

Right to Know Advisory Committee
May 25, 2010
Meeting Summary

Convened 1:13 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Robert Devlin
Richard Flewelling
Ted Glessner
Suzanne Goucher
A.J. Higgins
Mal Leary
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

Absent:

Shenna Bellows
Karla Black
Mark Dion
Kelly Morgan

Staff:

Marion Hylan Barr
Peggy Reinsch
Carolyn Russo

Advisory Committee Chair Senator Barry Hobbins convened the first 2010 meeting of the Right to Know Advisory Committee and asked the members to introduce themselves. Senator Hobbins then directed the Advisory Committee through the lengthy agenda.

Application of Freedom of Access laws to Indian Tribes

Senator Larry Bliss and Representative Charlie Priest, Chairs of the Joint Standing Committee on Judiciary of the 124th Maine Legislature had written a letter to inform the Advisory Committee members that, as Judiciary Committee Chairs they are leading a discussion with various interested parties to explore whether and to what extent Maine's Freedom of Access laws should apply to the federally-recognized Indian Tribes in Maine, particularly the Penobscot Indian Nation and the Passamaquoddy Tribe. The Maine Supreme Judicial Court ruled in 2001 that the Maine Freedom of Access laws do apply to the Penobscot Nation and the Passamaquoddy Tribe in certain situations. Great Northern Paper, Inc., et al. v. Penobscot Nation et al., 2001 ME 68. There have been several proposals to overturn the decision or limit its application. Senator Bliss and Representative Priest explained that they are trying to work their way through the issues with the Attorney General's Office and the Tribes. The Penobscot Nation has agreed to provide a copy of their freedom of access ordinance and is exploring polices with other

Tribes. Senator Bliss and Representative Priest recognize that at some point the discussions will need to involve the Right to Know Advisory Committee; at this point, however, the Judiciary Chairs are requesting only that the Advisory Committee members read the Law Court case (a link is included on the State's Freedom of Access webpage on Court Opinions: <http://www.maine.gov/foaa/news/court.htm>). They hope to assist in providing more informative materials about the Maine Implementing Act and the State's relationship with the Tribes.

Judiciary Committee

Senator Bliss and Representative Priest took the opportunity to thank the Advisory Committee for the thoughtful responses and quick turnaround on legislation questions during the most recent legislative session. They specifically mentioned Mal Leary and his willingness to interact with the Judiciary Committee on short notice. Senator Bliss and Representative Priest also recognized the significant number of issues referred from the Legislature to the Advisory Committee, and assured the members that the Advisory Committee's work is very important to the Judiciary Committee and the Legislature as a whole.

Summary of Second Regular Session, 124th Legislature's FOA actions in 2010

Staff quickly summarized the Legislature's actions on Freedom of Access issues during the most recently completed legislative session. The Advisory Committee's statutory recommendations were printed as two separate pieces of legislation.

- LD 1791, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings, proposed the Advisory Committee's nonunanimous recommendation that a record be made of all public proceedings. The Judiciary Committee determined that more discussion and a broader range of issues should be reviewed, and sent the topic back to the Advisory Committee for work this year (Resolve 2009, c. 186: Resolve, Directing the Right To Know Advisory Committee To Further Examine Requirements That Public Bodies Keep Records of Public Proceedings).
- LD 1792, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions contained the recommendations of the Advisory Committee with regard to statutory public records exceptions, some of which were not unanimous. The bill also included an unallocated section directing the Advisory Committee to take on bulk data issues. The Judiciary Committee accepted the recommendations except the changes proposed to the Finance Authority of Maine's confidentiality statutes. (PL 2009, c. 567) (More discussion on the FAME statute later in the meeting.)

Staff provided a list of legislation containing proposed public records exceptions that the Judiciary Committee reviewed in 2010 pursuant to 1 MRSA §434.

