A REPORT TO THE
123rd LEGISLATURE
FIRST REGULAR SESSION

Annual Report
of the
RIGHT TO KNOW ADVISORY COMMITTEE

January 2007

Staff:
Margaret J. Reinsch, Esq., Sr. Analyst
Colleen McCarthy Reid, Esq., Leg. Analyst
Office of Policy & Legal Analysis
Maine Legislature
(207) 287-1670
www.maine.gov/legis/opla

Members:
Sen. Barry Hobbins, Chair
Rep. Deborah Simpson
Shenna Bellows
Karla Black
Robert Devlin
Mark Dion
Richard Flewelling
James T. Glessner
Suzanne Goucher
Mal Leary
Judy Meyer
Maureen O'Brien
Linda Pistner
Harry Pringle
Christopher Spruce
Ralph Stetson
Christopher Spruce
Ralph Stetson

Table of Contents

Page

Executive Summary i

I. Introduction 1

II. Advisory Committee Duties 2

III. Advisory Committee Process 3

IV. Recommendations 4

V. Future Plans 7

Appendices

A. Authorizing Legislation, Public Law 2005, chapter 631
B. Membership list, Right to Know Advisory Committee
C. Freedom of Access laws packet distributed to 123rd Legislature
D. Draft language: Recommendation to establish Public Access Ombudsman
E. Draft language: Recommendation for mandatory training of certain elected officials
F. Survey

Executive Summary

The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Freedom of Access Laws. The 16 members are appointed by the Governor, the Chief Justice, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information about the Advisory Committee is available on the Advisory Committee's website: http://www.maine.gov/legis/opla/righttoknow.htm. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

The Right to Know Advisory Committee was convened on October 18, 2006 and met two additional times, on November 13th and November 28th. The Advisory Committee created three subcommittees to start the work on its responsibilities: The Compliance and Enforcement Subcommittee, the Education and Training Subcommittee and the Legislative Subcommittee.

The Advisory Committee makes the following recommendations:

- Develop training and education materials on the Freedom of Access laws for legislators through the distribution of written materials at the 123rd Legislature's Pre-Legislative Conference and participation in the Committee Chairs and Leads Orientation in January 2007;
- Establish an internship with the University of Maine Law School to assist the Advisory Committee with the review of public records exceptions;
- Establish a Public Access Ombudsman position within the Attorney General's Office;
- Recommend mandatory training for certain "chief" elected officials regarding the Freedom of Access laws; and
- Conduct a survey of state agencies, officials and the public to solicit feedback and comments on Freedom of Access issues.

Starting in 2007, the Right to Know Advisory Committee is required to meet at least four times a year. The Advisory Committee will provide assistance, mostly through the Legislative Subcommittee, to the Judiciary Committee specifically and the Legislature generally throughout the Legislative Session. During the 2007 interim the Advisory Committee will be reviewing and evaluating existing public records exceptions (Titles 1-8, 9-A and 9-B), with an eye to making recommendations about the existing public records exceptions to the Judiciary Committee in January 2008.

I. INTRODUCTION

This is the first annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Freedom of Access laws.

Public Law 2005, chapter 631 is included as Appendix A. The establishment of a permanent ongoing advisory council in statute is the culmination, in part, of the work and recommendations of two prior legislative study committees related to Freedom of Access issues---the Committee to Study Compliance with Maine's Freedom of Access Laws created by Resolve 2003, chapter 83 and extended by Public Law 2003, chapter 709 and the Freedom of Access Advisory Committee created by Resolve 2005, chapter 123. The final reports of those committees submitted in January 2004, November 2004 and February 2006 can be found on the Legislature's webpage at www.maine.gov/legis/opla/reportsnew.htm.

The Right to Know Advisory Committee has 16 members. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. Barry Hobbins Chair	*Senate member of Judiciary Committee, appointed by President of the Senate*
Rep. Deborah Simpson	*House member of Judiciary Committee, appointed by Speaker of the House*
Shenna Bellows	*Representing the public, appointed by the President of the Senate*
Karla Black	*Representing State Government interests, appointed by the Governor*
Robert Devlin	*Representing county or regional interests, appointed by the President of the Senate*
Sheriff Mark Dion	*Representing law enforcement interests, appointed by the President of the Senate*
Richard Flewelling	*Representing municipal interests, appointed by the Governor*
James T. Glessner	*Member of the Judicial Branch*
Suzanne Goucher	*Representing broadcasting interests, appointed by the Speaker of the House*

Mal Leary	*Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House*
Judy Meyer	*Representing the Press, appointed by the President of the Senate*
Maureen O'Brien	*Representing broadcasting interests, appointed by the President of the Senate*
Linda Pistner	*Attorney General's designee*
Harry Pringle	*Representing school interests, appointed by the Governor*
Chris Spruce	*Representing the public, appointed by the Speaker of the House*
Ralph Stetson	*Representing newspaper publishers, appointed by the Speaker of the House*

The complete membership list for the Advisory Committee is included as Appendix B.

The Advisory Committee was convened on October 18, 2006 by the Executive Director of the Legislative Council, David E. Boulter. In addition to the October 18th meeting, the Advisory Committee also met on November 13, 2006 and November 28, 2006. All of the meetings were held in the Judiciary Committee Room of the State House in Augusta and open to the public. Each meeting was also accessible through the audio link on the Legislature's webpage. The Advisory Committee also established a webpage at www.maine.gov/legis/opla/righttoknow.htm. Agendas and summaries of the meetings are included on the webpage.

II. RIGHT TO KNOW ADVISORY COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's Freedom of Access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's Freedom of Access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's Freedom of Access laws;

- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's Freedom of Access laws and the public's access to public proceedings and records;

- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- Examining inconsistencies in statutory language and proposing clarifying standard language; and

- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the Freedom of Access laws.

III. RIGHT TO KNOW ADVISORY COMMITTEE PROCESS

Given the broad scope of the Advisory Committee's ongoing duties and responsibilities, the Advisory Committee created three subcommittees to organize and focus its work: 1) Education and Training; 2) Legislative; and 3) Compliance and Resources. Each of the subcommittees was charged with a specific duty as outlined in Title 1, section 411, subsection 6; all of the subcommittees agreed to include the authority to make recommendations for statutory changes as one of its charges as described in Title 1, section 411, subsection 6, paragraph G.

Education and Training Subcommittee. The Education and Training Subcommittee's focus is to serve as a central source and coordinator of information about Maine's Freedom of Access laws; to serve as a resource to support training and education about Maine's Freedom of Access laws; and to support the provision of information about public access to records and proceedings via the Internet. See Title 1, section 411, subsection 6, paragraphs B, C, and D. Judy Meyer is the chair the subcommittee, and the following serve as members: Karla Black, Richard Flewelling, Sheriff Mark Dion, Mal Leary Maureen O'Brien, Linda Pistner, Harry Pringle and Ralph Stetson.

