RIGHT TO KNOW ADVISORY COMMITTEE

Wednesday, November 15, 2017
9:00 am
State House Room 438

Meeting Agenda

1. Welcome and introductions

2. Discussion of suggested changes to the Freedom of Access Act recommended for RTKAC consideration
   a. Amend training provision to require municipal officials to complete training when appointed to offices for which training is required if elected (§412)
   b. Amend penalty provision (§410)

3. Discussion of whether to comment on proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records

4. Discussion of remote participation by members of public bodies; review of straw votes on elements of proposed legislation from LD 1586 and outline of issues

5. Discussion of access to records and personal information related to licensed professionals and state and local government employees

6. Opportunity for members of the Advisory Committee to raise other topics for potential discussion

7. Update on review of existing public records exceptions—submission of questionnaires by agencies

8. Outline of draft report

9. Adjourn

Next meeting:

- Subcommittee meeting to review existing public records exceptions at 1 pm today
Summary of Remote Participation Discussion Topics

Summary of October 12, 2017 RTKAC meeting

1. A majority of members of the Advisory Committee supported:
   a. Allowing remote participation based on the entity’s function (12-0)
   b. Allowing remote participation by elected officials (7-5)
   c. Requiring a quorum to be present at the meeting location (11-1)
   d. Allowing voting only by those physically present (9-2)
   e. Prohibiting remote participation in executive sessions (9-3)
   f. Prohibiting remote participation in adjudicatory matters (12-0)
   g. Requiring remote participants to be able to access materials available at the meeting (9-3)

2. Remaining questions to consider:
   a. Should the law establish certain reasons why a member is absent as a precondition to remote participation (such as illness or weather)?
   b. Should the law require certain audio/visual requirements for the meeting? If so, what should those include?
   c. Is clarity needed on whether an absent member may participate or vote in certain matters – i.e., is participation allowed in some instances where voting is not?
   d. Should the public served by a body have input or be required to approve a remote participation policy?
Comparison of past bills resulting from recommendations of the RTKAC:

<table>
<thead>
<tr>
<th></th>
<th>LD 258</th>
<th>LD 1586</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Terms governing use of remote participation</strong></td>
<td>A policy adopted by the body</td>
<td>A written policy adopted by the body</td>
</tr>
<tr>
<td><strong>Which bodies may use remote participation</strong></td>
<td>A body subject to FOAA</td>
<td>A body subject to FOAA, except a publicly elected body</td>
</tr>
<tr>
<td><strong>Quorum requirements</strong></td>
<td>A quorum must be physically present at the noticed meeting location, unless: an emergency has been declared, the meeting is necessary to address the emergency and the body otherwise complies with other requirements to the extent practicable</td>
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<td><strong>Authorized means of remote participation</strong></td>
<td>Through telephonic, video, electronic or other similar means of communication</td>
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</tr>
<tr>
<td><strong>Reasons for public body member’s physical absence</strong></td>
<td>The adopted policy may establish circumstances under which a member may participate when not physically present</td>
<td>The adopted policy must establish criteria that must be met before a member may participate when not physically present</td>
</tr>
<tr>
<td><strong>Voting</strong></td>
<td>When a meeting includes remote members all votes must be taken by roll call; a member not physically present may participate in a quasi-judicial proceeding but may not vote on any issue concerning testimony or other evidence provided during the proceeding</td>
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<td><strong>Executive sessions</strong></td>
<td>The adopted policy may allow a member to participate remotely in an executive session</td>
<td>The adopted written policy may not allow a member to participate remotely in an executive session</td>
</tr>
<tr>
<td><strong>Audio/visual requirements</strong></td>
<td>Members of the body must be able to hear and speak to all other members; members of the public in the noticed meeting location must be able to hear all members participating from other locations. Members must receive documents and materials discussed at the proceeding prior to the meeting; materials made available at the meeting may be transmitted to members not present if the technology is available.</td>
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<td><strong>Annual meeting</strong></td>
<td>If a body conducts one or more meetings with members participating remotely, it must also hold at least one public meeting annually where no members participate remotely</td>
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Prepared by the Office of Policy and Legal Analysis for the Right to Know Advisory Committee
November 15, 2017
Existing Maine law specifically allowing remote participation:

1. **Workers Compensation Board** ("The board ... shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology."). 39-A MRSA §151, sub-§5. PL 2003, c. 608, §9.

