

# RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

November 12, 2013

1:00 p.m.

Room 438, State House, Augusta

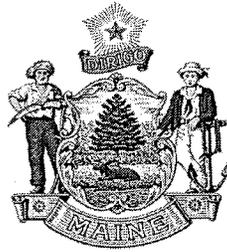
## Convene

1. Welcome and Introductions
2. Public Access Ombudsman Update - Brenda Kielty
3. Subcommittee Updates
  - Public Policy Subcommittee and Legislative Subcommittee  
Chris Parr, Chair  
Judy Meyer, Chair
  - Public Records Exceptions Subcommittee  
Suzanne Goucher, Chair
4. Draft Annual Report - outline
5. Additional issues, questions
6. Schedules
  - Right to Know Advisory Committee
    - Tuesday, December 17, 2013 at 1:00 p.m.

## Adjourn

G:\STUDIES 2013\Right to Know Advisory Committee\Agendas\November 12, 2013 agenda.docx (11/7/2013 11:09:00 AM)

Hon. Linda M. Valentino, Chair  
Hon. Kimberly Monaghan-Derrig  
Perry Antone  
Percy L. Brown, Jr  
Richard Flewelling  
James T. Glessner  
Suzanne Goucher  
Frederick Hastings  
Mary Ann Lynch



Mal Leary  
William Logan  
Judy Meyer  
Kelly Morgan  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol

STATE OF MAINE  
**RIGHT TO KNOW ADVISORY COMMITTEE**

November 12, 2013

Senator John L. Tuttle, Jr., Senate Chair  
Representative Louis J. Luchini, House Chair  
Joint Standing Committee on Veterans and Legal Affairs  
100 State House Station  
Augusta, Maine 04333

Dear Sen. Tuttle and Rep. Luchini:

The Right to Know Advisory Committee is tasked with reviewing existing public records exceptions in the statutes, and in the past two years has focused on the exceptions found in Titles 26 through 39-A. The Advisory Committee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation. The Advisory Committee has established the Public Records Exception Subcommittee to conduct these reviews.

As part of its review, the Public Records Exception Subcommittee considered an exception in Title 28-A, section 755 related to the business and financial records of liquor licensees. During the 125<sup>th</sup> Legislature, we understand that the 125<sup>th</sup> Legislature transferred statutory responsibility for collecting data from on-premise liquor licenses from the Department of Public Safety to the Bureau of Alcoholic Beverages and Lottery Operations (BABLO). At the Subcommittee's request, BABLO completed a survey about section 755 and provided input about the application and potential impact of the confidentiality exception. We attach that information for your review.

While BABLO has not yet instituted a system or process to collect data for liquor licensees, they expressed interest in gathering data from on-premise licensees for marketing purposes to help the State better manage the sale and distribution of spirits throughout the State. However, BABLO also indicated that stakeholders representing licensees raised concerns that the confidentiality provision in section 755 may impact their ability to collect that data. BABLO suggested that the Subcommittee consider making statutory changes to clarify section 755 to enable the agency to collect certain information from licensees, but otherwise maintain the confidentiality of licensees' business and financial records while in the possession of the licensee.

Because the suggestion raised other policy and legal issues that go beyond the confidentiality exception, the Subcommittee is reluctant to move ahead without legislative input.

VLA Letter  
Page Two  
11/12/13

We understand that your committee may be considering legislation in the Second Regular Session to further clarify BABLO's statutory responsibilities for liquor enforcement. As part of that review, we hope that your committee will consider the confidentiality exception and consult with BABLO and other interested parties to determine whether statutory changes should be recommended to Title 28-A, section 755.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

Sincerely,

Sen. Linda Valentino, Chair  
Right to Know Advisory Committee



**STATE OF MAINE  
126<sup>TH</sup> LEGISLATURE**

**Eighth Annual Report  
of the  
RIGHT TO KNOW ADVISORY COMMITTEE**

**January 2014**

**Members:**

**Sen. Linda M. Valentino  
Rep. Kimberly Monaghan-Derrig  
Perry Antone Sr.  
Percy Brown Jr.  
Richard Flewelling  
Suzanne Goucher  
Frederick Hastings  
Mal Leary  
William Logan  
Mary Ann Lynch  
Judy Meyer  
Christopher Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol**

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<http://www.maine.gov/legis/opla/righttoknow.htm>**

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## EXECUTIVE SUMMARY

This is the eighth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The 16 members are appointed by the Governor, the Chief Justice, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information is available on the Advisory Committee's website: <http://www.maine.gov/legis/opla/righttoknow.htm>. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

By law, the Advisory Committee must meet at least four times per year. During 2013, the Advisory Committee met on July 24, October 3, November 12, and December 17. The Advisory Committee established the Legislative Subcommittee, the Public Policy Subcommittee and the Public Records Exceptions Subcommittee to assist it in conducting its work. All three subcommittees held meetings and made recommendations to the Advisory Committee.

