

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
October 6, 2015
Meeting Summary

Convened 10:23 a.m., Room 438, State House, Augusta

Present:

Sen. Burns
Rep. Monaghan
Luke Rossignol
Linda Pistner

Staff:

Craig Nale
Henry Fouts

Introductions

The meeting was called to order and all members introduced themselves.

Election of Chair

Sen. Burns nominated Rep. Monaghan as Chair of the Subcommittee, which motion was seconded by Ms. Pistner and unanimously approved by all those present.

Public records exceptions review discussion

Staff reviewed the statutory review criteria with the group, as well as the review process generally. Staff had identified the relevant statutory provisions up for review by the end of 2016. Surveys were sent to the public bodies involved in administering each exception, and the results of completed surveys were brought to the group for its consideration and discussion. Agency representatives were invited to attend in person.

During this meeting the Subcommittee focused on public records exceptions concerning the Gambling Control Board (within the Department of Public Safety), as well as on various provisions concerning the Department of Agriculture, Conservation and Forestry and the Department of Inland Fisheries and Wildlife.

The Subcommittee reviewed agency survey results and input and discussed each of the following items, without taking a formal vote on any recommendation. These tabled items will be addressed in subsequent meetings.

(Note: Reference numbers below refer to the spreadsheet of public records exceptions created by staff and distributed at this meeting. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.)

Ref# 20 - 27: 8 MRSA §1006, sub-§1, ¶¶A-H

Mr. Rossignol suggested approving the status quo with respect to this item, given the review criteria and the recommendation of the Gambling Control Board. Ms. Pistner noted the tension in this suitability determinations vis-a-vis the public rights – this is a broad confidentiality provision as a practical matter. The devil is in the details when the provision is applied document to document. It was noted that these exceptions are also very important to third parties that are submitting this information.

Sen. Burns expressed concerns about the payback percentages provision, wondering if there was any public right to this information, beyond the proprietary information. Does the consumer have the right to know the general payback percentage? What is the casino obligation in this regard?

Ms. Pistner noted that there are extensive rules governing gambling and machine paybacks. The public can be certain about a minimum payback percentage, but casinos may increase payback percentages beyond this.

The Subcommittee agreed to invite Mr. Fleming of the Gambling Control Board to come help answer some of these questions.

These items were tabled.

Ref# 28: 8 MRSA §1006, sub-§3

The Subcommittee also wished to get more information from Mr. Fleming on this item. Additionally, members expressed interest in hearing from casino industry representatives since this, and other Gambling Control Board items, deal mostly with information gained from these third parties.

This item was tabled.

Ref# 29: 8 MRSA §1006, sub-§4

The Subcommittee also wished for more clarification from Mr. Fleming on this Gambling Control Board provision.

This item was tabled.

Ref# 30: 8 MRSA §1007, sub-§2

Another Gambling Control Board provision - it was noted that without this provision it is unlikely that other jurisdictions would share information with the Board.

This item was tabled.

Ref# 31 & 32: 8 MRSA §§1008, 1052

After brief discussion, this item affecting documents within the control of the Gambling Control Board was tabled.

Ref# 35: 12 MRSA §8005, sub-§1 (Dept. of Agriculture, Conservation and Forestry)

The Subcommittee wished to reach out to stakeholders affected by this landowner privacy provision before making a decision on this item.

This item was tabled.

Ref# 36: 12 MRSA §8005, sub-§1 (Dept. of Inland Fisheries and Wildlife)

After brief discussion, this item relating to forest management plans was tabled.

Ref# 37: 12 MRSA §8005, sub-§4

Rep. Monaghan remarked that she saw no issues with continuing this public records exception relating to information held by the Maine Forest Service.

After brief discussion, this item was tabled.

Ref# 38: 12 MRSA §10110

Members noted feelings of general support for continuation of confidentiality for certain fishing records, but that more discussion would be needed. There was a request for clarification on how a member of the public signified their wish for the Department of Inland Fisheries and Wildlife to keep their address confidential – is it an opt-in or opt-out type system?

Ref# 39: 12 MRSA §12551-A, sub-§10

After brief discussion, this item relating to email addresses held by the Department of Inland Fisheries and Wildlife was tabled.

Adjournment

Rep. Monaghan adjourned the meeting at 11:43 a.m.

