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Right to Know Advisory Committee
June 30, 2009
(Draft) Meeting Summary

Convened 12:40 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Karla Black
Robert Devlin
Ted Glessner
Mal Leary
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

| Absent:

Shenna Bellows
Sheriff Mark Dion
Richard Flewelling
Suzanne Goucher

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Barry Hobbins convened the Advisory Committee and welcomed everyone to the first meeting of 2009.

Summary of 124th Legislature's FOA actions in 2009

Staff reported on the Legislature's consideration of LD 1199 that resulted from the recommendations of the Advisory Committee and distributed a copy of the enacted law (Public Law 2009, chapter 2400. Staff noted that all of the Advisory Committee recommendations were adopted without change except that Section 15 of the bill related to teacher confidentiality was removed as LD 1191 considered by the Education Committee sought to amend the same provision. Linda Pistner also pointed out that a provision to remove the sunset date on the authorizing statute for the Public Access Ombudsman was added to LD 1199 by the Judiciary Committee.

Staff also summarized the proposed public records exceptions reviewed by the Judiciary Committee during the session and distributed copies of the relevant provisions of the enacted laws.

Discussion of Legislative Process and Role of Advisory Committee

When reviewing the list of proposed public records exceptions enacted into law, Mal Leary noted that LD 1191 which was considered by the Education Committee was not formally reviewed by the Judiciary Committee as required by law. Mr. Leary expressed his concern that the bill was not reviewed given the discussions of these provisions related to teacher confidentiality by the Advisory Committee. Sen. Hobbins explained that LD 1191 was reported out of the Education Committee at the end of the legislative session and moved very quickly. Staff also reminded the Advisory Committee that LD 1191 does not create a new public record exception and, based on that fact, the Judiciary Committee was okay with the bill being enacted without review. Sen.

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Hobbins suggested that the Advisory Committee may want to review the provision as enacted in LD 1191. He also expressed his opinion that overall the process for reviewing exceptions has improved as committees are becoming more aware of the process and analysis done by the Judiciary Committee.

Chris Spruce asked about the outcome of LD 679 related to attorneys' fees in actions pursuant to the freedom of access laws. Staff explained that the bill was enacted as Public Law 2009, chapter 423 and allows the recovery of attorneys' fees by the substantially prevailing plaintiff in appeals of freedom of access actions if the court determines that the refusal or illegal action was committed in bad faith. Harry Pringle expressed concern about the committee process in considering LD 679. He stated that he did not believe the Right to Know Advisory Committee was provided adequate notice of the bill and reminded the Advisory Committee of the history of the Advisory Committee's discussions of the attorneys' fees issue and the Advisory Committee's lack of consensus. Mr. Pringle explained that he believed the Judiciary Committee did not have adequate knowledge of the Right to Know Advisory Committee's discussion of the issue. Mr. Pringle also stated his belief that the function and role of the Right to Know Advisory Committee is to provide comment on legislation related to freedom of access issues and that the Advisory Committee should have notice of proposed legislation in a timely manner so that comments can be provided. Mal Leary agreed and suggested that the Advisory Committee have an opportunity to comment on every FOA-related bill to the Legislature. Chris Spruce remarked that, given the nature of the legislative process, he wasn't sure how more notice and involvement from the Advisory Committee could be achieved. Linda Pistner noted that, because the Advisory Committee was waiting for the appointment of new legislative members, there was no opportunity for the Advisory Committee to meet with the Judiciary Committee. Sen. Hobbins and staff expressed the hope that the Judiciary Committee would be more engaged with the Advisory Committee next session. Mr. Pringle reiterated the need for a process for the Advisory Committee to provide input to the Legislature given the time and effort spent on these issues by the Advisory Committee.

