Right to Know Advisory Committee
Public Records Exceptions Subcommittee
September 14, 2016
Meeting Summary

Convened at 10:17 a.m. in Room 438, State House, Augusta.

Present:
Sen. Burns
Rep. Kim Monaghan
Mary Ann Lynch
Helen Rankin
Eric Stout

Absent:
Luke Rossignol
Linda Pistner
A.J. Higgins
Chris Parr

Introductions

Rep. Monaghan called the meeting to order and all members introduced themselves.

Public records exceptions review discussion

Note: Reference numbers below refer to the spreadsheet of public records exceptions used to track the review process. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.

Staff introduced Robert O’Connell, of the Bureau of Motor Vehicles (BMV) within the Department of the Secretary of the State, who had offered to discuss his office’s view of two related public records exceptions that were tabled at the full Advisory Committee meeting on August 17th. Staff invited a representative of the Department of the Secretary of State to personally pass along the recommendations of his office and to be available if there were any questions from Subcommittee members.

With respect to the public records exception at 1 MRSA §402(3)(R) (Advisory Committee reference number 7), relating to Social Security numbers in possession of the Secretary of State, Mr. O’Connell stated that his agency did not object to the repeal of the exception, given the broader exception for Social Security Numbers in paragraph N of the same subsection of the statute, and also given the confidentiality provision in 29-A MRSA §1301 (Advisory Committee reference number 55) applicable to the Social Security Number of an applicant for a driver's license or non-driver identification card. Mr. O’Connell described his agency’s proposed draft legislation that would amend the confidentiality provision in Title 29-A, section 1301 by eliminating the discretionary sharing of Social Security Numbers as permitted by federal law and instead allowing the sharing of this information only as required by federal law, specifically 18 United States Code, section 2721(b).

Ms. Lynch made a motion to 1) repeal 1 MRSA §402(3)(R) and 2) recommend the legislation submitted by the BMV to amend 29-A MRSA §1301. Mr. O’Connell notified the Subcommittee that the BMV, through the Secretary of State would be submitting a bill to accomplish this to the next Legislature, but that his office appreciated the Subcommittee’s support. In response, Ms. Lynch modified her motion to recommend repeal of 1 MRSA §402(3)(R) and to endorse the BMV proposed amendment without
recommending that the full Advisory Committee put forward any legislation. The motion was seconded by Mr. Stout and the motion carried by a vote of 5-0.

Ref# 13: 5 M.R.S. §1541, Sub-§10-B, relating to internal audit working papers of the State Controller

The Subcommittee had previously tabled this item in order to give staff an opportunity to contact the Office of the State Controller again for feedback regarding this exception. The office provided a survey response, in which the agency recommended keeping the exception unmodified because it is critical to ensuring that ongoing audits and investigations are not jeopardized and because the protection of confidentiality encourages individuals to provide data and candid information during audits and investigations of their agencies.

The Subcommittee voted 4-0 unanimously to recommend no modification to the current exception.

Ref# 38: 12 M.R.S. §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

Staff reviewed a draft letter to Chandler Woodcock, Commissioner of Inland Fisheries and Wildlife relaying the Subcommittee’s decision to recommend no modification to the current exception, but encouraging the Department to submit its proposed legislation to the 128th Legislature. By consensus the Subcommittee approved of the letter.

Ref# 51: 22 M.R.S. §2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law

The Subcommittee had previously tabled this item in order to give staff an opportunity to contact the Department of Agriculture, Conservation and Forestry (DACF) again for feedback regarding which agency is the custodian of these records and, if DACF is the custodian, input on its experience and recommendations with respect to the exception. The agency responded that it did not recommend any changes to the current exception, and that it is important for the agency to follow federal requirements and federal confidentiality agreements with respect to this information.

