

Right to Know Advisory Committee
Ongoing FOA Issues Subcommittee
DRAFT Meeting Summary
Thursday, August 27, 2009

Convened 1:05 p.m. in Room 438, State House, Augusta

Present:

Mal Leary, chair
Karla Black
Ted Glessner
Judy Meyer
Linda Pistner

Staff:

Colleen McCarthy Reid
Peggy Reinsch

Ongoing Issues Subcommittee Chair Mal Leary convened the meeting and members introduced themselves.

Use of technology in public proceedings

Chief Information Officer Richard Thompson and Paul Sandlin, Manager of eGov Services, Policy, Planning and Oversight of the Office of Information Technology within the Department of Administrative and Financial Services, accepted the Subcommittee's invitation and spoke about the tools that have been developed and are being used by different agencies. Mr. Thompson explained that the Office believes strongly in the use of technology. He described how the Internet port was originally used to provide information, but that there has been an increase in interest in interactive capabilities in the last five years or so. He explained that some agencies are making use of the various social networking tools. Linda Pistner mentioned the Subcommittee's interest in focusing on how technology can infringe on the public access laws through the use of Facebook, Twitter, chat rooms, which may be useful in collecting information, but not for providing access to proceedings. In addition, the Subcommittee is concerned about the temporal nature of the communications, which disappear over time in these formats. Mr. Thompson agreed, and noted that his office is asking three questions: How do we capture a record? How do we display the record in the way the agency wants it displayed? How is the record preserved? Mr. Sandlin noted that some of the social networking tools have access restrictions, such as Facebook's requirement that a user sign up to access the information. He also mentioned that the temporal nature of the information is part of the design of these tools.

Mr. Thompson told the Subcommittee that there is a cost to keeping records, especially when they are kept in multiple formats. OIT has tried to always make records available

in the traditional paper format. If information is posted on the Internet, the record that the information was posted must also be maintained.

Mr. Leary explained that the Subcommittee is most interested in two issues. First, that the public has access to a board, commission, council, etc., when it is making a decision. For example, the Legislature streams many of its proceedings. Second, how can public participation be enabled? Mr. Thompson responded that there are a number of tool sets to reach those goals. Conferencing tools are currently available, although the number of participants may be limited. Documents can be shared over the Internet. Mr. Sandlin noted the availability of “webinars” although the limiting factor is the size of the audience. They offer two-way interaction, although there is some delay.

Mr. Thompson encouraged the Subcommittee to provide details of what would be needed for public access and participation, and the technology will catch up to the need.. Ted Glessner contrasted the technology available to those in Independence Hall (which he recently visited) in 1776 with what is possible today. The question is how to make things more accessible and more open using technology? People can listen now, but participation is more difficult at this point. What will the technology and funding support: participation by members, public at specified sites, anyone anywhere? We need to look at what is practical in today’s world. Mr. Thompson agreed that technology is available now to make those things possible, but the cost can be a problem, especially for public agencies other than the State government. Technology needs to be used appropriately, and the inappropriate use of technology should be discouraged. Mr. Leary recognized that the use of some technologies can save money, such as the video arraignments used by the Maine Courts. Mr. Leary also noted that although conference calls for a board are doable now, expanding the acceptance of public testimony to remote locations can lead to more questions.

The Subcommittee reviewed the draft legislation prepared by staff to address limitations on public proceedings using technology. The draft will be revised to carry out the Subcommittee’s recommendations. The draft incorporates the basic requirement that a quorum of the public entity must be present in the meeting location specified in the meeting notice, although other members can participate via conference call or other audio or audio and video communication.

For next meeting:

- Revision of draft legislation

Social Security Numbers

Linda Pistner discussed the provision in the federal law: “social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.” (42 USC §405(c)(2)(C)(viii)) The date of enactment is key. Also,

§405(c)(2)(C)(i) exempts State and local governments from the prohibition if the SSN is used for a list of purposes. Ms. Pistner noted that many federal programs that require the collection of SSN, including by the States in administering federal programs, include confidentiality restrictions. In addition, enforcement is based on a willful disclosure, and the violation is considered a crime. She wondered whether a US Attorney would follow up and prosecute violations.