2. **Finance Authority of Maine** (When the chief executive officer of FAME determines there is an emergency requiring action on not more than 3 days’ notice, an emergency meeting may be conducted by telephone if: (1) the conference call is placed by ordinary commercial means at an appointed time; (2) FAME records the conference call and prepares minutes of the emergency meeting; (3) public notice is given in accordance with FOAA, including the time of the meeting and the location of a telephone with a speaker attachment that allows everyone participating in the meeting to be heard and understood and available for members of the public to hear the business conducted at the meeting.). 10 MRSA §971. PL 1995, c. 117, Pt. C, §1.

3. **Emergency Medical Services’ Board** ("The board may use video conferencing and other technologies to conduct its business but is not exempt from [FOAA].” The board and its staff may participate in meetings by video conferencing or telephone conferencing or similar equipment if all persons participating in the meeting can hear each other; such participation “constitutes presence” at the meeting.). 32 MRSA §88, sub-§1, ¶D. PL 1987, c. 273, §5.

4. **Commission on Governmental Ethics and Election Practices** ("The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties ... and the commission’s office remains open for attendance.” Telephone meetings are permitted during the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of a complaint or to address procedural or logistical issues before a monthly meeting.). 21-A MRSA §1002, sub-§2. PL 2001, c. 470, §4.

5. **Maine Governmental Facilities Authority** ("The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public meeting ... only if each member can hear and speak to all other members and the public can hear the members, anyone present at the remote location is identified, the member’s attendance is not reasonably practical, and documents are available to the remote members. 4 MRSA §1602, sub-§3. PL 2015, c. 449.


7. **Maine State Housing Authority** (same as Maine Governmental Facilities Authority). 30-A MRSA §4723, sub-§2, ¶B. PL 2015, c. 449.

*Prepared by the Office of Policy and Legal Analysis for the Right to Know Advisory Committee
November 15, 2017*

Examples of other states' laws allowing remote participation:

1. Massachusetts

The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided further, that a quorum of the body, including the chair, are present at the meeting location. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39 [relating to presence when hearing testimony]. See also adopted regulations.

2. Connecticut

"Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power."

3. New Hampshire

For the purpose of this chapter, a 'meeting' means the convening of a quorum of the membership of a public body . . . or the majority of the members of such public body if the rules of that body define 'quorum' as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.

A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

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November 15, 2017
(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting’s location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

4. Vermont

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.

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(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

(i) identify himself or herself when the meeting is convened; and

(ii) **be able to hear the conduct of the meeting and be heard throughout the meeting.**

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. **At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.**
1. **$500 fine for willful violations**

   For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than $500 may be adjudged. 1 MRSA § 410. (Unchanged since 1987, when a willful violation was changed from a Class E crime.)

2. **Civil violations enforceable by Attorney General**

   The Law Court has held that “only the Attorney General or his [or her] representative may enforce the Freedom of Access Act by seeking the imposition of a fine pursuant to § 410.” *Scola v. Town of Sanford*, 1997 ME 119, ¶ 7, 695 A.2d 1194, 1195. In Maine, civil violations “are enforceable by the Attorney General, the Attorney General’s representative or any other appropriate public official in a civil action to recover what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the law.” 17-A MRSA § 4-B(1).

