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Right to Know Advisory Committee
December 19, 2007
(Draft) Meeting Summary

Convened 10:25 a.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Deborah Simpson
Shenna Bellows
Karla Black
Robert Devlin
Richard Flewelling
Ted Glessner
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

| Absent:

Sheriff Mark Dion
Suzanne Goucher
Mal Leary
Maureen O'Brien

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Hobbins convened the Advisory Committee.

LD 1881, An Act to Improve the Transparency and Accountability in Government

The Advisory Committee reviewed a discussion draft developed by the Legislative Subcommittee. Chris Spruce explained that the subcommittee had reviewed LD 1881, An Act to Improve the Transparency and Accountability in Government, and considered several drafts of proposed language. The latest draft presented to the Advisory Committee is intended to add a requirement that responses to public records requests be made in a certain time frame (10 calendar/business days suggested as a placeholder), to require an acknowledgment of requests and to require records to be inspected by a requester within a certain period of time. Because the subcommittee did not have time to review the draft during its meeting, Mr. Spruce said that the subcommittee makes no recommendation on the draft. He noted that the subcommittee has concerns about the current law because it is silent on when a response to a records request is required, but that seeing the draft language in print points out the complexities of trying to address these issues. Mr. Spruce also recalled that these issues have been discussed before without any resolution by the Advisory Committee and prior committees on Freedom of Access issues.

Judy Meyer explained that, to her, 10 days is a long time for a response to a records request. Ms. Meyer worried that 10 days would be interpreted as the default response time because the "5-day denial" provision in current law is often misinterpreted by governmental entities as the time frame for responses to requests. Ms. Meyer agreed that 10 days may be an appropriate time frame to responds to requests for records that require research or review, but argued that readily available documents like budget documents and meeting minutes should be made available within a very short time frame, perhaps 2 days or less. Ted Glessner agreed with Ms. Meyer that a recognition

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of the difference between “readily available” documents and those requests that are more complex or involve a large volume of documents may be worthwhile.

Harry Pringle remarked that he had spent a lot of time thinking through these issues and had joined the Legislative Subcommittee for several meetings to take part in their discussions and review of language. Mr. Pringle noted that records requests may range from a request for a single document to requests for thousands of pages and said he believed it would be very difficult to craft a statute with a one-size-fits all approach. Mr. Pringle pointed out several provisions in the draft language that he felt would create lots of opportunity for dispute, e.g. what does “readily available” mean? Although he has yet to be convinced there are widespread systemic problems with the law, Mr. Pringle agreed it would be worthwhile to address the lack of a specific requirement for a response to a records request. Mr. Pringle proposed that, instead of the discussion draft, the Advisory Committee use the proposed language to clarify Title 1, section 408, subsection 1 suggested by Chris Parr, Staff Attorney for the Maine State Police, (page 9 of Chris Parr’s draft), which would require an agency or public official to acknowledge receipt of a request within a reasonable period of time and allow an agency or official to request clarification of a request to facilitate the response. Mr. Pringle could support this language and argued that it was simpler and more eloquent than the discussion draft.

Richard Flewelling concurred with Mr. Pringle’s suggestion. If a specific 10-day requirement were put in place, Mr. Flewelling cautioned the Advisory Committee how difficult it might be to pin down the dates on which a response would be required and when the response would be received depending on whether the response was mailed to a selectperson that reviews mail twice a month or a town clerk that works full-time. Rep. Simpson also agreed that the more simple language proposed by Mr. Pringle was her preference and noted that the requirement that agencies and public officials deny a request within 5 days would remain the same.

Shenna Bellows remarked that Mr. Pringle’s proposal would be an improvement on the current law, but argued that the Advisory Committee should go further. Ms. Bellows reminded the subcommittee that the Maine Civil Liberties Union does get complaints about the timeliness of responses and that Sen. Weston put LD 1881 forward because of some personal experiences with FOA requests. Ms. Bellows argued that the “reasonable” standard in the current law and used in Mr. Pringle’s proposed language is problematic and that the public has little recourse without an ombudsman.

Judy Meyer liked the proposed language suggested by Mr. Pringle, but worried that the requirement that a requester provide written clarification of a request might be a barrier to some members of the public. The Advisory Committee agreed and, at Rep. Simpson’s suggestion, asked that the language remove any requirement that a request or clarification be made in writing.

Judy Meyer also asked whether the phrase “reasonable period of time” could be defined or described on the State’s FOA website, which the Advisory Committee is recommending as the basic curriculum for mandatory training. Harry Pringle agreed with Ms. Meyer’s suggestion and said that the Question and Answer format of the website would be a very good way to provide guidance to agencies and public officials on what is reasonable.

Ms. Bellows reminded the Advisory Committee that approximately 30 states have a specific time frame in law for responses to records requests. Ms. Bellows said that ideally there should be a requirement that requests be acknowledged within 5 days to mirror the current requirement for

denials of requests. Judy Meyer disagreed; she felt this would add a layer of paperwork that is not necessary.

