

Right to Know Advisory Committee
May 25, 2010
Meeting Summary

Convened 1:13 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
A.J. Higgins
Mal Leary
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

Absent:

Shenna Bellows
Karla Black
Mark Dion
Kelly Morgan

Staff:

Marion Hylan Barr
Peggy Reinsch
Carolyn Russo

Advisory Committee Chair Senator Barry Hobbins convened the first 2010 meeting of the Right to Know Advisory Committee and asked the members to introduce themselves. Senator Hobbins then directed the Advisory Committee through the lengthy agenda.

Application of Freedom of Access laws to Indian Tribes

Senator Larry Bliss and Representative Charlie Priest, Chairs of the Joint Standing Committee on Judiciary of the 124th Maine Legislature had written a letter to inform the Advisory Committee members that, as Judiciary Committee Chairs they are leading a discussion with various interested parties to explore whether and to what extent Maine's Freedom of Access laws should apply to the federally-recognized Indian Tribes in Maine, particularly the Penobscot Indian Nation and the Passamaquoddy Tribe. The Maine Supreme Judicial Court ruled in 2001 that the Maine Freedom of Access laws do apply to the Penobscot Nation and the Passamaquoddy Tribe in certain situations. Great Northern Paper, Inc., et al. v. Penobscot Nation et al., 2001 ME 68. There have been several proposals to overturn the decision or limit its application. Senator Bliss and Representative Priest explained that they are trying to work their way through the issues with the Attorney General's Office and the Tribes. The Penobscot Nation has agreed to provide a copy of their freedom of access ordinance and is exploring polices with other

Tribes. Senator Bliss and Representative Priest recognize that at some point the discussions will need to involve the Right to Know Advisory Committee; at this point, however, the Judiciary Chairs are requesting only that the Advisory Committee members read the Law Court case (a link is included on the State's Freedom of Access webpage on Court Opinions: <http://www.maine.gov/foaa/news/court.htm>). They hope to assist in providing more informative materials about the Maine Implementing Act and the State's relationship with the Tribes.

Judiciary Committee

Senator Bliss and Representative Priest took the opportunity to thank the Advisory Committee for the thoughtful responses and quick turnaround on legislation questions during the most recent legislative session. They specifically mentioned Mal Leary and his willingness to interact with the Judiciary Committee on short notice. Senator Bliss and Representative Priest also recognized the significant number of issues referred from the Legislature to the Advisory Committee, and assured the members that the Advisory Committee's work is very important to the Judiciary Committee and the Legislature as a whole.

Summary of Second Regular Session, 124th Legislature's FOA actions in 2010

Staff quickly summarized the Legislature's actions on Freedom of Access issues during the most recently completed legislative session. The Advisory Committee's statutory recommendations were printed as two separate pieces of legislation.

- LD 1791, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings, proposed the Advisory Committee's nonunanimous recommendation that a record be made of all public proceedings. The Judiciary Committee determined that more discussion and a broader range of issues should be reviewed, and sent the topic back to the Advisory Committee for work this year (Resolve 2009, c. 186: Resolve, Directing the Right To Know Advisory Committee To Further Examine Requirements That Public Bodies Keep Records of Public Proceedings).
- LD 1792, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions contained the recommendations of the Advisory Committee with regard to statutory public records exceptions, some of which were not unanimous. The bill also included an unallocated section directing the Advisory Committee to take on bulk data issues. The Judiciary Committee accepted the recommendations except the changes proposed to the Finance Authority of Maine's confidentiality statutes. (PL 2009, c. 567) (More discussion on the FAME statute later in the meeting.)

Staff provided a list of legislation containing proposed public records exceptions that the Judiciary Committee reviewed in 2010 pursuant to 1 MRSA §434.

Existing exceptions review process

Staff provided a list of the known existing public records exceptions contained in Titles 22 through 25. 1 MRSA §433 requires the Right to Know Advisory Committee to review these public record exceptions that are already contained in the statutes and make recommendations as to whether to continue, modify or repeal each exception to the Judiciary Committee of the 125th Legislature no later than January of 2012. Past practice has seen the Advisory Committee work through as many exceptions as possible the first year of the biennium and handle the more difficult provisions the second year. The Advisory Committee agreed to try this approach for this cycle of review as well.