Requests from the Legislature

Staff reviewed the 3 requests received from legislative committees for further review of certain issues by the Advisory Committee:

- Review of LD 757, An Act to Improve the Transparency of Certain Hospitals, requested by the Health and Human Services Committee;
- Review of LD 1353, An Act Regarding Salary Information for Public Employees requested by the Judiciary Committee; and
- Review of standard language currently in statute used to protect information in an application for State funding or other assistance, requested by the Judiciary Committee.

The Advisory Committee agreed (by consensus) to review these issues.

Request from Maine Press Association

The Advisory Committee also reviewed a request by the Maine Press Association to consider the issues raised in LD 1271, An Act to Generate Savings by Changing Public Notice Requirements, particularly the statutory requirement for public notice in newspapers. Attorney Dan Walker representing the Maine Press Association explained their concerns about legislative efforts similar to LD 1271 to shorten or eliminate the requirement for newspaper notice. He noted also

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that the context for the legislative debate has been the State's fiscal crisis. Attorney Walker asked that the Advisory Committee review the issue in a manner that balances the financial issues with the underlying principles of open government. The Advisory Committee discussed Attorney Walker's request. Chris Spruce and Mal Leary expressed concern about the lack of statewide online access and that the manner of providing public notice will be an ongoing issue. Sen. Hobbins agreed that this is an appropriate issue for the Advisory Committee to consider. Upon a motion by Mr. Leary (seconded by Judy Meyer), the Advisory Committee agreed to review this issue.

Law School Externship

The Advisory Committee discussed the Law School externship that was recently completed by Heidi Pushard. Linda Pistner reported that Ms. Pushard enjoyed the experience, but noted the difficulty in providing direct supervision and interaction with the Advisory Committee during the legislative session. Ms. Pistner suggested that having an extern during the Fall semester might provide a better opportunity for interaction with the Advisory Committee and staff. The Advisory Committee asked staff to contact the Law School about the possibility of placement for the Fall semester and, if not, will seek an extern for the Spring semester.

Education and Training Activities

Staff reminded the Advisory Committee of its role in education and training activities. Staff also gave an overview of the training activities provided by the Maine Municipal Association which were described in an email from Advisory Committee member, Richard Flewelling.

Discussion of additional FOA issues and activities

Staff also reviewed the list of ongoing issues and projects identified by the Advisory Committee: 1) social security numbers in public records; 2) use of technology in public proceedings; 3) minutes and records of public proceedings; and 4) records of advisory panels conducting reviews of internal activities of state agencies or officials (follow up on Abbott decision). The Advisory Committee agreed to keep working on these issues.

Discussion of Subcommittees and Structure of Subcommittees

Given the nature of the issues recommended for consideration by the Advisory Committee, the Advisory Committee agreed to change the subcommittee structure to more evenly distribute the tasks. Ted Glessner noted that the Compliance and Resources Subcommittee had not met as often as the Legislative Subcommittee or the Education and Training Subcommittee and suggested that the issues be distributed more equitably among the subcommittees. Chris Spruce suggested that the work of the Legislative subcommittee could be divided into one subcommittee focused on review of public records exceptions in current law and one subcommittee focused on specific issues raised in proposed legislation. Mal Leary suggested that the ongoing issues identified by the Advisory Committee could also be assigned to a subcommittee. After some discussion, the Advisory Committee proposed 4 subcommittees: (1) Education and Training Subcommittee; (2) Public Records Exceptions Subcommittee; (3) Legislative Subcommittee; and (4) Ongoing FOA Issues Subcommittee.

The charge and issues assigned to the subcommittees are summarized below. Members are asked to review the suggested subcommittee assignments and let staff know if they are interested in

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another subcommittee assignment or are interested in serving on additional subcommittees. In keeping with past practice, Sen. Hobbins and Rep. Hill are assigned to each subcommittee and will attend subcommittee meetings as they are able.

