

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
September 13, 2012
Meeting Summary

Convened 9:08 a.m., Room 438, State House, Augusta

Present:
Rep. Joan Nass
Shenna Bellows
Joe Brown
AJ Higgins
Linda Pistner

Absent:
Perry Antone

Staff:
Peggy Reinsch
Colleen McCarthy Reid

Introductions

Shenna Bellows, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

Title 22, section 8754, reporting of sentinel events

Ms. Bellows noted that the Subcommittee received joint comments from the Maine Hospital Association, Maine Medical Association, Maine Osteopathic Association and Maine Medical Mutual Insurance Company related to the Subcommittee's working draft to repeal the confidentiality provision. Because of the interest the draft has generated, the Subcommittee agreed to table the issue for further discussion to a meeting when all Subcommittee members are able to attend.

Exception # 14: 29-A MRSA §257

The Subcommittee agreed to table discussion of the provision to the next meeting pending comments from the Office of Information Technology.

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

The Subcommittee approved the draft, which amends the provision to clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public and repeals the requirement that a requester reside within 50 miles of the specific location.

Exception #37: 32 MRSA § 9418

Lt. Scott Ireland, Department of Public Safety, provided information and answered questions about exception 37 related to license applications for private contract security companies and their employees.

Subcommittee members noted that the provision protects the confidentiality of the entire contents of a license application and asked why that was necessary. Lt. Ireland responded that several questions on the application relate to pending criminal charges and adjudications and that it would be difficult to redact certain information from the application. Ms. Bellows agreed that some information should remain confidential, like social security numbers, but raised concerns about the inability of the public to access information about a private security guard given their increased role in a variety of settings. How would a member of the public lodge a complaint against a private security company? Lt. Ireland said that complaints would be addressed by the Department of Public Safety in a timely way and handled in a similar manner as complaints about law enforcement personnel.

Lt. Ireland further stated that security guards are often engaged in the protection of individuals and information should remain confidential about the scope of that work for the safety of those individuals. He also reminded the Subcommittee that, under current law, the Department of Public Safety makes public a listing of the names and addresses of licensed security companies and their employees.

The Subcommittee voted 5-0 to keep as is the provision relating to licenses of private security companies.

Public-private projects under 23 MRSA §4251

At the previous Subcommittee meeting, the Subcommittee voted 3-2 in favor of leaving the language as is. The Subcommittee reviewed a draft supported by the minority (Ms. Bellows and AJ Higgins) that would make public all records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda or other materials prepared, used or submitted in connection with any proposal considered under section 4251. The minority expressed support for the draft with minor changes to correct the section headnote and clarify that the provision applies to records prepared, used or submitted in connection with any proposal *to be* considered by the Department of Transportation.

Joe Brown reiterated his position that the law should not be changed; proposals should be made public once they become formal and are determined to meet the statutory criteria. Linda Pistner, who was not present for the Subcommittee's earlier discussion and vote, said she would prefer to recommend a middle of the road approach to the Advisory Committee and would favor a compromise between the current law and the minority's draft. Ms. Pistner suggested that the public should have access to information about a public-private proposal at a stage in the process when the public may provide meaningful input. Ms. Bellows expressed her strong support for the minority draft, but said she was willing to discuss alternative proposals if the Subcommittee were able to make a unanimous recommendation.

The Subcommittee agreed to table the discussion to the next meeting when all members are present. Ms. Pistner will work with the Advisory Committee's Law School Extern and staff to develop an alternative proposal.

Review of Existing Exceptions –Titles 26 through 39-A

The Subcommittee continued its review of the existing public records exceptions, starting with those tabled from the August 8th meeting and then returning to the beginning with the exceptions in Title 26.

46: 34-A MRSA §9877, sub-§4

The Subcommittee voted 5-0 to keep as is the provision relating to the Interstate Commission for Adult Offender Supervision records that adversely affect personal privacy rights or proprietary interests.

47: 34-A MRSA §9903, sub-§8

The Subcommittee voted 5-0 to keep as is the provision relating to the Interstate Commission for Juveniles records that adversely affect personal privacy rights or proprietary interests.

51: 34-B MRSA §3864, sub-§5

The Subcommittee voted 5-0 to keep as is the provision relating to mental health involuntary commitment hearings.

52: 34-B MRSA §3864, sub-§ 12

The Subcommittee voted 5-0 to keep as is the provision relating to the abstract of mental health involuntary commitment hearings provided to the State Bureau of Identification.

53: 34-B MRSA §5005, sub-§ 6

The Subcommittee voted 5-0 to table the provision relating to records and accounts requesting action by the Office of Advocacy for persons with an intellectual disability or autism. This provision was repealed and replaced as part of Public Law 2011, chapter 657; services previously provided by the Office of Advocacy will now be performed by the Disability Rights Center through a contract with the Department of Health and Human Services. Staff will get input from the Department about how the confidentiality of records will be addressed under this arrangement.

