

Right to Know Advisory Committee  
Public Records Exceptions Subcommittee  
September 11, 2013  
Meeting Summary

Convened 2:00 p.m., Room 438, State House, Augusta

Present:

Suzanne Goucher, Chair  
MaryAnn Lynch  
Linda Pistner

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

**Introductions**

Suzanne Goucher, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

**Review of Sentinel Events Exception—Title 22, section 8754**

3: 22 MRSA §8754

The Subcommittee agreed to table discussion of this exception to the next meeting. After reviewing the background information from prior subcommittee discussions, the members asked for several examples of statutory language from other state laws which protect the confidentiality of sentinel event reports and which provide for public disclosure of that information. Staff will request that the Advisory Committee's Extern, Stephen Wagner, provide that information. Staff will also provide an outline of the quality data already publicly reported by Maine hospitals and links to websites that consumers can use to review that information.

**Review of Exceptions Addressed in LD 420, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Public Records Exceptions**

The Subcommittee reviewed all of the exceptions addressed in LD 420. LD 420 proposed to implement all of the recommendations of the Right to Know Advisory Committee to amend or repeal public records exceptions reviewed in 2012. Because LD 420 was voted ONTP by the Judiciary Committee, the exceptions are back on the Subcommittee's agenda for 2013. The Subcommittee made the following recommendations on the exceptions included in LD 420.

1 and 2: 22 MRSA §1696-D and § 1696-F, related to the Community Right-to-Know Act

The Subcommittee tabled discussion of these exceptions to the next meeting. Staff will ask representatives of the Department of Health and Human Services for more information about why the provisions have not been implemented.

4: 26 MRSA § 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor

The Subcommittee voted 3-0 to amend the provision as proposed in LD 420.

5: 26 MRSA § 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute

The Subcommittee voted 3-0 to amend the provision as proposed in LD 420.

7: 29-A MRSA § 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles

The Subcommittee voted 3-0 to amend the provision as proposed in LD 420.

8: 29-A MRSA § 257, relating to the Secretary of State's motor vehicle information technology system

The Subcommittee voted 3-0 to amend the provision as proposed in LD 420.

9: 29-A MRSA § 517, sub-§ 4, relating to motor vehicle records concerning unmarked law enforcement vehicles

The Subcommittee voted 3-0 to amend the provision as proposed in LD 420.

28: 38 MRSA § 585-B, sub-§6, ¶ C, relating to mercury reduction plans for air emission source emitting mercury

The Subcommittee voted 3-0 to repeal the provision as proposed in LD 420.

29: 38 MRSA § 585-C, sub-§2, relating to the hazardous air pollutant emissions inventory

The Subcommittee voted 3-0 to repeal the provision as proposed in LD 420.

### **Review of Existing Exceptions in Titles 26 through 39-A**

The Subcommittee began its review of 27 exceptions tabled by the Subcommittee in 2012; the previous Subcommittee did not make any recommendation with regard to any of these exceptions.

6: 28-A MRSA § 755, relating to liquor licensees' business and financial records

The Subcommittee voted 3-0 to table this provision. This exception was previously tabled by the Subcommittee in 2012 because legislation was expected to address the issue during the 126<sup>th</sup> Legislature's First Regular Session. As the provision was not addressed in legislation, the Subcommittee will request that the Bureau of Alcoholic Beverages and Lottery Operations prepare an updated questionnaire for the next meeting.

10: 30-A MRSA §503, sub-§1-A, relating to county personnel records concerning the use of force

The Subcommittee voted 3-0 to keep the provision as is.

11: 30-A MRSA § 2702, sub-§ 1-A, relating to municipal personnel records concerning the use of force

The Subcommittee voted 3-0 to keep the provision as is.

12: 32 MRSA § 2599, relating to medical staff reviews and hospital reviews—osteopathic physicians

The Subcommittee voted 3-0 to keep the provision as is.

13: 32MRSA § 3296, relating to Board of Licensure in Medicine medical review committees

The Subcommittee voted 3-0 to keep the provision as is.

14: 32 § 13006, relating to real estate grievance and professional standards committee hearings

The Subcommittee voted 3-0 to keep the provision as is.

15: 32 § 16607, sub-§ 2, relating to records obtained or filed under the Maine Securities Act

The Subcommittee voted 3-0 to keep the provision as is.

16: 34-A MRSA § 5210, sub-§ 4, relating to liquor licensees' business and financial records

The Subcommittee voted 3-0 to table this provision relating to the State Parole Board report to the Governor. Staff will seek more information from the Department of Corrections about the number of persons subject to the parole provisions.

17: 35-A MRSA § 1311-B, relating to relating to public utility technical operations information

The Subcommittee voted 3-0 to keep the provision as is.

18: 35-A MRSA § 1316-A, relating to Public Utilities Commission communications concerning utility violations

The Subcommittee voted 3-0 to keep the provision as is.

### **Future Meetings**

The Subcommittee agreed to meet next on Wednesday, September 25, 2013, at 1:00 p.m. The agenda will include discussion of the tabled items (*chart 1 to 3, 6 and 16*) and initial discussion of the remaining exceptions (*chart 19 to 27, 30 to 39*).

Ms. Goucher adjourned the meeting at 3:00 p.m.

Respectfully submitted,  
Peggy Reinsch and Colleen McCarthy Reid

Right to Know Advisory Committee  
Public Records Exceptions Subcommittee  
September 25, 2013  
Meeting Summary

Convened 1:04 p.m., Room 438, State House, Augusta

Present:

Suzanne Goucher, Chair  
MaryAnn Lynch  
Linda Pistner

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

**Introductions**

Suzanne Goucher, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

**Review of Sentinel Events Exception—Title 22, section 8754**

3: 22 MRSA §8754
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The Subcommittee agreed to table discussion of this exception to the next meeting. After the reviewing a memo presented by the Advisory Committee's Extern, Stephen Wagner, the Subcommittee also heard remarks from representatives of the Maine Hospital Association and Maine Medical Mutual Insurance Company recommending that the confidentiality provision should be kept as is. Jeff Austin of the Maine Hospital Association noted that consumers would be better served reviewing comparative data among hospitals, including data related to sentinel events, than from the release of data about sentinel events in individual hospitals. Mr. Austin also reminded the Subcommittee that the stated legislative purpose of the sentinel events law is to improve quality of care and increase patient safety, not public disclosure. The confidentiality provision is meant to encourage a culture of reporting about medical errors and changing the provision would have an impact. Charlie Soltan representing Medical Mutual Insurance Company remarked that the reporting of sentinel events may involve potential liability for individual health care practitioners; the confidentiality provision is needed to ensure that reporting and discussion of errors happen freely.

MaryAnn Lynch expressed an interest in getting more information about the experience of other states, like California, Florida and Minnesota, which publicly disclose information about specific sentinel events. Ms. Lynch noted that hospitals are private entities, but rely on significant government revenue as payment for services. Staff will provide information about those states' experiences at the next meeting.

Suzanne Goucher stated that information about sentinel events and the quality of health care is important to consumers, especially with new ways of health care delivery; information should be available and accessible to the public. Mr. Austin agreed that one source of information for comparison purposes is needed; currently, there are many websites providing health care data and

no single source has emerged as a leader. Ms. Goucher asked Mr. Austin to provide an analysis of the types of reports required under the sentinel event reporting law to federal reporting requirements for hospitals to determine if similar information is disclosed to the public by other measures.

### **Review of Remaining Exceptions Addressed in LD 420**

At the September 11<sup>th</sup> meeting, the Subcommittee recommended that all of the provisions addressed in LD 420 move forward as drafted with the exception of the provisions related to the Community Right-to-Know Act, which were tabled.

1 and 2: 22 MRSA §1696-D and § 1696-F, related to the Community Right-to-Know Act

The Subcommittee voted 3-0 to amend the provisions as proposed in LD 420. Subcommittee members noted their understanding that the Community Right-to-Know Act has never been implemented so no records subject to the confidentiality provisions exist. However, because members felt a recommendation to repeal the Act in its entirety would not be within their charge, they agreed to recommend that the Advisory Committee send letters to the legislative policy committees—the Joint Standing Committees on Environment and Natural Resources and Health and Human Services--- asking them to review the Act and other related statutory programs to determine whether the Community Right-to-Know Act should be repealed.

### **Review of Existing Exceptions in Titles 26 through 39-A**

The Subcommittee continued its review of the exceptions tabled by the Subcommittee in 2012; the previous Subcommittee did not make any recommendation with regard to any of these exceptions.