Public Records Exceptions Subcommittee (Central charge is to review existing public records exceptions and make recommendations to keep, modify or repeal)

Chair:	Shenna Bellows (<i>suggested in absentia</i>)	Issues identified for 2009:
Members:	Linda Pistner Chris Spruce Suzanne Goucher Harry Pringle Sen. Hobbins Rep. Hill	<ul style="list-style-type: none">• Remaining exceptions• Teacher discipline confidentiality• Standard language currently in statute used to protect information in an application for State funding or other assistance

Legislative Subcommittee (Central charge is to respond to requests from the Legislature)

Chair:	Chris Spruce	Issues identified for 2009:
Members:	Karla Black Linda Pistner Bob Devlin Sen. Hobbins Rep. Hill	<ul style="list-style-type: none">• LD 757 - including non-governmental entities in the Freedom of Access laws• LD 1353 - public access to names, positions and salaries of public employees• Providing public notice (raised by Maine Press Association, LD 1271)

Ongoing FOA Issues Subcommittee (Central charge is to work through FOA issues that are more global and long-range)

Chair:	Mal Leary	Issues identified for 2009:
Members:	Judy Meyer Ted Glessner Sen. Hobbins Rep. Hill	<ul style="list-style-type: none">• Social Security numbers• Use of technology in public proceedings• Taking and keeping minutes/records of public proceedings• Classification of records of advisory panels conducting reviews of internal activities of public agencies or officials

Education and Training Subcommittee (Oversees training requirements)

Chair:	Judy Meyer	
Members:	Karla Black Richard Flewelling Sheriff Mark Dion Mal Leary	Linda Pistner Harry Pringle Sen. Hobbins Rep. Hill

Appointments; vacancies

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The Advisory Committee noted that there are 2 vacancies on the committee due to the resignations of Maureen O'Brien and Eric Conrad. Staff reported that they have been in contact with appropriate staff of the President and Speaker about filling those vacancies. In addition, it was noted that members currently serving on the Advisory Committee were appointed for 3-year terms due to end in November 2009. The law does not limit the number of terms of Advisory Committee members and members may continue to serve until a successor is appointed. Sen. Hobbins asked that Advisory Committee members interested in being reappointed let staff know so that information can be forwarded to the President and the Speaker; he also indicated that members should forward along any suggestions to fill the vacant positions representing broadcast interests and newspaper publishing interests respectively.

Future Meetings

The Advisory Committee expects to meet at least 3 more times before the end of the year. The Advisory Committee has scheduled 2 meetings to be held on:

- **Wednesday, September 23rd at 12:30 pm; and**
- **Wednesday, October 21st at 12:30 pm.**

Subcommittee meetings will be scheduled during July and August; subcommittees are expected to make a preliminary report to the full Advisory Committee on September 23rd. Dates for subcommittee meetings and additional Advisory Committee meetings for November or December are not determined at this time. Staff will consult with subcommittee chairs on possible dates for subcommittee meetings and schedule those meetings by email.

The meeting adjourned at 2:25 p.m.

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

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Right to Know Advisory Committee
September 23, 2009
Meeting Summary

Convened 12:45 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Dawn Hill
Karla Black
Shenna Bellows
Robert Devlin
Richard Flewelling
Mal Leary
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

| Absent:

Sheriff Mark Dion
Ted Glessner
Suzanne Goucher

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Barry Hobbins convened the Advisory Committee, welcomed everyone and had the members introduce themselves.

NEW ISSUE: Proposed legislation, Rep. Stacy Dostie (Sabattus)