Motion: To recommend to the Judiciary Committee an amendment to Title 1, section 408, subsection 1 based on the suggested language from Chris Parr with references to “written” removed.

Result: The Advisory Committee voted 10-1 in favor of the motion. Shenna Bellows objected and stated that she would support LD 1881 as drafted.

In response to a question from Sen. Hobbins about whether or not there would be active opposition to the Advisory Committee recommendation, Ms. Bellows said she would prefer that the Advisory Committee go further but that she would not actively work to defeat the proposal.

Review of Public Records Exceptions

Chris Spruce presented the Legislative Subcommittee’s recommendations on the existing public records exceptions. Mr., Spruce thanked the subcommittee members for their hard work and diligence in working through the process. Mr. Spruce explained that the recommendations of the subcommittee can be categorized as follows:

- Exceptions recommended without change;
- Exceptions recommended without change, but with objections raised by a subcommittee member;
- Exceptions recommended with proposed statutory changes; and
- Exceptions recommended for further review by the Judiciary Committee.

Mr. Spruce proposed that the Advisory Committee review the exceptions that are recommended for statutory changes and those that are recommended for further review by the Judiciary Committee before voting on whether to accept the recommendations of the subcommittee as a package. He also noted that the Legislative Subcommittee had not reviewed one exception, Title 4, section 17, subsection 3 relating to the State Court Administrator. Mr. Spruce suggested that the Advisory Committee review that exception as a group after getting input from Ted Glessner.

Advisory Committee staff presented an overview of the exceptions recommended for further review by the Judiciary Committee. Shenna Bellows explained that the legislative subcommittee recommended further review by the Judiciary Committee for those exceptions when serious concerns or policy issues were raised and the subcommittee felt it would be important for the Judiciary Committee to review with input from stakeholders.

Advisory Committee staff also presented an overview of the exceptions recommended with proposed statutory changes. The Advisory Committee members made particular note of the proposed statutory changes to the exception that preserves the confidentiality of working papers of the Office of Program Evaluation and Government Accountability. The legislative subcommittee voted to recommend conceptual support of the draft language (suggested by Beth Ashcroft, Director of OPEGA) by a vote of 4-1. Shenna Bellows explained her objection to the confidentiality of OPEGA working papers after the issuance of a final program evaluation report and made an analogy to the pending Law Court case seeking public disclosure of working papers of an advisory panel to the Attorney General. Ms. Bellows hoped that this exception would be carefully reviewed by the Judiciary Committee.

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The Advisory Committee then reviewed Title 4, section 17, subsection 3 relating to confidentiality of investigative and compliant files of the State Court Administrator. Ted Glessner explained that he recommended this exception be continued, although it has been used infrequently, due to concerns about the release of information relating to security. Mr. Glessner said that complaints are made on a daily basis, but that investigations are rare. Mr. Glessner explained that the release of this information may jeopardize the safety of the public, judges and other court personnel. Chris Spruce asked if the exception could be clarified to narrow the scope to information related to court security because he was concerned the current language is overbroad and could be interpreted to keep confidential all information related to complaints. Mr. Glessner agreed to the clarification.

Motion: To accept the Legislative Subcommittee's recommendations, with the additional recommendation to propose statutory change to Title 4, section 17, subsection 3 to limit confidentiality protection to complaints and investigative files related to court and judicial security.

Result: Unanimously adopted by Advisory Committee

Committee Recommendation on LD 1878

Rep. Simpson brought LD 1878, An Act to Generate Savings by Changing Public Notice Requirements, to the Advisory Committee's attention. LD 1878 has been carried over by the State and Local Government Committee. As originally drafted, the bill would phase out the requirement that government entities publish legal or public notices in a newspaper and require instead that the notices be published on an accessible website. Rep. Simpson suggested that the Advisory Committee make a statement in the annual report in opposition to LD 1878. Several Advisory Committee members weighed in against LD 1878 conceptually because it would restrict the public's notice of government meetings and activities. They recognized that while the bill may have been introduced with good intentions to save money, there was a greater public interest in making public notice accessible to all Maine residents. Karla Black also suggested that the Advisory Committee send a letter to the State and Local Government Committee in opposition to LD 1878.

Motion: To Oppose LD 1878 in annual report and send letter to State and Local Government Committee.

Result: Unanimously Adopted by Advisory Committee

Annual Report

The Advisory Committee reviewed the draft outline of its 2nd annual report. The annual report is due January 15th. A revised draft to reflect the Advisory Committee's decisions at today's meeting will be circulated by e-mail to the members for review in early January. The report is due January 15th.

Motion: To accept draft report pending revisions and final review by Advisory Committee members

Result: Unanimously adopted by Advisory Committee

Future Meeting

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The Advisory Committee scheduled its next meeting for **Wednesday, January 30th at 9:30 a.m.**

The meeting adjourned at 12:30 p.m.

Prepared by Peggy Reinsch and Colleen McCarthy Reid, Right to Know Advisory Committee staff

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