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
November 13, 2015
Meeting Summary

Convened 10:00 a.m., Room 208, Cross State Office Building, Augusta

Present:

Sen. Burns
Rep. Monaghan
Luke Rossignol
Linda Pistner
Mary Ann Lynch

Staff:

Craig Nale
Henry Fouts

Introductions

The meeting was called to order and all members introduced themselves.

Public records exceptions review discussion

Additional results of completed surveys from the public bodies administering the relevant public records exceptions were brought to the group for its consideration and discussion. As always, agency representatives had been invited to attend in person. During this meeting the Subcommittee reviewed the public records exceptions further detailed below.

(Note: Reference numbers below refer to the spreadsheet of public records exceptions created by staff and distributed at this meeting. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.)

Ref# 20 - 27: 8 MRSA §1006, sub-§1, ¶¶A-H, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information; would be unwarranted invasion of privacy of key executive, gaming employee or another person; key executive or gaming employee compensation; financial, statistical and surveillance information related to the applicant; creditworthiness, credit rating or financial condition of person or project; information from other jurisdictions conditioned on remaining confidential; information designated confidential under federal law; specific personal information, including Social Security number, of any individual

Ref# 28: 8 MRSA §1006, sub-§3, relating to records and information developed as part of a suitability requirement to select an operator of a central site monitoring system, held by the Gambling Control Board and the Department of Public Safety

Ref# 29: 8 MRSA §1006, sub-§4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Department of Public Safety

Ref# 30: 8 MRSA §1007, sub-§2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement

Ref# 31: 8 MRSA §1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052

Ref# 32: 8 M.R.S. §1052, relating to reports, information or records compiled by the Gambling Control Board and Department of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive

The Subcommittee voted 5-0 to recommend no modification to all of the above provisions concerning the Gambling Control Board. The group reviewed the tabled Gambling Control Board exceptions and earlier questions posed by the Subcommittee regarding the regulation and publicly accessible slot machine payout information. Staff reviewed relevant statutory language and relayed information communicated by Mr. Fleming, the Executive Director of the Gambling Control Board, as well as input from the Oxford and Bangor casinos. Additionally, Mike Mahoney appeared before the Subcommittee on behalf of the Bangor casino regarding the public records exceptions and answering Subcommittee questions regarding the industry's data privacy needs and existing regulatory oversight of slot machine payout data in particular. He noted that these 2005 public records exceptions had been well vetted by the Judiciary Committee, balancing the public's right to know with the casinos' legitimate business needs to keep some sensitive information confidential. Ms. Pistner corroborated that the Judiciary Committee had worked hard to narrow these exceptions, noting that this is best left as a policy decision for the Legislature and that she felt confident in the current process.

Ref# 5: 1 M.R.S. §402, Sub-§3, ¶P, relating to geographic information regarding recreational trails on private land held by the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry

The Subcommittee voted 5-0 to recommend no modification. The Department of Agriculture, Conservation and Forestry supports this exception – without it landowners may not be willing to permit a recreational trail system on their land.

Ref# 43: 20-A M.R.S. §13004, Sub-§2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel and administered by the Department of Education

The Subcommittee voted 4-1 to recommend changes to this public records exception, as proposed by the Department of Education. Mr. Burns cast the dissenting vote, and cited his concern that parents did not have adequate access under the existing law, or the proposed amendment, to investigations into complaints about alleged teacher misconduct.

The Department of Education presented draft language to amend this existing exception, stating the Department's intent to clarify the exception and to eliminate redundant language in order for the exceptions to better fit with the original intent of the provision. The DOE representative noted that while records regarding the investigation are confidential, a final written decision to discipline are public.

Ref# 12: 4 M.R.S. §1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services

The Subcommittee voted 5-0 to recommend no modification. John Pelletier, Executive Director of the Maine Commission on Indigent Legal Services, addressed the Subcommittee, pointing out that the records covered by the exception contain highly personal information, including individuals' personal contact information (including date of birth and social security number) sensitive details about case litigation, performance evaluations of individual attorneys and information privileged under the attorney-client privilege. The Commission is very supportive of keeping the exception in statute as is.

Ref# 8: 1 M.R.S. §538, Sub-§3, relating to InforME subscriber information

The Subcommittee voted 5-0 to recommend no modification. During the discussion, Ms. Lynch noted that the Judicial Branch uses this system, for example in the public's paying of fines, and that this information is indeed best kept confidential.