Sen. Hobbins invited Rep. Stacy Dostie to address the Advisory Committee out of order because of her schedule conflicts later in the day. Rep. Dostie provided copies of a rough draft of legislation and an article about action being taken in serialized e-mail, rather than a public proceeding. Rep. Dostie has submitted legislation to be considered in the Second Regular Session that would specifically prohibit public entities from taking action through the use of serialized e-mail. The draft legislation, based on California law, is in response to actions taken by the Sabattus Selectmen that apparently resulted in the resignation of the town manager. Mal Leary, who mentioned that the article incorrectly listed him as a spokesman for the Advisory Committee rather than the Maine Freedom of Information Coalition, expressed his concern about selectmen taking such action, and would like the Advisory Committee to review the proposed language. He stated that technology is outrunning the Legislature. Harry Pringle referenced a Law Court decision holding that discussions between board members outside of public meetings were not unlawful, and asserted that there are constitutional free speech issues raised by this proposal. He also mentioned that there is a long-tradition in Maine of allowing representatives of the people to talk with each other. Rep. Dawn Hill raised the issue of enforcement of the law should the proposal pass, and wondered whether it is better for municipalities to set their own policies. Judy Meyer remarked that the occurrence mentioned by Rep. Dostie is not an isolated instance, and expressed concern about serialized consensus building, in which the decision is made before the public meeting, but the action is taken in public without discussion. She does not believe reliance on municipal policies is appropriate because that would place confidence in the very people engaging in the non-public processes. Richard Flewelling mentioned that it is more than a municipal issue, and suggested that it would be worthwhile to look at how other

states deal with the concern. Mr. Pringle recommended that the Legislative Subcommittee take on the issue. Linda Pistner agreed, and raised the concern that it includes inherently political speech, so care must be taken. Anytime there are majority and minority factions on a board, the minority often feels they are being shut out. Shenna Bellows also cautioned about First Amendment issues, and suggested that the focus be on action taken in the public eye. The Advisory Committee voted unanimously to send the proposal to the Legislative Subcommittee for review and recommendations.

SUBCOMMITTEE REPORTS

※ Legislative Subcommittee

Subcommittee Chair Chris Spruce presented the recommendations of the Legislative Subcommittee.

1. Transparency of information related to State Government contracts and spending: website an example of open government? Resource questions

Mr. Spruce explained that this topic was raised by Mr. Leary: that the State should take advantage of the momentum of putting all ARRA contracts and spending online, and include all State contracts and spending online. The Legislative Subcommittee supports the idea, and wondered what the resource commitment would be. The Subcommittee invited Chief Information Officer Richard Thompson to address the Advisory Committee on the issue.

Mr. Thompson said that the resources necessary to create and maintain the Transparency website make up a significant component. The funding for the work and the tools was part of the administrative costs, and the tools will belong to the State and can be used in other applications. Some of the data now collected is done on a manual basis. Including all data points may be expensive, but many pieces are readily available now. All contracts that go through Purchases and Controls can be posted going forward, while the ARRA data must go back to February. Mr. Thompson recommended that members look at Maine.gov, and check out the “data share” - more data than ever before is available to review. Once it is posted for the first time, it can be repeated and updated on an appropriate basis.

Mr. Leary asked whether it would be appropriate to pass a statute to make sure that at least this level of transparency is maintained by future administrations. Mr. Thompson understood the concern, but indicated there would be a fiscal note if a law required all information be made public by a certain date. Mr. Thompson’s office is doing the best they can, using ARRA and InforME funding. Rep. Hill asked for a description of the plan, including a time frame, and Mr. Thompson agreed to report back to the Advisory Committee.

2. LD 1353, An Act Regarding Salary Information for Public Employees

The Judiciary Committee requested that the Advisory Committee review concerns raised about the release of salary information when linked to specific public employees’ names. Mr. Spruce explained the Subcommittee’s process, and mentioned that the three options

