

RIGHT TO KNOW ADVISORY COMMITTEE

Wednesday, December 4, 2019
1:00 p.m.
State House Room 438

1. Introductions
2. Subcommittee Reports: Recommendations and Advisory Committee Actions
 - A. Public Records Exceptions Subcommittee
 - B. Improve the FOAA Subcommittee
3. Other discussion?
4. Upcoming meetings
 - Advisory Committee
Wednesday, December 18, 2019 1:00 p.m.
 - Public Records Exceptions Subcommittee – if necessary
 - Improve the FOAA Subcommittee – if necessary
 - Issues Subcommittee
Wednesday, December 18, 2019 10:00 a.m.
5. Adjourn

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**Right to Know Advisory Committee
Issues Subcommittee**

**PROPOSED DRAFT LEGISLATION TO CREATE PRIVACY COMMITTEE
REFLECTS DECISIONS MADE AT OCT. 21st MEETING**

Privacy Committee Recommendation

Recommendation (vote 5-4): That the Legislature establish a committee to explore the need for a state Privacy Act. Membership should include at least one person who is also a member of the Right to Know Advisory Committee to ensure continuity and coordination. Federal laws establish a balance with the Freedom of Information Act requiring disclosure of government data, and the Privacy Act ensuring that personally identifying information contained in the government data is not released except in limited situations. Maine's Freedom of Access Act provides that all records in the possession of a governmental entity that have been received or prepared for use in connection with the transaction of public or governmental business or contain information relating to the transaction of public or governmental business, are public, with specific exceptions. There is no over-arching state pronouncement that purports to protect individuals' private information. The newly-formed committee would be directed to look at whether such comprehensive protection is necessary, and, if so, how that change in policy should be implemented. Additionally, the committee should explore whether there should be a permanent advisory committee on privacy and privacy-related issues which would parallel the work of the RTKAC, or whether those issues are appropriately covered by RTKAC.

**Right to Know Advisory Committee
Issues Subcommittee**

**PROPOSED DRAFT CORRESPONDENCE CONCERNING PUBLIC
PARTICIPATION WITH ARCHIVES ADVISORY BOARD
*REFLECTS DECISIONS MADE AT OCT 21st MEETING***

Tammy Marks, Director
Maine State Archives

Re: Archives Advisory Board activities

Dear Ms. Marks:

Thank you for your assistance to the Right to Know Advisory Committee to understand the important role the State Archives play in preserving the historical records of the State as well as helping to identify resources to manage all public records. Keeping track of records is a difficult task for all public entities, and the records retention schedules are an important piece in the overall records management puzzle. The development of those records retention schedules is key to ensuring that the public has a complete opportunity to know what their government is doing and how it carries out its responsibilities.

We are encouraged to know that the Secretary of State's Office is involved in updating the process and in ensuring that essential perspectives will be included in the development of records retention schedules going forward. Although the process has always been open, we write to request that the new Archives Advisory Board, with support from the State Archivist, take extra steps to ensure that notice of meetings is readily available, and information about the work of the Advisory Board is shared as widely as possible. We encourage the use of email distribution lists to support public knowledge and participation in the development process.

As you already know, the Advisory Committee is recommending legislation to expand the membership of the Archives Advisory Board to include representatives who can provide the perspective of journalists and news media. We also think it is important to include a member who is concerned with protecting individual's privacy interests. We will be making those recommendations to the Judiciary Committee with the expectation that the changes will be considered in the upcoming Second Regular Session.

Thank you again for your continued attention to our concerns.

Sincerely,

Representative Thom Harnett, Chair
Right to Know Advisory Committee

Right to Know Advisory Committee
Issues Subcommittee

PROPOSED DRAFT LEGISLATION TO CHANGE MEMBERSHIP OF THE
ARCHIVES ADVISORY BOARD
REFLECTS DECISIONS MADE AT OCT. 21st MEETING

Sec. 1. 5 MRSA §96, sub-§2 is amended to read:

§96. Archives Advisory Board

1. Established. The Archives Advisory Board, established by section 12004-I, subsection 8, shall serve to advise the State Archivist in administration of this chapter and to perform such other duties as may be prescribed by law.