Requests from the Legislature

Staff summarized requests made by the Legislature to the Right to Know Advisory Committee.

- Public Law 2009, c. 567 (LD 1792), An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions. Section 11 directs the Advisory Committee to review and make recommendations concerning issues involving requests for public records in bulk (usually electronic databases).

The State and Local Government Committee requested that Chief Information Officer Dick Thompson convene a stakeholders group to address questions that turn out to be a subset of the issues included in PL 2009, c. 567. (Mr. Thompson is retiring from State service at the end of June, and the Advisory Committee thanked him for his exemplary work. Greg McNeal will be spearheading this effort once Mr. Thompson retires.) The stakeholders group is to include a member of the Right to Know Advisory Committee. Bob Devlin volunteered to chair the bulk records subcommittee, and will represent the Advisory Committee in the stakeholders group.

- Resolve 2009, c. 171 (LD 1551), Resolve, Directing the Right To Know Advisory Committee To Examine Issues Related to Communications of Members of Public Bodies. This resolve began as a bill to prohibit the use of serial email to make decisions. The final adopted version directs review of:
 - Use of communication technologies to ensure decisions are made in public proceedings. (Judiciary Committee Chair Senator Bliss noted that the Judiciary Committee was concerned that the discussions encompass all technology, not just e-mail.);
 - Penalties for violations; and
 - Partisan caucuses.

- Resolve 2009, c. 186 (LD 1791), Resolve, Directing the Right To Know Advisory Committee To Further Examine Requirements That Public Bodies Keep Records of Public Proceedings. (See previous discussion.)
- Resolve 2009, c. 184 (LD 1802), Resolve, Directing the Right To Know Advisory Committee To Examine Issues Related to Private Information Contained in the Communications of Public Officials. This Resolve directs the Advisory Committee to review the protection of private information in e-mail and other forms of communications sent and received by public officials, particularly between elected officials and their constituents.
- FAME exceptions (removed from LD 1792 by the Judiciary Committee). At the request of the Judiciary Committee, the Advisory Committee developed templates to be used to draft confidentiality provisions for records concerning financial and technical assistance sought from public agencies. The templates were completed at the end of the 2009 work year of the Advisory Committee and applied to the FAME statutes, without giving FAME much opportunity to comment at the time. FAME objected to the changes included in LD 1792, resulting in the Judiciary Committee's deleting those recommendations from the bill. The Judiciary Committee informally requested that the Advisory Committee review the FAME statute again. Bill Norbert, Governmental Affairs Manager of FAME, addressed the Advisory Committee and expressed FAME's satisfaction with the current law and expressed willingness to participate in future discussions.
- The Judiciary Committee informally requested that the Advisory Committee review the criteria contained in Title 1, Section 434 to determine if there are other factors that should be considered when reviewing either existing or proposed public records exceptions that affect access to public records. The issue was raised by LD 1554, An Act Regarding Document Fees at County Registries of Deeds (PL 2009, c. 575), in which the State and Local Government Committee adopted factors that may be used to determine copying fees for deeds recorded at county registries of deeds.
- The Judiciary Committee informally requested that the Advisory Committee conduct an analysis of the information contained in the Central Voter Registry, what is entirely confidential, what can be released for limited purposes and what is completely public. LD 1627 (PL 2009, c. 564) rewrote the Central Voter Registry confidentiality provisions within Title 21-A. Not wanting to delay the enactment of the revision of the statute, the Judiciary Committee did not recommend any changes to the Legal and Veterans' Affairs Committee, but felt more comfortable having the Advisory Committee do the analysis during the summer.

Continuing projects

Projects that the Advisory Committee did not complete in 2009 included the confidentiality provisions in the Criminal History Record Information Act (CHRIA), protection of Social Security Numbers in the hands of public entities or when included in otherwise-public records, participation of members of public boards and commissions through technology, and bulk electronic data. Staff updated the Advisory Committee on the work on CHRIA, including the planned redrafting by the Criminal Law Advisory Commission. (Since the meeting, staff has communicated with Justice Mead, who is chairing the Courts' Task Force on Electronic Court Record Access (TECRA) Implementation Group. The Group plans to meet with the Maine Criminal Justice System (MCJUSTIS) Policy Board to discuss and review issues of access and privacy, including CHRIA, and make recommendations to the Maine Supreme Judicial Court. This work will probably not begin until the end of the summer.)

