

Right to Know Advisory Committee
Legislative Subcommittee
August 30, 2010
Draft Meeting Summary

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

Present:	Absent:
Chris Spruce, Chair - on phone	Karla Black
Shenna Bellows	Kelly Morgan
Robert Devlin	Linda Pistner
Richard Flewelling	
Mal Leary	
Judy Meyer	
Harry Pringle	

Staff:
Peggy Reinsch

Legislative Subcommittee Chair, Chris Spruce, was unable to attend the meeting in person, so he participated by speaker phone. Shenna Bellows convened the meeting of the Legislative Subcommittee of the Right to Know Advisory Committee at 1:28 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 19th meeting.

- **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. Four different amendments were proposed to the statement of the underlying policy and legislative intent of the Freedom of Access laws, Title 1, section 401. Mr. Pringle thought it was important to dispel the myth that public officials cannot talk to each other outside public proceedings. Such a prohibition would be unconstitutional, he said, and does not promote good government. The one Law Court decision that mentions the issue supports public officials being informed through communications, including outside public proceedings. After discussion, the Subcommittee recommended that all four options, with some additional wordsmithing, be submitted to the full Advisory Committee for consideration.

- **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 persons, not just constituents, and elected officials. The draft states that a record involving communications between a person and an elected official is a public record except for information that meets one or more criteria. Information would be confidential if it 1) is excepted from the definition of “public record” in subsection 3; 2) is designated confidential by statute; or 3) would be confidential if it were in the possession of another public agency or official. Ms. Bellows was concerned that people communicating with officials, especially via e-mail, will assume that the contents of communications are confidential, and recommended that there be a pop-up window and other obvious notices that such exchange of information is public. Ms. Meyer opposed the draft; she envisioned it being used as a roadblock to cloak all communications from public access simply by adding in personal information. The Subcommittee voted 4-1 (Ms. Meyer opposing) to send the draft to the full Advisory Committee, with the change that it apply to communications with “public officials,” not just “elected officials.”

- **Social Security Numbers**

The Subcommittee reviewed a revised version of the 2009 draft which designated Social Security Numbers as NOT public records, and established limitations on the collection and release of SSNs. Ms. Meyer asked how the Courts deal with records that are submitted that contain SSNs. Mr. Devlin reminded the Subcommittee that the Registries of Deeds have a special situation in that their statutes prohibit changes in the documents once recorded; automatic redaction of SSNs by the Registers of Deeds would require a special amendment. Ms. Bellows emphasized that the collection, use and release of SSNs is an important issue, and that identity theft is a particularly difficult problem to resolve. Although Ms. Bellows approved of Vermont’s comprehensive treatment with regard to SSNs, Mr. Pringle was concerned that such a broad approach would be difficult to take on. He mentioned that schools don’t want to collect SSNs, for example. Ms. Bellows agreed that protection of SSNs would be more within the purview of a Privacy Committee, rather than a Freedom of Access Committee.

The Subcommittee agreed to recommend the minimalist approach - amending the current law to provide that SSNs are not public records - to the full Advisory Committee. The Registry of Deeds issue (that an additional amendment may be required) will be noted as an outstanding issue.

- **Meeting records**

The Subcommittee reviewed the latest draft of legislation requiring making a record of public proceedings. The draft addressed issues the Judiciary Committee identified as problematic with LD 1791, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings. The draft

reduced the required contents of the records to matters decided or tabled, required maintenance of the record in accordance with the record retention schedules adopted independently of the Freedom of Access laws, and clarified that failure to make a record does not invalidate any action taken. Ms. Meyer recommended that paragraph C (concerning the subject matter of meeting discussions) be deleted. Mr. Pringle, although still opposed to the draft, agreed that deleting paragraph C made sense. Ms. Bellows agreed, and noted that the details of meeting records will be based on the audience. Mr. Flewelling also supported the draft, but wanted to make sure the Subcommittee was aware that such a requirement would most likely be considered an unfunded mandate. The Subcommittee voted 5-1 (Mr. Pringle in opposition) to support the revised draft.

The Subcommittee completed its work as assigned by the Advisory Committee. Staff will prepare a packet of recommendations from the Subcommittee to the full Advisory Committee for the meeting on September 23, 2010.

The meeting was adjourned at 2:18 p.m.

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

Upcoming meetings:

Bulk Records Subcommittee: Thursday, September 23, 2010, 10:30 a.m.

Right to Know Advisory Committee: Thursday, September 23, 2010, 1:00 p.m.

Public Records Exceptions Subcommittee, September 27, 2010. 1:00 p.m.