

Right to Know Advisory Committee  
Legislative Subcommittee  
July 19, 2010  
Draft Meeting Summary

Convened 1:05 p.m., Room 438, State House, Augusta

Present:	Absent:
Chris Spruce, Chair	none
Shenna Bellows	
Robert Devlin	
Richard Flewelling	
Mal Leary	
Judy Meyer	
Linda Pistner	
Harry Pringle	
Kelly Morgan	
Karla Black	

Staff:  
Peggy Reinsch  
Marion Hylan Barr

Legislative Subcommittee Chair, Chris Spruce, convened the meeting of the Legislative Subcommittee of the Right to Know Advisory Committee at 1:05 p.m. and asked the members to introduce themselves.

### **Continuing issues**

The Legislative Subcommittee reviewed draft legislation prepared based on the discussions during the July 12th meeting.

- **Protection of contact information lists of members of the public**

The Legislative Subcommittee had agreed that e-mail addresses should not be treated as confidential in all cases; there was interest in a draft that protected lists of email addresses. Staff prepared three different approaches to protecting lists of contact information provided by the public in communicating with or entering into transactions with governmental entities. The drafts were written broadly to cover names, telephone numbers, mailing addresses and e-mail addresses to provide the range of information protected in a few states. Shenna Bellows expressed interest in protecting e-mail addresses, and supported Option 3 (based on Texas law), but no other members supported any version of legislation. The Subcommittee was unanimous in recommending that a disclaimer be included on all webpages reminding and warning users that all information shared with the governmental entity through Internet contact is public information, and other methods of contact may be preferable.

- **Proceedings in public**

The Subcommittee reviewed the draft prepared by staff to provide a general policy statement about communications outside of meetings not being prohibited, unless they are used to circumvent the law. Linda Pistner noted that perhaps the wording needs to be reversed so that the emphasis is on complying with the law rather than circumventing the law. Harry Pringle didn't mind the order and in fact liked the First Amendment statement first, but he preferred focusing on the intent of the actions, rather than just whether the conduct was used to circumvent the law. Judy Meyer recommended amending an existing paragraph in §401 to clarify that serialized meetings are a type of clandestine meetings that the law is designed to prohibit. Staff will redraft, and the Subcommittee will send to the full Advisory Committee.

- **Protection of information in communications with elected officials**

The Subcommittee reviewed the revised draft prepared by staff that would protect certain information in communications between constituents and elected officials. Concern was raised about the use of the term "personal" when referring to protected medical, financial and other information: is it too narrow? Too vague? Mal Leary preferred limiting the protection to information that would be confidential in the hands of an agency. He reminded the Subcommittee that the Speaker and President think that some information may already be covered but that clarification is necessary. Ms. Meyer does not believe there needs to be any protection at all; this is information that people voluntarily provide to elected officials, and is not part of any application for assistance. Karla Black said she has never been comfortable relying on a DHHS statute to shield personal information sent to the Governor. Mr. Pringle recommended removing the last sentence stating that requests for action or votes are not protected, and moved to forward to the full Advisory Committee the draft with that deletion. Richard Flewelling seconded. Ms. Bellows expressed her concern about all the confidentiality provisions already in the law that protect business information and other non-personal information such as agricultural information. She also thought it important to clarify that requests for votes are public. The Subcommittee agreed that revision was necessary, and voted to table the issue until a redraft is reviewed.

- **Holding meetings using technology**

The Subcommittee reviewed the draft legislation which included suggested changes to the laws of the four entities that currently address telephone conferences or other deviations from traditional meetings. All agreed that the entities affected - the Finance Authority of Maine, the Ethics Commission, Emergency Medical Services Board and the Workers' Compensation Board - should have an opportunity to explain their use of the statutes and whether the new proposal would affect their ability to carry out their responsibilities. Mr. Flewelling recommended a clarification with regard to the application of the draft language to executive sessions. Mr. Pringle reiterated his opposition to the concept: if you get elected, you should attend. Linda Pistner believed

that the draft would not be improved through further discussion and moved that the Subcommittee recommend it to the full Advisory Committee. Mr. Flewelling seconded, and the vote was 7-2 (Ms. Pistner, Ms. Bellows, Mr. Leary, Mr. Devlin, Mr. Flewelling, Ms. Meyer and Ms. Morgan voting in favor, Mr. Pringle and Mr. Spruce voting against).

