as long as an individual could not be identified. The Advisory Committee will review the outline in advance of the meeting and, at the meeting, consider what types of personal information should be designated as confidential and under what circumstances confidential information may be disclosed.

The Advisory Committee agreed to continue discussion at the next meeting.

Review of past legislative and Advisory Committee work related to remote participation

Staff reviewed LD 1586, which was introduced to the 127th Legislature as a result the Advisory Committee’s discussions in 2015, as well as the submitted on the bill. Staff also provided the committee with information on laws related to remote participation in other states. LD 1586 proposed to allow a body subject to the Freedom of Access Act, except a publicly-elected body, to conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if certain conditions were met.

At the outset, members agreed that it is appropriate for statutory clarifications to be made with regard to remote participation. The Advisory Committee’s discussion focused on LD 1586 and whether the scope and conditions of LD 1586 should continue to be recommended for remote participation in public proceedings. Using an outline of the issues raised in previously discussions of remote participation and by LD 1586, the Advisory Committee indicated, by straw vote, their initial opinion on the following questions:

1. Whether eligibility for remote participation should make a distinction based on the function of the public body? 12 members voted yes.
2. Whether eligibility for remote participation should include publicly-elected bodies? 7 members voted yes.
3. Whether a quorum should be required at the meeting location? 11 members voted yes.
4. Whether voting should be limited to only those members attending in person? 9 members voted yes.
5. **Whether there should be limits on the reasons when remote participation is permitted?** The members deferred voting on this issue until the next meeting.

6. **Whether members participating remotely can participate in executive sessions?** 3 members voted in favor.

7. **Whether members participating remotely can participate in adjudicatory matters?** 0 members voted in favor.

8. **Whether members participating remotely must have access to all materials available to members participating in person?** 9 members voted in favor.

9. **Whether there should be specific requirements for audio-visual equipment or technology?** The members deferred voting on this issue until the next meeting.

No decisions were made. The Advisory Committee will review the results of the straw votes and continue the discussion of the issue at the November 15th meeting.

**Suggestion of other topics for Advisory Committee discussion**

Ms. Meyer suggested that the Advisory Committee consider offering comment on the proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records. Ms. Meyer stated she felt it would be appropriate for the Advisory Committee to comment on issues affecting public access to court records. Ms. Pistner agreed, although she noted that the Freedom of Access Act does not apply to the Judicial Branch. Mr. Parr cautioned that the Advisory Committee may not have adequate time to review and discuss the recommendations in order to prepare comments. The Advisory Committee agreed to add this item to the agenda for the next meeting and requested that staff forward electronic copies of the draft task force report and recommendations in advance of the meeting so that members will be prepared for a brief discussion. Ms. Meyer also asked that correspondence to the Task Force and Chief Justice from several public interest organizations and news organizations be shared with the Advisory Committee.

Mr. Parr also inquired about a recent email forwarded to the Committee from Brenda Kielty. The email noted that Ms. Kielty has received a suggestion that current law be amended to require training in FOAA for officials appointed to government positions that are now subject to the training requirement if the official is elected to the position.

**Discussion of the penalty provision in 1 MRSA §410**

The Advisory Committee did not discuss this agenda item due to time constraints; discussion may be deferred until the next meeting.

**Scheduling of future meetings**

The Committee’s next meeting will be held on Wednesday, November 15th at 9:00 a.m., with a Public Records Subcommittee meeting at 1:00 p.m. Based on the Advisory Committee’s deliberations on November 15th, Sen. Keim also suggested that the Advisory Committee may need to schedule an additional meeting in December. All meetings will be held in Room 438 of the State House.

The meeting was adjourned at 11:40 a.m.