drafted for the meeting were a result of the Subcommittee not reaching consensus on who needs the protection of confidentiality, and how to provide that protection. The existing Address Confidentiality Program, administered by the Secretary of State's Office, protects victims of domestic violence and stalking by providing a safe State House Station mailing address for all correspondence. Some members felt tying the protections to the ACP was appropriate because it is an existing program with clear standards. Other members were concerned that the population covered by the ACP may not necessarily be a close fit to those who may need confidentiality protection as envisioned by the Judiciary Committee. The members could identify situations in which a person would not be part of the ACP but could benefit from the confidentiality to the same extent. Some members felt that a general "safety" criterion was too broad. The proposed language provided three different options, two specifically linking to those protected by the ACP, and one modeled on the voter confidentiality provisions, but relying on a public employee's employer being satisfied with the employee's safety concern to lead to confidentiality of the employee's name. Ms. Pistner stated that she does not believe that many people would actually take advantage of the protection afforded by any of the proposals. Mr. Spruce recognized the issue, and asserted that it needs to be carefully drafted so it does not shield people who do not need it. Rep. Hill asked if there was another program to which this could be connected, such as protection from abuse orders, or other court judgments. Mr. Pringle mentioned his personal experience witnessing workplace violence, and he understands the need to protect victims' locations. Ms. Black reiterated the Judiciary Committee's concern about protection of undercover law enforcement officers. Mr. Pringle suggested that it either has to be written just right, or it shouldn't be done. Mr. Spruce agreed, and recommended that the Advisory Committee report back to the Judiciary Committee by recognizing the issue, but also recognizing that the devil is in the details. The Advisory Committee agreed not to recommend any change to the law, but to include in the report the concerns mentioned.

3. LD 757, An Act To Improve the Transparency of Certain Hospitals

Mr. Spruce explained the testimony received by the Subcommittee and the discussion among the members and some of the interested parties. The majority of the members do not support the application of the public meetings law to hospitals and others providing medical services (if they received public money). There was concern about extending the law to all nonprofits eventually. The Subcommittee minority thought the idea could be appropriately applied to nonprofits that perform a public function, especially when a public-private partnership is involved; but no specific proposal was recommended. The Subcommittee did agree that people seeking specific information should identify those requests and move forward on a more focused basis.

The Advisory Committee reviewed the draft letter to the Health and Human Services Committee explaining the process and the recommendation against enactment of LD 757. There was general agreement that the health care system should be more transparent, but the Freedom of Access laws should not be applied to make that happen. The Advisory Committee authorized Senator Hobbins to sign the letter on behalf of the Advisory Committee.

4. LD 1271, An Act To Generate Savings by Changing Public Notice Requirements

The Legislative Subcommittee reviewed the changes to the law put in place by LD 1271, Public Law 2009, chapter 256. The Maine Press Association had requested the Right to Know Advisory Committee to review the changes from the perspective of public access as oppose to saving money, which was the main impetus behind LD 1271. Mr. Spruce indicated that the changes made by c. 256 were relatively limited, but the Subcommittee recognized that there is a need to have more than only web access for information. Chipping away at what is published as public notices in the newspapers will continue to be proposed. Sen. Hobbins agreed that it is a bad idea to make publication decisions based solely on the fiscal aspects. He was concerned that perhaps the State has gone beyond bare bones in the papers. Mr. Spruce reminded the Advisory Committee that there is still a significant portion of the population that does not have access to information on the Internet. Judy Meyer suggested that the report include a statement that the State has gone as far as possible in reducing what must be printed as public notices. Mr. Pringle said he was comfortable with not recommending action as requested by the Maine Press Association, but he could not agree that we should not look at the issue again to make further reductions. Mr. Flewelling recommended that the report reflect the current technological context and the concerns for broad public access to information. The Advisory Committee agreed to not recommend any changes at this time.

※ Ongoing Issues Subcommittee

Ongoing Issues Subcommittee Chair Mal Leary presented the recommendations of the Subcommittee.

1. Meetings using technology

Because current law does not specifically authorize a public body to conduct meetings without the members physically in attendance, the FOA laws are usually interpreted as prohibiting such activity. There are a few Maine statutes that specifically authorize such meetings in certain circumstances, such authorizing the Ethics Commission to meet within 28 days of an election within 24 hours of the filing of any complaint or questions with the Commission (21-A MRSA §1002, sub-§2). The Ongoing Issues Subcommittee reported draft language to explicitly address meetings via technology. Subcommittee Chair Mal Leary explained that the purpose is to expand the ability of public bodies to use technology, while not diminishing public access to meetings. The draft authorizes members of a public body to participate in a public meeting via telephone, audio and video or other form of communication if a quorum is physically present, and if all those in attendance, including members of the public, can hear the member's participation. Mr. Leary explained that the draft wasn't final, but was presented to have the Advisory Committee determine whether to continue working on the concept. Richard Flewelling questioned the separate notice language, and whether it creates a conflict with existing notice provisions, as well as with the exceptions for meetings during declared emergencies. Mr. Pringle raised the question whether the members beyond a quorum can just not bother to attend meetings in person, as long as a quorum does.