6: 28-A MRSA § 755, relating to liquor licensees' business and financial records

The Subcommittee again voted 3-0 to table this provision. While the Bureau of Alcoholic Beverages and Lottery Operations has indicated that there are no changes to the comments they previously submitted in August 2012 on the exception, staff will inquire again to invite BABLO to submit suggested language to clarify ambiguous language in the current law.

16: 34-A MRSA § 5210, sub-§ 4, relating to the State Parole Board report to the Governor

The Subcommittee voted 3-0 to keep the provision as is. The Department of Corrections reported that there are 5 incarcerated persons subject to the parole provisions.

19: 35-A MRSA § 8703, sub-§ 5, relating to telecommunications relay providers

The Subcommittee voted 3-0 to amend the provision to clarify that the information must be kept confidential by the telecommunications relay provider, not the Public Utilities Commission. Staff will work with the Public Utilities Commission to develop draft language for the Subcommittee's review at the next meeting.

20: 35-A MRSA § 9207, sub-§ 1, relating to information about communications services providers

The Subcommittee voted 3-0 to keep the provision as is.

21 and 22: 36 MRSA § 575-A, sub-§ 2 and 36 MRSA § 579, relating to forest management and harvest plans and information concerning the Maine Tree Growth Tax Law

The Subcommittee voted 3-0 to keep the provision as is. The Subcommittee noted that, because of both a sunset provision and reporting requirement, the provisions will be reviewed by Legislature during the 2<sup>nd</sup> Regular Session. Members were comfortable recommending no change with the expectation that additional review will occur during the legislative session.

23: 36 MRSA § 1106-A, relating to forest management and harvest plans made available for Farm and Open Space Tax Law

The Subcommittee voted 3-0 to table action on this provision until 2014. For purposes of the Farm and Open Space Tax Credit, members noted that managed forest open space land is not used for commercial purposes. The confidentiality of forest management and harvest plans for land subject to the tax credit may not serve the same business and proprietary interests as plans submitted to qualify for the Tree Growth tax credit. Given the additional review of the provisions of the Tree Growth Tax Law by the Legislature in the 2<sup>nd</sup> Regular Session, the Subcommittee decided to wait until that review is completed before taking action on this provision.

24: 37-B MRSA § 708, sub-§ 3, relating to documents collected or produced by the Homeland Security Advisory Council

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information about the annual reports made to the Legislature by the Homeland Security Advisory Council pursuant to §708, sub-§2 and determine whether those reports are public records or protected from public disclosure by the confidentiality provision in sub-§ 3.

25: 37-B MRSA § 797, sub-§ 7, relating to MEMA reports of hazardous substances transportation routes

The Subcommittee voted 3-0 to keep the provision as is.

26: 38 MRSA § 414, sub-§ 6, relating to records and reports obtained by Board of Environmental Protection in water pollution control license application procedures

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask the Board of Environmental Protection for suggested language to amend the provision to cross-reference a definition of trade secret.

27: 38 MRSA § 470-D, relating to individual water withdrawal reports

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information about the annual aggregate data made available to the public about water withdrawals from the State Geologist and about the reporting by individuals to the Departments of Conservation, Environmental Protection and Health and Human Services. Staff will also solicit input on the provision from water utilities and other stakeholders.

### **Future Process for Review**

Before the next meeting, Ms. Goucher asked the Subcommittee members to spend some time thinking about the future process for reviewing exceptions. Once the Subcommittee completes its work on Title 26 to 39-A, the Advisory Committee will have finished the cycle of review of all exceptions required by law. Should the Subcommittee recommend that the process start all over again (back to Title 1) using the existing process? Should the Subcommittee recommend a process that focuses on review of recently enacted exceptions that were not previously reviewed by the Advisory Committee?

Ms. Goucher reported that the Freedom of Information Coalition, of which she is a member, has discussed the issue. They do not see any need to go back to the beginning, but do think there is value in reviewing those recently enacted exceptions that were not previously reviewed by the Advisory Committee. Ms. Goucher suggested that the members consider this proposal and discuss further at the next meeting.

### **Future Meetings**

The Subcommittee agreed to meet next on Monday, November 4, 2013, at 1:00 p.m. The agenda will include discussion of the tabled items (*chart 3, 6, 24, 26 and 27*) and initial discussion of the remaining exceptions (*chart 30 to 39*).

Ms. Goucher adjourned the meeting at 3:10 p.m.

Respectfully submitted,  
Peggy Reinsch and Colleen McCarthy Reid

Right to Know Advisory Committee  
Public Records Exceptions Subcommittee  
November 4, 2013  
Meeting Summary

Convened 1:06 p.m., Room 438, State House, Augusta

Present:

Suzanne Goucher, Chair  
MaryAnn Lynch  
Linda Pistner

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

**Introductions**

Suzanne Goucher, Subcommittee chair, called the meeting to order and asked all the members to introduce themselves.

**Review of Sentinel Events Exception—Title 22, section 8754**

3: 22 MRSA §8754

Stephen Wagner, the Advisory Committee's Extern, presented a memo outlining the experience of California and Minnesota, which publicly disclose information about specific sentinel events. At the request of the Subcommittee, Jeff Austin of the Maine Hospital Association also provided an analysis of the types of reports required under the sentinel event reporting law compared to federal reporting requirements for hospitals and highlighted the similar information that is already disclosed to the public by other measures.

The Subcommittee agreed to table discussion of this exception to the next meeting so that the members can review the publicly available health care quality information on state and federal websites highlighted by Mr. Austin.

**Review of Remaining Exceptions Addressed in LD 420**

1 and 2: 22 MRSA §1696-D and § 1696-F, related to the Community Right-to-Know Act

The Subcommittee voted 3-0 to repeal the Community Right-to-Know Act as the program has never been implemented and its repeal was previously recommended by the Department of Health and Human Services and Health and Human Services Committee in the 125<sup>th</sup> Legislature. In addition, the Subcommittee agreed to recommend that the Advisory Committee send letters to the legislative policy committees—the Joint Standing Committees on Environment and Natural Resources and Health and Human Services--- informing them of the recommendation and asking them to provide input on the proposed repeal of the Community Right-to-Know Act to the Judiciary Committee.

## **Review of Existing Exceptions in Titles 26 through 39-A**

The Subcommittee continued its review of the exceptions tabled by the Subcommittee in 2012; the previous Subcommittee did not make any recommendation with regard to any of these exceptions.

6: 28-A MRSA § 755, relating to liquor licensees' business and financial records

The Subcommittee voted 3-0 to take no action on the provision and to send a letter to the Veterans and Legal Affairs Committee asking them to consider the confidentiality exception and consult with BABLO and other interested parties to determine whether statutory changes should be recommended to Title 28-A, section 755.

19: 35-A MRSA § 8703, sub-§ 5, relating to telecommunications relay providers

The Subcommittee approved draft language to amend the provision to clarify that the information must be kept confidential by the telecommunications relay provider, not the Public Utilities Commission.

24: 37-B MRSA § 708, sub-§ 3, relating to documents collected or produced by the Homeland Security Advisory Council

The Subcommittee voted 3-0 to keep the provision as is.

26: 38 MRSA § 414, sub-§ 6, relating to records and reports obtained by Board of Environmental Protection in water pollution control license application procedures

The Subcommittee approved draft language to amend the provision to add a cross-reference to the definition of trade secret.

27: 38 MRSA § 470-D, relating to individual water withdrawal reports

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information about the publicly available information as part of permits granted to individual users by various state agencies.

The Subcommittee reviewed 3 exceptions below in Title 39-A relating to the Bureau of Insurance's regulation of workers' compensation self-insurers. Tom Record, senior staff attorney at the Bureau of Insurance, assisted the Subcommittee with its review and explained the rationale and importance of the confidentiality provisions for their regulatory purposes.

37: 39-A MRSA § 403, sub-§ 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay

The Subcommittee voted 3-0 to keep the provision as is.

38: 39-A MRSA § 403, sub-§ 15, relating to records of workers' compensation self-insurers

The Subcommittee voted 3-0 to keep the provision as is.

39: 39-A MRSA § 409, relating to the workers' compensation information filed by self-insurers concerning the assessment for expenses of administering the self-insurers' workers' compensation program

The Subcommittee voted 3-0 to keep the provision as is.

30: 38 MRSA § 1310-B, sub-§ 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information from the DEP about the process used to determine if records are confidential and what information about mercury-added products and mercury reduction plans is available to the public.

31: 38 MRSA § 1610, sub-§ 6-A, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years

The Subcommittee voted 3-0 to keep the provision as is.