3. **Attorney’s fees**

   In the event that a request to inspect or copy a public record is denied or an action is illegally taken in an executive session, a substantially prevailing plaintiff in an appeal to the Superior Court may be awarded attorney’s fees if the court determines the violation was committed in bad faith. 1 MRSA § 409. (Enacted in 2009.)
Outline of Draft Proposal
Related to Personal Information about Licensed Professionals
(based on 10/12 RTKAC discussion and proposed draft amendment to LD 1267 prepared by Board of Licensure in Medicine staff)

CONFIDENTIALITY OF CERTAIN INFORMATION OF APPLICANT OR LICENSEE IN POSSESSION OF THE BOARD

The following provisions apply to records pertaining to an identifiable applicant or licensee collected and maintained by the board.

1. Contact address. An applicant or licensee shall provide the board with a current professional address and telephone number, and email address, which is the applicant or licensee’s public contact address. In addition, an applicant or licensee shall provide the board with a current personal residence address and telephone number, and personal email address, which is the applicant or licensee’s public contact address unless the applicant or licensee has provided a professional address.

2. Confidential information pertaining to applicant or licensee. Except for disclosures authorized in subsection 3, the following information is confidential and may not be disclosed:

A. Personal residence address, unless it is the public contact address;

B. Personal email address, unless it is the public contact email address;

C. Personal telephone number, unless it is the public contact telephone number;

D. Personal health information;

E. Birth certificate or the equivalent;

F. Marriage certificate or the equivalent;

G. Divorce judgment or the equivalent;

H. Passport information;

I. Social security number or the equivalent;

J. Photographs;

K. College or medical school transcripts;

L. National examination scores; and

M. U.S. Drug Enforcement Administration Registration Number.

[N. Age;

O. Ancestry, ethnicity, genetic information, national origin, race or skin color;

P. Sex or sexual orientation as defined in Title 5, section 4553, subsection 9-C;
FOR RTKAC DISCUSSION PURPOSES ONLY 11/15/17

Outline of Draft Proposal
Related to Personal Information about Licensed Professionals
(based on 10/12 RTKAC discussion and proposed draft amendment to LD 1267 prepared by
Board of Licensure in Medicine staff)

Q. Mental or physical disabilities;

R. Information pertaining to the creditworthiness of an applicant or licensee.

3. Authorized disclosure. The information designated in subsection 2 regarding an applicant or licensee in the possession of the board is confidential, and may only be disclosed:

A. To governmental licensing or disciplinary authorities or to any health care providers or healthcare entities located within or outside this State that are concerned with granting, limiting, denying, suspending or revoking a physician’s employment or privileges not be disclosed without an order issued by a court of competent jurisdiction;

B. To the Federation of State Medical Boards, the National Board of Osteopathic Medical Examiners, the National Council of State Boards of Nursing, the National Commission on Certification of Physician Assistants, the International Association of Medical Regulatory Authorities, the American Board of Medical Specialties or their successor organizations;

C. To criminal justice agencies for use in a law enforcement investigation or criminal prosecution;

D. In a disciplinary hearing before the licensing authority or in any subsequent trial or appeal of a licensing authority’s action or order relating to such disciplinary hearing;

E. Pursuant to an order of a court of competent jurisdiction;

F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies;

G. To employees designated by the commissioner of an agency of which a licensing authority is a part;

H. To designated complaint officers or Board members of a licensing authority;

I. By an employee or agent of the Board or by a complaint officer designated by the commissioner of the agency of which the licensing authority is a part, when, and to the extent, deemed necessary to facilitate an investigation; and

J. To the person investigated and/or licensed by the licensing authority, on request. The commissioner of the agency of which the licensing authority is a part may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure might prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated.
Outline of Draft Proposal
Related to Personal Information about Licensed Professionals
(based on 10/12 RTKAC discussion and proposed draft amendment to LD 1267 prepared by
Board of Licensure in Medicine staff)

4. Aggregate information. Nothing in this section prohibits the disclosure of information
designated as confidential in subsection 2 if the information is disclosed in the aggregate and does not
directly or indirectly identify an applicant or licensee.