Ref# 14: 5 M.R.S. §17057, Sub-§3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff

The Subcommittee voted 5-0 to recommend no modification.

Ref# 15: 5 M.R.S. §17057, Sub-§4, relating to Maine Public Employees Retirement System private market investment activity

The Subcommittee voted 5-0 to recommend no modification. MePERS in its written response pointed out that without this exception it could not make private market investments, and that it does post public information regarding private market investments on its website.

Ref# 16: 5 M.R.S. §17057, Sub-§5, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information

The Subcommittee voted 5-0 to recommend no modification. MePERS noted that it has never received a public request relating to this information.

Ref# 17: 5 M.R.S. §90-B, Sub-§7, relating to the Address Confidentiality Program administered by the Secretary of State

The Subcommittee voted 5-0 to recommend no modification.

Ref# 18: 7 M.R.S. §1052, Sub-§2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers to the Department of Agriculture

The Subcommittee voted 5-0 to recommend no modification. There was some concern on the Subcommittee regarding how the public would know whether they were near a GMO crop, given the risk for cross-contamination with regular crops. The Subcommittee decided that the concerns were not necessarily germane to this exception, and that other sections of the statute seemed to meet some of these concerns.

Ref# 19: 7 M.R.S. §2231, Sub-§3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes

This exception has been repealed, so review is unnecessary.

Ref# 33: 8 M.R.S. §270-A, relating to records and information included in application or materials required for issuance of commercial track license by the Department of Agriculture

The Subcommittee voted 5-0 to recommend no modification.

Ref# 34: 9-A M.R.S. §6-105-A, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions and administered by the Department of Professional and Financial Regulation

The Subcommittee voted 5-0 to recommend no modification.

Ref# 48: 22 M.R.S. §1494, relating to occupational disease reporting information held by the Department of Health and Human Services

The Subcommittee voted 5-0 to recommend no modification.

Next meeting

The Subcommittee decided to meet one more time this year, on Dec. 1, immediately after the full Committee meeting. While the reviewed items will not be submitted to this year's Committee for inclusion in the January 2016 report, they will be included in the 2017 report when the review of all the scheduled exceptions is due.

Adjournment

Rep. Monaghan adjourned the meeting at 12:31 p.m.

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
December 1, 2015
Meeting Summary

Convened 11:48 a.m. Room 448, State House, Augusta

Present:
Sen. David Burns
Rep. Kim Monaghan
Mary Ann Lynch
Linda Pistner

Absent:
Luke Rossignol

Staff:
Craig Nale
Henry Fouts

Introductions

The meeting was called to order and all members introduced themselves.

Public records exceptions review discussion

Additional results of completed surveys from the public bodies administering the relevant public records exceptions, in addition to one previously item, were brought to the group for its consideration and discussion. As always, agency representatives had been invited to attend in person. During this meeting the Subcommittee reviewed the public records exceptions further detailed below.

(Note: Reference numbers below refer to the spreadsheet of public records exceptions used to track the review process. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.)

Ref# 3: 1 M.R.S. §402, Sub-§3, ¶N, relating to Social Security Numbers

The Subcommittee voted 4-0 to recommend no modification. The importance of allowing nondisclosure of Social Security Numbers was recognized by all.

Ref# 4: 1 M.R.S. §402, Sub-§3, ¶O, relating to personal contact information concerning public employees other than elected officials

The Subcommittee voted 4-0 to recommend no modification.

Ref# 7: 1 M.R.S. §402, Sub-§3, ¶R, Title 1, relating to Social Security numbers in possession of the Secretary of State

The Subcommittee voted 4-0 to recommend no modification.

Ref# 9: 1 M.R.S. §1013, Sub-§2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions

The Subcommittee voted 3-0 to recommend no modification. According to the Ethics Commission this exception has not been used in the last 13 years, so they believe the exception is clear. The exception is important due to the sensitive nature of this information.

Ref# 10: 1 M.R.S. §1013, Sub-§4, relating to Commission on Governmental Ethics and Election Practices records other than complaints

The Subcommittee voted 3-0 to recommend no modification.

Ref# 11: 1 M.R.S. §1013, Sub-§3-A, relating to complaint alleging a violation of legislative ethics

The Subcommittee voted 3-0 to recommend no modification.

