

Right to Know Advisory Committee  
November 17, 2011  
Meeting Summary

Convened 1:28 p.m., Room 438, State House, Augusta

Present:

Sen. David Hastings  
Rep. Joan Nass  
Shenna Bellows  
Joe Brown  
Mike Cianchette  
Richard Flewelling  
Ted Glessner  
Bill Logan  
Judy Meyer  
Kelly Morgan  
Linda Pistner  
Harry Pringle

Absent:

Perry Antone  
AJ Higgins  
Mal Leary  
Mike Violette

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

Introductions

Senator Hastings called the meeting to order and asked all the members to introduce themselves.

Citizen's Guide draft

Diana DeJesus, a Second-year Law Student at the Maine School of Law is currently the Right to Know Advisory Committee's Law Extern. Ms. DeJesus presented a draft of one of her projects: "A Citizen's Guide to Using the Maine Freedom of Access Act." She developed the publication after reviewing the website and noting that although the Frequently Asked Questions (FAQs) page is incredibly useful and informative, it does not provide instruction on how to use the Freedom of Access laws. Using a Florida publication as a guide, Ms. DeJesus used the information from the FAQ page to present the same information in a more simplified and accessible way. She envisions the document, once finalized, being made available on the State's Freedom of Access website. She would also like to create a basic version in a bookmark form that would direct people to the website, and which could be distributed at libraries and other resources. Linda Pistner, Ms. DeJesus's supervisor in the externship project, noted that Ms. DeJesus is pursuing funding, perhaps from the Nation Freedom of Information Coalition, to cover the costs of printing the Citizen's Guide. Any comments for improvement can be sent to staff, who will forward them to Ms. DeJesus.

Bulk Records Subcommittee Update

Michael Cianchette, chair of the Subcommittee, reported that since the last full Advisory Committee meeting, the Bulk Records Subcommittee had held a public hearing, and then held a follow-up meeting. The Subcommittee then joined forces with the Legislative Subcommittee for a combined meeting on November 10th. He noted that the Registries of Deeds issues are ongoing, and the bulk records questions were broader than just the application to the counties. He

reported that the Subcommittee realized that there was no way to work through bulk records as an issue separate from and outside the Freedom of Access laws. The Subcommittee agreed that defining “bulk records” was problematic; they concluded that they did not need to define the term if bulk records requests could generally be treated like any other public records request. In discussing how responses to record requests should be formatted (electronic, paper, etc.), the Subcommittee found common ground with the Legislative Subcommittee and they approached those questions together.

Senator Hastings asked whether the Subcommittee found distinguishing between commercial and noncommercial requests would be useful, and whether the Subcommittee thought there should be a separate way to establish fees for bulk records requests. Mr. Cianchette explained the discussions about fees, including thoughts about rule-making and fee schedules. He said the Subcommittee tried to separate deeds from the rest of the issues, especially since there is a separate statute that addresses issues specifically related to the Registries of Deeds. He said that the Secretary of State’s Office works with InforME on filing fees and other cost issues relating to the SOS records. The Subcommittee concluded that fees for bulk records should not be handled separately from other public records. Joe Brown wanted to make sure the Advisory Committee was aware that he didn’t agree with the rest of the Subcommittee, and thought it would be appropriate to handle bulk records requests differently based on whether the requestor will be using the information for commercial or noncommercial purposes. He noted that the State already draws distinctions between commercial and noncommercial purposes in other areas, such as registering motor vehicles and in shellfish licenses. Reflecting that same distinction in bulk records, especially with regard to deeds, would not be unreasonable. Mr. Brown emphasized the importance of protecting the integrity of the deeds.

Mr. Cianchette noted that the deeds issues had bogged down general discussion in the past. He mentioned other bulk records: the Secretary of State works with InforME as well as big purchasers for different data sets; general financial records, including payroll records, are also requested and made available in bulk. The Subcommittee reached consensus in finding that deeds are public records, and would otherwise fall under the FOA laws generally.