Summary

This draft designates certain information pertaining to an applicant or licensee held by a licensing
board as confidential. The draft permits the release of confidential information if the information is
disclosed in the aggregate and does not directly or indirectly identify an applicant or licenses. The draft
also authorizes the disclosure of confidential information about an applicant or licensee for specific
purposes.
Outline of Draft Proposal
Related to Privacy of Personal Information
(by suggestion made by Chris Parr at 10/12 RTKAC meeting)

1. MRSA § 434, sub-§2 is amended to read:

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

A. Whether a record protected by the proposed exception needs to be collected and maintained;
B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
C. Whether federal law requires a record covered by the proposed exception to be confidential;
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
H. Whether the proposed exception is as narrowly tailored as possible; and
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception; and
J. Whether public disclosure of the record or information contributes significantly to public understanding of the operations or activities of government.

Summary

This draft proposes to add to the statutory criteria for review of proposed public records exceptions consideration of whether public disclosure of the record or information contributes significantly to public understanding of the operations or activities of government.
Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§434. REVIEW OF PROPOSED EXCEPTIONS TO PUBLIC RECORDS; ACCESSIBILITY OF PUBLIC RECORDS

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

[ 2011, c. 320, Pt. D, §3 (AMD). ]

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

A. Whether a record protected by the proposed exception needs to be collected and maintained;
[2003, c. 709, §3 (NEW).]

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
[2003, c. 709, §3 (NEW).]

C. Whether federal law requires a record covered by the proposed exception to be confidential;
[2003, c. 709, §3 (NEW).]

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
[2003, c. 709, §3 (NEW).]

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
[2003, c. 709, §3 (NEW).]

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
[2003, c. 709, §3 (NEW).]

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
[2003, c. 709, §3 (NEW).]

H. Whether the proposed exception is as narrowly tailored as possible; and
[2003, c. 709, §3 (NEW).]

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.
[2003, c. 709, §3 (NEW).]

[ 2003, c. 709, §3 (NEW).]
2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

[2005, c. 631, §6 (NEW).]

2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

[2011, c. 320, Pt. D, §3 (NEW).]

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

[2011, c. 320, Pt. D, §3 (AMD).]

SECTION HISTORY

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STATE OF MAINE
128th LEGISLATURE
SECOND REGULAR SESSION

Twelfth Annual Report
of the
Right to Know Advisory Committee

January 2018

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# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>i</td>
</tr>
<tr>
<td>I.  Introduction</td>
<td></td>
</tr>
<tr>
<td>II. Committee Duties</td>
<td></td>
</tr>
<tr>
<td>III. Recent Court Decisions Related to Freedom of Access Issues</td>
<td></td>
</tr>
<tr>
<td>IV. Right to Know Advisory Committee Subcommittee</td>
<td></td>
</tr>
<tr>
<td>V.  Committee Process</td>
<td></td>
</tr>
<tr>
<td>VI. Actions Related to Recommendations Contained in Eleventh Annual Report</td>
<td></td>
</tr>
<tr>
<td>VII. Recommendations</td>
<td></td>
</tr>
<tr>
<td>VIII. Future Plans</td>
<td></td>
</tr>
</tbody>
</table>

**Appendices**

A. Authorizing Legislation: 1 M.R.S.A §411
B. Membership List
EXECUTIVE SUMMARY

[to be added]
I. INTRODUCTION

This is the twelfth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine’s freedom of access laws. The Advisory Committee’s authorizing legislation, located at Title 1, section 411, is included in Appendix A. Previous annual reports of the Advisory Committee can be found on the Advisory Committee’s webpage at www.maine.gov/legis/opla/righttoknowreports.htm.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Sen. Lisa Keim
Chair
Senate member of Judiciary Committee, appointed by the President of the Senate

Rep. Christopher Babbidge
House member of Judiciary Committee, appointed by the Speaker of the House

James Campbell
Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House
[appointed effective September 2017]

Suzanne Goucher
Representing broadcasting interests, appointed by the Speaker of the House

Stephanie Grinnell
Representing newspaper and other press interests, appointed by the President of the Senate

