

Right to Know Advisory Committee  
Public Records Exceptions Subcommittee  
September 27, 2010  
Draft Meeting Summary

Convened 1:22 p.m., Room 438, State House, Augusta

Present:

Shenna Bellows, Chair  
Ted Glessner  
Suzanne Goucher  
Linda Pistner  
Chris Spruce

Absent:

Karla Black  
AJ Higgins

Staff:

Marion Hylan Barr, Peggy Reinsch, Carolyn Russo

Public Records Exceptions Subcommittee Chair Shenna Bellows convened the meeting of the Public Records Exceptions Subcommittee of the Right to Know Advisory Committee at 1:22 p.m. and asked the members to introduce themselves. Ms. Bellows reviewed the tasks assigned to the Subcommittee.

- **Finance Authority of Maine, existing public records exceptions**

Background: At the request of the Judiciary Committee, in 2009 the Right to Know Advisory Committee developed templates to be used in the drafting of statutes pursuant to which technical or financial assistance could be sought from the State of Maine or other public entities. The Judiciary Committee sought guidelines for drafting consistent statutes that appropriately balance the public's interest in the information provided to the governmental entity and the privacy of the individual or organization applying for the assistance. The RTKAC approved two templates drafted by the Legislative Subcommittee: one that applies to information provided by an individual applying for assistance, and a different template for businesses seeking financial or technical support. The templates were used to draft a revision of the confidentiality provisions for the Finance Authority of Maine (FAME). Because of the timing of the recommendations and the Advisory Committee's report, FAME did not have an opportunity to comment on the revision until the language was included in LD 1792, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions. At the Judiciary Committee's public hearing on the bill, FAME requested that the proposed language not go forward, and the Business, Research and Economic Development Committee supported deletion of the changes from LD 1792. The Judiciary Committee agreed to strike the proposal from the bill, but requested that

the Right to Know Advisory Committee revisit its recommendations concerning the templates and the FAME statute.

Bill Norbert, the Government Affairs Manager of FAME addressed the Subcommittee and explained that FAME is very satisfied with the current law, which has been in effect for 25 years. The statute is very clear about what information is accessible to the public, and there have been only 2 or 3 requests per year for information that is protected. The statute has been used as a model for other assistance programs, including the Maine Rural Development Authority and the Small Enterprise Growth Program. Another feature that Mr. Norbert thinks is very important is the subsection that explicitly states the information and documents, once submitted as part of an application, are public records.

Mr. Norbert noted that a category of information that is protected under the FAME statute but is not mentioned in the template and therefore would be public is any pre-application information that is shared with FAME. Business entities often consult with FAME about assistance and programs that may be available prior to deciding whether to submit an application. Releasing information about such preliminary inquiries can be detrimental to the business, unnecessarily worry employees or provide an advantage to a competitor. Not all such preliminary inquiries lead to subsequent applications for participation in a program, so keeping that information confidential protects the interests of requestors. Once an application is made, the rest of statute applies, which allows public access to the bulk of the application.

Ms. Bellows asked Mr. Norbert if the templates could be improved by addressing categories of information covered by the FAME statutes, and he suggested adding language protecting sensitive personal information and records of third-parties (such as appraisals). Mr. Norbert thought the templates were a little vague; it would be better to spell out the protected information in more detail so no one wastes time arguing over what is or is not confidential. One size does not fit all.

The Judiciary Committee requested the development of the templates, Mr. Spruce, said, to provide predictability and a good approach in drafting such provisions; the templates certainly can be adapted to the needs of specific agencies. The Advisory Committee's experience is that statutes are all over the place in addressing essentially the same issue; the templates can bring some consistency. Mr. Glessner wondered whether the Judiciary Committee is satisfied with the templates. He agreed that the templates should provide guidance by addressing certain information and providing a consistent format, but there should still be ample opportunity for additional information.

Mr. Spruce moved that the Subcommittee recommend no changes to the FAME statute, and Mr. Glessner seconded the motion. The Subcommittee unanimously agreed (5-0), and then agreed with Ms. Pistner to ask Sean O'Mara, the RTK AC Law School Extern, to review the templates and determine if there are standard exceptions throughout the statutes, and identify any appropriate additions, deletions or other changes.