Legislative Subcommittee. The Legislative Subcommittee's focus is to serve as an adviser to the Legislature when legislation affecting public access is proposed; to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; and to examine inconsistencies in statutory language and to propose clarifying standard language. See Title 1, section 411, subsection 6, paragraphs E, F and H. Christopher Spruce is the chair of the subcommittee and the following serve as members: Shenna Bellows, Karla Black, Suzanne Goucher, Mal Leary and Linda Pistner.

Compliance and Resources Subcommittee. The Compliance and Resources Subcommittee's focus is to provide guidance in ensuring access to public records and public proceedings and to help establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; and to review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public. See Title 1, section 411, subsection 6, paragraphs A and J. James T. Glessner is the chair of the subcommittee and the following serve as members: Shenna Bellows, Karla Black, Robert Devlin, Mal Leary and Linda Pistner.

IV. RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS

The Right to Know Advisory Committee makes the following recommendations.

- **Develop training and education materials on the Freedom of Access laws for legislators through the distribution of written materials at the 123rd Legislature's Pre-Legislative Conference and participation in the Committee Chairs and Leads Orientation in January 2007**

One of the Right to Know Advisory Committee's statutory responsibilities is to serve as a resource to the Legislature and its committees. The Advisory Committee believes it is very important for all of Maine's elected legislators to be reminded of the purposes of the Freedom of Access laws as they begin their two years of legislative service. With the permission of the Legislative Council, the Advisory Committee put together a written presentation for legislators introducing them to the Right to Know Advisory Committee and its purposes and providing a basic overview of Maine's Freedom of Access laws, especially as it applies to legislative proceedings. The written packet was distributed to all legislators during the 123rd Legislature's Pre-Legislative Conference, December 4th - 6th. The documents are intended to provide legislators with basic information about the importance of the Freedom of Access laws as well as their responsibility under the laws with regard to their constituents and the public in general. The packet included brief summaries of the Freedom of Access laws, the responsibilities of the Right to Know Advisory Committee and a list of the members, and a written copy of the Frequently Asked Questions and the corresponding answers that are found on Maine's exemplary Freedom of Access webpage: www.maine.gov/foaa. A copy of the packet is included as Appendix C. In addition, the Advisory Committee will conduct an informal question and answer session on the Freedom of Access laws for the Orientation for Committee Chairs and Leads tentatively planned for January 16, 2007. The Advisory Committee hopes to develop more opportunities for

training and discussion about Maine's Freedom of Access laws with legislators and other public officials in the future.

- **Establish an internship with the University of Maine Law School to assist the Advisory Committee with the review of public records exceptions.**

Under current law (Title 1, section 432), the Right to Know Advisory Committee is charged with evaluating existing public records exceptions and making recommendations to the Legislature as to whether the exception should be repealed, modified or remain unchanged. According to a schedule set out in the law, the Advisory Committee must review the exceptions in certain titles of the Maine Revised Statutes on a biennial basis and complete its review by 2014. The public record exceptions contained in Titles 1-8, 9-A and 9-B are to be reviewed in 2008. To assist the Advisory Committee with the review, the Advisory Committee has submitted an internship proposal to the University of Maine School of Law seeking two law student interns for the 2007 Spring Semester. The interns are expected to undertake the following tasks: (1) identify the public records exceptions in Titles 1-8, 9-A and 9-B; (2) gather pertinent legislative history on the identified exceptions; (3) review the information provided by the government agencies that administer or apply the exceptions, as well as that provided by other stakeholders and prepare an outline of any issues raised with respect to the exceptions; and (4) participate, to the extent that schedules permit, in the meetings of the Advisory Committee or its subcommittees in which review of the exceptions is conducted. Supervision of the interns' work will be provided by Linda Pistner, Chief Deputy Attorney General. In addition, the work will be under the general supervision of the Chair of the Advisory Committee, State Senator Barry Hobbins.

- **Establish a Public Access Ombudsman position within the Attorney General's Office**

The Advisory Committee has unanimously endorsed the establishment of a Public Access Ombudsman, a funded half-time position within the Office of the Attorney General. The Committee has recommended to the Governor that funding for the position be included in the Governor's proposed fiscal year 2007-2008 budget currently being developed for presentation to the Legislature in early January. If funding for the position is not included in the proposed budget, the Advisory Committee supports the introduction of separate legislation creating the Ombudsman position.

The Advisory Committee believes that an Ombudsman is necessary to educate and assist state agencies, local governments and the public with regard to understanding Maine's Freedom of Access laws. Based on the anecdotal information provided about the Freedom of Access requests received by agencies and the concerns raised by advocates, the Advisory Committee believes that funding such a position will, in the long run, lead to greater awareness and compliance with the Freedom of Access laws and generate greater efficiencies and cost savings for state agencies asked to respond to requests for access to public records and proceedings.

The Advisory Committee has developed draft statutory language and a financial estimate for funding a half-time position. Based on the draft, an annual cost of less than $60,000 is expected. The draft language and budget estimate is included as Appendix D. Under the proposal, the

Ombudsman will be the link between the public and the governmental agency when there is misunderstanding, confusion or dispute over access to public records and proceedings. The Ombudsman will respond to questions, help determine what records or information must be accessible and help determine how agencies can best provide access to public records. The Ombudsman will be available to help information requestors narrow their requests to relevant and helpful documents, reducing unnecessary work and frustration on all sides of the question. The Ombudsman will also have the authority to issue advisory opinions. We envision that the Ombudsman will work in coordination with the Right to Know Advisory Committee to develop training and educational sessions and materials for agencies and public officials as well as the public. The Ombudsman will also collect data about the types of questions and complaints and report that information to the Governor, the Legislature and the Advisory Committee for use in formulating proposed changes in law and practice.

- **Recommend mandatory training for certain "chief" elected officials regarding the Freedom of Access laws**

The Advisory Committee supports mandatory training of "chief" elected officials as an important first step toward requiring such training for all public officials. The Advisory Committee believes awareness and basic training on the Freedom of Access laws is important to foster a deeper understanding among public officials about the people's right to know and the role of citizens in Maine's system of open government. Based on feedback from the Chiefs of Police Association and a survey of police departments that are required to have a policy and conduct basic FOA training, the Advisory Committee believes that the benefits of training far outweigh any burdens. While the ultimate goal is to mandate training for all public officials, the Advisory Committee does not believe that recommendation is feasible at this time. Although some questions and issues about the content and the process of the training are not resolved, the Advisory Committee recommends that certain elected officials (those who are policy makers: selectmen, county commissioners, city council members, those who make budget decisions, etc.) be required to complete a training program on the State's Freedom of Access website beginning January 1, 2008.