Ref# 38: 12 MRSA §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

The Subcommittee voted to table this item. This item, previously tabled on October 6, was discussed again. The Department of Inland Fisheries and Wildlife had provided more information on how the confidentiality provision was applied – it is currently an “opt-in” system, where a license applicant must affirmatively indicate in their application that they do not want their email address shared. The Department expressed its hope to transition to an “opt-out” system in the future. Additionally, the Department recommended to the Subcommittee that it would like confidentiality exceptions for use of the email addresses within the agency, for sharing applicant email addresses for law enforcement purposes, for court purposes, for marketing purposes and for sharing with other State agencies and third party contractors. For further discussion, the Subcommittee members wanted to see drafted proposed language for the change, and to also get clarification from the Department regarding the proposed third party contractors these email addresses would be shared with. Staff will work with the Department to get further information and to develop written draft legislation.

Ref# 44: 21-A M.R.S. §1003, Sub-§3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices

The Subcommittee voted 4-0 to recommend no modification.

Ref# 45: 21-A M.R.S. §1125, Sub-§3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet

The Subcommittee voted 4-0 to recommend no modification. The exception involves financial information not ordinarily available to the public.

Ref# 46: 21-A M.R.S. §1125, Sub-§2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet

The Subcommittee voted 4-0 to indefinitely postpone this item, as a recently passed citizen initiative repeals this provision.

Ref# 47: 21-A M.R.S. §196-A, relating to information contained electronically in the central voter registration system

The Subcommittee voted 4-0 to recommend no modification. A representative of the Department of the Secretary of State appeared before the Subcommittee and explained the need for the continuation of this exception for central voter registration system data. The Department had asked the Legislature for this provision because FOAA is intended to illuminate the activities of government – this data only pertains to personal information of voters. This policy reason still holds today. Releasing this data would raise issues of voter fraud and identity theft. A bill that would narrow this exception is heading to the Veterans and Legal Affairs Committee for the upcoming legislative session.

Ref# 49: 22 M.R.S. §2425, Sub-§8, relating to medical marijuana registry identification cards

The Subcommittee voted 3-0 to recommend no modification.

Ref# 52: 22 M.R.S. §4087-A, Sub-§6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman

The Subcommittee voted 3-0 to recommend no modification.

Ref# 55: 29-A M.R.S. §1301, Sub-§6-A, relating to the social security number of an applicant for a driver's license or non-driver identification card

The Subcommittee voted 3-0 to recommend no modification. The agency survey response indicated concern about a conflict with this exception to the public records covered under FOAA with a provision of Maine's motor vehicle laws that permits disclosure of Social Security Numbers pursuant to the federal Driver Privacy Protection Act, 18 U.S.C. §2721(a)(2). The group discussed this concern and concluded there was no conflict, because the public records exception allows, but does not require, nondisclosure of the SSNs (i.e., they are not designated as "confidential").

Ref# 63: 30-A M.R.S. §4706, Sub-§1, relating to municipal housing authorities

The Subcommittee voted 3-0 to recommend no modification

Ref# 68: 35-A M.R.S. §122, Sub-§1-B, ¶G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors

The Subcommittee voted 3-0 to recommend no modification

Ref# 69: 35-A M.R.S. §10106, relating to records of the Efficiency Maine Trust and its board

The Subcommittee voted 3-0 to table this item. The Subcommittee received comments from Efficiency Maine Trust that the word "and" at the end of subsection 1, paragraph 3 of this section should instead be an "or." The Subcommittee was reluctant to make a change without seeing the proposed amendment in formally.

Ref# 70: 36 M.R.S. §6271, Sub-§2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens

The Subcommittee voted 3-0 to recommend no modification

Ref# 71: 38 M.R.S. §1310-B, Sub-§2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

The Subcommittee voted 3-0 to recommend no modification

Ref# 72: 38 M.R.S. §580-B, Sub-§11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program

The Subcommittee voted 3-0 to recommend no modification

Next meeting

The Subcommittee will hold its next meeting in 2016. While the items reviewed at this December 1, 2015 meeting will not be submitted to this year's Committee for inclusion in the January 2016 report, they will be included in the 2017 report when the review of all the scheduled exceptions is due.

Adjournment

Rep. Monaghan adjourned the meeting at 12:58 p.m.