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Right to Know Advisory Committee September 10, 2008 (Draft) Meeting Summary

Convened 12:11 p.m., Room 438, State House, Augusta

Present:

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

| Absent:

Sheriff Mark Dion
Maureen O'Brien

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Barry Hobbins convened the Advisory Committee, and asked the members to introduce themselves. Sen. Hobbins outlined the agenda for the meeting.

Legislative Subcommittee Report

Chris Spruce, chair of the Legislative Subcommittee, reported on the subcommittee's activities.

Review of Public Records Exceptions. Mr. Spruce explained that the subcommittee is moving forward with its review of public records exceptions, which would begin immediately following adjournment of the advisory committee meeting. Julie Flynn, Deputy Secretary of State and David Etnier, Deputy Commissioner of the Department of Marine Resources, are scheduled to discuss specific public records exceptions contained in the respective statutes.

Training on Freedom of Access laws

The Legislative Council will conduct training for new and returning legislators when the 124th Legislature convenes in early December. The Advisory Committee reviewed the packet of materials that was distributed to legislators at the beginning of the 123rd Legislature in 2006, and identified several changes to be made. Staff has been in contact with the Legislative Council's Executive Director David Boulter about including Freedom of Access training in the pre-legislative conference. More discussions on content and timing with Mr. Boulter and the Council are planned. Judy Meyer, the Education and Training Subcommittee Chair, agreed to convene a subcommittee meeting to discuss the written materials to be offered as well as logistics for the

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training. (The Education and Training Subcommittee will meet at 11:30 a.m. on Monday, November 17, 2008.)

Proposed definition of “agency or public” official

Mal Leary proposed an amendment to the Freedom of Access laws to add a definition of “agency or public official”: *The term "agency or public official" shall include any public agency or public official and any private or quasi-public person, entity, or advisory group, individually or collectively, that functions as a public agency or public official based on consideration of four factors: (A) performance of a governmental function; (B) the extent of governmental funding; (C) the extent of governmental involvement or control; and (D) whether official governmental action resulted in the creation of the entity. A person, entity, or advisory group need not strictly conform to each factor to meet the definition, but all relevant factors are to be considered and weighed.* The purpose is to cover advisory groups that do public business. Mr. Leary said that the group that was challenged in the Abbott lawsuit has significant protection under current law, under the Attorney General’s confidentiality statute, so no blanket exception is needed.

Linda Pistner provided a draft to address a narrower category of advisory groups, and reminded the Advisory Committee that the Attorney General’s Office was not a party to the Abbott case. Ms. Pistner’s draft circulated at the meeting would add a new subsection 3-B to 1 MRSA §402: *3-B. Public records further defined. “Public records” also includes records of any advisory organization established, authorized or organized by law, resolve, Executive Order of the Governor, or by the request of an agency or public official, unless those records are exempt under subsection 2(F).* Ms. Pistner recommended further revision of her proposal to cover the specific concern about “internal” reviews; because such reviews are a legitimate governmental function, and the records should be available whether the review is done internally or farmed out to the private sector. Ms. Pistner also emphasized that there is a significant difference between making the records of such an advisory group open, and making the proceedings open to the public. Her proposal focuses on the records alone. Eric Conrad questioned whether the Attorney General supports the draft, and Ms. Pistner replied that he did.

The Advisory Committee discussed the idea behind the proposals and raised the concern about unintended consequences from a sweeping amendment to the Freedom of Access laws. There was general agreement to make sure a loophole doesn’t exist, but also recognition of the difficulty in drafting language that doesn’t sweep in too much. Richard Flewelling did not oppose codifying the Abbot factors, but pointed out that Mr. Leary’s draft does not follow that decision verbatim. Mr. Flewelling also stressed that it is important to provide in the legislative record an explanation of the Legislature’s intent to deviate from the holding in Abbott, if that is, indeed, the Legislature’s intent.

Judy Meyer queried whether the Advisory Committee is interested in overturning Abbott. There was interest in ensuring that private groups working on public matters be accountable, but no interest in overturning the outcome of Abbot. After thorough discussion, the Advisory Committee tabled the proposals, and asked Ms. Pistner to redraft her proposal (defining an additional category of “public records”) to include circumstances of internal reviews, no matter who is conducting the review. The new proposal will be on the agenda for discussion at the next Advisory Committee meeting.

Proposed definition of “security plans” as a public records exception

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Bob Devlin submitted a proposal to the Advisory Committee based especially on Kennebec County's experience with request from the public and correctional facilities residents for the security plans of the correctional facilities. The Sheriffs' Association supports, and Mr. Devlin has received a lot of feedback.

P. Records describing security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared specifically for state and county correctional facilities, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel, correctional unit residents, or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature, to county officials or Board of Corrections members under conditions that protect the information from further disclosure.

There was some discussion to send the proposal to the Legislative Subcommittee, but the decision was made that the subcommittee is swamped with the existing exception reviews. Advisory Committee members decided they needed additional background on the issue and agreed to table the matter to the next meeting.

Law School extern

The Advisory Committee agreed to apply to the Maine School of Law to host a law school extern again this year. The deadline for proposals is in October. Ms. Pistner and staff will rework the description of the work that was submitted last year, and circulate it for approval before sending it to the Law School.

Ongoing projects

- Social Security numbers - Staff is collecting information and reviewing statutory provisions in state law governing collection and disclosure of Social Security numbers.
- Privileges - Staff is reviewing statutory provisions governing the creation and recognition/abrogation of privileges and will review caselaw. See 1 MRSA §402, sub-§3. ¶B.

Public hearings

The Advisory Committee agreed to not schedule public hearings until it was ready to proceed with information gathering on a specific subject or proposal.

Potential Funding

Nothing new to report.

Future Meetings

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- ◆ Legislative Subcommittee, Monday, October 6, 2008, 1:00 p.m., Room 438
- ◆ Legislative Subcommittee, Thursday, November 13, 2008, 1:00 p.m.
- ◆ Education and Training Subcommittee, Monday, November 17, 2008, 11:30 a.m., Room 438
- ◆ Advisory Committee, Monday, November 17, 2008, 12:00 noon

The meeting adjourned at 1:50 p.m.

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

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