Under the Advisory Committee's proposal, elected officials would be required to read training materials developed by the Right to Know Advisory Committee and Attorney General's Office on the Freedom of Access laws, including the requirements for both open meetings and access to public records. Elected officials would self-certify that the training requirements have been met by sending an e-mail confirmation that the training has been completed. While all elected officials serving in office on January 1, 2008 would be required to complete the training within a certain period of time, newly elected officials subject to the requirement must take the online training course within 90 days of being sworn into their office. The Advisory Committee discussed the possibility of including in the draft language a provision permitting an elected official to use the completion of another relevant training program on the Freedom of Access laws to satisfy the training requirement. Although the Advisory Committee did not reach a final conclusion, the Advisory Committee encourages the legislature and the Judiciary Committee to consider including such a provision. Draft language to implement this recommendation is included as Appendix E.

- **Conduct a survey of state agencies, officials and the public to solicit feedback and comments on Freedom of Access issues**

The Advisory Committee is interested in public officials' experiences with the Freedom of Access laws, particularly any compliance issues officials experience when responding to requests for access to public records. The Advisory Committee is seeking feedback on practical problems that may affect compliance with the law and suggestions for recommendations of statutory changes and best practices. The Advisory Committee has developed a survey on the Freedom of Access laws to be made available to all State agency contacts and all other governmental officials through cooperating organizations such as the Maine Municipal Association and Maine School Management Association. The Advisory Committee also supports making the survey available to the public through the website. The Advisory Committee members will make known the opportunity for the public to comment through a press release. The surveys may be returned anonymously. A copy of the survey is included as Appendix F. Once the surveys are returned, the Advisory Committee will analyze the results to develop recommendations for statutory and other public policy changes for the next legislative session.

V. FUTURE PLANS

Starting in 2007, the Right to Know Advisory Committee is required to meet at least four times a year. Throughout the upcoming Legislative Session, the Advisory Committee will provide assistance, mostly through the Legislative Subcommittee, to the Judiciary Committee specifically and the Legislature generally relating to proposed legislation affecting public access and new public records exceptions. During the 2007 interim the Advisory Committee will be reviewing and evaluating existing public records exceptions (Titles 1-8, 9-A and 9-B), with an eye to making recommendations about the existing public records exceptions to the Judiciary Committee in January 2008. The Advisory Committee may also develop additional recommendations for statutory changes through an analysis of the survey results from state agencies, public officials and the general public relating to best practices and compliance with the Freedom of Access laws. Finally, the Advisory Committee will work with the Governor and the Legislature to fully implement the recommendations contained herein—its first annual report.

APPENDIX A

Authorizing Legislation, Public Law 2005, Chapter 631

CHAPTER 631

H.P. 1503 - L.D. 2111

An Act To Implement the Recommendations of the Freedom of Access Advisory Committee

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §411 is enacted to read:

§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

2. Membership. The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and

M. The Attorney General or the Attorney General's designee.

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and who to contact for specific inquiries;

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as who to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics;

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and

K. May undertake other activities consistent with its listed responsibilities.

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of

the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

Sec. 2. 1 MRSA §431, sub-§3 is enacted to read:

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

Sec. 3. 1 MRSA §432, as enacted by PL 2003, c. 709, §3, is amended to read:

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee ~~shall~~ may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

2. Process of evaluation. According to the schedule in section ~~434~~ 433, the ~~review~~ advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The ~~review committee shall use the~~ following criteria ~~to determine~~ apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the exception;

C. Whether federal law requires a record to be confidential;

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

3. Assistance from committees of jurisdiction. The ~~review~~ advisory committee ~~shall~~ may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The ~~review~~ advisory committee may hold ~~joint~~ public hearings ~~with~~ after notice to the appropriate committees of jurisdiction. ~~The review committee shall notify the appropriate committees of jurisdiction concerning work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.~~

Sec. 4. 1 MRSA §433, sub-§1, as enacted by PL 2003, c. 709, §3, is repealed.

Sec. 5. 1 MRSA §433, sub-§§2 and 3 are enacted to read:

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following Titles are scheduled for review in 2008:

(1) Title 1;

(2) Title 2;

(3) Title 3;

(4) Title 4;

(5) Title 5;

(6) Title 6;

(7) Title 7;

(8) Title 8;

(9) Title 9-A; and

(10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

(1) Title 10;

(2) Title 11;

(3) Title 12;

(4) Title 13;

(5) Title 13-B;

(6) Title 13-C;

(7) Title 14;

(8) Title 15;

(9) Title 16;

(10) Title 17;

(11) Title 17-A;

(12) Title 18-A;

(13) Title 18-B;

(14) Title 19-A;

(15) Title 20-A; and

(16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

(1) Title 22;

(2) Title 23;

(3) Title 24;

(4) Title 24-A; and

(5) Title 25.

D. Exceptions codified in the following Titles are scheduled for review in 2014:

(1) Title 26;

(2) Title 27;

(3) Title 28-A;

(4) Title 29-A;

(5) Title 30;

(6) Title 30-A;

(7) Title 31;

(8) Title 32;

(9) Title 33;

(10) Title 34-A;

(11) Title 34-B;

(12) Title 35-A;

(13) Title 36;

(14) Title 37-B;

(15) Title 38; and

(16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

Sec. 6. 1 MRSA §434, sub-§2-A are enacted to read:

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

Sec. 7. 5 MRSA §12004-J, sub-§14 is enacted to read:

14. Freedom of Access Advisory	Right To Know and Ex-Committee	Legislative Per Diem penses for Legislators and Expenses Only for Certain Members	1 MRSA §411

Sec. 8. Appropriations and allocations. The following appropriations and allocations are made.

LEGISLATURE

Legislature 0081

Initiative: Provides a base allocation of $500 in fiscal year 2006-07 in the event outside funding is received to fund certain expenses of the Right To Know Advisory Committee.