32: 38 MRSA § 1661-A, sub-§ 4, relating to information submitted to the DEP concerning mercury-added products

The Subcommittee tabled discussion of this exception to the next meeting. Staff will ask for more information from the DEP about the process used to determine if records are confidential and what information about mercury-added products is available to the public.

33: 38 MRSA § 2307-A, relating to information submitted to the DEP concerning toxic use and hazardous waste reduction

This provision was repealed in July 2012 and substantively replaced by a new provision regulating priority toxic chemical use in Title 38, section 2324. The Subcommittee tabled this provision to the next meeting; staff will ask the DEP to complete a survey on the new provision, which replaced section 2307-A.

34: 39-A MRSA § 153, sub-§ 5, relating to the Workers' Compensation Board abuse investigation unit

The Subcommittee voted 3-0 to keep the provision as is.

35: 39-A MRSA § 153, sub-§ 9, relating to the Workers' Compensation Board audit working papers

The Subcommittee voted 3-0 to keep the provision as is.

36: 39-A MRSA § 355-B, sub-§ 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims

The Subcommittee voted 3-0 to keep the provision as is.

**Future Process for Review**

The Subcommittee decided to defer discussion until the next meeting. Staff will develop potential options for the future process for reviewing exceptions. Ms. Pistner suggested that one option include a process for annually reviewing exceptions enacted, amended or repealed in the previous legislative session.

**Future Meetings**

The Subcommittee agreed to meet next on Tuesday, December 3, 2013, at 1:00 p.m. The agenda will include discussion of the tabled items (*chart 3, 27, 30, 32 and 33*) and discussion of the future process for review of exceptions.

Ms. Goucher adjourned the meeting at 3:00 p.m.

Respectfully submitted,  
Peggy Reinsch and Colleen McCarthy Reid

Right to Know Advisory Committee  
Public Records Exceptions Subcommittee  
December 10, 2013  
Meeting Summary

Convened 1:07 p.m., Room 438, State House, Augusta

Present:

Suzanne Goucher, Chair  
MaryAnn Lynch, on the speaker phone  
Linda Pistner

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

**Introductions**

Suzanne Goucher, Subcommittee Chair, called the meeting to order and asked all the members to introduce themselves. Subcommittee member Mary Ann Lynch participated via speaker phone from her office in Portland because of unexpected transportation issues. Ms. Goucher explained that Ms. Lynch was participating for discussion purposes, but would not be able to vote because she was not physically present.

**Review of Sentinel Events Exception—Title 22, section 8754**

3: 22 MRSA §8754

At the most recent subcommittee meeting, the members tabled the disposition of the sentinel events reporting confidentiality provision to allow the members to review the several websites that provide information about health care facility quality to determine if information similar to the sentinel events reports is available from other sources. Staff provided a copy of draft legislation prepared last year that makes the reports public except for information require to be kept confidential by federal law and data developed from the reports that identify or permit identification of a patient of a health care facility.

Ms. Lynch explained that, because so much of the State's public money goes towards health care, she can't in good conscience support complete confidentiality. If she had been present and voting, she would have voted in favor of the proposed draft. She also explained that her position with the Judicial Branch prevents her from advocating for that position before the Legislature. Linda Pistner said she had mixed feelings, but she is aware of many other sources for information that can be used to make health care decisions, and she is also cognizant of the lobbying of the Judiciary Committee the last time there was a legislative proposal about the public release of sentinel event reports. Ms. Goucher also admitted being of two minds on the issue, but she understands that the reporting of the information is important and should not result in finger-pointing. She believes the public will push for access to more information useful in making health care decisions, but that this may not be the proper source.

The Subcommittee voted 2-0 to recommend no change. Ms. Lynch stated that she would support the proposed draft, but will not be filing a separate minority report.

### **Review of Existing Exceptions in Titles 26 through 39-A**

The Subcommittee continued its review of the exceptions tabled by the Subcommittee in 2012; the previous Subcommittee did not make any recommendation with regard to any of these exceptions.

27: 38 MRSA § 470-D, relating to individual water withdrawal reports

The Subcommittee had tabled discussion of this exception at the last meeting. Staff collected information from the Department of Environmental Protection, the Land Use Planning Commission and the Safe Drinking water Program within the Department of Health and Human Services. Title 38, section 470-D makes individual water withdrawal reports confidential, but aggregate information is reported by the Maine Geological Survey. DEP reported that pulp and paper mills submit reports based on their permits, which are public, so the information would be available through the permitting process. There are few agricultural users, and they have never requested confidentiality of their water withdrawals and no one has ever requested the information, which is public. Information collected by the Safe Drinking Water Program would be public.

Ms. Lynch stated that she is a little bit of mixed minds because water is a public resource, but there are other sources for the information, the Department wants to continue the exception and there is no public clamor for removing the confidentiality. Ms. Pistner noted that water extraction is a big issue for the State, and perhaps a better response is to recommend a comprehensive review of water withdrawal across the State and what information is available to the public.

The Subcommittee voted to recommend no change, but to recommend that the Right to Know Advisory Committee send a letter to the Environment and Natural Resources Committee suggesting a comprehensive review of water withdrawal, including a review of the public accessibility of information. Ms. Lynch said that if she were present and voting, she would support the recommendations.

30: 38 MRSA § 1310-B, sub-§ 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

32: 38 MRSA § 1661-A, sub-§ 4, relating to information submitted to the DEP concerning mercury-added products

The Department of Environmental Protection submitted the Standard Operation Procedure: Information Claimed to be Confidential that implements Title 38, section 1310-B. The statute allows appeal of the Departments determination whether the information is confidential or public, but neither reporters nor those seeking the information have ever challenged the Department's determination in court. The same process that the Subcommittee has supported for other products also applies for mercury-added products.

After reviewing the documentation, Ms. Pistner stated that the existing process is satisfactory.

The Subcommittee voted 2-0 to recommend no change to 30 and 32. Ms. Lynch said that if she were present and voting, she would support the recommendation.

33: 38 MRSA § 2307-A, relating to information submitted to the DEP concerning toxic use and hazardous waste reduction replaced by 38 MRSA §2324, subsection 3 relating to information submitted to DEP about priority toxic chemicals

This provision was repealed in July 2012 and substantively replaced by a new provision regulating priority toxic chemical use in Title 38, section 2324. The Subcommittee tabled this provision to ask the DEP to complete a survey on the new provision, which replaced section 2307-A.

The DEP reported that because the statute was so new, there is no experience about the confidentiality provision to reports. The confidentiality language invokes the process established by section 1310-B, which the Subcommittee has already reviewed and agreed not to recommend changes.

The Subcommittee voted 2-0 to recommend no change. Ms. Lynch said that if she were present and voting, she would support the recommendation.

### **Future Process for Review**

Now that all identified public records exceptions in all the Titles of the Maine Revised Statutes have been reviewed once, the Subcommittee discussed whether the existing public records exceptions should continue to be subject to a periodic review. The members recognized that things change over time and what may be a reasonable protection from public access one day may no longer be appropriate 10 or 20 years later. They discussed whether review by the Advisory Committee should be limited to just new provisions added by the Legislature since the review process was initiated in 2006. They agreed that no useful information is usually available within a couple years of new enactments, so it is essentially a waste of time for the Advisory Committee to review newly enacted public records exceptions.

The Subcommittee asked staff to summarize the full extent of the Advisory Committee's review since 2006, including how many changes were recommended.

The Subcommittee voted 2-0 to recommend to continue the review, but with a change in the process. Ms. Lynch said that if she were present and voting, she would support the recommendation. The proposed process:

1. No scheduled review in 2014.
2. In 2015 (to be reported to the Judiciary Committee in 2016 and 2017), review all public records exceptions that were enacted after the creation of the review process, so public records exceptions enacted in 2005 through 2012. Allow two years for review.
3. In 2017 (to be reported to the Judiciary Committee in 2018 and 2019), start over with Title 1 as the first step in a 12-year process to cover all the Titles of the Maine Revised Statutes. (Each two-year period of the 12-year process will cover approximately 1/6 of the public records exceptions in Title 1 through 39-A.)

4. In 2017 (to be reported to the Judiciary Committee in 2020 and 2021), carry out the second step of the 12-year process, plus any public records exceptions enacted in 2013-2016.
5. Going forward, repeat this process for newly enacted exceptions along the same time frame, ignoring the prior three years in order to allow new exceptions to "ripen" with experience.
6. At the end of the 12-year review, the Advisory Committee will determine whether to continue the process or create a new approach.

Ms. Goucher adjourned the meeting at 2:04 p.m.

