

Bulk Records (Public Policy) Subcommittee  
Right to Know Advisory Committee  
September 10, 2013  
Meeting Summary

Convened 10:00 a.m., Room 438, State House, Augusta

Present:  
Chris Parr, Chair  
Joe Brown  
Fred Hastings  
Judy Meyer  
Harry Pringle

Absent:  
Linda Pistner

Staff:  
Henry Fouts  
Peggy Reinsch

**Convening, Introductions**

Chris Parr, Bulk Records Subcommittee Chair, called the meeting to order and asked the members and staff to introduce themselves.

**Subcommittee name change**

Mr. Parr suggested the subcommittee change its name to something more reflective of the subcommittee's work. "Public Policy Subcommittee" was proposed. The issue of merging the subcommittee with the Legislative Subcommittee was raised. The topic was tabled until the end of the meeting.

**Lowering the payment in advance threshold of 1 MRSA § 408-A(10)**

The issue was raised regarding how an agency is able to collect money for costs associated with supplying public documents, once the requesting individual is in possession the requested documents. Requesting money upfront is much easier for the government, because the government does not have the resources or time to chase down individuals who have not paid.

The statute currently applies a \$100 threshold – if there is no pre-payment for requests estimated to cost \$100 or more then the agency is not require to start the process of gathering the documents. If the request is estimated to be under this amount, the agency must make copies of the documents but does not need to turn over the documents until payment is made. If this interpretation of the statute is correct, the problem is a billing issue that could be solved by the government entity tweaking its operating procedures.

During the course of the discussion, Public Access Ombudsman Brenda Kielty addressed the subcommittee, noting that FOAA sets hourly fee rates but not a flat fee

cost. She posed the question whether there was a distinction between an “information request” fee and a FOAA fee. There had been some concern from the public regarding agencies charging arbitrary flat fees, for example, \$125 for a fire report. Ms. Kielty also questioned what a “request for information” meant in the context of LD 1511. It was noted by the subcommittee that prior discussions of this topic became focused on deeds. The statutes do set some flat fees, and some fees have developed as an average according to the practical experience of the agencies.

After the discussion the subcommittee was not in favor of lowering the advance payment threshold and the issue was considered resolved.

### **Anonymous FOAA requests**

Agencies comply with anonymous requests currently, when able. Should this practice be allowed? There was agreement that there are certain circumstances where anonymity should be allowed, but there was some concern about allowing a blanket opening to anonymous requests. It was noted that a person can always use a third party requester to maintain their anonymity. The subcommittee agreed to set this topic aside.

### **FOAA as a discovery tool**

There are litigation discovery rules and procedures in place, but individuals still use FOAA as a discovery tool, for example, in traffic stop cases. If there are already ways for a defendant to seek out materials, should FOAA be available as an additional means to get information? It was noted in the discussions that this issue has been wrestled with in the past and the conclusion was that these are two separate processes – each with its own specific timelines, etc. The “reasonable time” for a response to a FOAA would not need to be relevant to any impending court deadlines. It was noted that over the years the committee has never recommended differentiating FOAA requests based on the purpose of the requestor – to do so in this context would be a big change to the current statute. The subcommittee agreed to stay with the status quo regarding this issue.

### **Post all FOAA requests made to State agencies to a searchable online database**

The Legislative Subcommittee referred the topic of whether to post all FOAA requests to a searchable online database. The Bulk Records (Public Policy) Subcommittee briefly discussed the topic and decided that this was not currently an issue that needed to be explored.

### **FOAA focus solely on public accessibility of records vs. information**

The subcommittee discussed the public accessibility of records versus information in those records. An example of this issue is when agencies redact information in the records they provide to the public, using their own discretion.

Patricia Shearman, Register of Deeds for Oxford County (Eastern District), addressed the subcommittee, and expressed concern that under current statutes personal

information in deeds must be specifically requested to be redacted – this results in individuals’ Social Security Numbers and bank account numbers being publicly available. Other states have wholesale redaction laws, but Maine does not.

