

Right to Know Advisory Committee
October 21, 2009
(Draft) Meeting Summary

Convened 12:50 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Shenna Bellows
Karla Black
Robert Devlin
Ted Glessner
Suzanne Goucher
A.J. Higgins
Mal Leary
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

Absent:

Rep. Dawn Hill
Richard Flewelling

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Barry Hobbins convened the Advisory Committee, and asked the members to introduce themselves. Sen. Hobbins welcomed A.J. Higgins who has been appointed to represent radio and broadcasting interests. Sen. Hobbins also outlined the agenda for the meeting.

Legislative Subcommittee Report

Chris Spruce, chair of the Legislative Subcommittee, reported that the subcommittee has no specific recommendations yet, but would continue its discussions of the issues at a meeting on November 10th (*this meeting has been rescheduled to November 17th*). Chair Spruce briefly updated the committee on the status of the issues as follows.

Review of Rep. Dostie's proposed legislation relating to serialized email discussions. The subcommittee acknowledged that the actions described by Rep. Dostie, which prompted her to request the bill, were already a violation of the law's requirement for meetings to be conducted in public. However, subcommittee members do believe that many elected officials may not realize the parameters for electronic communications and decision-making. The subcommittee has asked staff to prepare a revised discussion draft to clarify that elected officials may not make decisions outside of a public meeting and to draft written guidance on the use of email and other electronic communication media by elected officials for possible inclusion in the Frequently Asked Questions section of the FOAA website.

Requests for bulk electronic data. The subcommittee met with Dick Thompson, Chief Information Officer, and has asked for more information related to the actual cost associated with fulfilling requests for bulk electronic data and the categories of personal information included in electronic databases containing public records. The subcommittee will also review the current

security breach notification law, which does apply to governmental entities, to determine if that law may be amended to address personal information included in electronic databases.

Public Records Exceptions Subcommittee Report

Shenna Bellows, chair of the Public Records Exceptions Subcommittee, provided an update on the subcommittee's activities and noted the chart prepared by staff outlining the actions taken to date on the existing exceptions subject to review. Ms. Bellows reported that the subcommittee has tabled 3 issues which will be discussed further at the next subcommittee meeting: 1) the exceptions relating to juror information (which were discussed earlier in the day with Supreme Court Justice Andrew Mead); 2) the issue of standard language to address the confidentiality of information held by review panels, including the domestic abuse homicide review panel; and 3) the issue of standard language to protect information submitted in requests for technical and financial assistance.

Review of Revised Discussion Drafts

❖ Use of Technology in Public Proceedings

Staff reviewed the discussion draft and outlined the revisions. Mal Leary inquired whether members also had concerns similar to those raised by Richard Flewelling in his email comments about the requirement that a quorum be physically present before a member of a body could use technology to participate in a meeting. Although he was not commenting on behalf of the Maine School Management Association, Harry Pringle said he had some personal reservations about the proposal and would not be in favor of allowing this for routine meetings. Mr. Pringle expressed support for the emergency exception and thought that provision could stand on its own, but raised concerns about the impact of other provisions. Mr. Pringle thought the proposal lacks a standard to determine when a member may participate remotely and wondered whether this might be an invitation for members not to attend meetings on a regular basis. He also felt that the draft should be clarified because it does not adequately address whether the public has the same means of access as the members of a body to the participation of a member who participates in the meeting remotely. Mr. Leary pointed out that the draft does not mandate that remote participation be permitted, but provides an option.

Judy Meyer said she would not be in favor of loosening the quorum requirement as the ideal is for everyone to gather together for a meeting; the draft is intended to allow remote participation in the rare cases where it might be necessary and is not an invitation to skip meetings. Linda Pistner agreed that a quorum is necessary to maintain a core group for a meeting. Ted Glessner echoed the comments of Ms. Meyer and Ms. Pistner and said that the quorum requirement is also a key component for providing the public access. Mr. Glessner stated he viewed the draft as a small change from the status quo.

The Advisory Committee agreed not to change the quorum requirement, but asked staff to clarify the language relating to the public's access to the meeting. Staff will prepare a revised draft for additional review and comment at the next meeting.

❖ Social Security Numbers

Staff reviewed the discussion draft and outlined the revisions. Staff also noted that concerns have been raised from some state agencies, including the Department of Professional and Financial

Regulation and the Department of Education, about how the proposed draft might affect their current practices and policies. Staff suggested that the Advisory Committee may want to gather comments from other state agencies by sharing the draft with the Freedom of Access contacts in each state agency. The Advisory Committee tabled the discussion of the draft until the next meeting and asked staff to solicit comments on the draft from state agencies. Chris Spruce requested that agencies be asked to specify their concerns about how the draft proposal would affect their operation and to propose amendments to the draft in writing. Suzanne Goucher added that agencies should also be asked to explain why it is necessary for them to collect and use social security numbers.