Respectfully submitted,  
Peggy Reinsch and Colleen McCarthy Reid

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Joint  
Legislative Subcommittee & Public Policy Subcommittee

Right to Know Advisory Committee  
October 3, 2013  
Meeting Summary

Convened 10:12 a.m., Room 126, State House, Augusta

Present:

Chris Parr, Co-Chair  
Judy Meyer, Co-Chair  
Fred Hastings  
Harry Pringle  
Suzanne Goucher  
Luke Rossignol  
Linda Pistner  
Perry Antone  
Joe Brown  
Sen. Linda Valentino  
Garrett Corbin, for Richard Flewelling

Absent:

Mal Leary

Staff:

Henry Fouts  
Peggy Reinsch

**Convening, Introductions**

Judy Meyer and Chris Parr, respective chairs of the Legislative Subcommittee and Public Policy Subcommittee, called the meeting to order and asked the members and staff to introduce themselves.

**Encryption**

The issue of the encryption of emergency responder radio communications was added to the agenda, carried over from the morning's prior meeting of the Legislative Subcommittee. Judy Meyer gave the subcommittee a brief history of how the issue had come to the Right to Know Advisory Committee, and how it had progressed to the current state.

Perry Antone provided clarification on the issue, noting that there had been some confusion in the public around the conversion of law enforcement and emergency medical services radio communications from analog to digital signals. This change was mandated by the Federal government in order to free up more air waves for analog signals. Because of the switch in signals to the digital type, the analog radio monitoring equipment traditionally used does not adequately receive these digital signals.

Encryption, on the other hand, is the intentional scrambling of a signal to keep communications private. This is done currently only with law enforcement tactical and special operations. There are downsides to encryption that make it unlikely to be used by law enforcement for regular transmissions: it breaks down inter-operability between agencies (because different law enforcement agencies would be unable to communicate) and would be cost-prohibitive for most local law enforcement agencies.

The Maine Chiefs of Police Association are in opposition to legislation regarding radio encryption because this would be legislation where there really is no issue. Additionally, the Maine Chiefs of Police Association position is that even though the public can hear live radio transmissions, there is no FOAA right to this information. There is often protected private information (for example, juvenile information, social security numbers, etc.) that is transmitted over the radio that the agency cannot redact as it would be able to with written public records. There are also issues with the transmissions of emergency medical services, for example HIPAA confidentiality issues.

A representative for emergency medical services noted that he had not heard of any discussions in which emergency medical services organizations were interested in encryption. He noted how important it is for ambulance services to communicate, which is difficult with encryption.

After brief discussion, where the question was raised whether the issue was properly before the Right to Know Advisory Committee and some members expressed satisfaction that the cost barrier alone ensures that encryption will not be an immediate issue, the joint subcommittees unanimously voted to take no action on this issue.

### **Public records versus public information**

The joint subcommittees discussed whether FOAA applies to information or just records, and how to clarify the Public Access Ombudsman's task to track "information" requests directed to public agencies. One member stated that the entire FOAA scheme is set up in the context of public records, so LD 1511 should only be interpreted as applying to requests for records. The idea was posited that the Public Ombudsman should only track written requests, and that tracking verbal requests would be unnecessary. Another member disagreed with this distinction between oral or written requests. The idea of amending the law passed in LD 1511 was raised, but was dismissed by Brenda Kielty, the Public Access Ombudsman, because it would still not address the issue of what the scope of a FOAA request may include.

The joint subcommittee decided, together with Ms. Kielty, that she would create a draft tracking form to be used by the various agencies when FOAA requests are made, get feedback from various public access officers, and bring the form back to the subcommittees for guidance.

### **Compliance with new law (LD 1216, PL 2013, c. 350)**

LD 1216 created a new deadline for public agencies to respond within 5 working days of receiving a FOAA request with an acknowledgement of having received the request, and also providing a denial of the request if appropriate. If an agency fails to make its timely response, the request is treated as if it were denied and the requesting individual may appeal the denial through the court system.

The discussion began around the idea of whether this deadline was enough time for agencies to comply with the law. Linda Pistner of the Attorney General's Office noted that her office has suggest amendments to the law: 1) allowing agencies to respond that they "expect to deny" the request; 2) limiting where an appeal to the courts may be taken to certain areas (in conformance with venue rules); and 3) allowing the public agency to respond to a legal complaint with a "statement of position" instead of a detailed legal answer. There was concern voiced about what extra useful information would be provided to the court in a "statement of position". It was also opined that this change would be helpful to the court and would also save costs to the State in responding to FOAA appeals, due to what are sometimes multiple irrelevant allegations of plaintiffs. There was discussion around limiting FOAA appeals to courts in the locality of the "principal office" of the agency involved.

The discussion went back to the new 5-day deadline – 10 days was offered as an alternative. Also, the idea of a grace period was introduced, where an agency would have to acknowledge the request within 5 days, but would have more time in which to issue a denial. The subcommittees agreed there needed to be some kind of "hammer" – a deadline type mechanism for FOAA enforcement. Garrett Corbin, proxy for Richard Flewelling, representing municipal interests, noted that the statute doesn't define "receipt" of a FOAA request, and suggested the statute be amended to clarify this.

The joint subcommittees and Linda Pistner agreed that Ms. Pistner would come back to the subcommittees with draft legislation to amend LD 1216 (PL 2013, c. 350), specifically in regards to creating a grace period for FOAA denials, describing the responsibilities in a court action and better defining when "receipt" of a FOAA request is considered to occur.

### **Should government records containing personal information about private citizens be generally protected from public disclosure (or protect just the personal information in public records)?**

If personal information is collected by the State, what are the State's duties in regards to that information? It was noted that every time a new aspect of public records is deemed confidential, it requires additional review and redaction of documents by public agencies, which increases the costs to that agency to comply with FOAA requests. It was pointed out that the complexity of the Federal Privacy Act shows what a hard issue this is.

Mr. Parr asked staff if there were other state statutes that attempted to address this issue. Staff replied that the Federal Privacy Act was the best model out there, as they were not aware of any good models on the state level yet. Staff noted there are several places in Maine statutes where private information is collected that the agency is not precluded from disclosing. Some members of the subcommittees were uncomfortable restricting public access to documents, even when they do contain some of this personal information; if there is a definite and specific need for security, then the law should be changed to address that concern narrowly – not with a blanket policy.

The discussion shifted to the specific issue of the Registers of Deeds wanting to redact personal information in public records they supply to the public, currently not permitted by statute, and the desire of some of the public (e.g., banks) to have continued access to this personal information. Two Registers of Deeds addresses the joint subcommittees. They noted that this is a huge issue, especially in regards to bulk sales, with people in the public requesting entire databases of records. The Registers of Deeds have serious concerns with providing

official records with personal information to the public. They asked for a law that would allow the Registers to reject a document for filing if it contains personal information. Ms. Meyer asked if the law were changed to allow the Registers to redact Social Security Numbers, it would be feasible and affordable to implement. The Registers noted there would be costs, but thought it would be feasible and affordable, and that this change would address at least some of their concern.

The joint subcommittees unanimously agreed to draft legislation to authorize the Registers of Deeds to redact Social Security Numbers when they supply records to the public.

Break for lunch at 12:20, reconvened at 1:04pm.

### **“Abuse” of the Freedom of Access Act (FOAA)**

Mr. Parr began the conversation, noting that the issue of abuse of FOAA should be of concern. From a practical standpoint, time spent on frivolous or repetitious FOAA requests is time taken away from the staff to focus on other duties as well as on other FOAA requests, creating delayed responses.

The question was posed: Who makes the determination of what an “abuse” is? Some members expressed the view that this decision must be made by a judge, not an agency. Staff provided draft legislation and examples of other states’ statutes that address FOAA-type abuses.

A member posited that there should perhaps be an intermediary between the public agency denying the request and a judge – perhaps a system where a formal ombudsman or other official in the Attorney General’s Office would review an agency’s denial of records requests. The Public Access Ombudsman, Brenda Kielty, noted that under current law the ombudsman did not have this authority, and that there was currently no formal structure in place to allow this. Linda Pistner of the Attorney General’s Office noted that an issue here is who needs to go to court. Or, would the agency be able to go somewhere else for relief? Mr. Brown requested more information on how the process worked in those states that allowed an agency to deny a FOAA-type request under defined “abusive” conditions – is the burden on the requestor to go to the courts?

The subcommittees discussed whether current “harassment” law could provide an agency relief. After discussion, it seemed to most members this was not an adequate remedy.