Law School Extern update

Linda Pistner, the official supervisor of Maine School of Law externs placed with the Right to Know Advisory Committee, updated the Advisory Committee on the work and energy of the latest extern, Mariya Burnell, who recently graduated from the University of Maine School of Law. Ms. Burnell completed research and written reports on several topics, including central voter registration databases, electronic mail communications and public records in bulk form.

The Law School has revised its externship program and has placed an extern with the Advisory Committee for the fall semester. Sean O'Mara will be working with the Advisory Committee once school convenes again in September.

Education and training for elected public officials

Because this is an election year, newly-elected legislators will need to undergo FOA training to meet the requirements of the law. The Attorney General's Office spearheaded the training at the beginning of the latest biennium; the Advisory Committee may want to help provide that training.

Subcommittees and scheduling

After much discussion and revision, the Advisory Committee decided to restructure its subcommittees once again. The Advisory Committee will try to accomplish its work through three subcommittees: the Legislative Subcommittee, the Public Records Exceptions Subcommittee and the Bulk Records Subcommittee. Members of the Advisory Committee should contact staff to express preferences for participation on one or more subcommittees.

- **Legislative Subcommittee**

Chris Spruce agreed to serve as subcommittee chair.

Topics:

- Use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public;
- Consideration of revision of penalties for violations of the freedom of access laws;
- Whether partisan party caucuses should be specifically excluded from the definition of "public proceedings";
- Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents;
- Policy on whether e-mail addresses are public records;
- Central Voter Registry;
- Social Security Numbers;
- Use of technology in attending meetings;
- Keeping records of public proceedings; and
- Scope of review process (1 MRSA §434 criteria)

- **Public Records Exception Subcommittee**

Shenna Bellows was suggested (and agreed to serve) as the subcommittee chair.

Topics:

- Review Titles 22 through 25;
- FAME statute; and
- Criminal History Record Information Act.

- **Bulk Records Subcommittee**

Bob Devlin agreed to chair this subcommittee.

Topics:

From PL 2009, c. 567:

- Public access to databases;
 - Protection of personal information that is not designated as confidential but is contained in databases that include public records;
 - Reasonable costs for copies when public records are requested in bulk;
 - Whether access or costs should be based on the intended or subsequent use of the information requested in bulk;
 - The acceptable formats for responses to requests, including electronic and paper;
 - The appropriate role for InforME in responding to requests for public records in bulk; and
 - Any other issues the Advisory Committee considers appropriate; and
- Coordination with SLG/CIO stakeholders group.

Scheduling

The Right to Know Advisory Committee scheduled three additional meetings for 2010:

Thursday, September 23, 2010, starting at 1:00 p.m.

Thursday, October 21, 2010, starting at 1:00 p.m.

Thursday, November 18, 2010, starting at 1:00 p.m.

Subcommittee chairs will work with staff to develop subcommittee schedules.

Meeting adjourned, 3:25 p.m.

Prepared by Peggy Reinsch, Marion Hylan Barr and Carolyn Russo, RTK AC staff

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Right to Know Advisory Committee
September 23, 2010
Meeting Summary
DRAFT

Convened 1:20 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Shenna Bellows
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
A.J. Higgins
Mal Leary
Judy Meyer
Kelly Morgan
Linda Pistner
Bruce Smith (for Harry Pringle)
Chris Spruce

| Absent:

Karla Black
Mark Dion
Harry Pringle

Staff:

Peggy Reinsch, Carolyn Russo & Marion Hylan Barr

Advisory Committee Chair Senator Barry Hobbins convened the meeting of the RTKAC at 1:20 p.m. Members introduced themselves and Chair Hobbins recognized and welcomed the new RTKAC extern, Sean O'Meara. Sean is a student at the University of Maine School of Law and will be working on research and projects for the RTKAC this semester. When in Augusta, he will be working out of the Office of the Attorney General.

Legislative Subcommittee Report

Subcommittee Chair Chris Spruce presented the recommendations of the Legislative Subcommittee to the RTKAC for discussion and committee action. The following outlines the tasks of the Legislative Subcommittee, their recommendations and the RTKAC action.