54: 34-B MRSA §5475, sub-§3

The Subcommittee voted 5-0 to keep as is the provision for confidentiality of judicial certification hearings relating to an intellectual disability or autism.

55: 34-B MRSA §5476, sub-§6

The Subcommittee voted 5-0 to keep as is the provision for confidentiality of mental judicial commitment hearings relating to an intellectual disability or autism.

56: 34-B MRSA §5605, sub-§15

The Subcommittee voted 5-0 to table the provision relating to records of persons with an intellectual disability or autism as it raises similar issues as exception # 53.

57: 34-B MRSA §7014, sub-§ 1

The Subcommittee voted 5-0 to keep as is the exception relating to court proceedings concerning sterilization.

1: 26 MRSA §3

Adam Fisher and Susan Wasserott of the Department of Labor provided information and answered questions of the Subcommittee related to exceptions 1 to 4 and exception 7.

With regard to the provision in Title 26, section 3, Mr. Fisher explained that the law protects the release by the Department of records relating to workplace safety investigations. However, he noted that once a report is made to a county or municipality, the report becomes a public record in the hands of that county or municipality. Ms. Bellows noted her concerns about the inconsistency—why is the same information confidential in the hands of one governmental entity but not another? Ms. Bellows suggested that the provision might be amended to require the Department of Labor to make the report public, but otherwise protect the confidentiality of the underlying information. Mr. Fisher responded that the department would prefer to maintain current law as it is consistent with federal law for private employers, but was willing to discuss possible alternatives.

The Subcommittee agreed to table the provision; staff will work with the department to consider possible amendments to the provision.

2: 26 MRSA §43

The Subcommittee voted 5-0 to keep as is this exception relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards.

3: 26 MRSA §665, sub-§1

The Subcommittee voted 5-0 to keep as is this provision relating to records submitted by an employer concerning wages to the Bureau of Labor Standards.

4: 26 MRSA §685, sub-§3

The Subcommittee voted 5-0 to keep as is this provision relating to substance abuse testing by an employer.

5: 26 MRSA §934

The Subcommittee voted 5-0 to table this provision relating to reports of the State Board of Arbitration and Conciliation in a labor dispute. Staff will solicit further input from the State Board.

6: 26 MRSA §939

The Subcommittee voted 5-0 to table this provision relating to information disclosed by a party to the State Board of Arbitration and Conciliation.

7: 26 MRSA §1082, sub-§7

The Subcommittee voted 5-0 to keep as is this provision relating to employers' unemployment compensation records concerning individual information.

8: 27 MRSA §121

The Subcommittee voted 5-0 to keep as is this provision concerning the identity of library patrons and the use of books and materials by patrons.

9: 27 MRSA §377

The Subcommittee voted 5-0 to table this provision relating to the location of archeological research sites, pending further information and input from the Maine State Museum.

10: 28-A MRSA §755

The Subcommittee voted 5-0 to table this provision relating to the business and financial records of liquor licensees. Based on input from the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, it is expected that legislation will be considered in the 126th Legislature's First Regular Session. The Subcommittee agreed to table consideration of this exception until 2013.

Executive Clemency Process; Exception #45

At the invitation of the Subcommittee, Michael Cianchette, Acting General Counsel for Governor LePage, described the current process used by the Governor when considering requests for pardons. By executive order, the Governor has established an Executive Clemency Board to advise him on applications for pardon; this practice has been used by former Governors for some time. Mr. Cianchette explained that the Board holds public hearings on applications, but meets in executive session to make its recommendations. Reports made by the board to the Governor are confidential.

Ms. Bellows expressed her opinion that the report or recommendation of the board should be made public. Mr. Cianchette responded that the report made to the Governor does not contain formal findings, but is more of a collection of information about an individual seeking pardon as well as the board's recommendation. Some of that information is confidential under other provisions of state law and it would be difficult to redact that information. Ms. Bellows wondered if report was too broad and suggested that only the Board's recommendation could be made public. Mr. Cianchette was concerned that the Board might be reluctant to provide candid advice and recommendations to the Governor. Ms. Pistner noted the Governor's plenary power to grant clemency and agreed that confidentiality of the process makes sense. Ms. Pistner compared the process to the process used by the Governor to get advice on appointing judges; the selection process and recommendations of that advisory committee are also kept confidential.

In the interest of time, the Subcommittee agreed to table the discussion of the provision to the next meeting.

Future Meetings

The Subcommittee agreed to meet next on Thursday, October 11, 2012, at 9:00 a.m.

The Advisory Committee will meet:

- Thursday, October 11, 2012 at 1:00 pm, Room 438, State House;
- Thursday, November 15, 2012 at 1:00 pm, Room 438, State House; and
- Thursday November 29, 2012 at 1:00 pm, Room 438, State House.

Ms. Bellows adjourned the meeting at 12:05 p.m.

Respectfully submitted,
Peggy Reinsch and Colleen McCarthy Reid

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