Mr. Pringle noted that judges apparently don’t have the power to enjoin abusive FOAA requests currently, and that the issues facing the subcommittees were: 1) Should any additional limits on “abusive” FOAA requests into law; 2) If so, what is the standard?; and 3) Whether the burden should be on the agency or requesting member of the public to file for an injunction with the court. He continued that a judge should be given similar authority to a judge in legal discovery disputes; there should be a high standard for denying an “abusive” FOAA request, and it should be decided by a judge. The idea was introduced that both the agency and a denied requestor should have the ability to bring a lawsuit regarding denied records for “abusive” requests. Several members agreed that the burden to bring a lawsuit for an injunction should be on the agency wishing to stop the FOAA requests – the court could then decide how, or if, to limit the agency’s duty to respond to the request.

A member noted that abusive requests can involve separate requests from the same individual, not just repeated requests for the same information – would this drafted language address that? Would this apply to individual requests, or the requestor? Several members

thought the drafted language would cover both situations. It was noted that it was unlikely a judge would ever eliminate an individual's right to request documents through FOAA, but would perhaps limit the frequency of the individual's requests. It was also posited that if the subcommittees wish to go down this road, it may be helpful to provide more specificity in the language to give a court more guidance and help ensure that the intent of the provision is being carried out.

The joint subcommittees unanimously agreed to move forward on developing this legislation and to table the discussion until the next meeting.

### **Future meetings**

The Public Policy Subcommittee will meet jointly with the Legislative Subcommittee at 10:00 a.m. on Tuesday, November 12<sup>th</sup>.

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

All meetings will be held in Room 438 (Judiciary Committee Room) at the State House.

The meeting was adjourned at 1:54pm.

Respectfully submitted,

Henry Fouts and Peggy Reinsch

Joint  
Legislative Subcommittee & Public Policy Subcommittee

Right to Know Advisory Committee  
November 12, 2013  
Meeting Summary

Convened 10:04 a.m., Room 438, State House, Augusta

Present:

Chris Parr, Co-Chair  
Judy Meyer, Co-Chair  
Richard Flewelling  
Suzanne Goucher  
Fred Hastings  
Linda Pistner  
Harry Pringle  
Luke Rossignol  
Sen. Linda Valentino

Absent:

Perry Antone  
Joe Brown  
Mal Leary

Staff:

Henry Fouts  
Peggy Reinsch

**Convening, Introductions**

Chris Parr, chair of the Public Policy Subcommittee, called the meeting to order and asked the members and staff to introduce themselves. Mr. Parr and Judy Meyer, chair of the Legislative Subcommittee, presided over the combined subcommittees meeting by topic area.

**Proposed legislation**

Representative Bobbi Beavers agreed to talk to the subcommittees about her proposed legislation concerning the confidentiality of marine resources and fish processing information. The Legislative Council approved LR 2490 for introduction to the Second Regular Session of the 126th Legislature. LR 2490 has been indexed to the Judiciary Committee (although it may be referred to a different committee once printed) because of the proposed confidentiality requirements. Representative Beavers introduced her constituent, Lori Howell, Vice President of Spinney Creek Shellfish Company, in Eliot, Maine. Spinney Creek runs a depuration facility to purify shellfish consistent with state and federal requirements. Ms. Howell indicated that there are only about five depuration facilities in the United States, and about six in Canada. There is no specific model for a depuration facility, so each is different. The Howells built their facility over the course of 30 years and through hundreds of thousands of dollars' worth of research in their own laboratory. The Department of Marine Resources has received at least five requests for information about the Spinney Creek business, some of the requests seeking propriety

information. The Howells treat their operations and their operations manual as trade secrets and will not release information they consider proprietary. They need to collaborate and communicate with the DMR to ensure appropriate regulation, and some of that proprietary information will be collected by the Department; the Howells want that information protected from release to the public and competitors. Ms. Howell asserted that if the proprietary information isn't protected, there will be no incentive for business to innovate, as all advances will have to be released to the public. Also, it will encourage honesty with DMR resulting in proper regulatory oversight.

The subcommittees thanked Representative Beavers and Ms. Howell for sharing the information and giving the members an opportunity to preview a freedom of access issue that will be before the Legislature in 2014.

### **State Privacy Acts**

Right to Know Law School Extern Stephen Wagner researched state-level privacy acts and prepared a memo on the different approaches. The memo was shared with the members via email prior to the meeting, so, although Mr. Wagner was not available to attend the meeting, the members were prepared to discuss the issues and thanked him for his work.

Ms. Meyer opened the discussing by expressing her concern that taking on a general privacy act would be beyond the appropriate jurisdiction of the Right to Know Advisory Committee; the emphasis has always been public access, rather than privacy, and privacy issues have been dealt with on an individual basis. She warned of unintended consequences resulting from passing overly-broad protections. Linda Pistner declined to comment on the jurisdiction, but thought that citizens who felt their privacy had been invaded would be the last to come to the Advisory Committee with a complaint. Her concern is that there is no real guidance, and that every statutory exception is dealt with individually. Suzanne Goucher questioned how to throw a cloak over "personal" records without causing other problems. Mr. Parr affirmed his belief in open government, but said he also believes in citizens' privacy rights, and thinks that the State has a responsibility to protect citizens' private information that is in the government's possession. Mr. Parr said he believes citizens should be – and will be – asking for greater protection of such information. He mentioned concerns with current accessibility to records relating to situations in which private citizens are ~~the~~ at their most vulnerable, such as the 911 call recording transcripts that were the subject of recent litigation. He also noted that the big game changer is that needs to be considered when discussing accessibility to government records is the Internet – this, given the fact that individuals can now use the Internet to share and access private information about other individuals instantaneously and globally. Ultimately, however, Mr. Parr concluded that, as a practical matter, the creation and implementation of a general privacy act would likely not be viable. He said he thought that the current practice of addressing privacy issues on an individual basis is perhaps the best approach presently available.

The subcommittees voted 8-1 (Ms. Goucher dissented) to bring the general discussion of a state-level privacy act to the full Advisory Committee.

## **Remote participation in meetings**

Staff prepared a summary of the statutory approaches other states have taken with regard to the remote participation in meetings by members of public bodies. Members agreed that the fact that the current statute provides no guidance is an unacceptable state of affairs. Either the State should embrace the technology and provide guidance as to at least minimum requirements or the statute should clearly prohibit such participation. Harry Pringle suggested that a couple of adjustments be made to LD 258 and then have a discussion in the full Advisory Committee. Fred Hastings noted that the need for travel and the challenging weather in Maine are reasons to support the use of technology, and that there are excellent resources already in existence. He agreed with Mr. Pringle, and endorsed monitoring the use to see what happens. An important aspect is the requirement in the proposed legislation that any public body using the process would first have to adopt a policy that authorizes the use. Mr. Rossignol agreed, stating his belief that the problems and practicalities can be figured out through each body's particular policies.

The subcommittees voted 8-1 (Ms. Meyer dissenting) to recommend LD 258 with two changes: require the policy to address whether remote participation can be used in executive sessions in order to provide the protection of privacy that is intended through the use of executive session, and to exempt the quorum requirement when other statutes specifically address that limitation. Senator Valentino, Ms. Pringle and Ms. Pistner all expressed concerns with some aspects, but they all agreed the concept should move forward for discussion. Ms. Meyer supports remote participation until the point of voting; she said the Maine Press Association opposes letting members of a public body who are not in the room cast votes.

## **Membership of RTK AC – add IT expertise**

In the course of discussing the ins and outs of teleconferencing and videoconferencing, Mr. Hastings suggested that it would be very useful to have an information technology expert on the Advisory Committee. Senator Valentino and Mr. Parr agreed. There was some discussion about whether the appointment must come from the Office of Information Technology, and the decision was to recommend the discussion to the full Advisory Committee. A suggestion would be to allow the Governor to appoint a member with expertise in information technology. Staff will develop language.

## **Public Law 2013, chapter 350**

Mr. Parr noted that LD 1216 was not presented to the Right to Know Advisory Committee before going forward to the Judiciary Committee, and that some of the issues that the enacted law raised could have been eased by working through the Advisory Committee first. There is frustration that the Advisory Committee is being bypassed by legislation. Ms. Pistner said she understood that frustration, but that the exigencies of the legislative session would rarely allow time for the Advisory Committee to meet, although the Public Access Ombudsman and the

Attorney General's Office can collect and share comments. Senator Valentino said that if the Advisory Committee wants to weigh in, it needs to be prepared by the time of the public hearing. For the upcoming session (no carryovers), if more time is needed, perhaps it would be best to ask for an Ought Not To Pass vote and bring recommendations back to the next Legislature.