- Examine use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public. (adopted option #3, page 3A-1)

Mr. Spruce moved adoption of option 3 of the 4 options presented on draft p. 3A-1 (amending the declaration of policy and rules of construction under Title 1, §401). Option 3 is a clear statement that communications are not prohibited among public body members, but that those communications may not be used to defeat the purposes of the freedom of access laws. Mr. Flewelling agreed that the option captured First Amendment rights and provides a caution to members. Ms. Pistner also agreed that this option was preferable as it speaks to the subchapter,

and Chair Hobbins thought it struck a good balance. The RTKAC adopted the recommendation 12-0.

- Consider revision of penalties for violations of the freedom of access laws. (no change)

Although the Subcommittee discussed this issue at length and reviewed other states' approaches to penalizing violation of the freedom of access laws, the Subcommittee voted to propose no statutory change at this time. Instead, members agreed on continuing to focus more on education and outreach to public officials. Mr. Spruce noted that Mr. Leary, who had not yet arrived at the meeting, was most interested in looking at penalties for individual violators and might want to speak to the Committee on that matter at some point.

- Determine if partisan party caucuses should be specifically excluded from the definition of "public proceedings"? (no change)

The Subcommittee discussed this and noted that most caucuses are open. Although it would be great if all were, the Subcommittee recognized that the Legislature has authority to control its internal activities and that courts will not support challenges to that authority. The Subcommittee therefore recommends no change at this time.

- Examine protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents. (tabled)

The Subcommittee was divided on this issue. Ms. Meyer did not support any change. She noted that corresponding with government officials creates vital public records. Also requiring public officials to know what information to redact and to actually perform the redaction would be a big burden. Ms. Meyer believes the better approach is to educate the public so that they know that any correspondence to a government official may be public. Mr. Spruce supported and moved acceptance of the proposed draft (p. 3A-2), that states that communications between a public official and a person is a public record except for information in that record that is excepted from the definition of "public record", is designated confidential by statute or would be confidential if in the possession of another public agency or official. Ms. Bellows seconded the motion. Ms. Pistner agreed with Ms. Meyer's concerns about how to draft something that did not sweep in unintended information. Mr. Smith noted that there may be First Amendment implications, like that in the case of disclosing signatures on referendum petitions. Ms. Meyer further expressed her opposition to the draft, as it would eliminate a layer of accountability. Mr. Higgins asked who would be the gatekeepers – who would decide if information in an email should be red-flagged for redaction? Staff reminded the group that the Subcommittee had also recommended that agencies post a disclaimer on their websites that notifies the public that any communication may be public. After lengthy discussion, Ms. Goucher requested more information regarding what other states are doing in this area and asked if a tabling motion would be appropriate. Chair Hobbins suggested that feedback from other groups would be helpful. Mr. Spruce moved to table, and the vote was 12-0.

- Examine policy on whether e-mail addresses are public records. (no change but recommend website disclaimer or warnings about public nature of emails)

Mr. Spruce explained that the Subcommittee recommended no statutory change, but that the group did support requesting government agencies to post on their websites a disclaimer or

warning that if a person communicates with an agency via email, that email and email address are probably a public record. Ms. Bellows expressed her reservations about this issue and the difficulty balancing public accountability with privacy. She noted that an individual email address does not pertain to government operations and instead is being obtained for marketing purposes. Ms. Goucher expressed that personal privacy is a fallacy today; all personal information is out there, including email addresses.

- Review of Central Voter Registry. (no change recommended)

Mr. Spruce explained that the Subcommittee reviewed the work of the Legal and Veterans' Affairs Committee and was satisfied that they did a thorough job of weighing the public and private concerns in the Central Voter Registry; therefore the Subcommittee proposed no additional changes.

- Examine policy for Social Security Numbers (SSNs). (adopted draft, page 3A-3)

