

Right to Know Advisory Committee
September 15, 2015
Meeting Summary

Convened 10:15 a.m., Room 438, State House, Augusta

Present:

Rep. Monaghan
Rep. Rankin
Richard LaHaye
William Shorey
Kelly Morgan
Suzanne Goucher
Fred Hastings
Judy Meyer
Chris Parr
Linda Pistner
Harry Pringle
Luke Rossignol

Absent:

Sen. Burns
Mary Ann Lynch

Staff:

Craig Nale
Natalie Haynes

Introductions

Rep. Monaghan called the meeting to order and the members introduced themselves. The decision to elect a chair was tabled until the next meeting and Rep. Monaghan agreed to chair the current meeting.

Summary of the FOAA legislative actions during the First Regular Session of the 127th Legislature

Staff summarized the FOAA legislative actions during the First Regular Session of the 127th Legislature by providing a summary of the following:

- Public Law 2015, chapter 248 (LD 1086), An Act To Implement the Recommendations of the Right To Know Advisory Committee To Create a Remedy for Unduly Burdensome and Oppressive Requests (*based on Appendix I, RTK-AC 2014 report);
- Public Law 2015, chapter 249 (LD 1087), An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Response Deadlines and Appeals (*based on Appendix G, RTK-AC 2014 report);
- Public Law 2015, chapter 317 (LD 1085), An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Receipt of a Request for Public Records (*based on Appendices G and H, RTK-AC 2014 report);

- Public Law 2015, chapter 250 (LD 1088), An Act To Implement Recommendations of the Right To Know Advisory Committee (*based on Appendices D,E and F, RTK-AC 2014 report).

The committee briefly discussed the status of the Judiciary Committee's carryover bill LD 1241. Ms. Pistner explained that much of the discussion on this bill involved a need for clarification on remote participation as it stands under the current law, and whether or not the law should be broadened. The committee discussed the fact that the topic of remote participation has been a longstanding unresolved issue where it has been difficult to identify a solution. The committee requested that staff provide an overview of remote participation and the challenges that are associated with meeting the public's expectations in light of advancements in technology. The committee requested that the summary also include the RTKAC's prior recommendations on this topic and the most recent Judiciary Committee's work sessions on this issue, as well as a copy of the Governor's veto letter on the bill related to remote participation.

Update from the Public Access Ombudsman

Public Access Ombudsman Brenda Kielty provided the Committee with an update on her recent activities and presented the committee with the following materials: a mid-year data summary report that summarizes the activities of the Ombudsman for the first half of calendar year 2015; a summary of the interim report to the Government Oversight Committee (GOC) regarding compliance with public records laws; and a copy of the status of recommendations from the report to the GOC on records retention and management. These documents are posted on the RTKAC's website at: <http://legislature.maine.gov/legis/opla/righttoknow.htm>.

Ms. Kielty described that FOIA provides a right to public records; however there are significant challenges to the public's right to records when public records are not created in the first place or properly retained. A brief overview was provided of the letter from the Secretary of State's Office that summarized the interim report to the GOC regarding the stakeholder group charged with reviewing the records retention and management issue. Ms. Kielty explained that she has been working with Tammy Marks, Director of the State Archives, to develop the report to the GOC and how to improve public record retention policies and practices (a list of the stakeholder group is included in this letter, which is available on the RTKAC website). Ms. Kielty stated that the FOIA depends on adequate documentation and proper record retention. The committee asked if the RTKAC would be able to provide input on any proposed legislation that the GOC considers relating to the records retention issue and management topic, and Ms. Kielty stated she would report back to the committee on this request.

Ms. Marks explained that October is Archives Month in Maine and around the country. The Maine State Archives is using the month of October to highlight the training that it offers in the area of records management, records retention, email management and the Freedom of Access Act. The State Archives website has a link to allow people to sign up for the workshops (see the Maine State Archives website at:

<http://www.maine.gov/sos/arc/>). Training is being provided for any interested State employees, records officers, directors/agency heads, as well as legislators and public officials. Ms. Kielty and Ms. Marks noted that training in this area across the state has been inconsistent and not far-reaching.

The committee asked if this stakeholder group would be look at how these issues are affecting people at the municipal level. Ms. Kielty stated that the stakeholder group was primarily focused on issues at the state level and would not be able to address all issues seen at the municipal level. Ms. Kielty stated that she would recommend that the Archives Advisory Board receive input from a representative of a school or municipality to provide this perspective.

Ms. Kielty provided a review of the mid-year data summary report. Ms. Kielty explained that many members of the public have an expectation that public records should be easily or readily available and are surprised to learn of the technological challenges and costs associated with accessing public records. Ms. Kielty requested approval from the Committee to draft some FAQs regarding recent changes to the FOAA statute that could be placed on the website. The Committee approved this request. Ms. Kielty will be providing the Committee with a copy of the proposed FAQs for the website in order to allow the Committee to provide any suggested changes by October 15.