The redraft of PL 2013, c. 350 (which came from LD 1216) prepared by staff was discussed. The central concern is the five-day deadline to acknowledge that a FOA request has been received; the law in effect prior to c. 350 was an acknowledgment within "a reasonable time." The five-day deadline is hard on small offices with part-time employees (such as a water utility) as well as large offices with huge volumes of requests (such as the State Police and the Department of Public Safety). Mr. Parr and Ms. Meyer prefer the "reasonable time" requirement, but Senator Valentino identified concerns, such as "reasonable" to whom? She said sometimes there just has to be a time-certain, not just because an agency is swamped. Although some members prefer "reasonable" there was reluctance to recommend going back to that language now that the statute has changed. Senator Valentino pointed out the inconsistent inclusion of "body" with "agency" and "officer" in the draft. Beverly Bustin-Hatheway, Register of Deeds for Kennebec County, asked that the term "abstract" be removed from the language, as "abstract" in the Registry of Deeds is the database.

The subcommittees voted 8-1 (Mr. Parr dissenting) to send the revised draft to the full Advisory Committee.

### **Remedies for abuse**

The subcommittees reviewed the draft legislation to give an agency or officer the opportunity to file an action in Superior Court to approve the denial of a request to inspect or copy a record with "just and proper cause." The members agreed that the burden to seek a remedy should be on the governmental agency, and that an extraordinary situation would need to exist for an agency to use the action.

The subcommittees voted 9-0 to support presenting the draft to the full Advisory Committee.

### **Authority to redact Social security numbers**

The subcommittees reviewed draft legislation prepared by staff that authorizes, but does not require, Registers of Deeds to redact Social Security numbers from documents filed with the Registry for recording. Ms. Bustin-Hatheway, Register of Deeds for Kennebec County, commented that the draft didn't go far enough and that it would lead to inconsistencies. She offered a stricter concept, which would prohibit Registers of Deeds from accepting documents that contain Social Security numbers. Ms. Meyer explained that the Advisory Committee's mission is not to tell Registers of Deeds how to do their jobs, but to focus on what are appropriate public records. The members were not comfortable recommending a prohibition on accepting documents containing SSNs, but they thought supporting the legislation as drafted

would at least raise the issue for people to address during the legislative session. Mr. Hastings noted his concern that the burden on agencies may be the focus of discussions with the net result being the decimation of the full Right to Know/Freedom of Access Act premise.

The subcommittees voted 9-0 to support presenting the draft to the full Advisory Committee.

### **Remaining issues**

The subcommittees agreed to postpone the remaining issues to the next meeting. Those issues are:

- Update on State e-mail management protocol
- Can FOA requests be made anonymously? Does it matter if the request is in writing?
- Should FOAA requests for commercial purposes be subject to the fee restrictions of 1 MRSA §408-A, sub-§8? What is a commercial purpose?
- Review of standard fees and fee schedules adopted by agencies
- Review of allocation of responsibilities between the Advisory Committee and the Ombudsman

### **Future meetings**

- The Public Policy Subcommittee will meet jointly with the Legislative Subcommittee at 9:00 a.m. on Tuesday, December 17th.
- The full Advisory Committee will meet later that day at 1:00 pm.

All meetings will be held in Room 438 (Judiciary Committee Room) at the State House.

The meeting was adjourned at 12:15 p.m.

Respectfully submitted,

Peggy Reinsch and Henry Fouts

revised

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Joint  
Legislative Subcommittee & Public Policy Subcommittee

Right to Know Advisory Committee  
December 17, 2013  
Meeting Summary

Convened 9:15 a.m., Room 438, State House, Augusta

Present:

Chris Parr, Co-Chair  
Judy Meyer, Co-Chair  
Joe Brown  
Richard Flewelling  
Suzanne Goucher  
Mal Leary  
Linda Pistner  
Harry Pringle  
Luke Rossignol  
Rep. Kim Monaghan-Derrig

Absent:

Perry Antone  
Fred Hastings

Staff:

Henry Fouts  
Peggy Reinsch

**Convening, Introductions**

Chris Parr, chair of the Public Policy Subcommittee, called the meeting to order and asked the members and staff to introduce themselves.

**Review of draft legislation**

A. Meetings using communications technology for remote participation

Harry Pringle moved to refer the draft legislation, which includes the two changes requested at the last meeting, to the full Advisory Committee. Richard Flewelling seconded. The two changes: require the policy to address whether remote participation can be used in executive sessions in order to provide the protection of privacy that is intended through the use of executive session, and to exempt the quorum requirement when other statutes specifically address that limitation.

Joe Brown reiterated his opposition to allowing elected officials to participate remotely. Mr. Parr said he agreed with Mr. Brown. The members voted 5-2 to refer the draft to the full Advisory Committee. (In favor: Mr. Flewelling, Mr. Logan, Ms. Pistner, Mr. Pringle, Mr. Rossignol; opposed: Mr. Brown, Mr. Parr.)

B. FOAA deadlines and appeals

Mr. Pringle moved to refer the draft to the full Advisory Committee. Mr. Flewelling seconded.

Mr. Parr said he would vote against the proposal; the Department of Public Safety has never been able to comply with the strict deadlines because of the volume of requests and because of the complexity of requests and the necessary reviews. The new deadlines are unrealistic; he would prefer to have the statute focus on reasonableness.

The members voted 6-1 to refer the draft to the full Advisory Committee. (In favor: Mr. Brown, Mr. Flewelling, Mr. Logan, Ms. Pistner, Mr. Pringle, Mr. Rossignol; opposed: Mr. Parr.)

#### C. Relief from overly-burdensome FOAA requests

Garrett Corbin presented the results of the survey Maine Municipal Association conducted among its member municipalities during November. A total of 93 municipalities responded, and 20 of those indicated that they had received large-scale (in terms of frequency, scope or both) FOAA requests in the past three years. The results indicate a range of responses, including several recommendations for changes. The members thanked Mr. Corbin for the work and the information.

Mr. Pringle moved to refer the draft legislation to the full Advisory Committee. Mr. Flewelling seconded. The members voted 7-0, with one abstention, to refer the draft to the full Advisory Committee. (In favor: Mr. Brown, Mr. Flewelling, Rep. Monaghan-Derrig, Mr. Parr, Ms. Pistner, Mr. Pringle, Mr. Rossignol; abstained: Mr. Logan.)

#### D. Change reporting date for the Public Access Ombudsman

Mr. Logan moved to refer the draft to the full Advisory Committee. Mr. Brown seconded. The members voted 8-0 to refer the draft to the full Advisory Committee. (In favor: Mr. Brown, Mr. Flewelling, Mr. Logan, Rep. Monaghan-Derrig, Mr. Parr, Ms. Pistner, Mr. Pringle, Mr. Rossignol.)

#### E. Add IT expertise to membership of RTK AC

Mr. Brown moved to refer the draft to the full Advisory Committee. Mr. Logan seconded. The members voted 8-0 to refer the draft to the full Advisory Committee. (In favor: Mr. Brown, Mr. Flewelling, Mr. Logan, Rep. Monaghan-Derrig, Mr. Parr, Ms. Pistner, Mr. Pringle, Mr. Rossignol.)

#### F. Allow Registers of Deeds to redact Social Security numbers

Mr. Parr allowed Patricia Shearman, Register of Deeds for Oxford East and representing the Registers of Deeds Association, to address the subcommittees about the proposed draft legislation. She said that the proposed discretion bothered the registers, and she read a statement for Susan Bulay, Register of Deeds for Penobscot County. The registers are concerned about inconsistencies from county to county, and the liability if redactions are not made. The estimated costs for eight of the counties (serviced by Xerox) total \$675,693 to redact existing records. The registers would prefer a statute that prohibits the filing of documents that contain Social Security numbers. Ms. Shearman distributed copies of the Missouri and New Hampshire laws that prohibit such filings.

Mr. Pringle suggested that it may be better to leave the entire issue for the Legislature to handle by reviewing the recording statute. Ms. Pistner suggested that a letter to the State and

Local Government Committee may be appropriate. Mr. Logan agreed that a letter may be the best route, but he did not think that a blanket prohibition on filings would be good.

Mr. Logan moved that the subcommittees recommend that the Advisory Committee send a letter to the State and Local Government Committee recommending review of the two prongs (redacting existing recordings and stopping SSNs on new filings) of the concerns raised by the Registers of Deeds. Mr. Flewelling seconded. The members voted 7-1 with one abstention to recommend that the full Advisory Committee send a letter to the State and Local Government Committee. (In favor: Mr. Flewelling, Mr. Logan, Rep. Monaghan-Derrig, Mr. Parr, Ms. Pistner, Mr. Pringle, Mr. Rossignol; opposed: Mr. Brown; abstaining Ms. Meyer.)