2. Members. The Archives Advisory Board consists of ~~9~~ 12 voting members with expertise in the administrative, fiscal, legal and historical value of records. Voting members of the board must represent the spectrum of records in the State and are appointed by the Secretary of State as follows:

A. Two public members representing the interests of public access to government records, recommended by a public interest group;

B. Two members from municipal or county government with expertise in local government records, recommended by local or county government entities;

C. One member representing a state or local historical society, recommended by a state or local historical society;

D. One member with expertise in the legal requirements of records retention and public records law, recommended by the Attorney General;

E. One member with expertise in the State's fiscal requirements of records retention, recommended by the Governor;

F. One member from the executive branch with expertise in executive branch records, recommended by the Governor; and

G. One member from the Department of Administrative and Financial Services, Office of Information Technology with expertise in electronic records, electronic records management systems and emerging technology related to electronic records, recommended by the Governor;

H. Two members representing journalists, newspapers, broadcasters and other news media interests; and

I. One member representing the protection of personal privacy interests.

**Right to Know Advisory Committee
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**PROPOSED DRAFT LEGISLATION TO CHANGE MEMBERSHIP OF THE
ARCHIVES ADVISORY BOARD
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The State Archivist serves as a nonvoting member.

3. Terms; chair; compensation. The voting members under subsection 2 serve a 3-year term and continue serving until either reappointed or replaced. In case of the termination of a member's service during that member's term, the Secretary of State shall appoint a successor for the unexpired term. The voting members shall elect a chair. Voting members must be compensated as provided in chapter 379.

SUMMARY

This bill adds three additional members to the Archives Advisory Board to ensure that journalists, newspapers, broadcasters and other news media as well as personal privacy protection advocates are part of the expertise involved in the development of records retention schedules.

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Reinsch, Margaret

From: Parr, Christopher <Christopher.Parr@maine.gov>
Sent: Monday, December 2, 2019 10:37 AM
To: Risler, Hillary
Cc: Reinsch, Margaret; McCarthyReid, Colleen
Subject: ** Proposed draft language re: school video recordings
Attachments: 191202 DRAFT - 20-A MRSA sec. 6001-D.pdf

Importance: High

This message originates from outside the Maine Legislature.

Hillary:

Good morning –

When time allows, would you pls forward the attached draft language to the members of the RTKAC so that the language can be considered at the next Issues Subcommittee meeting, and then by the full committee?

My hope is that if consensus is not reached on the language the subcommittee has been discussing that would be applicable to publicly-created-and-maintained video recordings generally, then perhaps consensus can be reached on language applicable to school video recordings specifically.

Thank you! Pls let me know if you wish to discuss.

Best, C

Chris

CHRISTOPHER PARR
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DRAFT – FOR DISCUSSION PURPOSES ONLY

Sec. 1. 20-A M.R.S.A. § 6001-D is enacted to read:

§ 6001-D. School video recordings confidential

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. School video recording. “School video recording” means a video or audio recording made by any publicly-owned or publicly-leased security or surveillance camera that is on or within school grounds and is in the possession or custody of a public school, a private school approved for tuition purposes or a private school recognized by the department as providing equivalent instruction pursuant to section 5001-A, subsection 3, paragraph A, subparagraph (1), division (b). “School video recording” does not include audio or video recordings that are education records as defined by the federal Family Educational Rights and Privacy Act of 1974, including, but not limited to, any portion of a school video recording that is an education record as defined by that federal law.

B. School grounds. “School grounds” has the same meaning as in section 6554, subsection 2, paragraph E.

2. School video recordings confidential. School video recordings are confidential and are not public records for the purposes of Title 1, Chapter 13. A school may not disclose any portion of such recordings, except as provided in subsection 3.

3. Permissible disclosure of school video recordings. Notwithstanding subsection 2, a school video recording may be disclosed by the school that is the custodian of the recording to:

A. A criminal justice agency, if the school video recording is known to include, or suspected of including, information material to an investigation being conducted by that agency. School video recordings obtained and maintained by criminal justice agencies pursuant to this paragraph constitute confidential intelligence and investigative record information under pursuant to Title 16, chapter 9;

DRAFT - FOR DISCUSSION PURPOSES ONLY

B. An employee, contractor, volunteer, or visitor of the school, or an attorney for any of such persons, who has been accused of misconduct, if the school video recording is known to include, or suspected of including, information material to the accusation. A school video recording disclosed pursuant to this paragraph may not be further disclosed in whole or part to any other person, but may be used in any administrative or judicial proceedings that occur to address the accusation of misconduct;

C. To the attorney for, or a parent or guardian of, a student who has been accused of misconduct, if the school video recording is known to include, or suspected of including, information material to the accusation. A school video recording disclosed pursuant to this paragraph may not be further disclosed in whole or part to any other person, but may be used in any administrative or judicial proceedings that occur to address the accusation of misconduct.

4. Dissemination of school video recordings in the custody of private transportation agencies. The disclosure of school video recordings in the custody of a private transportation agency providing services to a school must be expressly addressed in contract. At a minimum, the contract must provide that a private transportation agency may not disclose a school video recording in the custody of that agency except to the extent permitted by this section.