The Subcommittee reviewed the legislation that was proposed last year that did not pass due to many issues regarding time and redaction and reviewed other states' approaches dealing with handling SSNs in public records. Chris presented the Subcommittee recommendation, which is to adopt a "minimalist" approach and amend Title 1, §402 to specify only that SSNs are not public records. While all agreed in concept, some raised concerns about how this change will practically work. Mr. Devlin noted that SSNs are deeply embedded in county deeds collections, and Ms. Meyer pointed out the SSNs that are collected on municipal records and then migrate to the courts. How do we iron out the redaction process? What are the details? Ms. Bellows explained that the Subcommittee began with more details but believes that this is an important statement to make: SSNs are not public records. Ms. Bellows also understands that logistical problems with no limitations on collection, storage or release of the SSNs. Ms. Pistner stated that it is important that we protect the agencies that collect SSNs. Mr. Spruce reiterated that this is not a complete fix, but it is a step forward. Ms Reinsch reminded the Committee that this is a way to protect people who are passing out the records; because a SSN is not a public record, a requester has no right to the SSN and the custodial agent can redact. Staff also explained that because something is not a public record, it does not mean that it is necessarily confidential. Mr. Flewelling thought that this distinction was important. Ms. Pistner also reminded the Committee that something is not a public record unless it has a clear public purpose.

Mr. Spruce moved acceptance of the recommendation, Mr. Flewelling seconded it, and vote was unanimous. (12-0)

- Examine use of technology in attending meetings. (tabled)

Mr. Spruce introduced the Subcommittee's draft proposal (page 3A-4), which was not unanimous. The draft proposal creates requirements for public proceedings that involve members who are not physically present. In addition to this draft that looks to establish uniformity in meetings that involve communication from members who are not physically present, the Subcommittee looked at four existing examples of entities whose members are authorized by statute to participate from other locations. The four are the Finance Authority of Maine, the Emergency Medical Services Board, the Ethics Commission and the Workers' Compensation Board. Since input from the affected agencies has not yet been solicited, the item

was tabled and staff was asked to send a letter out under Chair Hobbins and Subcommittee Chair Spruce's names that will be sent to solicit feedback from the agencies.

- Keeping records of public proceedings. (adopted draft p. 3A-4)

Mr. Spruce presented the Subcommittee's recommendation, which was not unanimous and which may be a local government mandate. The Subcommittee discussed what is a "meeting" but narrowed the initial draft to limit recordings of public meetings to include the date, time and place; the members, present and absent; and all motions and votes taken. The general substance of all matters proposed and discussed need not be included in the record. Mr. Flewelling noted that this change addressed his concern; now, if there is no motion or vote, no record need be made. Mr. Smith raised the concern brought earlier in Subcommittee by Mr. Pringle, which was that these requirements seemed very burdensome on subcommittees of school boards. Jeff Austin from the Maine Municipal Association pointed out that some boards have such requirements now and that it may be prudent to distinguish when a vote is required to be taken from an action that really doesn't need a vote (i.e., where to have lunch). Mr. Spruce moved to accept the proposed draft as is, Mr. Flewelling seconded the motion. The vote was taken, and it was 10-1. (Mr. Smith voted no, and Mr. Higgins was not present for the vote.)

- Examine scope of review process (1 MRSA §434 criteria). (adopted draft, p. 3A-6)

Mr. Spruce presented the Subcommittee draft that expands the criteria for review to specify that the review committee has authority to consider factors that affect the accessibility of public records (i.e., fees, request procedures and timeliness of responses), as well as the repeal, modification and continuation of public records exceptions. Mr. Spruce moved to accept the recommendation, Ms. Goucher seconded the motion and the Committee vote was unanimous (11-0).

Bulk Records Subcommittee Report

Subcommittee Chair Bob Devlin reported that the group has met twice and is looking at a number of issues. At its meeting on September 23rd, the Subcommittee reviewed a draft proposal that would incorporate into the freedom of access laws language that was recently enacted pursuant to Public Law 2009, c. 575 amending the law dealing with reasonable fees in the registry of deeds statutes. Ms. Meyer explained that the court will be looking at both the old and new language regarding fees shortly, as it hears the MacImage case against several counties. Based on the pending litigation, the Subcommittee chose to wait on a recommendation regarding this proposal.

The Subcommittee also identified the need to have additional information before it can go forward. Information that the Subcommittee will review at its next meeting(s) includes:

- Examples of other states' definitions of "bulk data" and "bulk records";
- Input from agencies and other governmental entities regarding the proposed draft for reasonable fees;
- Explanations from agencies and other governmental entities regarding their statutory authority to set fees by rulemaking and whether the proposed language would conflict with their existing authority; and

- A list of concerns, problems, costs, questions from agencies, municipalities and individuals regarding the proposed change in law that excepts SSNs from public records under the freedom of access laws (may require public hearing in order to have necessary interested parties weigh in).