The Advisory Committee was very fortunate to have the services of a Legal Extern of the Maine School of Law. Stephen Wagner, currently a second year student at the Law School, worked with the Advisory Committee during the first semester of the 2013-2014 school year.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2013 recommendations and a summary of relevant Maine court decisions from 2013 on the freedom of access laws.

For its eighth annual report, the Advisory Committee makes the following recommendations, although not all the recommendations are unanimous:

*{to be added}*

In 2014, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 26 through 39-A.

The Advisory Committee looks forward to a full year of activities and working with the Public Access Ombudsman, the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in its seventh annual report.

## I. INTRODUCTION

This is the eighth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. Title 1, section 411 is included as Appendix A. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at [www.maine.gov/legis/opla/righttoknowreports.htm](http://www.maine.gov/legis/opla/righttoknowreports.htm).

The Right to Know Advisory Committee has 16 members. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. Linda M. Valentino Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Kimberly Monaghan-Derrig	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Perry Antone Sr.	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Percy Brown Jr.	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Richard Flewelling	<i>Representing municipal interests, appointed by the Governor</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Frederick Hastings	<i>Representing newspapers and other press interests, appointed by the President of the Senate</i>
Mal Leary	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
William Logan	<i>Representing the public, appointed by the Speaker of the House</i>
Mary Ann Lynch	<i>Member of the Judicial Branch</i>
Judy Meyer	<i>Representing newspaper interests, appointed by the Speaker of the House</i>
Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>

Linda Pistner *Attorney General's designee*

Harry Pringle *Representing school interests, appointed by the Governor*

Luke Rossignol *Representing the public, appointed by the President of the Senate*

The complete membership list of the Advisory Committee, including contact information, is included as Appendix B.

## **II. RIGHT TO KNOW ADVISORY COMMITTEE DUTIES**

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- Examining inconsistencies in statutory language and proposing clarifying standard language; and
- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to be able to work with the newly-appointed Public Access Ombudsman, former Special Assistant Attorney General Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2013, the Advisory Committee met on July 24, October 3, November 12, and December 17. The Advisory Committee established the Legislative Subcommittee, the Public Policy Subcommittee and the Public Records Exceptions Subcommittee to assist it in conducting its work. All of the full committee meetings and subcommittee meetings were held in the Judiciary Committee Room of the State House in Augusta and open to the public. Each meeting was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage which can be found at [www.maine.gov/legis/opla/righttoknow.htm](http://www.maine.gov/legis/opla/righttoknow.htm). Agendas, meeting materials and summaries of the meetings are included on the webpage.

### **III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES**

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of the developments in case law relating to Maine's freedom of access laws. The Advisory Committee identified the following court decisions summarized below.

*{to be added}*

### **IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES**

Given the broad scope of the Advisory Committee's ongoing duties and responsibilities and the nature of the requests received from the Legislature, the Advisory Committee reorganized its subcommittee structure in 2013. Three subcommittees were appointed: 1) Legislative; 2) Public Policy; and 3) Public Records Exceptions. Senator Valentino and Representative Monaghan-Derrig, the legislative members of the Advisory Committee, are ex officio members of each subcommittee.

**Legislative Subcommittee.** The Legislative Subcommittee's focus is to serve as an advisor to the Legislature when legislation affecting public access is proposed and to respond to requests from the Legislature or others to consider issues affecting public records and public access. Judy Meyer serves as chair of the Subcommittee and the following serve as members: Percy Brown, Richard Flewelling, Suzanne Goucher, Mal Leary, William Logan, Chris Parr, Harry Pringle and Luke Rossignol.