OTHER SPECIAL REVENUE FUNDS	**2005-06**	**2006-07**
All Other	$0	$500
OTHER SPECIAL REVENUE FUNDS TOTAL	$0	$500

G:\STUDIES-2006\Right to Know\PUBLIC631.doc (8/16/2006 2:43:00 PM)

APPENDIX B

Membership List, Right to Know Advisory Committee

Right to Know Advisory Committee

P.L. 2005, Chapter 631

Tuesday, December 19, 2006

Appointment(s) by the Governor

Karla Black
161 Pleasant Street
Richmond, ME 04357

Representing State Government Interests

Richard P. Flewelling
P.O. Box 244
South Freeport, ME 04078

Representing Municipal Interests

Harry Pringle
Drummond Woodsum & MacMahon
245 Commercial St PO Box 9781
Portland, ME 04104-5081
207 772-1941

Representing School Interests

Appointment(s) by the President

Sen. Barry J. Hobbins
22 Glenhave Circle
Saco, ME 04072
207 282-5985

Senate Member of Judiciary Committee

Shenna Bellows
Maine Civil Liberties Union
401 Cumberland Ave.
Portland, ME 04101
207 774-5444

Representing the Public

Robert Devlin
Kennebec County Administrator
125 State Street
Augusta, ME 04330
207 622-0971

Representing County or Regional Interests

Mark Dion
Cumberland County Sheriff's Department
36 County Way
Portland, ME 04102
207 774-1444

Representing Law Enforcement Interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400
207 689-2902

Representing the Press

Maureen O'Brien
WCSH 6
1 Congress Square
Portland, ME 04101
207 828-6666

Representing Broadcasting Interests

Appointment(s) by the Speaker

Rep. Deborah L. Simpson
551 Turner Street
Auburn, ME 04210
207 777-1379

House Member of the Judiciary Committee

Suzanne Goucher
ME. Assoc. of Broadcasters
69 Sewall Street Suite 2
Augusta, ME 04330
207 623-3870

Representing Broadcasting Interests

Mal Leary
Capitol News Service
17 Pike Street
Augusta, ME 04330
207 621-2384

Representing a Statewide Coalition of Advocates of Freedom of Access

Chris Spruce
c/o Island Housing Trust
PO Box 851
Mount Desert, ME 04660
207 667-3186

Representing the Public

Ralph Stetson
295 Minot Avenue
Auburn, ME 04210
207 233-0891

Representing Newspaper Publishers

Attorney General

Linda Pistner
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333
207 626-8800

Designee

Chief Justice

James T. Glessner
State Court Administrator
PO Box 4820
Portland, ME 04112
207 822-0792

Member of the Judicial Branch

Staff:

Peggy Reinsch 287-1670
OPLA

Colleen McCarthy Reid 287-1670
OPLA

APPENDIX C

Freedom of Access Laws Packet Distributed to 123rd Legislature

HON. BARRY J. HOBBINS, CHAIR
HON. DEBORAH L. SIMPSON
SHENNA BELLOWS
KARLA BLACK
ROBERT DEVLIN
MARK DION
RICHARD FLEWELLING
JAMES T. GLESSNER

SUZANNE GOUCHER
MAL LEARY
JUDY MEYER
MAUREEN O'BRIEN
LINDA PISTNER
HARRY PRINGLE
CHRIS SPRUCE
RALPH STETSON

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

TO: Senators and Representatives, 123rd Maine Legislature
FROM: Right to Know Advisory Committee
DATE: December 4, 2006

Congratulations on your election to the 123rd Maine Legislature!

The Right to Know Advisory Committee was created by the Legislature and charged with ensuring the integrity of the Freedom of Access laws and their underlying principles. We would like to take this opportunity to provide a quick introduction to the Freedom of Access laws as they apply to legislators and committees, the Right to Know Advisory Committee and its role and responsibilities. We have assembled this packet of documents to provide you with basic information about the importance of the Freedom of Access laws as well as your responsibility under the laws with regard to your constituents and the public in general.

This packet contains the following:

- A brief summary of the responsibilities of the Right to Know Advisory Committee and a list of the members;
- A summary of the Freedom of Access laws as they apply to you as legislators and legislative committee members;
- A written copy of the Frequently Asked Questions and the corresponding answers that are found on Maine's exemplary Freedom of Access webpage: www.maine.gov/foaa; and
- A collection of letters from Advisory Committee members that we hope illustrates the broad coalition of support that is the foundation of the Advisory Committee.

One of the Right to Know Advisory Committee's responsibilities is to serve as a resource to the Legislature and its committees. We hope to be providing more opportunities for training and discussion about Maine's Freedom of Access laws as time allows. We formally offer our assistance in your work, and will endeavor to make ourselves available to assist you when called upon.

Please contact us with your questions or comments. The Right to Know Advisory Committee's website is http://www.maine.gov/legis/opla/righttoknow.htm. Thank you.

THE RIGHT TO KNOW ADVISORY COMMITTEE

The Right to Know Advisory Committee is an on-going advisory council, created by Public Law 2005, chapter 631, with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's Freedom of Access laws.

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's Freedom of Access laws. The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the Freedom of Access laws.

The Right to Know Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's Freedom of Access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's Freedom of Access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's Freedom of Access laws and the public's access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- Examining inconsistencies in statutory language and proposing clarifying standard language; and
- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records.

Right to Know Advisory Committee
http://www.maine.gov/legis/opla/righttoknow.htm
State House Station 13, Augusta, Maine 04333
Staff: Office of Policy and Legal Analysis (207) 287-1670

The Right to Know Advisory Committee members are:

Sen. Barry Hobbins Chair	*Senate member of Judiciary Committee, appointed by President of the Senate*
Rep. Deborah Simpson Vice Chair	*House member of Judiciary Committee, appointed by Speaker of the House*
Shenna Bellows	*Representing the public, appointed by the President of the Senate*
Karla Black	*Representing State Government interests, appointed by the Governor*
Robert Devlin	*Representing county or regional interests, appointed by the President of the Senate*
Sheriff Mark Dion	*Representing law enforcement interests, appointed by the President of the Senate*
Richard Flewelling	*Representing municipal interests, appointed by the Governor*
James T. Glessner	*Member of the Judicial Branch*
Suzanne Goucher	*Representing broadcasting interests, appointed by the Speaker of the House*
Mal Leary	*Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House*
Judy Meyer	*Representing the Press, appointed by the President of the Senate*
Maureen O'Brien	*Representing broadcasting interests, appointed by the President of the Senate*
Linda Pistner	*Attorney General's designee*
Harry Pringle	*Representing school interests, appointed by the Governor*
Chris Spruce	*Representing the public, appointed by the Speaker of the House*
Ralph Stetson	*Representing newspaper publishers, appointed by the Speaker of the House*

Please visit Maine's Freedom of Access webpage
http://www.maine.gov/foaa/index.htm
for more information about Maine's Freedom of Access laws,
including Frequently Asked Questions.

MAINE'S FREEDOM OF ACCESS LAW AND THE CONDUCT OF THE BUSINESS OF THE LEGISLATURE

A Summary of Legislative Issues

Prepared by the Right to Know Advisory Committee
December 2006

The Maine Freedom of Access law requires governmental entities to conduct public business in the open and to provide access to public records. Legislative meetings and records are subject to the law and must be open to the public, with some limited exceptions set forth in the law.