Beverly Bustin-Hatheway, Register of Deeds for Kennebec County, addressed the subcommittee, noting that legislation was previously submitted to allow the Registry of Deeds to redact records. That legislation did not pass, but she would welcome the Committee to submit it again.

There was discussion around the idea of a law permitting redaction of certain personal information by all government entities. Would an agency be required to do this redaction, or merely permitted? Would an agency have the human resources or ability to buy software to accomplish this redaction?

Mr. Hastings noted that this is an opportunity for both sides to work together to make the system better, such as making clear that information will be available to the public when a record is filed with the Registry of Deeds. Perhaps the best answer for now is to ensure the FAQ page is clear about providing information that may become publicly accessible.

### **Abuse of FOAA and restrictions on FOAA requestors**

Should there be a limit on a number of requests per person that will be allowed per year? In discussions the subcommittee acknowledged that FOAA abuse was definitely a problem, for example, people exploiting FOAA for personal gain or as a form of harassment against public agencies, but there was also concern about putting any restrictions on FOAA requests.

Public Access Ombudsman Brenda Kielty noted that it would be difficult to define “abuse” under the current FOAA scheme, but it could be done by placing restrictions on who may make requests, the frequency of those requests, the manner, and the scope of the requests. However, such restrictions would change the current FOAA very much.

Jon Storer, superintendent of the Auburn Water District shared his agency’s experience with a particular FOAA requestor, and how abuses have put a strain on his agency’s resources. He added that if the agency were allowed to charge a fair amount for the actual time spent complying with requests, he would be happy.

It was noted that past attempts by the Advisory Committee to resolve this issue over the years have never ended with a solution that people are comfortable with. A possible solution was introduced, to create a system where a judge would have authority to place limits on requestors under a defined set of circumstances. The subcommittee asked staff to look at other states’ statutes to find an analog to the authority of a civil judge to limit discovery, in limited circumstances, in regards to FOAA-type access to information. Additionally, staff were asked to bring back some proposed legislation that would accomplish this objective. The subcommittee also asked for input on this proposed solution from the Judiciary representative on the Committee, Mary Ann Lynch.

Ms. Kielty noted that a FOAA requester has access to judicial intervention when an agency egregiously denies information – this solution would provide a parallel mechanism for the agency to get relief from the most extreme cases of abuse.

## **Unintended adverse impacts of FOAA**

An unintended adverse impact of FOAA results from the modern reluctance of government personnel to keep documents, and to put things in writing, because of the potential that the information will be disclosed pursuant to a FOAA request. This can have a negative impact on historical information, for example, and also takes away an important communicative tool at government's disposal. The subcommittee decided to put this issue aside.

## **FOAA for commercial purposes**

The Committee has discussed the issue of treating FOAA requests differently based on whether the request is for commercial purposes a number of times and come to the ultimate conclusion that it is too difficult to differentiate between commercial and non-commercial purposes. There are some ways to set a side commercial purposes for specific information, but not in the context of the larger FOAA. Sometimes commercial purposes can serve the public good. This also goes to the larger issue of personal privacy versus public right to information. Staff will bring back to the subcommittee information about the Law Court case dealing with this (MacImage), as well as how the statute relating to commercial use of deeds was worked out.

## **Final business**

The subcommittee unanimously voted to 1) request from the full Advisory Committee that the subcommittee name be changed to "Public Policy Subcommittee", and 2) to hold its next meeting as a joint meeting with the Legislative Subcommittee.

## **Future meetings**

The Bulk Records (Public Policy) Subcommittee will meet jointly with the Legislative Subcommittee at 10:00 a.m. on Thursday, October 3<sup>rd</sup>.

The full Advisory Committee will meet later that day at 1:00 pm.

\*All meetings will be held in Room 126 (Transportation Committee Room) at the State House.

The meeting was adjourned.

Respectfully submitted,

Henry Fouts and Peggy Reinsch