## Remaining issues

- Update on State e-mail management protocol

The members reviewed the State-wide email retention policy adopted by the Secretary of State and effective October 11, 2013.

- Can FOA requests be made anonymously? Does it matter if the request is in writing?

Mr. Parr said that sometimes receiving and having to respond to an anonymous request can be frustrating. If the principle is transparency, why should the person asking for records be able to ask from behind the veil of anonymity? We can't stop people from using pseudonyms and fronts, but we can prohibit anonymous request. He also said that having a request in writing can be enormously helpful for several reasons. Ms. Pistner explained that one of the concerns raised by the Maine Freedom of Information Coalition's survey several years ago was how intimidated requestors felt when asking for records. Lots of people don't want their name in a written request, she said. She often creates a writing in response to a request.

Mr. Parr said that, once again, the question of "what is a FOAA request" is raised. A person who comes into the office to ask for a copy of the minutes of a meeting doesn't need to give a name or put the request in writing. Mr. Logan said that the statute presumes that a requester is known – the proposed abuse provision (see below); government agency must determine if the requester failed to pay for copies in the past. He reminded everyone that the request itself is public – the public should know who is asking, the frequency of requests, the scope, the time it takes to respond.

Ms. Meyer wondered how often anonymous requests create problems. She suggested that the Public Access Ombudsman be requested to collect information. Ms. KIELTY addressed the subcommittees and said she would be happy to work with MMA to assemble information. The only anonymous request that she is aware caused concerns is the one made for concealed handgun permit information.

- Should FOAA requests for commercial purposes be subject to the fee restrictions of 1 MRSA §408-A, sub-§8? What is a commercial purpose?

Mr. Parr Suggest that issues related to commercial purposes be tabled, and the members agreed.

- Review of standard fees and fee schedules adopted by agencies

The members reviewed information collected by staff about fees and fee schedules adopted by State agencies. The members agreed that no action was necessary.

- Review of allocation of responsibilities between the Advisory Committee and the Ombudsman

Staff presented information about the evolution of responsibilities among the Advisory Committee and the Public Access Ombudsman. There was some discussion about moving mention of the FOAA website from the Advisory Committee to the Public Access Ombudsman statute, but the decision was to not make changes at this time. Ms. Kielty explained that she is already running the website. There are some funding questions, but for now the Office of the Attorney General is absorbing those costs. She hopes to make the website a platform for training starting in 2014.

Ms. Kielty explained that although she can currently handle the existing duties, she is reaching the limit of what is possible and will need additional staff eventually.

- Question about whether “working papers” are public records

Ms. Meyer asked that the members discuss the underlying concern that was made evident in the recent revelations about “working papers” that were part of a funding decision-making process being shredded. Mr. Pringle stated that there is not much doubt that “drafts” are public records under the statute, but there is always a question about retention schedules. If a Superintendent revises a draft of a letter, are all electronic versions of the letter public records? Mr. Parr agreed, and said he was concerned that government employees would begin to feel obligated to hoard every document they ever create to make sure every version of every document is retained. His interpretation of “working papers” is not drafts but decision points. Ms. Meyer reminded the group about the discussion of the proposed exemption for the Governor’s working papers: the public is interested in the whole process, from the kernel of an idea to fruition.

The members agreed that the best way to approach the concerns is through training. Ms. Meyer complimented the training already being done by the Maine Municipal Association and the Maine School Management Association. Mr. Logan said he didn’t think this is a big issue that is routinely a problem, and that he also supports more guidance in the training materials.

Ms. Kielty agreed to collaborate with the records retention experts (in the State Archivist’s office) and to develop guidance.

## **Future meetings**

No meetings are scheduled.

The meeting was adjourned at 11:16 a.m. p.m.

Respectfully submitted,  
Peggy Reinsch and Henry Fouts

Legislative Subcommittee  
Right to Know Advisory Committee  
September 9, 2013  
Draft Meeting Summary

Convened 10:02 a.m., Room 438, State House, Augusta

Present:	Absent:
Judy Meyer, Chair	none
Joe Brown	
Richard Flewelling	
Suzanne Goucher	
Mal Leary	
Bill Logan	
Chris Parr	
Harry Pringle	
Luke Rossignol	

Staff:  
Henry Fouts  
Peggy Reinsch

### **Convening, Introductions**

Judy Meyer, Legislative Subcommittee Chair, called the meeting to order and asked the members to introduce themselves. Staff provided a brief overview of the agenda.

Ms. Meyer recommended that the agenda items relating to Freedom of Access Act and the Public Access Ombudsman legislation be skipped until the other agenda items are discussed. (LD 258 [referred back to RTK AC], LD 104 [PL 2013, c. 339], LD 1216 [PL 2013, c. 350] and LD 1511 (PL 2013, c. 229))

### **Encryption of emergency communications**

The subject of establishing a policy concerning the encryption of emergency radio communications among law enforcement and first responders was discussed in 2012. The Right to Know Advisory Committee wrote to the Board of Trustees of the Maine Criminal Justice Academy requesting that the Board consider creating a model encryption policy for consideration by local law enforcement agencies. The Chair of the Board of Trustees responded that the Board does not formulate model policies for law enforcement, although it does develop standards for law enforcement policies mandated by the Legislature.

After discussion, the Subcommittee agreed to explore options for pursuing the original proposal of a policy that maintains the current practice. The Subcommittee voted to table the issue while staff develops language and checks with stakeholders.

### **Appropriations Committee caucuses**

The Right to Know Advisory Committee has discussed the openness of legislative party caucuses in the past; there is some interest in addressing it in the statute to make it clear whether caucuses are open to the public or closed. The Subcommittee discussed the current practices of the Appropriations and Financial Affairs Committee, in which negotiations done between the “chairs and leads” are open and anyone who knows about the meeting can attend, but general notice is not provided. The Legislature looks to its Joint Rules, adopted by each Legislature, to govern notice requirements rather than FOAA. This relies on the inherent power of the Legislature to govern its internal procedures.

The Subcommittee voted 7-2 (Mr. Brown and Mr. Parr dissenting) to ask Public Access Ombudsman Brenda Kielty to provide clarification regarding the public accessibility requirements under Maine law for party caucus meetings. Ms. Kielty agreed to try to provide guidance by the beginning of November.

### **Protection of “personal information” within the data breach statute**

The Notice of Risk to Personal Data Act (10 MRSA Chapter 210-B) requires that an entity that holds personal data to provide notice when the entity is aware that the personal information has been subjected to a risk of disclosure. The Subcommittee agreed that, because the State has the same responsibility as private entities under the statute, no change and no further discussion are necessary.

### **Review of statutes to determine whether records should be protected from disclosure**

The Subcommittee agreed that no discussion was necessary on the topic of requiring a regular review of records that are accessible to the public.

### ***McBurney v. Young*, 569 U.S. \_\_\_\_ (2013)**

The United States Supreme Court ruled that the Virginia Freedom of Information Act is constitutional even though it provides rights to public records to Virginia citizens and not to others from other states. The Subcommittee discussed whether it would be appropriate to limit the application of the Maine FOAA to Maine citizens, and quickly decided such a change would be setting up a barrier that would be easily crossed. Mr. Parr noted that it may be appropriate to give priority to in-state requests and therefore alleviate the stress on State agencies that are overwhelmed with public records requests. The Virginia statute was set up so Virginia citizens can find out what is going on with their Virginia government. Allowing access of records for other, such as commercial, purposes creates a resource issue. The Subcommittee voted 8-0 (Mr. Parr abstained) to take no action.

### **Permissive or mandatory**

The Subcommittee discussed the question of whether the specific types of information listed as exceptions from the definition of “public record” (1 MRSA §403, sub-§3) must be redacted from records that are released to the public. Although there is some discomfort about the idea that a records custodian has discretion as to whether release records that are not “public records” but which have not been explicitly

designated as “confidential,” the Subcommittee agreed to take no action. The Public Records Exceptions Subcommittee reviews all public records exceptions and tries to use consistent language to designate as confidential records that should be kept from being disclosed.

### **Date of birth of public employees**

The question of whether a public employee’s date of birth is public information was raised this summer. Mr. Parr and Ms. Kielty concluded that the fact that “age” is confidential information in a public employee’s personnel file is sufficient grounds to not release the employee’s date of birth. The Subcommittee discussed whether the statutes should be amended to include “date of birth” – either instead of “age” or in addition to “age.” The Subcommittee agreed to table the discussion until the next meeting, at which point the members can review all the statutes that address the confidentiality of “age” and “date of birth” of public employees.