Update on public records exceptions statutory review schedule for public records exceptions enacted from 2005- 2012; establishment of the Subcommittee

The Committee agreed that the public records exception statutory review process should be led by a subcommittee. The subcommittee members are: Rep. Monaghan, Linda Pistner and Luke Rossignol.

The Committee determined that the first agency to be reviewed from 2005 should be the Gambling Control Board and requested that a representative from the board be present at the next meeting.

The Committee set the first meeting of the subcommittee for October 6th at 9:30am, and the next meeting of the full Right to Know Advisory Committee for October 6th at 1:00pm.

Topics and Projects for 2015

The Committee began exploring potential tasks to be undertaken in 2015.

- Chris Parr recommended that the Advisory Committee review the topic of extremely burdensome FOAA requests that are voluminous and require considerable length of time to review for confidential information and to redact personal information. In addition, Mr. Parr mentioned that many cases involve individuals who are requesting information based on a personal interest and not for any public purpose. Mr. Parr

asked if there was interest on behalf of the Committee to discuss crafting a potential remedy that would address these types of circumstances, suggesting a set number of hours that would be allowed for fulfilling the request and then the agency would be allowed to charge the actual cost associated with the request. Ms. Kielty agreed that the State Police have a high volume of requests and discussed how the federal law allows full compensation to be charged and not a flat fee. Ms. Kielty explained that Maine has chosen to try to accommodate the need for access to public records for those that do not have the funds to pay large fees for FOAA requests. Maine FOAA is not concerned as to who the requester of records is, or their purpose, unlike the federal law which categorizes the requestor based on the purpose of the request and the corresponding fee schedule (serving a commercial interest/media/ private interest). Ms. Kielty noted that another area that could be discussed was the length of time for fulfilling a public records request and that there are no uniform standards that apply in order to hold an agency to a specific standard. The Committee agreed that the topic of burdensome requests should be addressed by the full committee.

- The Committee also requested a summary of the most recent actions relating to remote participation in the Judiciary Committee, as well as the previous RTKAC recommendations that were designed to address this topic, but have not yet been adopted.
- Some members of the Committee also expressed an interest in discussing the legislative budget process and whether or not the FOAA applies to the Legislature and if so, how FOAA addresses the issue of small groups of legislators meeting privately to adopt language for the State budget. The Committee agreed to take up this topic at one of its meetings this fall.

Future Meetings

Wednesday, October 6th, 2015. Room 438 of the State House for all meetings.

Right to Know Advisory Committee

November 13, 2015

Meeting Summary

Convened 1:07 p.m., Room 208, Cross State Office Building, Augusta

Present:

Sen. David Burns
Rep. Kim Monaghan
Suzanne Goucher
Fred Hastings
Richard LaHaye
Mary Ann Lynch
Judy Meyer
Harry Pringle
Linda Pistner
Luke Rossignol
William Shorey

Absent:

Chris Parr
Helen Rankin
Kelly Morgan

Staff:

Natalie Haynes, Craig Nale, Henry Fouts

Introductions

Advisory Committee members introduced themselves.

Public Records Exceptions Subcommittee update and recommendations

Rep. Monaghan reviewed the progress of the Public Records Exceptions Subcommittee from its meeting that morning. During the review process in the Subcommittee meeting, the Department of Education proposed an amendment to a current public records exception under review, 20-A MRSA §13004(2-A)(B). Staff explained the information presented to the Subcommittee that morning regarding the amendment: that the objective of the exception was to allow sharing of Maine teacher discipline information with other states, through a national organization, that may be looking into a potential teacher candidate's background. Debra Plowman from the Department of Education spoke to the amendment further, stating that this confidentiality exception was undermined because it explicitly maintains a broad category of information as confidential, which includes the information that the Department wants to be able to share with other states under the exception.

While a majority of the Subcommittee had voted to recommend the Department's proposed amendment to the full Committee, Mr. Burns noted his vote in opposition to this. He stated his concern with allowing other states to see teacher discipline information that is not available to parents. Mr. Burns reiterated that he would like to see a mechanism for the public to have access to disciplinary information or investigations, at least after the fact. Mr. Pringle raised his reluctance to vote his support for Advisory Committee movement on this issue. He cited his concern with the breadth of currently confidential information the amendment would allow Maine to share with other states. Additionally, Mr. Pringle noted that the Maine public has, and will continue to have under the amendment, no access to any of this disciplinary information. He

counseled for further thought on the issue. Mr. Burns concurred, requesting further information from the Department before the Committee voted. Mr. Pringle moved to table the item, and the group voted to table the item and to seek further information from the Department on the question of how exactly the confidential information in 20-A MRSA §§6101 and 6103 fit within the broadened exception in 20-A MRSA §13004(2-A) sought by the Department.

