

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
August 17, 2016
Meeting Summary

Convened at 10:16 a.m. in Room 438, State House, Augusta.

Present:
Sen. Burns
Rep. Kim Monaghan
Mary Ann Lynch
Chris Parr
Helen Rankin
Eric Stout

Absent:
Luke Rossignol
Linda Pistner
A.J. Higgins

Staff:
Craig Nale
Henry Fouts

Introductions

Rep. Monaghan called the meeting to order and all members introduced themselves.

Public records exceptions review discussion

Note: Reference numbers below refer to the spreadsheet of public records exceptions used to track the review process. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.

The Subcommittee continued its review of existing public records exceptions.

Ref# 2: 1 M.R.S. §402, Sub-§3, ¶C-1, relating to communications between a constituent and an elected official

This item was tabled at the Subcommittee's prior meeting.

Rep. Monaghan asked staff to differentiate this confidentiality provision from the more general provision dealing with legislative working papers. Staff explained that while legislative working papers are not public records until after the legislative session, this confidentiality provision applies with no time limit.

Ms. Lynch moved, seconded by Rep. Monaghan, to recommend maintaining the provision with no modifications, as it is narrowly tailored to protect private constituent information.

Mr. Parr noted that this is another example of information being designated confidential as opposed to the entire record that contains that information being designated confidential, and that this creates a burden on the agencies and public bodies because of increased time required for searching for and redacting the confidential information. He expressed that this was his general problem with these types of public records exceptions and his being in favor of a broader "records" standard for this confidentiality provision.

After some further discussion in the Subcommittee, Mr. Parr made a motion, seconded by Mr. Stout, that the Subcommittee recommend that this public records exception be amended to apply more broadly to the entire record of constituent communication if it contains any of the types of information listed in the current exception. However, the amendment would also require the agency to provide the record with such information redacted, if it did not constitute an undue burden on the agency. The vote was unanimous of those present. This proposed amendment will be put on the agenda for the next full Advisory Committee meeting.

Sen. Burns stated that it was time for the Legislature to have a better disclaimer to make it clearer to the public that constituent communications with legislators may become public record.

Mr. Stout made another motion, proposing that the subcommittee recommend creating a new public records exception along similar lines to the proposed amendment. The new public records exception would exempt from the definition of “public records” any records containing the information described in 1 M.R.S. §402(3)(C-1)(1) and (2) (e.g., an individual’s medical information, credit or financial information, etc.). Sen. Burns expressed discomfort with applying such a broadly applicable public records exception, and wondered about the unintended consequences of such a change. Rep. Monaghan shared this concern, but stated her support for the motion for the purpose of having a discussion of the proposal in the full Advisory Committee. The vote in favor of the motion was 5-1. This discussion will be put on the agenda for the next full Advisory Committee meeting.

Ref# 6: 1 M.R.S. §402, Sub-§3, ¶Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail

The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 13: 5 M.R.S. §1541, Sub-§10-B, relating to internal audit working papers of the State Controller

The Subcommittee voted 6-0 to table this item in order to give staff an opportunity to contact The Office of the State Controller again, requesting feedback from the agency regarding this exception.

Ref# 35: 12 M.R.S. §8005, Sub-§1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres

This item was previously tabled in order for staff to solicit stakeholder input. The one stakeholder group that responded stated that it had no problem with the current exception. The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 36: 12 M.R.S. §8005, Sub-§2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs

This item was previously tabled in order for staff to solicit stakeholder input. The one stakeholder group that responded stated that it had no problem with the current exception. The Subcommittee voted 6-0 to recommend no modification to the current exception.

Ref# 37: 12 M.R.S. §8005, Sub-§4, relating to forest management information designated confidential by agency furnishing the information

This item was previously tabled in order for staff to solicit input from the stakeholders identified in the Department of Agriculture, Conservation and Forestry's survey response. No recommended changes were received from stakeholders and the agency itself had recommended no changes in its original response.

Mr. Parr objected to this provision on the basis that it was another example of information being designated confidential as opposed to the entire record itself being confidential, creating a burden on the agency or public body to search for and redact such information.