Another issue that was discussed at the last meeting was the use of the freedom of access process to circumvent InforME fees.

Public Records Exceptions Subcommittee

Subcommittee Chair Shenna Bellows reported that the Subcommittee will hold its first meeting on September 27th. At that meeting the Subcommittee plans to begin its evaluation of each public records exception that is scheduled for review this biennium (Titles to review include 22; 22-A; 23; 24; 24-A; and 25); review the FAME exceptions that were removed from LD 1792 by the Judiciary Committee and receive an update on the status of the redraft of the Criminal History Record Information Act (CHRIA).

Updates on Other Issues

Working Group on Bulk Records convened at the request of the State and Local Government Committee

Staff reported that this group is tentatively scheduled to meet next on October 26th. They have been on hold pending the litigation involving MacImage and the counties.

Education and training for elected public officials

The Committee believes that Legislators should receive education and training about the right to know laws at the beginning of every legislative session, even if they have received the training before. Ms. Pistner, who provides the legislative training, indicated that she would like to hear feedback from the Legislators regarding the training. She wants to ensure that we are providing them with what they need. Mr. Leary asked the Committee if we should expand training to appointed boards and others. Mr. Flewelling explained that elected municipal officials are required to receive training; however, appointed officials, who in many cases perform the same duties as elected officials (i.e., some clerks and assessors), are not required to receive the training. He would not quarrel with expanding training to groups who perform the same functions as elected officials. Ms. Meyer agreed and suggested that it was time to look back and tweak the education\training law if problems exist. Ms. Meyer said that many municipal employees who also do the same jobs as elected officials are not trained, and supervisors for persons who have to administer the laws do not have the training their employees are required to have. As a first step, Mr. Leary moved to have staff draft language that requires appointed clerks to have the same mandatory training as elected clerks. Mr. Devlin suggested that department heads and supervisors who receive freedom of access requests also be strongly encouraged to receive the training. Mr. Flewelling proposed that the Committee take a more comprehensive look before making recommendations.

Future meetings

- Thursday, October 21 at 1:00 p.m., Room 438, State House, Augusta

- Thursday, November 18 at 1:00 p.m., Room 438, State House, Augusta

Other issues

- Extern Sean O'Meara presented to the Committee his Freedom of Access website recommendations (handout), which was well received.

Adjourned 4:10 p.m.

Right to Know Advisory Committee

October 21, 2010

Meeting Summary

DRAFT

Convened 1:15 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
Judy Meyer
Kelly Morgan
Linda Pistner
Harry Pringle
Chris Spruce

Absent:

Shenna Bellows
Karla Black
Mark Dion
A.J. Higgins
Mal Leary

Staff:

Peggy Reinsch, Carolyn Russo & Marion Hylan Barr

Advisory Committee Chair Senator Barry Hobbins convened the meeting of the RTKAC at 1:15 p.m. Chair Hobbins reviewed the agenda and invited members and staff, including the Maine School of Law Extern Sean O'Mara, to introduce themselves.

Subcommittee Reports

Legislative Subcommittee Report

Subcommittee Chair Chris Spruce reported that the Legislative Subcommittee had not met since the last Advisory Committee, but would be scheduling one more meeting. Issues not resolved within the Legislative Subcommittee's jurisdiction are: drafting limitations on access to private information in communications of elected and other public officials; the requirement for education and training of public officials; and compiling the feedback from the boards and commissions whose current statutes allow meetings via communication technology when less than a quorum is physically present. (The Legislative Subcommittee will meet on Thursday, November 18, 2010, starting at 11:00 a.m., in Room 438 of the State House.)

Bulk Records Subcommittee Report

Subcommittee Chair Bob Devlin reported that the Bulk Records Subcommittee is meeting on Wednesday, October 27, 2010 at 10:00 a.m. in Room 438 of the State House. The Subcommittee requested feedback on the draft incorporating the cost factors from Title 33 registry of deeds fees into the general fee provisions for the Freedom of Access laws (1 MRSA

§408, subsection 3). The Subcommittee will also take public comment at the meeting and will work on defining “bulk data” and identifying next steps.

