

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 FOAA 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 FOAA 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.