During 2013, the Legislative Subcommittee had \_\_ meetings and discussed the following issues. Because of the similarities in the issues being discussed as well as an overlap of members, the Legislative Subcommittee met jointly with the Public Policy Subcommittee on \_\_ occasions.

{to be added}

*See discussion of Advisory Committee recommendations in Section VI.*

**Public Policy Subcommittee.** The Public Policy Subcommittee was formerly known as the Bulk Records Subcommittee. The Subcommittee changed its name to reflect the breadth of the issues under discussion. Chris Parr is the chair of the Subcommittee and the following serve as members: Percy Brown, Fred Hastings, Judy Meyer, Linda Pistner and Harry Pringle.

During 2013, the Public Policy Subcommittee held \_\_ meetings and discussed the following issues. Because of the similarities in the issues being discussed as well as an overlap of members, the Public Policy Subcommittee met jointly with the Legislative Subcommittee on \_\_ occasions.

{to be added}

*See discussion of Advisory Committee's recommendations in Section VI.*

**Public Records Exceptions Subcommittee.** The Public Records Exception Subcommittee's focus is to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; to examine inconsistencies in statutory language and to propose clarifying standard language. Suzanne Goucher is the chair of the Subcommittee and Mary Ann Lynch and Linda Pistner serve as members.

During 2013, the Public Records Exception Subcommittee held \_\_ meetings: \_\_\_\_\_. The Subcommittee discussed the following exceptions.

*Title 22, section 8754, reporting of sentinel events*

{to be added}

*Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act*

{to be added}

*Review of Existing Exceptions –Titles 26 through 39-A*

During 2013, the Public Records Exception Subcommittee reviewed \_\_ existing public records exceptions found in Titles 26 through 39-A. The subcommittee completed review of \_\_ existing public records exceptions, and tabled \_\_ exceptions for continued analysis and discussion in 2014. In its review, the Subcommittee sought input from the State agencies responsible for administering the public records exceptions and a number of interested parties affected by specific exceptions, including the Department of Health and Human Services, the Bureau of Insurance within the Department of Professional and Financial Regulation, the Bureau of Alcoholic Beverages and Lottery Operations, the Department of Corrections, the Public Utilities Commission, the Maine Emergency Management Agency, the Department of Environmental Protection, the Board of Environmental Protection and the Maine Geological Survey.

*See discussion of Advisory Committee's recommendations in Section VI.*

**V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS CONTAINED IN SEVENTH ANNUAL REPORT**

The Right to Know Advisory Committee made several recommendations in its seventh annual report. The actions taken in 2013 as a result of those recommendations are summarized below.

<p><b>Recommendation:</b> Continue without modification, amend and repeal the specified existing public records exceptions in Titles 26 through 39-A</p>	<p><b>Action:</b> The Judiciary Committee voted "Ought Not to Pass" on the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in <i>LD 420, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions</i>. The Advisory Committee referred the provisions addressed in LD 420 back to the Public Records Subcommittee for additional action and recommendation. <i>See discussion of Public Records Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p><b>Recommendation:</b> Communicate to the Department of Health and Human Services about repealing two programs never implemented</p>	<p><b>Action:</b> The Advisory Committee sent a letter on November 15, 2012 to the Commissioner of Health and Human Services.</p>
<p><b>Recommendation:</b> Amend the Community Right-to- Know Act to provide for more public access to information about hazardous</p>	<p><b>Action:</b> The Judiciary Committee voted "Ought Not to Pass" on the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in <i>LD 420, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions</i>.</p>