Intent of the Freedom of Access Law

According to the Maine Freedom of Access law, it is the intent of the Legislature that "actions [involving the conduct of the people's business] be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly." The Freedom of Access law, found in Title 1 of the Maine Revised Statutes, chapter 13, applies to most governmental entities, including the Legislature.

Public Proceedings

Under state law, all meetings of the Legislature, its joint standing committees and legislative subcommittees are public proceedings. A legislative subcommittee is a group of 3 or more committee members appointed for the purpose of conducting legislative business on behalf of the committee.

The public must be given notice of public proceedings and must be allowed to attend. Notice must be given in ample time to allow the public to attend and in a manner reasonably calculated to notify the general public. The public is also allowed to record the proceedings as long as the activity does not interfere with the orderly conduct of the proceedings.

Limited Exception to Public Proceedings (Executive Sessions)

In very limited situations, joint standing committees may hold executive sessions to discuss certain matters. State law is quite specific as to those matters that may be deliberated in executive sessions. The executive session must not be used to defeat the purpose of the Act, which is to conduct the people's business in the open.

The permitted reasons for executive session are set forth in the law, Title 1, section 405 and Title 3, section 156. The reasons most relevant to legislative work are discussion of confidential records and pre-hearing conferences on confirmations.

An executive session may be called only by a public, recorded **vote** of 3/5 of the members, present and voting, of the committee. The **motion** to go into executive session must indicate the precise nature of the business to be discussed and no other matters may be discussed. When the committee has completed its permitted discussions, the committee must adjourn the executive session. A committee may not take any **votes** or other official action in executive sessions.

If a committee wants to hold an executive session, the committee should discuss the circumstances with a lawyer from the Office of Policy and Legal Analysis who can provide the committee with guidance about whether an executive session is permitted and, if so, how to proceed.

Public Records

The Freedom of Access law defines "public records" broadly, to include all material in possession of public agencies, staff and officials if the materials were received or prepared for use in, or relate to, the transaction of public or governmental business. The scope of the definition means that most, if not all, papers and electronic records relating to legislative business are public records. This includes records that may be stored on an individual legislator's personal computer if they relate to or were prepared for use in the transaction of public business, *e.g.*, constituent inquiries, correspondence about legislative matters that is sent from a legislator's home computer.

Time-Limited Exception from Public Disclosure for Certain Legislative Records

However, the Freedom of Access law contains exceptions to the general rule that public records must be made available for public inspection and copying. One exception that is relevant to legislative work allows certain legislative papers to be withheld from public disclosure until the end of the legislative session in which they are being used. The exceptions are as follows:

- Legislative papers and reports (e.g. bill drafts, committee amendments and the like) are not public records until signed and publicly distributed; and
- Working papers, drafts, records, and memoranda used to prepare proposed legislative papers or reports are not public records until the end of the legislative session in which the papers or reports are prepared or considered or to which they are carried over.

The Legislative Council's Confidentiality Policy and the Joint Rules provide guidance to legislative staff about how such records are to be treated before they become public records.

Confidential Records in the Possession of Committees

Committees may also need to be prepared to deal with other types of non-public records, such as individual medical or financial records that are classified as confidential under state or federal law.

If the committee comes into possession of records that are declared confidential by law, the Freedom of Access law allows the committee to withhold those records from the public and to go into executive session to consider them (see discussion above for the proper process).

In addition, the committee should also find out whether there are laws that set specific limitations on, and penalties for, dissemination of those records. The Office of the Attorney General or an attorney from OPLA can help the committee with these records.

Joint Rule 313 also sets forth procedures to be followed by a committee that possesses confidential records.

Legislative Review Of Public Record Exceptions

All exceptions to the public records law are subject to a review process. A legislative committee that considers a legislative measure proposing a new statutory exception must refer the measure to the Judiciary Committee, which will review and evaluate the proposal according to statutory standards, then report findings and recommendations to the committee of jurisdiction.

The Right to Know Advisory Committee reviews exceptions that are already established in statute, and will report findings and recommendations to the Judiciary Committee for consideration during the Second Regular Session.

Maine's Freedom of Access Laws

Frequently Asked Questions (FAQ)

from http://www.maine.gov/foaa/faq/index.shtml

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: http://www.access.gpo.gov/uscode/title5/parti_chapter5_subchapterii_.html or you can find more general information on the Freedom of Information Act at: http://www.firstgov.gov/Topics/Reference_Shelf/FOIA.shtml

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/mainecourts/superior/index.html

In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business." A number of exceptions are specified. (See the discussion of exemptions below.) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. 1 M.R.S.A. § 408 (1).

How do I make a Freedom of Access Act request for a public record?

See the How to Make a Request page on this site.

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain.

For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion.

You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

How long does the agency or official have to respond to my request for information?

The Freedom of Access Act requires agencies or officials to determine within 5 working days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request whether to comply with the request. If a request is denied in whole or in part, the denial must be made in writing within 5 working days of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency of official. 1 M.R.S.A. §§ 408 (1) & (2).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do I have if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/mainecourts/superior/index.html

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself.

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record." 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying." 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving and compiling the requested records. The Act authorizes agencies or officials to charge $10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than $20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds $100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency of official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6).

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given for all "public proceedings" if the proceedings are a meeting of a body or agency consisting of 3 or more persons. The notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: http://www.courts.state.me.us/mainecourts/superior/index.html

Can I record a public proceeding?

Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies

keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

Please visit Maine's Freedom of Access webpage
http://www.maine.gov/foaa/index.htm
for more information and links to statutory text.

Right to Know Advisory Committee
http://www.maine.gov/legis/opla/righttoknow.htm
State House Station 13, Augusta, Maine 04333
Staff: Office of Policy and Legal Analysis 287-1670

State of Maine
123rd Maine Legislature

November 28, 2006

To Members of the 123rd Legislature:

Enclosed please find information on the Right to Know Advisory Committee, as well as Maine's Freedom of Access laws, which govern open meetings and the public's access to information. As elected officials, we have come to understand the importance of earning and maintaining the public's trust. That trust is strengthened and confirmed when the people of the State see that the government, at all levels and in all activities, is working for them.

The Advisory Committee has sent you this information so you will be well-prepared to protect the public's interest, especially in the business of the Legislature. We all share a responsibility to ensure that meetings are properly posted and that the business of the Legislature is transparent for the public.

We hope that the enclosed information will be helpful to you. The Advisory Committee will be making more information about the Freedom of Access laws available to you in the near future. Please contact any member of the Right to Know Advisory Committee with any questions or suggestions.