Rep. Monaghan moved to accept the remaining “No Modification” recommendations from the Subcommittee with respect to the public records exceptions currently in statute that the Subcommittee reviewed that morning and at the Subcommittee’s previous meeting. The motion was seconded by Ms. Goucher, and the group unanimously voted in support.

Remote participation by members of public bodies

Staff reviewed the results of the remote participation questionnaires received from members. Results were only received from 7 members, with answers showing a good deal of variability and containing various contingencies. Although the questionnaire allowed some concerns to be compared among members, the group agreed that it did not help reach a consensus. Staff then reviewed a chart comparing various elements (e.g. applicability, voting requirements, etc.) of past and present remote participation bills, as well as a draft bill containing various language options reflecting this variability. (Materials from this meeting are available on the Right to Know Advisory Committee’s website.) Sen. Burns noted that a broad recommendation for legislation would be more likely to get consensus. The group agreed to work through forming recommended legislation, agreeing to first address the issue of which public bodies the law permitting remote participation would apply to. Some members voiced support for the law applying to all public bodies, leaving to each body to determine through its policy whether or not to allow remote participation. Other members were opposed to elected officials being permitted to vote remotely. Some agreed with this limitation for reasons of implementing a more incremental change, and ensuring the law would not apply to the Legislature. After much discussion, a large majority of the group voted for the legislation to be written to apply to non-elected bodies subject to the Freedom of Access Act, with exclusions for public bodies currently permitted by statute to have remote participation by members. The Advisory Committee continued to work through consensus on the elements of what would be the group’s recommended legislation. The Advisory Committee voted to not include reference to the type of electronic means of communication that may be used, instead allowing that decision to be made by the body adopting the remote participation policy; to not allow remote participation at executive sessions out of privacy concerns; to maintain notice requirements; to ensure that members both present at the meeting location and participating remotely can hear all of the participants in the meeting and speak to other members of the body during the meeting; to ensure that documents discussed at the meeting be available to members not physically present; to prohibit members participating remotely from voting in quasi-judicial proceedings; and to allow a body to achieve a quorum by including members participating remotely in emergency circumstances. Staff reviewed the results of the discussion and the Committee voted unanimously in support of the resulting draft recommended legislation.

Records Management Stakeholder Group

Staff updated the group on the latest meeting of the Records Management Stakeholder Group, which Advisory Committee staff members were formally invited to in order to keep the Committee apprised of that group’s progress developing reforms to the State records retention and archives process.

IT representative member

The Advisory Committee asked staff to contact the Governor's Office to get an update on the appointment process for the newly added member to the Advisory Committee, a person with "broad experience in and understanding of issues and costs in multiple areas of information technology."

Transparency in the Legislature's budget negotiations

Senator Burns and Representative Monaghan started a discussion about the budget negotiations and process during the past legislative session, which was an issue raised at the first Right to Know Advisory Committee meeting. Representative Monaghan stated that more information and resources were needed to properly address the issue, and explained that there may be a bill on the issue coming up in the next legislative session. Sen. Burns noted that there is an existing mechanism for determining whether FOAA was violated: through the court system. The issue was tabled without objection.

Draft annual report - outline

Staff reviewed the proposed outline and appendices for the upcoming annual report. A full draft is to be presented at the following meeting. The Advisory Committee agreed to the proposed layout and makeup of the report.

Schedules

The full Committee will meet in the morning of Dec. 1st, to be immediately followed by a Subcommittee meeting.

The meeting was adjourned at 3:29 p.m.

Right to Know Advisory Committee
December 1, 2015
Meeting Summary

Convened 10:05 a.m., Room 448, State House, Augusta

Present:

Sen. David Burns
Rep. Kim Monaghan
Suzanne Goucher
Fred Hastings
Richard LaHaye
Mary Ann Lynch
Judy Meyer
Kelly Morgan
Harry Pringle
Linda Pistner
Helen Rankin
William Shorey

Absent:

Chris Parr
Luke Rossignol

Staff:

Natalie Haynes, Craig Nale, Henry Fouts

Introductions

Advisory Committee members introduced themselves.

Draft annual report review & vote

Staff reviewed the draft annual report with the Advisory Committee. Mr. Pringle wanted to make sure that the recommendation section of the report (and Executive Summary) regarding the Advisory Committee's recommended legislation to permit remote participation by members of public bodies be explicit that it applied only to bodies with appointed members, not elected members. Further discussion on this point elucidated that elected officials that may be appointed to serve on a public body would not disqualify that body from allowing remote participation by its members by virtue of the fact that the elected officials were not specifically elected to that body (e.g., just because some members of the Advisory Committee are elected officials, since they were appointed to their seats on the Advisory Committee, not elected, remote participation in Advisory Committee meetings would not be prohibited under this proposed legislation). Ms. Meyer asked if the Legislature should be explicitly exempted in the legislation. Mr. Pringle noted that it was hard to reign in all possibilities, to solve all potential problems, but that instead the Advisory Committee was passing along more of a template for the Judiciary Committee to work with. It was further requested that the clarification about elected members be included in the summary portion of the proposed legislation. The Committee agreed to include Mr. Pringle's suggested clarifications into the report and the summary portion of the proposed remote participation legislation.

