Right to Know Advisory Committee  
September 20, 2017  
Meeting Summary

Convened 9:00 a.m., Room 438, Maine State House, Augusta

Present:  
Sen. Lisa Keim  
Rep. Chris Babbidge  
Stephanie Grinnell  
Mary Ann Lynch  
Judy Meyer  
Suzanne Goucher  
Richard LaHaye  
Paul Nicklas  
Chris Parr  
Linda Pistner  
Eric Stout

Absent:  
Mary-Anne LaMarre  
Luke Rossignol  
AJ Higgins  
William Shorey

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 past legislative and Advisory Committee work related to remote participation

Staff reviewed past efforts of the Legislature, including amendments developed by the Joint Standing Committee on Judiciary, and the Advisory Committee to amend the Freedom of Access Act to provide additional guidance or requirements around allowing members of public bodies to participate in meetings of those bodies when not physically present. Staff distributed copies of and briefly summarized the following legislative documents: LD 258 (126th Legislature); LD 1809, the Judiciary Committee amendment to LD 1809 and the Governor’s veto message on LD 1809 (126th Legislature); LD 448 (127th Legislature); LD 1241, the Judiciary Committee amendment to LD 1241, a Senate amendment to LD 1241 and the public law of the enacted version of LD 1241 (127th Legislature); and LD 1586 (127th Legislature).

Advisory Committee members discussed the view of the Attorney General’s Office that remote participation is not allowed under the Freedom of Access Act because members of a public body must be present and subject to the public’s eye, which is the position taken in a 1979 Opinion of the Attorney General. Advisory Committee members compared that opinion with the Governor’s veto message on LD 1809, which reflects the Governor’s view that the Freedom of Access Act does not prohibit remote participation as long as the other requirements of the Act are met, such as the notice and recordkeeping requirements. The Advisory Committee expressed some concern that agencies, boards and commissions of state government, including the Public Utilities Commission, appear to be allowing members to participate in meetings remotely without express statutory authorization or more clarity in the Freedom of Access Act. The Advisory Committee noted that eight public bodies are currently authorized in statute to allow members to participate in meetings remotely.
Advisory Committee members questioned why previous efforts to enact legislation regarding remote participation have failed: members noted that bodies with urgent needs to meet and make decisions for financial or public safety reasons had been successful at obtaining express authorization for remote participation, but that other attempts to define the circumstances under which remote participation is authorized or the bodies that may allow remote participation had been opposed by bodies whose existing policies would contradict those requirements or who would be excluded from the proposal. The discussion focused on whether elected members should be allowed to participate remotely rather than face their constituents in person and on whether a quorum of the body should be required to be physically present at the meeting.

Members of the Advisory Committee decided to resume the discussion at the next meeting with LD 1586 as the starting point because LD 1586 was introduced to the 127th Legislature as a result of the Advisory Committee’s discussions in 2015. Staff agreed to gather testimony on prior bills to provide a clearer picture of why some may have been opposed, to determine what practices may currently be in use in the State, to gather information on how other states address remote participation, and to catalogue the areas where decisions would affect the bodies using remote participation. No decisions were made and the item will be discussed at the Advisory Committee’s third meeting in 2017.

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

At its first meeting in 2017, the Advisory Committee agreed to consider two bills carried over from the First Regular Session of the 128th Legislature in the Judiciary Committee: LD 1267 and LD 1541. The Advisory Committee also agreed to consider two other bills that died during the First Regular Session: LD 1633 and LD 146. All of the bills relate to confidentiality of personal information.

With respect to LD 1267 and LD 1541, staff reviewed how LD 1267 generally treats information submitted by license applicants to certain licensing boards as confidential unless otherwise specified in the law, and how LD 1541 treats license application information for polygraph examiners and professional investigators confidential except in certain specified circumstances. These bills raised questions within the Judiciary Committee about developing a comprehensive approach to professional licensing information accessibility where perhaps categories of information could be identified as either deserving default confidentiality or default public accessibility. Sen. Keim explained that the Judiciary Committee became bogged down by the number of potential categories of information, the possible differences in expectations of privacy of various licensed professionals and public employees, and with the task of reviewing existing confidentiality provisions to attempt to make those more uniform. Mr. Stout contrasted Maine’s exception-based Freedom of Access Act with the federal Privacy Act, which protects personally-identifiable information. The Advisory Committee generally discussed two potential models available to policymakers: 1) make all licensing information public, except for certain types of information designated as confidential; or 2) make all licensing information confidential, except for certain types of information designated as public.

With respect to LD 1633 and LD 146, the Advisory Committee did not discuss specific policy approaches, but felt that further information and discussion about professional licensing information would also be helpful in addressing the personal information issues raised in these bills.

The Advisory Committee agreed to continue discussion at the next meeting. Staff will provide materials outlining the categories of personal information protected from disclosure for public employees and licensed professionals under current law and the additional categories of personal information proposed to be protected under the proposed legislation. Staff will also provide background information on the Federal Privacy Act, which provides protection for “personally-identifiable information” as defined in federal law.
**Update on status of review of existing public records exceptions**

Staff informed the Advisory Committee that questionnaires are being compiled to be sent to the appropriate administrators of the existing public records exceptions in Titles 1 through 7-A, which the Advisory Committee is required by law to review prior to 2019. A subcommittee of the Advisory Committee expects to begin reviewing the returned questionnaires at a meeting in November.

**Discussion of emails received by the Advisory Committee**

The Advisory Committee occasionally receives email from members of the public with potential topics for discussion at Advisory Committee meetings. The agenda provided an opportunity for members of the Advisory Committee to discuss the contents of any of those emails; members did not choose to discuss the emails at this meeting and agreed that staff should acknowledge receipt to the senders.

**Discussion of civil penalty amount for violations of the Freedom of Access Act**

Staff reviewed the provision of law that establishes a $500 civil penalty for every willful violation of the Freedom of Access Act. Mr. Stout recalled that federal law provides for up to a $5,000 penalty, which is charged to the individual for criminal violations of the Privacy Act. Other members commented that under the Freedom of Access Act the fine is paid by the violating agency with taxpayer dollars and does not benefit the aggrieved person. Mr. Parr suggested that the penalty could allow for some discretion in the amount and could accrue to a special fund meant to advance the objectives of the Freedom of Access Act. Ms. Meyer commented that other states levy the fine against the violator in his or her individual capacity rather than against the person as a government employee.

Staff agreed to gather further information, including how the term “willful” is applied, how many willful violations have occurred, and what other remedies are available under the Freedom of Access Act, such as attorneys’ fees and injunctive relief. The matter is anticipated to be discussed at the Advisory Committee’s third meeting.

**Scheduling of future meetings**

The Committee’s third meeting will be held on Thursday, October 12th at 9:00 a.m., and the fourth and final meeting will be held on Wednesday, November 15th at 9:00 a.m. All meetings will be held in Room 438 of the State House.

The meeting was adjourned at 11:30 a.m.