Existing exceptions review process

Staff provided a list of the known existing public records exceptions contained in Titles 22 through 25. 1 MRSA §433 requires the Right to Know Advisory Committee to review these public record exceptions that are already contained in the statutes and make recommendations as to whether to continue, modify or repeal each exception to the Judiciary Committee of the 125th Legislature no later than January of 2012. Past practice has seen the Advisory Committee work through as many exceptions as possible the first year of the biennium and handle the more difficult provisions the second year. The Advisory Committee agreed to try this approach for this cycle of review as well.

Requests from the Legislature

Staff summarized requests made by the Legislature to the Right to Know Advisory Committee.

- Public Law 2009, c. 567 (LD 1792), An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions. Section 11 directs the Advisory Committee to review and make recommendations concerning issues involving requests for public records in bulk (usually electronic databases).

The State and Local Government Committee requested that Chief Information Officer Dick Thompson convene a stakeholders group to address questions that turn out to be a subset of the issues included in PL 2009, c. 567. (Mr. Thompson is retiring from State service at the end of June, and the Advisory Committee thanked him for his exemplary work. Greg McNeal will be spearheading this effort once Mr. Thompson retires.) The stakeholders group is to include a member of the Right to Know Advisory Committee. Bob Devlin volunteered to chair the bulk records subcommittee, and will represent the Advisory Committee in the stakeholders group.

- Resolve 2009, c. 171 (LD 1551), Resolve, Directing the Right To Know Advisory Committee To Examine Issues Related to Communications of Members of Public Bodies. This resolve began as a bill to prohibit the use of serial email to make decisions. The final adopted version directs review of:
 - Use of communication technologies to ensure decisions are made in public proceedings. (Judiciary Committee Chair Senator Bliss noted that the Judiciary Committee was concerned that the discussions encompass all technology, not just e-mail.);
 - Penalties for violations; and
 - Partisan caucuses.

- Resolve 2009, c. 186 (LD 1791), Resolve, Directing the Right To Know Advisory Committee To Further Examine Requirements That Public Bodies Keep Records of Public Proceedings. (See previous discussion.)
- Resolve 2009, c. 184 (LD 1802), Resolve, Directing the Right To Know Advisory Committee To Examine Issues Related to Private Information Contained in the Communications of Public Officials. This Resolve directs the Advisory Committee to review the protection of private information in e-mail and other forms of communications sent and received by public officials, particularly between elected officials and their constituents.
- FAME exceptions (removed from LD 1792 by the Judiciary Committee). At the request of the Judiciary Committee, the Advisory Committee developed templates to be used to draft confidentiality provisions for records concerning financial and technical assistance sought from public agencies. The templates were completed at the end of the 2009 work year of the Advisory Committee and applied to the FAME statutes, without giving FAME much opportunity to comment at the time. FAME objected to the changes included in LD 1792, resulting in the Judiciary Committee's deleting those recommendations from the bill. The Judiciary Committee informally requested that the Advisory Committee review the FAME statute again. Bill Norbert, Governmental Affairs Manager of FAME, addressed the Advisory Committee and expressed FAME's satisfaction with the current law and expressed willingness to participate in future discussions.
- The Judiciary Committee informally requested that the Advisory Committee review the criteria contained in Title 1, Section 434 to determine if there are other factors that should be considered when reviewing either existing or proposed public records exceptions that affect access to public records. The issue was raised by LD 1554, An Act Regarding Document Fees at County Registries of Deeds (PL 2009, c. 575), in which the State and Local Government Committee adopted factors that may be used to determine copying fees for deeds recorded at county registries of deeds.
- The Judiciary Committee informally requested that the Advisory Committee conduct an analysis of the information contained in the Central Voter Registry, what is entirely confidential, what can be released for limited purposes and what is completely public. LD 1627 (PL 2009, c. 564) rewrote the Central Voter Registry confidentiality provisions within Title 21-A. Not wanting to delay the enactment of the revision of the statute, the Judiciary Committee did not recommend any changes to the Legal and Veterans' Affairs Committee, but felt more comfortable having the Advisory Committee do the analysis during the summer.