Judy Meyer said that if you set up a commercial/noncommercial distinction, then you start investigating motivation and purpose or requests. Also, how do you apply the process uniformly across the state, make small towns act in as sophisticated a manner as large State agencies? Besides, newspapers are commercial entities that are profitable; how would newspaper requests be treated?

Senator Hastings noted that Registries of Deeds are the only records center that has turned into a profit center. The counties are concerned that if you take away the ability of the Registries to charge fees, then the counties must raise property taxes to make up the difference.

Ms. Meyer said the Subcommittee recommended no change at this time, and the deeds issue aside, she saw no compelling reason to change. Shenna Bellows pointed out that different members chose to recommend no change now for different reasons. The ACLU Maine has filed an amicus brief in the MacImage litigation, siding with Mr. Simpson and his company and against the counties’ position.

Harry Pringle said that the Legislative Subcommittee hadn’t really thought about how the recommendations will affect bulk records like the Registries. Ms. Pistner provided that the recommendation isn’t so much to “do nothing”, but that it is such a hard nut to crack. Something

doesn't seem right, she said, when an agency spends a lot of time and money developing a database and they have to turn it over for the cost of a CD.

Senator Hastings said that the Advisory Committee should expect to vote at the next meeting, and he encouraged any members who have other recommendations to provide specific alternatives.

#### Legislative Subcommittee update, and combined update

Judy Meyer summed up the activities of the Legislative Subcommittee and the work that overlapped with the Bulk Records Subcommittee. She first explained the lengthy review of the Criminal History Record Information Act (CHRIA) revision, facilitated by Special Assistant Attorney General Charlie Leadbetter. The confidentiality provisions of CHRIA were scheduled for review by the Right to Know Advisory Committee in 2008-2009. The Advisory Committee requested the help of the Criminal Law Advisory Commission (CLAC), who pointed out significant other issues in CHRIA that CLAC thought should be addressed. The Advisory Committee officially requested CLAC to undertake the revision, and then have the Advisory Committee review the draft for Freedom of Access review purposes. CLAC's draft was broken into two pieces, the second creating a separate subchapter on intelligence and investigative information, a category of information that is not the same as criminal history. Mr. Leadbetter explained the revisions and improvements in terminology. The Subcommittee agreed that the new language is much clearer with regard to what information is public and what information is confidential. The Subcommittee agreed to recommend that the full Advisory Committee approve the draft. The next step will be for CLAC to submit the bill for consideration by the Legislature. The legislation will be the official product of the Criminal Law Advisory Commission, but the Advisory Committee may be asked to weigh in.

The Advisory Committee members agreed to review the draft revision, which is posted on the website, and be prepared to vote at the next meeting.

Ms. Meyer explained the discussions about the issues raised in LD 1465, as well as related questions that had been directed to the Advisory Committee. She explained that costs and timelines had been thoroughly discussed, and the Bulk Records Subcommittee and the Legislative Subcommittee had agreed to require that a responding agency or official provide an estimate of when a copy of a requested record would be available, rather than setting hard deadlines. The estimate would have to be made in good faith and would be nonbinding. The members agreed to support clarification that requests can be by any means, including over the phone, and the copies can be provided by mailing, which could be more convenient for requestors and responders alike. LD 1465 recommended court-ordered sanctions, which the members decided was already covered by current law and so rejected the proposal. Ms. Meyer said the Subcommittees still have a lot to work through, and that they were not prepared to make recommendations on these issues at this meeting.

Ms. Bellows identified a significant split in the membership with regard to the consideration of new or expanded "working papers" exceptions to the public records definition. She wanted to make sure that such a proposal, if it goes forward, would not be made part of LD 1465, but would be a separate piece of legislation.