A.J. Higgins
Representing broadcasting interests, appointed by the President of the Senate
(resigned in October 2017)

Richard LePage
Representing law enforcement interests, appointed by the President of the Senate

Mary-Anne LaMarche
Representing school interests, appointed by the Governor

Mary Ann Lynch
Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court

Judy Meyer
Representing newspaper publishers, appointed by the Speaker of the House

Paul Nicklas
Representing municipal interests, appointed by the Governor
Christopher Parr  
Representing state government interests, appointed by the Governor

Linda Pistner  
Attorney General’s designee

Luke Rossignol  
Representing the public, appointed by the President of the Senate

William Shorey  
Representing county or regional interests, appointed by the President of the Senate

Eric Stout  
A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor

Vacant  
Representing the public, appointed by the Speaker of the House

The complete membership list of the Advisory Committee, including contact information, is included in Appendix B.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine’s freedom of access laws. The Advisory Committee’s specific duties include:

- Providing guidance in insuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine’s freedom of access laws and the people’s right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine’s freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine’s freedom of access laws and the public’s access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
Examinining inconsistencies in statutory language and proposing clarifying standard language; and

Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2017, the Advisory Committee met on September 6, September 20, October 12 and November 15. Each meeting was open to the public and was also accessible through the audio link on the Legislature’s webpage.

The Advisory Committee has also established a webpage, which can be found at www.maine.gov/legis/opia/righttoknow.htm. Agenda, meeting materials and summaries of the meetings are available on the webpage.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people’s right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine’s freedom of access laws. For its twelfth annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decisions related to freedom of access issues.

{summaries of recent decisions to be added}

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2017, the Advisory Committee chose to appoint one subcommittee: the Public Records Exceptions Subcommittee. The Public Records Exceptions Subcommittee’s
focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 1 to 7-A no later than 2019.

Rep. Babbidge, Ms. Grinnell, Mr. Nicklas, Mr. Parr, Mr. Rossignol and Mr. Stout serve as members of the subcommittee.

As part of its review, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body.

{discussion and deliberations on exceptions made by Subcommittee at November 15th meeting to be added}

V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held four committee meetings, which are summarized below.

Summary of September 6, 2017 meeting
[to be added]

Summary of September 20, 2017 meeting
[to be added]

Summary of October 12, 2017 meeting
[to be added]

Summary of November 16, 2017 meeting
[to be added]

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN ELEVENTH ANNUAL REPORT

The Right to Know Advisory Committee made two recommendations in its eleventh annual report. The legislative actions taken in 2017 as a result of those recommendations are summarized below.

| Recommendation: Communicate the Advisory Committee’s interpretation of | Action: The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee’s belief that the exception “is not... |
1 MRSA §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, ¶3.

intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State... or to prohibit disclosure of information about spills or discharges of hazardous materials.” The Advisory Committee also recommended that the Judiciary Committee consider submitting a committee bill to allow additional input from stakeholders and further expressed concerns about the scope of the exception.

The Judiciary Committee considered the Advisory Committee’s recommendation and felt a bill would be a good vehicle for raising potential issues with the law, but, after seeking input through its committee analyst, ultimately did not feel stakeholders could express concerns that would be helpful in drafting proposed legislation.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Action:</th>
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<tbody>
<tr>
<td>Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants.</td>
<td>The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee’s determination that a uniform policy on the confidentiality of licensed professionals’ contact information must balance the professionals’ privacy and safety interests with the public’s interest in determining a professional’s training and competence. The Advisory Committee recommended focusing on keeping categories of information confidential, such as personal contact information, unless personal contact information is the other way to identify the professional or when the professional affirmatively opts to allow the information to be disclosed.</td>
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</table>

In response, the Judiciary Committee considered two bills (LD 1267 and LD 1311) related to the confidentiality of professional licensing information. The Judiciary Committee has carried those bills over to any special or regular session of the 128th Legislature and has asked that the Advisory Committee provide input on resolution of the issues presented in those bills.