Mr. Leary suggested recommendations along the lines of protecting what is already in the hands of public records custodians, and not collecting SSNs if not necessary. Ms. Pistner recommended asking agencies how a prohibition on disclosure would affect them. Mr. Thompson noted that there are 102 locations where information is maintained. Where the SSNs already exist today, it would take a great deal of effort to not disclose in many situations. The State is getting more and more requests for bulk data. The custodian can redact as required, but it isn't always the case of simply protecting a field on a spreadsheet; it depends on the type of information that is requested. Mr. Thompson stated that he would like to have a clear statement that SSNs are confidential.

Beverly Bustin Hathaway, Register of Deeds for Kennebec County, added that her office has the ability to redact SSNs, and will do so when requested. But their database is made up of optical scans of paper records to make the information available on the web. Ms. Pistner noted that the Registry of Deeds could put the cost of redaction on the requestor.

Mr. Glessner suggested that changes should be made incrementally; a broad brush will go nowhere. He outline a four-step process:

1. First recognize that there is a problem with not protecting Social Security numbers. What is the basis of the concern? Identity theft is the biggest concern.
2. Second, require a decision in each case whether the Social Security number should be collected.
3. Third, if the decision is to collect the SSN, what are the practical methods to collect and protect the SSN? For example, the Courts are collecting SSNs in a separate file.
4. Fourth, as we make records available, exercise some due diligence. For example, on some forms there is a specific field for SSN.

Mr. Leary stated that he would like the Policy of the State to be to not collect SSNs unless there is a good reason. Ms. Pistner suggested a strong prospective prohibition against collection and disclosure. Ms. Hathaway reminded the Subcommittee that the Registers of Deeds do not now have blanket authority to redact, so the data is being distributed world-wide with all the data intact. Public disclosure can be protected, and the original can be kept as a back up copy.

For next meeting:

- Draft legislation to make SSNs confidential prospectively

Minutes

The Subcommittee reviewed the issue of requiring public bodies to keep and maintain minutes of public proceedings. LD 786, An Act to Require that Minutes Be Kept of Municipal Meetings, was considered by the State and Local Government Committee during the First Regular Session. It received one vote in favor from the Committee, and the House and Senate accepted the majority Ought Not To Pass report. The Maine Municipal Association (MMA) opposed the bill and submitted written testimony. That testimony was shared with the Subcommittee. Judy Meyer mentioned that she doesn't think there can be much cost to pen and paper and writing down the basics of what happens at a meeting. She does not believe that citizens have the power to require the selectmen to make a record. She is most concerned about dysfunctional boards and how they do business. Mr. Leary suggested requiring municipal boards to keep a record of decisions and actions, not full verbatim minutes. The Legislature has to keep a record, why not a municipal body? Ms. Pistner suggested obtaining MMA's reaction to a requirement that meetings be recorded, and maintained only until the next meeting. Karla Black agreed that MMA's reaction would be of interest, and voiced her doubt that proposing the requirement again would be a good idea; Mr. Glessner agreed.

For next meeting:

- Draft legislation on recording decisions and actions

Ad hoc internal review

The Subcommittee reviewed draft legislation prepared by staff to require certain records associated with an ad hoc internal review be designated as public records. All agreed that the report itself should be public; after that, there was concern about records reviewed and people interviewed. Ms. Meyer noted that it is an extraordinary thing for an ad hoc group to take over an internal review, so it is okay to put extraordinary restrictions on the group. She was comfortable with protecting the notes of the members, however. Ms. Black expressed her concern that this is a departure from the Freedom of Access laws - putting a burden on someone who is not a public employee, and the burden is greater than that shared by public employees.

For next meeting:

- Revise draft legislation

Issues referred to Advisory Committee

Two items brought to the attention of staff will be added to the Advisory Committee's agenda for September 23rd:

- E-mail from Pamela Lovely, Cumberland County Register of Deeds, about businesses packaging and reselling information and data kept by counties and balking at the copying fees

- E-mail from James Moore about the release of information in the Kenneth McDonald murder investigation and prosecution

Next Meeting

Wednesday, September 23, 2009, 11:30 a.m.
Room 438, State House

Adjourned, 3:05 p.m.

Respectfully submitted
Peggy Reinsch and Colleen McCarthy Reid

Other upcoming meetings scheduled so far:

- Public Records Exceptions Subcommittee
Wednesday, September 9, 2009, 12:30 p.m.
- Legislative Subcommittee
Wednesday, September 16, 2009, 12:30 p.m.
- Advisory Committee
Wednesday, September 23, 2009, 12:30 p.m.