- **Criminal History Record Information Act (CHRIA)**

Staff explained that the project to revise the Criminal History Record Information Act is moving forward, but slowly. The Criminal Law Advisory Commission has begun its process to try to update the Act, and at the same time the Maine Criminal Justice Information System (MCJUSTIS) Policy Board and the Technology Implementation Group of the Judicial Branch are exploring policy changes not necessarily directly related to what is confidential and what is public. These additional explorations are beyond the scope of the RTK AC, so staff and Special Assistant Charles Leadbetter are working on a more simple revision of CHRIA to address the freedom of access issues and necessary clarifications of current laws and practices. If the RTKAC chooses to go forward to address the confidentiality language, the large policy issues can be dealt with when those more comprehensive decisions are made. It is expected that a draft should be available for review next month, and the Subcommittee can decide then whether to recommend the more discrete changes immediately, or hold off until the other policy decisions are made. Mr. Glessner identified himself as a member of both the MCJUSTIS Policy Board and the Judicial Branch’s Technology Implementation Group. He explained some of the issues the groups are wrestling with, including whether the State Bureau of Identification should be the sole repository for the public to contact to access criminal history records. He said that some of the technical issues are close to being resolved, leaving the bigger policy questions outstanding.

The Subcommittee agreed to wait until a draft is ready and all the options are explained before taking any action.

- **Review of existing public records exceptions**

The Subcommittee briefly went over the process to review existing public records exceptions as required by statute. Mr. Spruce recommended that the new proposed criterion - accessibility - be included in the process, even though that recommendation of the RTK AC has not yet been enacted into law.

Ms. Bellows noted that several agencies responded to the surveys on specific statutory exceptions, and the Subcommittee started its work with the laws over which the Bureau of Insurance has jurisdiction. Colleen McCarthy Reid assisted the Subcommittee in working through the provisions.

#	Title, section and description	Subcommittee recommendation
63	Title 24, section 2302-A, subsection 3, relating to utilization review data provided by nonprofit hospital or medical service organization	9/27: no change

64	Title 24, section 2307, subsection 3, relating to an accountant's work papers concerning nonprofit hospital or medical service organizations	9/27: no change
65	Title 24, section 2329, subsection 8, relating to alcoholism and drug treatment patient records of nonprofit hospitals and medical service organizations	9/27: table - no problem with exception, but check with TRecord about making language consistent
66	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input
67	Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	9/27: table - ask medical licensing boards for input
68	Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input
69	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input
70	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input
71	Title 24, section 2986, subsection 2, relating to billing for forensic examinations for alleged victims of gross sexual assault	9/27: no change - But note that records not in hands of public entity
72	Title 24, section 2986, subsection 3, relating to District Court hearings on storing or processing forensic examination kit of gross sexual assault	9/27: no change
73	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	9/27: table - ask Maine Trial Lawyers for input
74	Title 24-A, section 222, subsection 13, relating to insurance information filed with the Superintendent of Insurance concerning registration statements, tender offers, requests or invitations for tender offers, options to purchase, agreements	9/27: table - ask Consumers for Affordable Health Care, TRecord for input
75	Title 24-A, section 225, subsection 3, relating to insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent
76	Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem)
77	Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem)

78	Title 24-A, section 414, subsections 4 and 5, relating to insurance certificate of authority audit work papers	9/27: no change
79	Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions	9/27: table - ask Consumers for Affordable Health Care and TRecord for input
80	Title 24-A, section 796-A, relating to proprietary business information of special purpose insurance vehicle filed with the Superintendent of Insurance	9/27: no change
81	Title 24-A, section 952-A, subsection 4, relating to actuarial opinion of reserves	9/27: table - ask Maine Trial Lawyers for input

The Subcommittee members agreed to schedule at least two additional meetings. At the next meeting, the Subcommittee will try to complete all the insurance statutes, and the second meeting will include review of the Title 23 (Maine Turnpike Authority and Maine Department of Transportation) exceptions.

The meeting was adjourned at 3:10 p.m.

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

Upcoming meetings: Right to Know Advisory Committee: Thursday, October 21, 2010, 1:00 p.m.
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