Ms. Lynch made a motion to recommend no modification to the current exception, reasoning that this exception was involving proprietary and competitive information and that the agency had recommended its continuation. The Subcommittee voted 5-0, with one abstention, to recommend no modification to the current exception.

Ref# 38: 12 M.R.S. §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

This item was previously tabled in order for staff to gather additional information from the Department of Inland Fisheries and Wildlife regarding how a member of the public signified their wish for the department to keep the individual's email address confidential, whether this was treated as an opt-in or opt-out type of system.

The department provided draft legislation expanding the exception to individual's applying for permits and registrations as well, and designating this information as confidential. Under the proposal, the commissioner would be permitted to allow a member of the public to clearly indicate that the individual's email address not be kept confidential (an opt-in system). The proposal included additional exceptions to the confidentiality to allow the department to disclose these email addresses to a contractor or state agency for marketing or wildlife management purposes.

Mr. Stout explained the origin of the current public records exception, being aware of the agency responding to a FOIA request for all email addresses contained in the department's electronic licensing system for commercial purposes. He noted that the term "contractor" in the proposed exception to the confidentiality requirement should be clarified.

Mr. Parr made a motion, seconded by Sen. Burns, to 1) recommend no modification to the current public records exception and 2) ask the full Advisory Committee to review the department's proposed legislation for possible action. Ms. Lynch expressed her lack of support for the second part of the motion, noting that the proposed legislation would be more appropriately vetted through the Legislature's Inland Fisheries and Wildlife Committee. Sen. Burns agreed and the motion was withdrawn.

Mr. Parr expressed his support for the draft legislation's opt-in approach and broader application, but echoed concerns about allowing the use of this information by contractors. Rep. Monaghan expressed some concern about the patchwork of public records exceptions regarding this type of personal information.

Mr. Parr made a motion, seconded by Ms. Lynch, to recommend no modification to the current public records exception. The motion was amended at the suggestion of Mr. Stout, to send a letter to the Department of Inland Fisheries and Wildlife to relay the Subcommittee's concerns regarding the draft legislation's allowing the department to use otherwise confidential email addresses for marketing purposes without permission. The Subcommittee voted in favor of the motion, 6-0.

Ref# 39: 12 M.R.S. §12551-A, Sub-§10, relating to smelt dealers reports, including name, location, gear and catch

This item was previously tabled. Staff reviewed the agency response, recommending no changes to current law. Ms. Lynch moved to recommend no modification, noting that this exception goes to the competitive nature of the fishery.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 40: 14 M.R.S. §6321-A, Sub-§4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program

Ms. Lynch spoke to the importance of this confidentiality provision to the process of foreclosure mediation, with much of this information being personal financial information.

The Subcommittee voted 5-0 to recommend no modification to the current exception.

Ref# 41: 17-A M.R.S. §1176, Sub-§1, relating to information that pertains to current address or location of crime victims

Mr. Parr made a motion, seconded by Mr. Stout, to recommend no modification to the current exception. The motion carried, 5-0.

Ref# 42: 17-A M.R.S. §1176, Sub-§5, relating to request by crime victim for notice of release of defendant

Mr. Parr made a motion, seconded by Ms. Lynch, to recommend no modification to the current exception. The motion carried, 5-0.

Ref# 51: 22 M.R.S. §2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law

Staff related the Department of Health and Human Services (DHHS) survey response, where the agency had responded that the Department of Agriculture, Conservation and Forestry (ACF) was the custodian of these records because 22 M.R.S. §2153 gives that department the power to promulgate appropriate regulations. ACF provided no response to staff questions.

Mr. Parr noted that this was an example of a specific public records exception for information that is already made confidential under another statute, in this case a federal statute. Ms. Lynch made a motion to recommend no modification to the current exception, but the motion failed. Mr. Parr asked staff to attempt to gather more information from the agencies to determine where the records actually are.

The Subcommittee voted 5-0 to table this item until the next meeting.

Next meeting

The Subcommittee will hold its next meeting on September 14, 2016 at 10:00 a.m. in Room 438 of the State House, Augusta.

Adjournment

Rep. Monaghan adjourned the meeting at 12:28 p.m.