### **Formal, standardized policy governing the storage, retention, and disposition of government emails**

Ms. Kielty noted that records retention and email go hand in hand with FOAA; one can’t access email if it has not been retained. So far, she has focused on email at the State level. This is an ongoing discussion at all levels of government and in all jurisdictions. Ms. Kielty recommended hearing from Maine’s OIT experts and Tammy Marks from Archives, at least with regard to State agencies. A State policy is being developed. The Subcommittee asked for a written update on the policy, and tabled the question for the next meeting.

### **Government records containing personal information about private citizens**

The Subcommittee agreed to work with the Bulk Records (now Public Policy) Subcommittee to explore the question of whether and how to protect personal information about private citizens that is contained in public records.

### **LD 549 as amended by the Judiciary Committee (bill carried over in Appropriations Committee): An Act To Provide for Special Restrictions on Dissemination and Use of Criminal History Record Information for Class E Crimes Committed by an Adult under 21 Years of Age**

The Subcommittee discussed the proposal to “seal” the criminal history records relating to a single conviction of Class E theft when committed by a person under 21 years of age. Why just Class E theft, which covers shoplifting, when there are other Class E crimes that are even less serious? Convictions are always in the public realm, even if sealed in the SBI’s records. The Subcommittee voted 9-0 to take no action.

### **Post all FOAA requests**

Ms. Kielty had received a request that all FOAA requests be posted online. This could serve three purposes: First, a person whose records were the subject of the request would know that his or her information was requested and released; Second, the posting would further transparency of government activities; and Third, abuses of FOAA would

be more apparent. The Subcommittee discussed whether any jurisdictions do this now, and Ms. Kielty indicated that the federal government does make at least some of this information available online. Ms. Meyer said that Connecticut does so, and Mr. Leary noted that requests under the Connecticut freedom of access laws are required to be made formally, citing the specific statutory reference for the information. The Subcommittee agreed to ask the Bulk Records Subcommittee to add this issue in its discussions.

### **Right to Know Advisory Committee and the Ombudsman**

Ms. Goucher reminded the Subcommittee that some of the duties originally proposed for the Public Access Ombudsman were shifted to the Advisory Committee when it became clear that no funding was available for the Ombudsman. The Subcommittee agreed to ask Staff and Ms. Kielty to review the original proposals and report back to the Subcommittee at the next meeting.

### **Future Meetings**

The Legislative Subcommittee will meet at **9:00 a.m. on Thursday, October 3rd**, and will meet jointly with the Public Policy Subcommittee (fka the Bulk Records Subcommittee) at 10:00 a.m. on Thursday, October 3rd.

The Advisory Committee will meet at 1:00 pm, Room 438, State House on Thursday, October 3, 2013.

The meeting was adjourned at 12:20 p.m.

Respectfully submitted,  
Peggy Reinsch and Henry Fouts

Legislative Subcommittee  
Right to Know Advisory Committee  
October 3, 2013  
Draft Meeting Summary

Convened 9:00 a.m., Room 126, State House, Augusta

Present:

Judy Meyer, Chair  
Joe Brown  
Suzanne Goucher  
Bill Logan  
Chris Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol  
Senator Linda Valentino

Absent:

Richard Flewelling  
Mal Leary

Staff:

Henry Fouts  
Peggy Reinsch

**Convening, Introductions**

Judy Meyer, Legislative Subcommittee Chair, called the meeting to order and asked the members to introduce themselves.

**Public body member participation from remote locations, LD 258**

Ms. Meyer opened the discussion about LD 258, which was voted ONTP by the Judiciary Committee, by explaining the history of the work of the Right to Know Advisory Committee on the concept. She explained that the draft had been proposed as a response to question about electronic meetings, and that the Advisory Committee has not reached consensus on all the aspects of legislation addressing the subject matter. Some members do not believe a member of a public body should be able to vote if not physically present, others believe that bringing members together electronically is the wave of the future and should be accommodated, and others believe the type of organization or the type of the proceeding should govern what is permissible. The Judiciary Committee asked the Advisory Committee to continue developing the idea, and include feedback from entities that currently rely on technology to make their proceedings effective.

The Subcommittee raised many questions. Should a person elected to a local government position be able to participate when spending six months of the year in Florida? Does the significance of the issues affect whether the members can participate from a remote location? If members of the public body are well-compensated for their participation,

should they be required to be physically present for all proceedings? What is the best way to narrowly tailor the proposed statute to ensure effective public proceedings and provide for transparency and accountability for the public?

The Subcommittee members reviewed the chart of responses from State entities that currently conduct public proceedings by using some form of communication technology to allow one or more members to participate from remote locations. They also reviewed the written testimony provided to the Judiciary Committee on LD 258. There are several public bodies that make use of technology to conduct their proceedings, despite the lack of general authorization in the FOAA or specific authorization in the statutes that pertain to the individual public bodies.

Joe Brown, relying on his experience as a county commissioner, said that he had never been to a meeting at which new information wasn't provided, and that the new information always has a potential to influence the decision-making that day. Public officials should always be available to be influenced by their constituents, he said, especially if the public officials are elected.

Harry Pringle, declining to support or oppose legislation on this subject, agreed that if a person is elected, the person needs to be there, but that we also need to move into the modern age. He said it is very important to clarify the law because there are various bodies making their own decisions about whether it is appropriate to meet over the phone. We have to be very careful to deal with all the issues. For example, if a school board approves a \$21 million bond issue using electronic communication, is the bond valid? If the school board imposes discipline through an electronic meeting, is it valid? Mr. Pringle noted that boards can be divided into two types – local and statewide, which often include members from a large geographic expanse – and that may be a way to address permissible activities. He urged the Subcommittee to recommend legislative action to clarify which bodies are specifically authorized to allow remote participation.

Luke Rossignol, who often travels from the County to attend meetings, emphasized the importance of entities, such as the Maine Human Rights Commission, being able to take testimony and allow participants, witnesses and complainants to connect electronically. He asked how LD 258 deals with a public body when it uses executive session – can the member participating remotely still be a part of the executive session? How do you know who is in the room with the member to ensure that the executive session is truly closed?

There was discussion about application of any changes to the Legislature. Senator Valentino expressed her frustration that the legislative rules allow a committee member who was not present to nonetheless cast a vote (although it must be done in person and not via phone or email).

Mr. Pringle noted that LD 258 requires the public body to adopt a policy authorizing remote participation before a member can participate without being physically present, which means it is the right of the body to decide, not the right of the individual member.

Chris Parr wondered whether the absent person should be in a public place to participate, although that would eliminate the member of a public body connecting from home. He agreed that the issue is very complex and that, although we have the technology that should be used, there are practical considerations.

There was significant discussion about prohibiting elected officials from using remote participation, and also about drawing distinctions based on what the body is doing. Maybe it would be acceptable to allow advisory committees to meet by phone. If a person is paid a salary to attend a panel and doesn't show, Perry Antone said the person should just be replaced. Maybe it would be best to look at whether the public body can benefit from members participating even when not physically present? After floating a couple of motions that did not succeed, the members agreed that one size does not fit all and that they need more information.

The Subcommittee asked staff to follow up on what other states authorize. Mr. Parr moved that the question be addressed incrementally: use LD 258 as a framework, but don't allow elected officials to meet remotely unless there is an emergency. There is concern about abuse of an "emergency" exception. In addition, executive sessions need to be addressed. The Subcommittee voted 6-2 in favor of the motion. (In favor: Judy Meyer, Joe Brown, Suzanne Goucher, Chris Parr and Linda Pistner; opposed: Harry Pringle and Luke Rossignol) Staff will prepare draft legislation for discussion at the next meeting.

### **Encryption of public safety radio transmissions**

The Subcommittee agreed to discuss the encryption issues in the joint meeting of the Legislative Subcommittee and the Public Policy Subcommittee, immediately following adjournment of the Legislative Subcommittee meeting.

### **Future Meetings**

The Legislative Subcommittee will meet with the Public Policy Subcommittee at **10:00 a.m. on Tuesday, November 12, 2013**

The Advisory Committee will meet at 1:00 pm, Room 438, State House on Tuesday, November 12, 2013.

The meeting was adjourned at 10:10 a.m.

Respectfully submitted,  
Peggy Reinsch and Henry Fouts

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

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

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

Absent:  
Linda Pistner

Staff:  
Henry Fouts  
Peggy Reinsch

### **Convening, Introductions**

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

### **Subcommittee name change**

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

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

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

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

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

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

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

### **Anonymous FOAA requests**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Unintended adverse impacts of FOAA**

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

## **FOAA for commercial purposes**

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

## **Final business**

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

## **Future meetings**

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

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

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

The meeting was adjourned.

Respectfully submitted,

Henry Fouts and Peggy Reinsch