The Advisory Committee agreed to table the draft pending new language to be drafted by staff.

2. Social Security Numbers

Subcommittee Chair Mal Leary explained that the Subcommittee's goal is to take an overall approach toward protecting Social Security numbers that are held by public entities. SSNs are scattered throughout State government. Because of the issues involved with making public entities protect all SSNs already located in public records, the Subcommittee recommends designating SSNs as exceptions to public records (currently law excepts SSNs in the possession of the Department of Inland Fisheries and Wildlife from the definition of "public records"), and prohibiting release of SSNs collected after January 1, 2011. The draft also directs that agencies collecting SSNs must do so only if authorized and the SSNs must be collected in a way to keep them separate from information in records that are otherwise public.

Mr. Pringle agreed with the proposed amendment to the definition of "public record," but expressed his surprise that the Legislature would enact a law that authorizes the Department of Education to collect SSNs from students. (Education Commissioner Gendron will address the Advisory Committee about PL 2009, c. 448 at a future meeting.) Rep. Hill questioned whether the exception for law enforcement investigations was too broad. Ms. Pistner suggested bringing in the definition of law enforcement agency from the Criminal History Record Information Act.

The Advisory Committee tabled the draft pending new language to be prepared by staff.

3. Minutes/Records of public meetings

Subcommittee Chair Leary explained that because a lot of public bodies already keep meeting records, this draft defines the minimum that must be included in the record. This draft requires that a record be made of each public meeting. Mr. Flewelling pointed out that a similar bill was proposed and soundly defeated by the Legislature this year. He reminded the Advisory Committee that the proposal is an unfunded mandate. Ms. Meyer is willing to make the argument that pencil and paper that would be necessary to comply with the requirement do not constitute a mandate. Mr. Pringle wanted to make sure that this requirement would not result in a change for those entities that already keep meeting records. Mr. Spruce expressed his opinion that this is the most supportable proposal, which goes to the public's right to know by making sure a record is created.

The Advisory Committee tabled the draft pending new language, to be prepared by staff, that clarifies that the record may be a written record or an audio record.

4. Records of ad hoc internal review

Subcommittee Chair Leary explained that the purpose of the proposed draft is to make public specific records related to an internal review of agency conduct. If the review were done by public employees, most of the records of the review would be public. The proposal is to ensure that the same type of review done by persons outside the agency at the direction of the agency head results in the same public access. The draft requires a report to be produced in such an activity, and the report must be public. The proposed

draft requires the report to include the findings, recommendations and conclusions, as well as the process of the review, the list of persons interviewed and the list of records reviewed. Mr. Leary asked whether the idea is something the Advisory Committee wants to pursue.

Mr. Pringle stated that he is not in favor of overturning Abbott v. Moore. Mr. Leary took the opposite position that the Law Court would say that policy-making is for the Legislature, and the Legislature’s role is to change the law to reach policy goals. He believes an entity reviewing a public entity’s conduct should be public.

The Advisory Committee tabled the draft, pending more research and possibly more drafting by staff to address personnel file confidentiality issues.

※ Public Records Exceptions Subcommittee

Public Records Exceptions Subcommittee Chair Shenna Bellows presented the report of the Subcommittee.