Senator Hastings asked for clarification on the various timelines proposed by LD 1465, and Ms. Meyer agreed that there was not consensus. She personally does not think the same timelines can appropriately apply to all situations – the part-time town clerk in a small town, as well as a large

State agency. Kelly Morgan explained that a handful of members disagreed and thinks that a deadline is good, while “reasonable” doesn’t give requestors or agencies a structure in which to work. She thinks a requirement to acknowledge the request within five days would be very helpful. One of Mr. Pringle’s concerns about establishing a deadline is that it will become the date that responses will be made, even if they could have been provided earlier. All agreed that they do not want to eliminate the opportunity for a citizen to walk up to the counter and ask for a public record; formalizing the process is not necessary. Establishing deadlines may require the use of a form for requests in order to track compliance with the deadlines.

Both Subcommittees support funding the Ombudsman within the Attorney General’s Office as a full-time position.

Public Records Exception Subcommittee Update

Ms. Bellows reported on the activities of the Public Records Exceptions Subcommittee. A chart identifying each statute reviewed and its status within the Subcommittee was provided.

Patricia Quinn and Nathaniel Rosenblatt, representing the Northern New England Passenger Rail Authority (NNEPRA), attended the meeting to address any Advisory Committee questions about the Subcommittee’s divided recommendation on the revision of the NNEPRA confidentiality statute. Ms. Meyer was concerned about all estimates for procurement contracts being kept confidential forever, and Ms. Bellows reiterated her concern about the confidentiality of records and correspondence about negotiations after contracts are executed. After much discussion, the Advisory Committee asked staff to look into other statutes that govern contracts, estimates and negotiations and to work with NNEPRA to prepare a redraft. The issue was tabled.

Ms. Bellows then moved acceptance of the Subcommittee’s recommendations on those sections of law on which the members unanimously supported keeping the law as is. Bill Logan seconded the motion, and the vote was unanimous. Accepted as is are the following statutes:

EXCEPTION #	DESCRIPTION
20	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual
21	Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities
22	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act
33	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have “direct and legitimate interest” or meet other criteria Amended in 2011, PL 2011, c. 58
34	Title 22, section 2706-A, subsection 6, relating to adoption contact files
35	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form
36	Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information
44	Title 22, section 4008, subsection 1, relating to child protective records
55	Title 22, section 8824, subsection 2, relating to the newborn hearing program
56	Title 22, section 8943, relating to the registry for birth defects

EXCEPTION #	DESCRIPTION
59	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike  Amended by PL 2011, c. 302, §18
60	Title 23, section 1982, relating to patrons of the Maine Turnpike
61	Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls
68	Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act
69	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act
70	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels
73	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance

Ms. Bellows then explained each of the provisions the Subcommittee had reviewed that the Subcommittee recommended either amendments or letters for legislative committees to review, or on which the members divided. The Advisory Committee accepted all the recommendations.

EXCEPTION #	DESCRIPTION	RECOMMENDATION
22	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	Proposed draft, but letter to HHS that whole section preempted
22	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	Divided report: no change 5-1 (SBellows)
37	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	AMEND
38	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	letter to HHS about repeal because never implemented
39	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	letter to HHS about repeal because never implemented
53	Title 22, section 8707, relating to the Maine Health Data Organization	AMEND
94	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	AMEND to address when program no longer exists

112	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	Divided report: no change 3-1 (SBellows) - but letter to IFS to flag that inconsistent with treatment of examination reports
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Ms. Bellows explained that the few remaining sections should be ready for final disposition at the next Advisory Committee meeting. Senator Hastings recognized the work of the Public Records Exceptions Subcommittee and thanked the members for their work.

Senator Hasting adjourned the meeting at 3:22 p.m.

Meetings of the Advisory Committee and subcommittees are scheduled as follows. All meetings are to be held in Room 438 of the State House.

- Thursday, December 8, 2011, 9:00 a.m.: Public Records Exceptions Subcommittee
- Thursday, December 8, 2011, 10:00 a.m.: Bulk records and Legislative Subcommittees
- Thursday, December 8, 2011, 1:00 p.m.: Advisory Committee

Respectfully submitted,  
Peggy Reinsch and Colleen McCarthy Reid

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