Staff suggested that the statute could be clarified to indicate that DACF is the official custodian of these records instead of the Department of Health and Human Services. Staff added that, however, practically speaking, the departments already have an understanding of how the law is administered and neither indicated that the language has caused any problem.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 54: 25 M.R.S. §4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 56: 29-A M.R.S. §2251, sub-§7-A, relating to personally identifying accident report data contained in an accident report database

There was some discussion in the Subcommittee about whether this information should be kept confidential, given that it is potentially important for individuals seeking necessary information about the
other party in an automobile accident. During the course of the discussion it was clarified that this exception applied only to bulk data transfers from the accident database, not to requests for individual accident reports. Mr. Stout explained that the provision was originally enacted to limit the information released in bulk data requests from law firms seeking personal information by which to contact potential clients.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 57: 29-A M.R.S §2117-A, relating to data collected or retained through the use of an automated license plate recognition system

Mr. Stout explained the current automated license plate recognition system by which commercial truck license plate data is collected by scanners at State Police truck inspection stations and the plate number is electronically checked against a national database of commercial truck safety violations. Ms. Lynch expressed concern about continuing this public records exception when the Department of Public Safety did not express an opinion on whether it should be retained. Rep. Monaghan expressed concern that the Subcommittee had not heard input from the Department of Transportation, Bureau of Motor Vehicles or truckers associations. Staff agreed to gather input from these entities and report back at the next Subcommittee meeting.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 58: 32 M.R.S. §91-B, sub-§1, relating to quality assurance activities of an emergency medical services quality assurance committee

Subcommittee members expressed concern for the breadth of this confidentiality provision. In particular, there was concern about the confidentiality of the “quality assurance activities” of an emergency medical services quality assurance committee approved by the Emergency Medical Services Board. Members expressed understanding of the need for personally identifiable information to be confidential, but confusion about why the proceedings and activities of this public body should be confidential.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 59: 32 M.R.S. §91-B, sub-§1, ¶A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 60: 32 M.R.S. §91-B, sub-§1, ¶B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 61: 32 M.R.S. §91-B, sub-§1, ¶C, relating to information submitted to the Emergency Medical Services Board for its statewide trauma-incidence registry under section 87-B

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 62: 32 M.R.S. §91-B, sub-§1, ¶D, relating to examination questions used for credentialing by Emergency Medical Services Board
Ms. Lynch expressed some concern about this provision, noting that the Board of Overseers of the Bar, for example, makes public the bar examination questions from prior years so that those planning to take the exam can better understand the scope of the test and prepare for it. She noted that this confidentiality provision is qualitatively different than the other related provisions in this section. Ms. Lynch stated that she understood the reason for wanting to protect the questions for upcoming examinations, but not the questions for prior examinations.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 64: Title 34-A, section 11221, subsection 13, relating to disclosure by the Bureau of Investigation and law enforcement agencies of certain sex offender registry information in electronic form

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 65: Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information collected by the Bureau of Investigation, including information relating to the identity of persons accessing the sex offender registry

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 66: Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board

Staff related its efforts to gather information about and from the Mental Health Homicide, Suicide and Aggravated Assault Review Board. The only information staff could ascertain was that the Board appears to have been inactive since at least 2011.

Ms. Lynch noted that there is currently a Homicide Review Board that is active. Sen. Burns asked staff to continue seeking information about the Board from the Attorney General’s Office, including information about the Board’s status and whether its charge is currently being carried out by the Homicide Review Board. Ms. Lynch also suggested following up with Lisa Marchese, Criminal Division Chief of the Attorney General’s Office, Cumberland County District Attorney Stephanie Anderson and the National Alliance on Mental Illness (NAMI) in Maine.

The Subcommittee voted to table discussion on this exception by a vote of 5-0.

Ref# 67: Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification

Ms. Lynch noted that these records contained very confidential mental health information used for purposes of firearm background checks.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 69: Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board

This item was previously tabled by the Subcommittee in order to request a proposed amendment from the Executive Director of the Efficiency Maine Trust in writing. Staff reviewed the proposed amendment, which would move the authority to determine whether records of the trust were business sensitive, and
therefore confidential, from the board to the director. The amendment also gives authority to the director, as opposed to the board, in making the determination of what information that would be otherwise confidential may be released. According to the Efficiency Maine Trust Executive Director, Michael Stoddard, this change is needed because these decisions must be made quickly, in the ordinary course of business, and are therefore better suited to being made by the executive director than the board, which only meets once per month. Additionally, the amendment would replace an “and” with an “or,” so that any of the criteria for confidential trust records may be present instead of all criteria needing to be met in order for the records to be determined confidential.

The Subcommittee voted 5-0 to amend the current provision with the language submitted by Mr. Stoddard of the Efficiency Maine Trust.

**Next meeting**

The Subcommittee will hold its next meeting at 10:00 a.m. on Wednesday, October 5th in Room 438 (Judiciary Committee Room) of the State House.

**Adjournment**

Rep. Monaghan adjourned the meeting at 12:11 p.m.