

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
July 20, 2016
Meeting Summary

Convened at 11:34 a.m. in Room 436, State House, Augusta.

Present:
Rep. Kim Monaghan
Chris Parr
Helen Rankin
Kelly Morgan
Eric Stout

Absent:
Luke Rossignol
Mary Ann Lynch
Linda Pistner
A.J. Higgins

Staff:
Craig Nale
Henry Fouts

Introductions

The meeting was called to order and all members introduced themselves.

Public records exceptions review discussion

Staff reviewed the applicable review criteria at 1 MRSA §432 for the Right to Know Advisory Committee's review of existing public records exceptions. Staff provided a broad overview of the recommendations regarding existing public records in the Advisory Committee's 2015 report, and provided general information about the scope of the review that must be completed by 2017.

Completed surveys sent to the public bodies administering the relevant public records exceptions were distributed to Subcommittee members. During this meeting the subcommittee reviewed the public records exceptions detailed below.

(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.)

Ref# 1: 1 M.R.S. §402, Sub-§2, ¶G, relating to committee meetings pertaining to interscholastic sports
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The Subcommittee voted 4-0 to indefinitely postpone this item. The Maine Principals Association responded to the request for information that it is not a public body; the exception also pertains to meetings, not public records. The Subcommittee interpreted the public records exceptions review requirement in the Freedom of Access Act to require only a review of exceptions to the definition of "public records." The Subcommittee discussed the possibility of further deliberation on this point with the full Advisory Committee.

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

The Subcommittee voted 4-0 to table this item to discuss the broader implications of codifying individual public records exceptions rather than fewer, but more broadly applicable, public records exceptions. The Subcommittee discussed the difficulty in applying public records exceptions that except certain information contained in a record from the definition of “public record,” instead of applying to the entire record. The Subcommittee discussed generally the possibility of defining categories of information within public records that should be confidential and not susceptible to disclosure under any circumstances; for example, personally identifiable information (“PII”) as that term is used in federal public access laws. The Subcommittee discussed how this approach could reduce the total number of individual public records exceptions in law. The Subcommittee also discussed the differences between legislative working papers and constituent communications, and the applicable public records requirements for each.

Ref# 50: 22 M.R.S. §1711-C, Sub-§20, ¶N, relating to hospital records concerning an individual’s health care information
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The Subcommittee voted 4-0 to recommend repealing this exception, provided the statute was explicitly clear that all other federal laws concerning confidentiality and privacy applied. HealthInfoNet, the custodian of the records subject to this exception, responded to the request for information that it is not a public body subject to FOAA. Staff reviewed case law regarding how to determine if a body is a public body subject to FOAA; the Subcommittee determined that HealthInfoNet is not a public body. Because the exception is inoperative, the Subcommittee recommended its repeal.

Next meeting

The Subcommittee will hold its next meeting on August 17, 2016 at 10:00 a.m. in Room 438 of the State House, Augusta.

Adjournment

Rep. Monaghan adjourned the meeting at 12:23 p.m.