

DRAFT

Right to Know Advisory Committee  
Legislative Subcommittee  
December 12, 2007  
(Draft) Meeting Summary

Present:

Chris Spruce, Chair  
Rep. Deborah Simpson  
Shenna Bellows  
Karla Black  
Linda Pistner  
Harry Pringle

| Absent:

Suzanne Goucher  
Mal Leary

Staff:

Colleen McCarthy Reid  
Peggy Reinsch

Chris Spruce, Chair of the Legislative Subcommittee, called the meeting to order and welcomed the participation of Harry Pringle, a member of the Advisory Committee who has not formally participated with the Legislative Subcommittee in the past.

Public Records Exceptions

The legislative subcommittee invited Beth Ashcroft, Director of the Office of Program Evaluation and Government Accountability (OPEGA), to discuss with the Subcommittee the shortcomings of the current statute governing the confidentiality of certain records within the possession of the OPEGA. Ms. Ashcroft explained the procedures that OPEGA uses to conduct investigations and audits, and the Office's adherence to the professional audit standards adopted by the Auditor General of the United States. Those standards include documenting who the auditors talk to and their positions with the audited organization, as well as their statements. She stressed how important it is that the people who approach OPEGA, or the people OPEGA seeks out, to feel comfortable being completely candid; ensuring the confidentiality of the people provides protection that is sometimes necessary to establish that level of comfort. In addition, Ms. Ashcroft noted that preliminary information being released prematurely can cause significant problems.

Ms. Ashcroft stated that many people believe that OPEGA's working papers become public after the report is released, but the statute does not provide for the release of the working papers at any time. The confusion may arise because the working papers are mentioned in both subsections 3 and 5 of Title 3, section 997. Ms. Ashcroft would like to clarify the statute with regard to working papers.

In addition, Ms. Ashcroft expressed an interest in revising the statute as it applies to the director's discretion to disclose working papers to anyone other than the agency or entity under review. She mentioned both those conducting peer reviews of OPEGA and other entities who may be assisting an agency in implement recommendations as appropriate to have access to working papers, at the director's discretion.

## DRAFT

Linda Pistner asked that Ms. Ashcroft provide the Subcommittee with a draft of the changes she would like to see in §997, which Ms. Ashcroft agreed to provide. She also agreed to look into whether federal standards for confidentiality of audit working papers exist.

### LD 1881

The legislative subcommittee reviewed the proposed draft legislation responding to the issues raised in LD 1881. The draft, prepared by staff, was created to include all the issues mentioned at the previous subcommittee meeting: Initial response deadline, including a written acknowledgment (current law sets a deadline of five days if the request is denied); making “readily available” public records accessible without delay; requirement of a written request; maximum response deadlines; extenuating circumstances when deadlines can’t be met; appropriate deadlines to carry out inspection of requested public records. Once all the elements were included in the draft, with significant decision-point options indicated, the subcommittee members were concerned about the draft’s complexity. Shenna Bellows initially recommended tabling the discussion until Sen. Weston (the sponsor of LD 1881) could have a chance to comment. Rep. Deb Simpson reminded the subcommittee that the Joint Standing Committee on Judiciary carried over LD 1881 in order to benefit from the Right to Know Advisory Committee’s analysis and recommendations. All agreed to continue the discussion with the goal of deciding on elements to include in a draft to review and submit to the full Advisory Committee.

Mr. Spruce expressed concern about the requirement that a request identify the record sought with “reasonable particularity” and asked for more information about the meaning of the term. Harry Pringle apologized for not having the same background as the other subcommittee members, but stated that he had never seen anything so convoluted, and that it would be impossible to train on this provision of the law alone in less than two hours. He also said that he hasn’t seen a problem that indicates that such a complex solution is necessary. He expressed the thought that usually the problematic requests are from attorneys or commercial interests, not individual members of the public.

Mr. Spruce expressed the need for a time line. He suggested that there be deadline within days of the request that one of the following responses must be given: 1) we will give you the record; 2) we won’t give you the record and this is why; or 3) we think we will give you the record, but we need to do work to determine how much we can give to you. He stated that he is leery of any additional deadline beyond reasonableness.

Mr. Pringle read a request for records recently received by school departments and asked what would be a reasonable time period in which to respond when the records requested are numerous and may require a considerable amount of redaction. Karla Black mentioned that every State agency received the same request. Mr. Pringle noted that when such a request is made in the course of litigation, only records that are relevant must be made available. Under the Freedom of Access laws, there is no such limit.

## DRAFT

Ms. Black stated that she can support an acknowledgment, and not much more. It is not clear how to solve the problems stated without creating a bigger problem.

Linda Pistner explained that there should not be any problem with providing a record that is readily available. Anything else should be subject to a “reasonable” time period to produce the record. If the entity has to search for the record or redact information, the record should not be considered “readily available”.

Mr. Pringle asked whether there is a sense that readily available records are not being made available, and Ms. Bellows mentioned the Freedom of Information Coalition’s audits. Mr. Pringle responded that some of the records requested were not actually public records.

Re. Simpson said that sometimes the problem comes from the fact that the town office is open only part time, so an immediate response is not possible. She recommended that “readily available” records be made available within 10 days, that otherwise an acknowledgment must be provided. Allow the agency to provide an estimated response time, but not require such information. A public record requester wants to know if they have been heard, and an acknowledgment provides the assurance that they have indeed been heard. She suggested that an acknowledgment is required only when a request is reduced to writing, but a written request is not necessary for records that are readily available.

Staff was directed to make a redraft available by the end of Monday, December 17th.

### Existing public records exceptions

The Subcommittee continued its review of the existing public records exceptions identified in Titles 1, 2, 3, 4, 5, 6, 7, 8, 9, 9-A and 9-B. The subcommittee considered the existing exceptions set aside during the previous meeting, including amendments suggested by the responding agencies and Christopher Parr, the Freedom of Information contact person for the Department of Public Safety. The subcommittee worked through the remaining exceptions and identified those that should be continued without amendment, those that should be repealed, and those that should be amended. For some exceptions, Ms. Bellows noted her objection, and why the Maine Civil Liberties Union objected to those exceptions. The subcommittee divided on their recommendations on a few exceptions. For certain identified exceptions, the subcommittee recommends that the Advisory Committee suggest that the Judiciary Committee review the provisions in a context that allows more participation from interested parties. Staff will draft amendment language and provide that draft to the subcommittee before the next meeting. The subcommittee will present recommendations to the full Advisory Committee at the next meeting.

### Future meetings:

- ◆ Legislative Subcommittee, December 19, 2007, 9:00 a.m.

DRAFT

◆ Full Advisory Committee, December 19, 2007, 10:00 am

Prepared by Peggy Reinsch and Colleen McCarthy Reid

F:\RTK AC\Summary for 12-12-07 Legis Subcmte.doc (12/17/2007 12:02:00 PM)