<p>substances</p>	<p>The Advisory Committee referred the provision amending the Community Right-to-Know Act back to the Public Records Exceptions Subcommittee for additional action and recommendation. The Subcommittee recommended repeal of the Act. <i>See discussion of Public Records Exceptions Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p><b>Recommendation:</b> Continue discussion and consideration of the confidentiality provision in the sentinel events reporting law</p>	<p><b>Action:</b> The Advisory Committee referred the issue to the Public Records Exceptions Subcommittee. The Subcommittee reviewed the confidentiality provision in the sentinel events reporting law. <i>See discussion of Public Records Exceptions Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p><b>Recommendation:</b> Make no changes to the law regarding the encryption of radio transmissions from police and first responders</p>	<p><b>Action:</b> No action was taken.</p>
<p><b>Recommendation:</b> Request that the Board of Trustees of the Maine Criminal Justice Academy consider creating a model encryption policy for consideration by local law enforcement agencies that reflects the current practices, and request that the board report back to the Advisory Committee on any decisions or actions taken pursuant to the request</p>	<p><b>Action:</b> The Advisory Committee sent a letter on November 15, 2012 to the Board of Trustees of the Maine Criminal Justice Academy. On December 6, 2012, the Board of Trustees responded to say that the Board does not formulate model policies for law enforcement and suggested that the Advisory Committee consider inviting the Maine Chiefs of Police Association to develop a model policy. In July 2013, the Advisory Committee referred the issue back to the Legislative Subcommittee. <i>See discussion of Legislative Subcommittee actions in Section IV and discussion of Advisory Committee's recommendations in Section VI.</i></p>
<p><b>Recommendation:</b> Request that the Public Access Ombudsman look at the confidentiality of email addresses collected by schools and municipalities and report</p>	<p><b>Action:</b> The Legislature enacted Public Law 2013, chapter 339 (LD 104, An Act to Amend the Laws Governing Public Records). The law excludes email addresses obtained by political subdivisions of the State for the sole purpose of disseminating notices from the political subdivision or its elected officers from the definition of a "public record". In</p>

<p>back to the Advisory Committee</p>	<p>addition, the Public Access Ombudsman conducted a survey of school districts in the State and reported back to the Advisory Committee in October 2013. The Ombudsman reported that only one school district had received a request for email addresses of parents of students.</p>
<p><b>Recommendation:</b> Make no changes to the application of the Freedom of Access laws to the Maine Public Broadcasting Corporation</p>	<p><b>Action:</b> No action was taken.</p>
<p><b>Recommendation:</b> Provide guidance through updates to the Frequently Asked Questions webpage and training for legislators with regard to the storage, management and retrieval of public officials' communications, including email</p>	<p><b>Action:</b> The Frequently Asked Questions webpage was updated as recommended by the Advisory Committee. In December 2012, the training for legislators was updated to incorporate guidance on the storage, management and retrieval of public officials' communications, including email.</p>
<p><b>Recommendation:</b> Make available to agencies and legislative drafters templates for drafting specific confidentiality statutes</p>	<p><b>Action:</b> At the request of the Advisory Committee, the templates were distributed to agency and legislative drafters.</p>
<p><b>Recommendation:</b> Make no additional modifications to the Freedom of Access Act concerning bulk requests or bulk transfers of public records, with the understanding that concerns about bulk requests and bulk data transfers will most likely be revisited in the future (divided report)</p>	<p><b>Action:</b> No action was taken.</p>

<p><b>Recommendation:</b> Enact legislation authorizing the use of technology to permit remote participation in public meetings (divided report)</p>	<p><b>Action:</b> The Judiciary Committee voted “Ought Not to Pass” on the recommendations of the Advisory Committee with regard to remote participation in meetings as proposed in <i>LD 258, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies</i>. The Judiciary Committee requested that the Advisory Committee continue its work related to LD 258, making sure to include in the discussion public bodies that meet through the use of telephone or video links even if their authorizing statutes are silent on the procedure. The Advisory Committee referred the provisions addressed in LD 258 back to the Legislative Subcommittee for additional action and recommendation. <i>See discussion of Legislative Subcommittee actions in Section IV and discussion of Advisory Committee’s recommendations in Section VI.</i></p>
<p><b>Recommendation:</b> Enact legislation requiring the Department of Transportation to give public notice at least 30 days prior to submitting a bill to the Legislature that authorizes an agreement implementing a public-private partnership for a transportation project (divided report)</p>	<p><b>Action:</b> LD 217, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Access to Records Relating to Public-private Partnerships, was not enacted. Instead, the Legislature enacted Public Law 2013, Chapter 208 (LD 721, An To Provide Transparency in Public-private Partnerships for Transportation Projects), which was considered by the Transportation Committee and addressed the same concern.</p>

## VI. RECOMMENDATIONS

During 2013, the Advisory Committee engaged in the following activities and makes the recommendations summarized below.

*{to be added}*

## VII. FUTURE PLANS

In 2014, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 26 through 39-A. The Advisory Committee looks forward to a full year of activities working with the Public Access Ombudsman, the Judiciary and the Legislature to implement the recommendations included in this report.