- **Penalties**

Staff provided a review of the different options and considerations for revising penalties. The major concepts were to allow a penalty to be assessed against an individual, including a culpable mental state (such as “knowingly” or “intentionally”), and increasing fine amounts. The law already authorizes attorneys’ fees against the entity in bad faith situations, and the court is authorized to invalidate actions improperly taken during executive sessions. Inherent in the court’s power is the ability to enjoin future violations. There was no interest in imposing criminal sanctions. Mr. Leary suggested allowing the individual bad actor to be fined, and giving the judge discretion to impose a fine of up to \$5,000. Mr. Pringle did not agree; he did not think it makes sense to encourage citizens to run for school boards and then impose a penalty. He also said he thinks compliance with the law has gotten better. People make mistakes, they acknowledge it and apologize, and change their behavior. Ms. Meyer described this section of the law as “dormant” and asked how to make it more effective. Ms. Pistner thought education is improving compliance, and did not support changes. Mr. Leary recognized that there are honest mistakes, but he would like to be able to really go after people who knowingly and willfully violate the law. Mr. Pringle noted that his clients are usually trying to find the legal line between protecting information protected by statute and releasing information that is public; he doesn’t know anyone who willfully violated the law. Mr. Flewelling asked staff to look into the history of the statute; there used to be a criminal penalty. Ms. Morgan understood some elected officials felt a violation of the law was not a big deal because fines are never imposed; she supported increased fines but not criminal penalties. Mr. Pringle noted that the penalty had just been upped by the ability to award attorneys’ fees; citizen enforcement with paid attorneys’ fees is the most effective enforcement tool. Mr. Pringle moved to make no changes, Mr. Flewelling seconded, and the Subcommittee voted 7-2 to support the motion. (Ms. Pistner, Mr. Pringle, Ms. Bellows, Mr. Spruce, Mr. Devlin, Mr. Flewelling and Ms. Meyer voting in favor, Mr. Leary and Ms. Morgan voting against)

- **Scope of public records exceptions review process: accessibility**

The Subcommittee reviewed a draft amending the scope of the review of proposed legislation by the Judiciary Committee (referred to as “the review committee” in the statute) during the legislative session. The draft includes a new consideration of whether the proposed legislation affects the accessibility of public records, as opposed to focusing on whether certain information is excluded from being a public record. Mr. Devlin noted that there is an ongoing struggle with technology about what is a public record and how it can be accessed. This is the tip of the iceberg; how the public agencies do business affects access. The Subcommittee voted unanimously (9-0) to send the draft to the full Advisory Committee.

- **Should the law be amended to specifically address caucuses?**

The Subcommittee clarified that it will not make a recommendation concerning caucuses to the full Advisory Committee.

### **New business**

- **Review of protected information in the Central Voter Registration System (CVR)**

The Judiciary Committee requested that the RTK AC take a more in depth look at the information contained in the electronic voter information database, known as the Central Voter Registration System (CVR) to ensure that the appropriate balance is struck between public information and protection of personal information. Access to information is important to ensure the integrity of elections and the ability for elections to be carried out, while balanced against protecting personal information and not chilling citizens' interest in participating. The Subcommittee reviewed charts of information collected from voters when they register, the information maintained in the CVR at the local level and statewide, and who can access what data and for what purposes. Ms. Bellows believed that current law is straightforward, and thought the Legal and Veterans' Affairs Committee struck a good balance. She was happy to approve it as is, or go through the specific criteria step by step. Mr. Spruce reminded the Subcommittee that they had reviewed an earlier version last year. Mr. Leary noted that LVA House Chair Representative Trinward had used the criteria matrix to work through the legislation in Committee. He recommended that the Subcommittee approve the law as written, and the Subcommittee unanimously (9-0) agreed.

- **Social Security Numbers**

The Subcommittee started the discussion about protecting Social Security Numbers by reviewing a draft considered by the RTK AC last year, a description of how agencies that collect SSNs protect them from release, a list of Maine statutes that reference SSNs and an update on legislative actions in other states with regard to SSNs. Ms. Bellows thought spending more time reviewing the materials would be useful to her. Ms. Pistner noted that past attempts and designating SSNs as confidential resulted in large fiscal notes, at least partly because Secretary of State Matt Dunlap had identified significant expense for the Archives to review records and redact SSNs. She also noted that the California Identity Protection Act looked interesting from the summary, and may be worth reviewing. Mr. Leary reminded the Subcommittee that federal law directs that SSNs be used only for the Social Security Administration, and that there has been an effort to stop collecting SSNs when not absolutely needed. Mr. Pringle thought amending the list of public records exceptions to just state that SSNs are not public records would be useful. The Subcommittee discussed the interpretation that records that are not public records but

that are not specifically designated as confidential can be released at the discretion of the record custodian. Mr. Leary and Ms. Bellows both wanted to make sure that agencies can share the information when it is appropriate to do so.

Staff will prepare a draft, using the draft circulated in 2009 as a starting point.

- **Meeting records**

A majority of the RTK AC recommended legislation last year to require public bodies to make and keep basic records of all public proceedings for which notice is required under §406. LD 1791 was heard by the Judiciary Committee during the Second Regular Session, and converted into a Resolve directing the RTK AC to continue to review the issue, taking into account additional concerns, including retention of records, the validity of actions taken at a proceeding for which no record is prepared, and the breadth of the information to be included in the records. Mr. Pringle explained his opposition, which is that the requirement applies to everyone, even a two-person meeting to determine the maintenance of a ball field. Staff explained the record retention requirements that currently apply to state, regional and governmental entities.

Staff will prepare a new draft to address issues raised by the Judiciary Committee.

The next Subcommittee meeting is scheduled for Monday, August 30, 2010, starting at 1:00 p.m.

The meeting was adjourned at 3:35 p.m.

Respectfully submitted  
Marion Hylan Barr  
Peggy Reinsch  
Staff, Right to Know Advisory Committee