Public Records Exceptions Subcommittee

Subcommittee Chair Shenna Bellows was absent, so Mr. Spruce reported on her behalf. The Public Records Exceptions Subcommittee has met twice. There are 123 public records exceptions provisions to be reviewed in Title 22 through 25. About ¾ of those provisions are within the Department of Health and Human Services and the Bureau of Insurance. The Subcommittee reviewed 66 sections, completed work on 42 (although the Subcommittee is recommending a few language clarifications). Most of these confidentiality provisions are pretty straightforward and are not controversial.

The Subcommittee is charged with reviewing and evaluating the public records exceptions contained within the Criminal History Record Information Act (CHRIA). Staff is working with the Attorney General’s Office to complete a draft for the Criminal Law Advisory Commission to review and edit. That final product will then be reviewed by the Subcommittee, which may recommend the draft to the full Advisory Committee.

The Subcommittee discussed the standard drafting templates for applications for governmental technical/financial assistance, and the Legislature’s rejection of the application of those templates to the Finance Authority of Maine statutes. Advisory Committee Extern Sean O’Mara is working on developing alternative language that takes advantage of what was identified as beneficial provisions in the FAME statutes.

Education and training for public officials

Staff prepared draft legislation to follow up on a suggestion at the last meeting to expand the group of persons required to complete FOA training. Mr. Leary had suggested that appointed clerks be treated the same as elected clerks; appointed clerks should be required to complete the training because they do the exact same work that elected clerks do. In Mr. Leary’s absence, the Advisory Committee chose not to discuss the merits or the details of the draft, and referred it to the Legislative Subcommittee.

Chair Hobbins asked for ideas on how to improve the training. One suggestion was to expand training for new legislators. In addition, Chair Hobbins stated that it would be useful to create a one-page handout for Legislative Committee Chairs to provide to their committee members during committee orientation that explains the process that is required by statute with regard to reviewing proposed public records exceptions. Ms. Pistner noted that one that has been raised is whether training is required for every term for which an elected official is elected, and suggested that clarification would be helpful. The Legislative Subcommittee will include that issue in its discussion.

Old business

Confidentiality of information in communications of public officials

The Advisory Committee tabled the draft legislation governing the confidentiality of certain information contained in communications, including e-mail, of public officials. Ms. Goucher had requested additional information about other states, which was provided in a packet including an article from State Legislatures magazine (NCSL publication). Ms. Bellows had requested that the Advisory Committee postpone discussion until she can be in attendance. Rep. Hill noted that one of her approaches in submitting the legislation initially was to make sure it is clear to anyone communicating with a public official what information would be public. Ms. Morgan explained that part of the discussion included a recommendation that there be a notice on the State's website that communications and e-mail address may be public information. The Advisory Committee agreed to keep the issue and the draft on the agenda for the full Advisory Committee meeting on November 18th.

Website recommendations

Sean O'Mara walked the Advisory Committee members through his recommendations for changes in the State's Freedom of Access website, focusing on the Frequently Asked Questions section. The members supported the changes, with a small clarification on mailing costs, and a go-slow recommendation concerning Social Security numbers.

Meeting records

The Advisory Committee's majority recommendation to require basic records of all public proceedings was reviewed by the Legislative Policy Committee of the Maine Municipal Association. Jeff Austin reported the LPC's recommendation that the requirement be limited to municipal boards and committees that have actual authority, exempting those groups whose discussions and works are advisory only. Ms. Goucher asked Mr. Flewelling to try to draft language that does that, and he agreed to consult with staff to do so.

New business

A copy of an article from The News Media & the Law, "Law schools step in to help maintain sunshine," was distributed. Mr. O'Mara explained his ideas and actions for involving the Law School in providing A Freedom of Access resource to the public. The Advisory Committee readily agreed to support continuation of the exploration of the avenue, and requested that staff inquire into the interest in the legal community to participate in such a project. Current law may need to be revised to accommodate the involvement of the Law School.

Future meetings

- Bulk Records Subcommittee:
Wednesday, October 27, 2010, 10:00 a.m., Room 438 of the State House
- Public Records Exceptions Subcommittee:
To be scheduled
- Legislative Subcommittee
Thursday, November 18, 2010, 11:00 a.m., Room 438 of the State House,
- Full Advisory Committee
Thursday, November 18, 2010, 1:00 p.m., Room 438, State House, Augusta

Adjourned 2:22 p.m.

Respectfully submitted,
Peggy Reinsch, Marion Hylan Barr, staff

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