Continuing projects

Projects that the Advisory Committee did not complete in 2009 included the confidentiality provisions in the Criminal History Record Information Act (CHRIA), protection of Social Security Numbers in the hands of public entities or when included in otherwise-public records, participation of members of public boards and commissions through technology, and bulk electronic data. Staff updated the Advisory Committee on the work on CHRIA, including the planned redrafting by the Criminal Law Advisory Commission. (Since the meeting, staff has communicated with Justice Mead, who is chairing the Courts' Task Force on Electronic Court Record Access (TECRA) Implementation Group. The Group plans to meet with the Maine Criminal Justice System (MCJUSTIS) Policy Board to discuss and review issues of access and privacy, including CHRIA, and make recommendations to the Maine Supreme Judicial Court. This work will probably not begin until the end of the summer.)

Law School Extern update

Linda Pistner, the official supervisor of Maine School of Law externs placed with the Right to Know Advisory Committee, updated the Advisory Committee on the work and energy of the latest extern, Mariya Burnell, who recently graduated from the University of Maine School of Law. Ms. Burnell completed research and written reports on several topics, including central voter registration databases, electronic mail communications and public records in bulk form.

The Law School has revised its externship program and has placed an extern with the Advisory Committee for the fall semester. Sean O'Mara will be working with the Advisory Committee once school convenes again in September.

Education and training for elected public officials

Because this is an election year, newly-elected legislators will need to undergo FOA training to meet the requirements of the law. The Attorney General's Office spearheaded the training at the beginning of the latest biennium; the Advisory Committee may want to help provide that training.

Subcommittees and scheduling

After much discussion and revision, the Advisory Committee decided to restructure its subcommittees once again. The Advisory Committee will try to accomplish its work through three subcommittees: the Legislative Subcommittee, the Public Records Exceptions Subcommittee and the Bulk Records Subcommittee. Members of the Advisory Committee should contact staff to express preferences for participation on one or more subcommittees.

- **Legislative Subcommittee**

Chris Spruce agreed to serve as subcommittee chair.

Topics:

- Use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public;
- Consideration of revision of penalties for violations of the freedom of access laws;
- Whether partisan party caucuses should be specifically excluded from the definition of "public proceedings";
- Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents;
- Policy on whether e-mail addresses are public records;
- Central Voter Registry;
- Social Security Numbers;
- Use of technology in attending meetings;
- Keeping records of public proceedings; and
- Scope of review process (1 MRSA §434 criteria)

- **Public Records Exception Subcommittee**

Shenna Bellows was suggested (and agreed to serve) as the subcommittee chair.

Topics:

- Review Titles 22 through 25;
- FAME statute; and
- Criminal History Record Information Act.

- **Bulk Records Subcommittee**

Bob Devlin agreed to chair this subcommittee.

Topics:

From PL 2009, c. 567:

- Public access to databases;
 - Protection of personal information that is not designated as confidential but is contained in databases that include public records;
 - Reasonable costs for copies when public records are requested in bulk;
 - Whether access or costs should be based on the intended or subsequent use of the information requested in bulk;
 - The acceptable formats for responses to requests, including electronic and paper;
 - The appropriate role for InforME in responding to requests for public records in bulk; and
 - Any other issues the Advisory Committee considers appropriate; and
- Coordination with SLG/CIO stakeholders group.

Scheduling

The Right to Know Advisory Committee scheduled three additional meetings for 2010:

Thursday, September 23, 2010, starting at 1:00 p.m.

Thursday, October 21, 2010, starting at 1:00 p.m.

Thursday, November 18, 2010, starting at 1:00 p.m.

Subcommittee chairs will work with staff to develop subcommittee schedules.

Meeting adjourned, 3:25 p.m.

Prepared by Peggy Reinsch, Marion Hylan Barr and Carolyn Russo, RTK AC staff

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