In regard to the text of the proposed legislation, Ms. Lynch suggested edits that were discussed by the group. First, she pointed out 2 instances of an unneeded "or" at page 2, subsection 2, on the 2nd and 4th lines. Ms. Lynch also suggested changing the first line of the proposed legislation

with the following: “A public proceeding subject to this subchapter, except a proceeding of a publicly elected body, may be conducted through telephonic, video” This replaces the term “public body” with “public proceeding”, because the latter term is already defined in FOAA. The group was in agreement that all suggested drafting changes should be included in the final report.

Department of Education’s proposed amendment to 20-A MRSA §13004(2-A)

Staff reviewed the proposed amendment and the concerns previously raised by the Department of Education in its response to the standard questionnaire sent to agencies as part of the public records exceptions review. The proposed amendment is included in **Appendix E**. The Department raised its concern that information made confidential in 20-A MRSA §§6101 and 6103 is information it wants to release in §13004(2-A)(B), because allowing the Department to release this information regarding teaching licensees would allow other states to share their information regarding teachers previously licensed in those states. Staff pointed out that the exception in §6101 was much broader than the information that would be relevant to be released pursuant to §13004(2-A), and raised the potential for the Committee to specify in this confidentiality waiver only the relevant information required to be shared with other states if the breadth of released information is a countervailing concern.

Debra Plowman, Director of Policies and Programs in the Department of Education, and Assistant Attorney General Sarah Forster appeared before the Advisory Committee to explain the proposed amendment. According to Ms. Plowman and Ms. Forster, the goal of the amendment is to allow the Department to work with a national organization to share certification complaint information on Maine teachers with other jurisdictions, which would allow the Department to receive the same information about teachers coming to Maine from other jurisdictions. Ms. Forster explained that the 2-A(B) exception exempts the information that the Department actually wants to share, and that allowing the Department to share that information was the original intent of the legislation. Ms. Meyer asked what specific information the Department was looking to share. The reply was that generally the organization and other states are interested in information regarding the basis for teacher disciplinary action, including criminal history and complaints that could result in a teacher losing certification. Ms. Plowman said the idea is to make sure Maine students are safe, and to do so the State wants to know about individuals from other states coming here to teach our children and that allowing Maine to release its teacher discipline information is the way to allow this information sharing.

On a motion by Mr. Pringle, seconded by Ms. Lynch, the Committee debated the idea of including a recommendation on amending the education statutes in the Committee’s report. Mr. Pringle noted that this provision was confusing, and the proposed amendment was a bit of a blunderbuss, for example, it would allow the release of emotional disturbance information of a certified teacher’s family member. Mr. Pringle also asked whether and how the confidentiality of information released could be maintained once released outside the Department of Education under the proposed exception.

Senator Burns and members of the Advisory Committee discussed how the issue underlying this proposed amendment is that current law prohibits the Department of Education from sharing this information with the public (e.g., parents) or a school district within the State that might want to hire the concerned teacher, but under this amendment would allow this information to be shared with other states or a national organization. The Advisory Committee further discussed whether it is outside the Committee’s purview to address the larger policy issues surrounding the selective confidentiality of this information. The Advisory Committee debated whether to refer the issue

to the Education and Cultural Affairs Committee of the Legislature for a more comprehensive solution rather than making a recommendation to address part of the issue. Ms. Meyer suggested that a final solution from the Education and Cultural Affairs Committee could specify information that may be shared to accomplish the goals discussed, rather than specifying what information cannot be shared. The Committee decided not to include a recommendation in its report at this time.

The Committee voted 11-0 to send a letter to the Education and Cultural Affairs Committee alerting them to the issues that came up in the Advisory Committee's review of the confidentiality exception in 20-A MRSA §13004(2-A), and specifically the following concerns regarding the existing exception and the proposed amendment: whether the amount and scope of information potentially released is appropriate; whether there should be limits on re-dissemination once released by the Department; whether the information should also be permitted to be shared within the State, not just among other states; and whether the statutes should be revised to state what may be shared, rather than what cannot be shared. The letter from the Advisory Committee to the Education and Cultural Affairs Committee is included in **Appendix E**.

The Committee voted 11-0 to endorse the draft report, with the previously discussed additions, amendments and updated information.

The meeting was adjourned at 11:34 a.m.