❖ ***Taking and Keeping Minutes of Public Proceedings***

Staff reviewed the discussion draft and outlined the revisions. Mal Leary noted that the subcommittee's intent in developing the draft was to require government entities to make a basic record of its actions. Mr. Leary acknowledged that the subcommittee discussed the potential for the proposal to be considered a municipal mandate as noted by Richard Flewelling in his email comments on the draft. Harry Pringle raised his concerns with the draft, including that the draft may go farther than necessary in requiring subcommittees to make a record of its meetings and the practical burdens that will result. Bob Devlin agreed with Mr. Pringle and asked how the proposal might be clarified. Staff noted that the current law defines public proceeding, but doesn't make a distinction between the type of meeting. Judy Meyer stated her belief that if public notice of the meeting is required by law, then the law should require a record or minutes of that meeting. Chris Spruce expressed concern over the interpretation of the term "promptly" and suggested that the draft be amended to require that the record of the meeting be made "within a reasonable period of time" to be consistent with section 408's requirement for when a body or official must respond to a request for public records. Suzanne Goucher wondered when minutes became "official" and whether that might be the determining point for making minutes available to the public. Harry Pringle explained that he believes that minutes become a public record at the time they are produced even if in draft form and, as such, must be made available to the public.

Mr. Spruce proposed that the Advisory Committee accept the draft proposal as amended to reflect that the record be made within a reasonable period of time and clarify that the record of a meeting must be made only if public notice of the meeting is required. The Advisory Committee voted to accept the draft proposal as amended by a vote of 11-1.

❖ ***Classification of Records of Advisory Panels Conducting Reviews of Internal Activities of Public Agencies or Officials***

Staff reviewed the discussion draft and outlined the revisions. Harry Pringle expressed his opposition to the draft. If the draft is intended to respond to the Moore v. Abbott case, Mr. Pringle said the draft does not address the key issue in that case which was access to working papers not the report. In Mr. Pringle's view, any written report as a result of an internal review is a public record unless the report or portions of the report are otherwise confidential by law; the draft prescribes the format of the report and requires the identification of individuals and would impede the ability of agencies or officials to conduct investigations. Judy Meyer pointed out the draft is intended to address the activities of private individuals acting on behalf of government officials and was not intended to address intra-agency activities or investigations. Mal Leary noted the subcommittee wanted to make sure that any report is made public and is focused on concerns about government functions being farmed out to private individuals. Mr. Pringle responded that the draft as written does not address the perceived problems since the report itself is public and

wondered whether the real intent is to make the discussions of outside entities public. Mr. Leary agreed that the draft as written may have missed the mark, but that the subcommittee was trying to address a legitimate concern and gap in the law. The current law applies to advisory committees and task forces created by law or Executive Order, but it is not clear for other groups. Mr. Leary said the subcommittee was not interested in making the meetings of these groups public, but wanted to focus on the report.

Chris Spruce suggested there may be some overlap with the Public Records Exception Subcommittee's discussion of review panels and the confidentiality of information and records held by the review panels. Mr. Spruce recommended that the two issues might benefit from being discussed together. The Advisory Committee referred the issue to the Public Records Exception Subcommittee for further discussion by a vote of 11-1.

Update: Transparency of Information Related to State Government Contracts and Spending

Dick Thompson, Chief Information Officer, has not yet completed the timeline for making State spending and contract information available on Maine.gov website. Mr. Thompson will be asked to provide that information in advance of the next meeting.

Review of Draft Letters ---Advisory Committee Recommendations and Comments

❖ *LD 1353, An Act Regarding Salary Information for Public Employees*

The Advisory Committee approved the draft letter to the Judiciary Committee reflecting the Advisory Committee's comments on LD 1353.

❖ *Public Notice Requirements for rulemaking, Public Law 2009, chapter 256 (LD 1271)*

The Advisory Committee approved the draft letter to the Maine Press Association with one revision suggested by Linda Pistner: to add language stating that the Advisory Committee is not commenting or taking a position on future legislation.

Other Matters

❖ *Definition of "elected official"*

Judy Meyer said she had been asked about the definition of "elected official" under the Freedom of Access laws and when the FOA laws apply to an elected official: Is it upon swearing in or after the election? Concerns were raised to Ms. Meyer about private meetings of individuals (held after an election but before the individuals were sworn into office) being used to set agendas and discuss government matters. The Advisory Committee briefly discussed the issue, but declined to add it to the agenda for the next meeting.

❖ *Bills in the Second Regular Session*

Mal Leary asked that the next meeting include on the agenda a discussion of any bills expected in the Second Regular Session related to Freedom of Access issues.

❖ *Law School Extern*

Karla Black asked about the status of the Law School Extern. Staff will follow up with the Law School about making a proposal for the Spring Semester.

Next Meeting

The next meeting of the full Advisory Committee has been scheduled for **Tuesday, December 1st at 12:30 pm** in Room 438, State House.

Future Subcommittee meetings are scheduled for:

- ◆ Legislative Subcommittee, Tuesday, November 17, 2009, 10:30 am; and
- ◆ Public Records Exception Subcommittee, Tuesday, November 17, 2009, 12:30 pm.

The meeting adjourned at 2:35 p.m.

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

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