Thank you.

Sincerely,

Barry J. Hobbins
Barry Hobbins
State Senator

Deborah L. Simpson
Deborah L. Simpson
State Representative

MAINE CIVIL LIBERTIES UNION

November 17, 2006

Dear Members of the 123rd Legislature:

The Maine State Legislature took an important step in establishing the Right to Know Advisory Committee. As a representative of the public, I take seriously the people's right to know. Indeed, the right to know is a necessary corollary to the right of expression guaranteed by the First Amendment. In political matters, the right of expression is meaningless without the right to know.

As Executive Director of the Maine Civil Liberties Union, a membership organization representing almost 3,000 Mainers in defense of the Bill of Rights, I am charged to support the United States Constitution, just as legislators swear to do upon taking office. I encourage each legislator to consider the Constitution in considering the legislation before you, particularly any legislation that contains potential exceptions to Maine's Freedom of Access laws.

The achievement of government of and by the people requires that the people know what the government is doing. We are deeply concerned that government agencies have often arbitrarily suppressed news and information of public interest, thereby narrowing "the marketplace of opinion." Reasonable people can agree on exceptions to protect the privacy of individuals or narrow exceptions granted upon direct relevance to specific security matters. But even these necessary safeguards must not be allowed to serve as a cloak for inefficiencies or unwise or even improper behavior about which the public has the right to know.

It is an honor to serve on this committee. I look forward to working with my fellow members of the committee and to working with each of you to ensure that all of us fulfill our obligations to Mainers to defend and support their right to know, founded in the First Amendment of the United States Constitution.

Sincerely,
Shenna Bellows
Executive Director
Maine Civil Liberties Union

401 Cumberland Ave. • Ste.105 • Portland, Maine 04101 • 207 774-5444 • Fax 207 774-1103

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

JOHN ELIAS BALDACCI
GOVERNOR

November, 2006

Dear Members of the 123rd Maine Legislature:

Congratulations on your election to the 123rd Maine Legislature! Whether you are coming to Augusta for the first time or are returning for another term, I know you will find your experience as a member of our legislature to be both challenging and rewarding.

As you begin your new term in public office, I encourage you to consider the words once written by Justice Hugo Black: "The effective functioning of a free government like ours depends largely on the force of informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees." Although those words first appeared in 1959, they are no less true today. The cornerstone of our representative democracy truly is public participation and the key to an active citizenry is knowledge. To that end, Maine's Freedom of Access laws grant the people of this state a broad right of access to their government by requiring the state's business to be conducted in ways that are open, transparent and accessible.

The State of Maine took two important steps recently to increase public awareness and understanding of the Maine Freedom of Access laws. The first is the launching of a public freedom of access website as part of an ongoing educational effort to inform state employees and the public about the laws. The second is the legislature's establishment of a permanent Right to Know Advisory Committee that serves as a resource on freedom of access issues and is responsible for a broad range of other access-related activities.

As a member of the Right to Know Advisory Committee and a state employee, I cannot overstate the importance and need for government officials to engage in more public discussions about Maine's Freedom of Access laws. For that reason, I encourage you to visit the Freedom of Access website at www.maine.gov/foaa for additional information on the laws and the Right to Know Advisory Committee. More importantly, I encourage you to contact the committee directly if we can be of any assistance to you or your constituents.

Best of luck in the upcoming session.

Regards,

Karla Black
Deputy Legal Counsel

PRINTED ON RECYCLED PAPER

PHONE: (207) 287-3531 (Voice) (207) 287-6548 (TTY) FAX: (207) 287-1034
www.maine.gov

COMMUNITY • COMMUNICATION • COMMITMENT
MAB
MAINE ASSOCIATION OF BROADCASTERS

69 Sewall St., Suite 2
Augusta, Maine 04330
Ph. 207-623-3870
Fax 207-621-0585
www.mab.org

11/6/06

Greetings and congratulations to the members of the 123rd Legislature!

The Maine Association of Broadcasters is pleased and proud to participate in the newly-formed Maine Right to Know Advisory Committee. After two iterations as a temporary study commission, the Committee was finally given life and permanence in the 122nd Legislature. Its overarching mission is to ensure that the people's business is conducted in full public view. .

As we have worked on this and other Right to Know-related legislation in recent years, we have often had to raise the argument that "right to know" does not mean the *media's* right to know, it means the *public's* right to know. While the media are often the conduit between elected officials and the electorate, it is every citizen's right to obtain direct access to the documents and processes of governance.

As you may know, the Legislature in 2003 passed a law requiring that all proposed new public records exemptions undergo a review to determine whether the exemption is warranted. While it is one of the charges of the Right to Know Advisory Committee to assist the Legislature's Committee on Judiciary in this process, other committees of jurisdiction have an invaluable role to play through a preliminary vetting of all legislation that seeks to throw the cloak of confidentiality over public records. The burden should fall on those seeking such confidentiality to make the case for its necessity.

We wish you well as you embark on the important work of the next two years.

Cordially yours,

Suzanne D. Goucher

Suzanne D. Goucher
President & CEO

MAINE MUNICIPAL ASSOCIATION

Legal Services
60 Community Drive
Augusta, Maine 04330-9486
(207) 623-8428
Fax (207) 623-1287

WILLIAM W. LIVENGOOD
REBECCA WARREN SEEL
RICHARD P. FLEWELLING
MICHAEL L. STULTZ
KRISTIN M CHENRY COLLINS
SUSANNE F. PILGRIM

JOSEPH J. WATHEN
(1957-1997)

November 13, 2006

Dear Members of the 123rd Maine State Legislature:

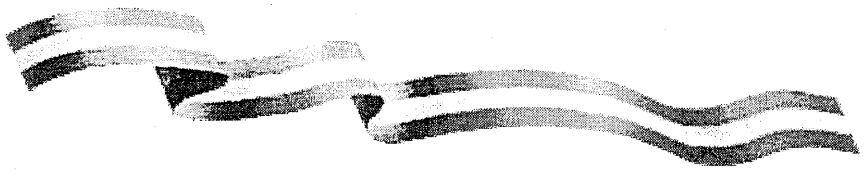
As an attorney for the Maine Municipal Association and a member of the Right to Know Advisory Committee, I want to affirm our organization's strong commitment to the principles of open government as embodied in Maine's Freedom of Access Act or "Right to Know" law.

The Maine Municipal Association is a voluntary membership organization representing the interests of Maine's nearly 500 towns, cities and plantations. In addition to advocating for sound public policies affecting local government, MMA provides a wide variety of membership services, including legal services. Among other things, our legal services program offers local officials both specific advice and general guidance on freedom of access compliance. We do this by a variety of means, including individual consultation, group training and detailed publications and web-based resources.