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<thead>
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<th>Recommendation:</th>
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<tr>
<td>Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases.</td>
<td>The Advisory Committee sent a letter to the Health and Human Services Committee about the Department of Health and Human Services proposed Data Release Rule, 10-144 CMR, ch. 175, which would have affected the release of certain data held by the Maine Center for Disease Control and Prevention. The Advisory Committee expressed concerns about the proposed rule’s limitation on the release of records.</td>
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The Department of Health and Human Services rescinded the proposed rule.

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<tr>
<th>Recommendation:</th>
<th>Action:</th>
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<tr>
<td>Enact legislation to clarify</td>
<td>The Legislature accepted the recommendation of the Advisory Committee</td>
</tr>
</tbody>
</table>
that government entities may require advance payment before providing a public record to a requestor.

<table>
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<tr>
<th>Recommendation:</th>
<th>Action:</th>
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<tr>
<td>Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013.</td>
<td>The Legislature accepted most of the recommendation of the Advisory Committee and passed Public Law 2017, chapter 163, which amended Title 35-A, section 10106, subsection 1 to change the criteria for designation of records of the Efficiency Maine Trust as confidential, except that the Legislature did not accept the recommendation that the director of the Efficiency Maine Trust be allowed to determine which records contain information that would give a user a competitive advantage and instead kept that authority in the Efficiency Maine Trust Board. The Legislature accepted the recommendation of the Advisory Committee that a redundant public records exception for social security numbers be repealed.</td>
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<tr>
<th>Recommendation:</th>
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<tr>
<td>Communicate with the Joint Standing Committee on Health and Human Services about potential repeal of the Mental Health Homicide, Suicide and Aggravated Assault Review Board.</td>
<td>The Advisory Committee sent a letter to the Health and Human Services Committee requesting it of the apparent dormancy of the Mental Health Homicide, Suicide and Aggravated Assault Review Board, but asked the Committee to consider whether the Board should be revived or if the provision of law establishing the Board should be repealed. The Health and Human Services Committee drafted a bill to repeal this board and, after holding a public hearing on the bill, voted to repeal the Mental Health Homicide, Suicide and Aggravated Assault Review Board. The Legislature repealed the board and its associated public records exceptions in Public Law 2017, chapter 93.</td>
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</table>

VII. RECOMMENDATIONS

Arising from its activities and discussions in 2017, the Advisory Committee makes the following recommendations in this, its eleventh annual report.

{to be added}

VIII. FUTURE PLANS

{to be added}
APPENDIX B
Membership List
<table>
<thead>
<tr>
<th>Statewide Jurisdiction</th>
<th>Appointed Membership</th>
<th>Elected Membership</th>
</tr>
</thead>
</table>

Remote participation requirements:

- mail)
  - fax message or
  - electronic copy
- telephone, video
- Authorized means of
  - the meeting location
- group that require an
  - physical

Quorum requirements:

- official(s)
  - include elected
  - remote participation
  - which bodies may do

Terms of remote use of

Wednesday, November 13, 2017
Remove Participation Decision-making Matrix
<table>
<thead>
<tr>
<th>Reasons for public body member's physical absence</th>
<th>Elected membership</th>
<th>Elected membership – Adjudicatory function</th>
<th>Appointed membership</th>
<th>Appointed membership – Adjudicatory function</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) any reason is acceptable; B) require the body to establish acceptable reasons; or C) provide acceptable reasons in law</td>
<td></td>
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<tr>
<td>Voting</td>
<td></td>
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<tr>
<td>(require votes to be by roll call?)</td>
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<tr>
<td>Executive sessions</td>
<td></td>
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<td></td>
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<tr>
<td>(prohibit remote participation in executive sessions?)</td>
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<tr>
<td>Audio/visual requirements</td>
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<tr>
<td>(specify certain requirements regarding access to materials, sight, sound?)</td>
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<tr>
<td>Annual meeting</td>
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<tr>
<td>(include a requirement that at least one meeting include no remote participation?)</td>
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</table>