Recognizing that there can sometimes be legitimate competing interests, MMA has long been a responsible advocate for transparency in local government because we believe that government at all levels is fundamentally the people's business. MMA therefore supports the important work of this Committee and is pleased to be represented on it.

Respectfully,

Richard P. Flewelling, Esq.



Maine Freedom of Information Coalition

ENSURING THE RIGHT OF MAINE'S PEOPLE TO ACCESS GOVERNMENT RECORDS AND MEETINGS.
P.O. Box 232 • Augusta, ME 04332-0232 • info@mfoic.org

Dear Member of the 123rd Maine Legislature:

On behalf of the individuals and groups that make up the Maine Freedom of Information Coalition, congratulations on your election.

Fundamental to democracy is freedom of speech, open meetings of government and access to public records. Mainers have a long history of open government with many towns still holding annual town meetings where open debate and discussion are celebrated.

Mainers also recognized that with change and growth, the long traditions of openness needed protection in law and, in 1959; the Legislature enacted a strong freedom of access law. The law stated all meetings are open and all records are public, unless there is a specific exception.

Since then, lawmakers have passed hundreds of exceptions to the law. In November of 2002, the Maine Freedom of Information Coalition conducted a statewide public records audit to find out how well government agencies compiled with the law. The results were mixed. A follow up audit was conducted in May of 2006 and while there has been some improvement, it indicates there are still compliance problems all across the state.

The Legislature recognized the problems and established a study committee that recommended a more rigorous review of proposed exceptions and a systematic review of all existing exceptions. Lawmakers adopted those proposals in 2003 and in 2006 enacted legislation creating a permanent advisory committee on access issues on which I am privileged to serve

The coalition is ready to assist you on Freedom of Access issues as we all work to assure the people's access to their government.

Sincerely,

Mal Leary
President
Maine Freedom of Information Coalition

Sun Journal
Connecting you with your community

Dear Members of the Maine Legislature,

The Maine Press Association, along with its member newspapers, strongly supports the concept of open access to government and has consistently advocated for adherence to Maine's Freedom of Access Act as we believe it a fundamental right of citizens to be involved with and be informed of the business of government.

The Press Association, which enjoys the support of all seven of Maine's daily newspapers and 24 of its weeklies, has actively joined in the work of the Legislature in recent years to revise and strengthen Maine's so-called right-to-know law. We are committed to continue that work, which is why we are so appreciative of the opportunity to serve on the Right to Know Advisory Committee.

The work of this Committee, which is a relatively young coalition, has already proven its value in serving the interest of Maine citizens and assisting government in meeting its obligations under Maine's FOAA. Over the past several years, this Committee's recommendations to the Judiciary Committee have resulted in establishing fair and reasonable reproduction costs of public records and has also provided government with some financial protection from nuisance FOI requests. Members of this Committee have discussed and evaluated the penalties for violating Maine's FOAA and have thoughtfully considered how best to assist the Judiciary Committee in its work to evaluate the continued need of hundreds of existing FOAA exceptions.

Maine citizens are more likely than the average American to be involved with the government process and this state's public officers and officials are genuinely interested in meeting their obligation to citizens. The Maine Press Association, however, has too often seen and heard of instances in which lack of training or education on the part of the public or government interferes with public trust and government obligations. Our members have seen improvements in this regard in the law enforcement community, which has been required since 2003 to adopt FOI policies and provide training on FOAA. The law enforcement community, which also recognizes that training has enhanced its relationship with citizens, now prides itself on its commitment to citizen access of public records and meetings.

The Maine Press Association believes that additional training and education across local, county and state government will enhance all elected and appointed officials' understanding of the law, better protecting citizens' fundamental right to know. Our membership is eager to assist with that training and education through the work of the Right to Know Advisory Committee and we look forward to working with lawmakers toward that goal.

Sincerely,

Judith L Meyer

Judith Meyer, managing editor/days

104 Park Street • P. O. Box 4400 • Lewiston, Maine • 04243-4400

(207) 784-5411 • toll free 1 800 482-0753 • advertising fax (207) 784-5955 • news fax (207) 777-3436

DrummondWoodsum

Harry R. Pringle
hrpringle@dwmlaw.com

245 Commercial Street
Post Office Box 9781
Portland, ME 04104-5081

(207) 772-1941
(207) 772-3627 Fax
(800) 727-1941

www.dwmlaw.com

ADMITTED IN ME ONLY

John A. Graustein*
Daniel Amory*
Harry R. Pringle*
Richard A. Spencer*
Gerald M. Zelint
Ronald N. Ward*
David J. Backer*
John S. Kaminski*
William L. Plouffe*
Jerrol A. Crouter*
Michael E. High*
Richard A. Shinay*
Bruce W. Smith*
E. William Stockmeyer*
Benjamin E. Marcus*
Melissa A. Hewey*
Eric R. Herlan*†
Jeanne M. Kincaid*†
Gregory W. Sample*
Daniel J. Rose*†
Kaighn Smith, Jr.*
Daina J. Nathanson*
Edward J. Kelleher*
S. Campbell Badger*
Amy K. Tchao*
David S. Sherman, Jr.*
Robert P. Nadeau*
Catherine D. Alexander*
Katherine W. Bubar*†
Brian D. Willing*
John Lisnik, Jr.*†
Aaron M. Pratt*†
James C. Schwellenbach*
Elizabeth D. McEvoy*
Jeffrey T. Piampiano*
Peter C. Felmly*
Jessica M. Emmons*
Jonathan M. Goodman*
Mika K. Reynolds*
Abigail Greene Goldman*

Consultants

Roger P. Kelley
Labor Relations &
Conflict Management

Ann S. Chapman
Policy & Labor Relations

Christopher P. O'Neil
Governmental Affairs

Michael J. Opuda Ph.D.
Special Education

Of Counsel

Harold E. Woodsum, Jr.*
Hugh G. E. MacMahon*
Joseph L. Delafield III*
Robert L. Gips*
Donald A. Kopp*
Diane McCormackt

* Admitted In Maine
† Admitted In New Hampshire

November 9, 2006

Dear Member of the 123rd Legislature:

Writing on behalf of Maine School Management Association and the local school units across the State of Maine that it represents, I am truly honored to be able to serve on the Right to Know Advisory Committee established by the 122nd Legislature.

I am confident that the Right to Know Advisory Committee will be able to build on the accomplishments of the study committees which preceded it. The legislative recommendations of those committees resulted in a number of improvements to the statute, including:

- a clarification that public records must be provided within a "reasonable period of time" rather than within an arbitrary time period;
- the protection of "personal contact information" of public employees; and
- the establishment of a process for reviewing both new and existing statutes to determine whether exceptions to public records should be adopted or continued.

Perhaps most importantly, however, the work of those committees has resulted in better information and training for public officials and employees across Maine on the Freedom of Access statute, a goal that Maine School Management Association wholeheartedly supports.

If Maine School Management Association could be of assistance to you on Freedom of Access issues over the next two years, we would be delighted to be of service.

Very truly yours,

Harry Pringle

Harry R. Pringle

c: Dale Douglass, Executive Director, Maine School Management Association

Admiral Publishing
18 Pleasant Street Suite 333 • Brunswick ME
rgstetson@adelphia.net

November 10, 2006

To Whom It May Concern:

I would like to thank you in advance for your support in helping The Right to Know Advisory Committee in its vital role in upholding the Freedom of Access laws as they apply to all public entities.

I represent the Newspaper Publishers of the State of Maine on this committee.

Thomas Jefferson's thoughts on the importance of newspapers in our democracy is captured in this quote:

"If it were left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." *Thomas Jefferson*

Our role in maintaining freedom in our democratic way of life can not be understated. We play the necessary role of 'Watchdog". In order for us to carry out our role as "watchdogs" of democracy, we must have open access to publicly available information. This open access is the only way we can disseminate information necessary for the citizens to govern themselves. This access is not easy to obtain. Only with constant vigilance and struggle to hold onto open access has it been granted.

Again, thank you in advance for your support.

Ralph Stetson
President
Admiral Publishing

APPENDIX D

Draft Language: Recommendation to Establish Public Access Ombudsman

▫ Proposed recommendation to establish a Public Access Ombudsman position within the Department of Attorney General ---Draft Language

Sec. 1. 5 MRSA §200-I is enacted to read:

§200-I. Public Access Division; Public Access Ombudsman

1. Public Access Division; Public Access Ombudsman. There is created, within the Department of Attorney General, the Public Access Division to assist in compliance with Maine's Freedom of Access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, hereinafter referred to in this section as the "ombudsman," to administer the division.

2. Duties. The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning Maine's Freedom of Access laws in cooperation with the Right to Know Advisory Committee;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the Freedom of Access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the Freedom of Access laws;

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the Freedom of Access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor or requestors and the parties involved; and

E. Make recommendations concerning ways to improve public access to public records and proceedings.

3. Assistance. The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

4. Confidentiality. The ombudsman may access records that a public agency or official believes are confidential in order to make a determination whether the records may be released to the public. Records believed to be confidential by the public agency or official are confidential if those records are in the possession of the ombudsman.

5. Report. Beginning in 2008 and annually thereafter, the ombudsman shall submit a report not later than March 15 of each year to the Legislature and the Right to Know Advisory Committee concerning the activities of the ombudsman for the previous year. The report must include the following information:

A. The total number of inquiries and complaints received;

B. The number of inquiries and complaints received each from the public, the media and public agencies or officials;

C. The number of complaints received concerning each of the following:

(1) Public records;

(2) Public meetings;

E. The number of inquiries and complaints that were resolved;

E. The number of complaints received about each of the following:

(1) State agencies;

(2) County agencies;

(3) Regional agencies;

(4) Municipal agencies;

(5) School administrative units; and

(6) Other public entities;

F. The total number of written advisory opinions issued and pending; and

G. Recommendations concerning ways to improve public access to public records and proceedings.

SUMMARY

This bill establishes the Public Access Ombudsman within the Department of the Attorney General. The ombudsman will provide information and educational materials and programs to the public, as well as public agencies and officials, in cooperation with the Right to Know Advisory Committee. The ombudsman will respond to informal inquiries, resolve freedom of access complaints when possible and issue advisory opinions concerning Maine's Freedom of Access laws. The ombudsman is not permitted to issue an advisory opinion on an issue that is subject of a lawsuit filed under the Freedom of Access laws. The ombudsman must make the advisory opinions available to the public once they are distributed to the persons requesting the advisory opinion and the parties involved. The ombudsman will make recommendations concerning ways to improve public access to public records and public proceedings.

The ombudsman may request the assistance of any public agency or official in carrying out these responsibilities. The ombudsman has the authority to access records and information an agency or

official believes to be confidential to determine if the public may have access. The records and information remain confidential in the possession of the ombudsman.

Beginning in March 2008, the ombudsman will report annually to the Legislature and the Right to Know Advisory Committee regarding the ombudsman's activities and the inquiries and complaints received. The report must also include recommendations concerning ways to improve public access to public records and proceedings.

Revised Ombudsman budget estimate - draft

AAG		
Range 30 step 4		FY08
	start date	7/1/2007
Headcount		0.5
Personal Service		29,110
with benefits		19,538
	PS subtotal	**48,648**
All Other		
	travel	1,700
	dues,printing	3,000
	training	50
	telephone	600
	wan,email,computer & software	2,425
	AO subtotal	**7,775**
Grand Total		**56,423**

APPENDIX E

Draft Language: Recommendation for Mandatory Training of Certain Elected Officials

APPENDIX F

Survey

RIGHT TO KNOW ADVISORY COMMITTEE SURVEY: MAINE'S FREEDOM OF ACCESS LAWS

The Right to Know Advisory Committee, established by the Legislature pursuant to Public Law 2005, chapter 631, is charged with ensuring the integrity of the Freedom of Access laws and their underlying principles. Specifically, the Advisory Committee may make recommendations to the Legislature for changes in the statutes and recommendations to the Governor, the Legislature, the Judicial branch and local and regional governmental entities with regard to best practices for providing access to public records. The Advisory Committee is interested in public officials' experiences with the Freedom of Access laws, particularly any issues officials experience when responding to requests for access to public records. The Advisory Committee is seeking feedback on practical problems and suggestions for recommendations of statutory changes and best practices. Would you please help us by answering the following questions and returning the survey to the Advisory Committee? Please contact our staff if you have questions. All survey responses will be open to public inspection; anonymous responses are welcome. Thank you!

Name (optional) _____

Governmental Entity (optional) _____

1. Please describe any practical problems or issues you have experienced in responding to an individual's request for access to public records under the Freedom of Access laws.

2. Are there one or more particular provisions of the Freedom of Access laws (Title 1 Maine Revised Statutes Chapter 13) that need clarification?

3. Do you have any suggestions or recommendations for changes in the statute or the development of best practices to improve the Freedom of Access laws?

4. Please provide any additional comments.

PLEASE SUBMIT RESPONSE TO
RIGHT TO KNOW ADVISORY COMMITTEE
C/O 13 STATE HOUSE STATION, AUGUSTA, MAINE
OR FAX TO 207-287-1275