Ms. Bellows explained that the Subcommittee reviewed 13 public records exceptions, and tabled six for more information. Seven of the existing public records exceptions were accepted by the Subcommittee, although not all were unanimous votes. Amendments were prepared for four, based on the Subcommittee’s standard requirement that the starting point for all records is that they are public, and then confidentiality protections should be narrowly tailored to cover what needs to be protected. The Subcommittee has not yet reviewed the Criminal History Record Information (staff is working with the Attorney General’s Office to prepare a draft), the standard language for protecting information submitted in applications seeking financial or technical support (such as to FAME), and the system review panels confidentiality (such as protection for the Homicide Review Panel’s records).

The recommendations from the Subcommittee:

10	945-J		Title 10, section 945-J, relating to the Maine International Trade Center	AMEND; draft approved 3-0 vote
10	975-A	2, 3	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine	TABLED for more information, discussion
12	550-B	6	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas	TABLED for more information, discussion; prepare draft amendment

12	549-B	5	Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural areas	TABLED for more information, discussion
12	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	ACCEPTED; no change 2-1 Vote
12	6445		Title 12, section 6445, relating to logbooks for lobster harvesters	ACCEPTED; no change 2-1 Vote
12	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	AMEND; pending review of draft 3-0 vote
12	6749-S	1	Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors	ACCEPTED; no change 2-1 Vote
12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	AMEND; pending review of draft 2-1 vote
12	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	ACCEPTED; no change 2-1 Vote
14	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	ACCEPTED; no change 3-0 vote
14	1254-A	8	Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	ACCEPTED; no change 3-0 vote
14	1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information	ACCEPTED; no change 3-0 vote

16			Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	TABLED for more information, discussion
16	614	2 1-A	Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	TABLED for more information, discussion
19-A	4013	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	TABLED for more information, discussion
20-A	13004	2-A	Title 20-A, section 13004, subsection 2- A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	AMEND-reflect PL 2009, c. 331 3-0 vote

Mr. Leary requested that the Subcommittee reconsider the jury secrecy laws. He recommended that the presumption for the information be reversed to be consistent with other Maine statutes: that the information is presumed public and confidentiality protections narrowly tailored to address specific concerns.

The Subcommittee recommended that the education credentialing draft be reconsidered by the full Advisory Committee. The Advisory Committee's recommendation was not considered by the Judiciary Committee and the Legislature in the First regular Session on the assumption that a related bill referred to the Education Committee would address the same issues, which it did not.

The Advisory Committee voted to table the recommendations concerning public records exceptions pending further review by the Subcommittee. The education confidentiality was tabled until the next Advisory Committee meeting on October 21st.

NEW ISSUES

- Bob Devlin updated the Advisory Committee on the Hancock County Registry of Deeds case. Although the Superior Court has issued an opinion requiring the Registry of Deeds to provide MacImage with electronic records without charging the \$1.50 per page as approved by the County Commissioners, the parties have asked the court for a clarification of the ruling. Even though the case focuses on what is a "reasonable fee," it has implications with regard to bulk sales of information and maintaining the integrity of information. It points out that when the original FOA laws were put into place, no one envisioned the depth of the technology to come. Ms. Meyer has a different perspective on the case, seeing this as a Freedom of Access win, citing reasons why bulk sales are good for individuals as well as the public. She said it is clear that documents from MacImage are not official documents to be used for legal proceedings, so that the registries will still be asked to produce certified

documents in those instances. Ms. Pistner said that this situation raises a legitimate policy question: if a public entity invests in making information more accessible by implementing technology, to what extent can the public entity recoup the investment that has resulted in a benefit from the entity's forward thinking?

- Chris Parr, Staff Attorney for the Maine State Police, Department of Public Safety spoke to the Advisory Committee about concerns related to requests for bulk data from the Maine Accident Reporting System. He distributed copies of the blank form to explain the information that must be provided by individuals involved in motor vehicle accidents, including driver's license numbers, dates of birth and insurance information. It is a crime to NOT fill out the form. Any person can go online and purchase a copy of a report for \$10, \$1.50 of which goes to InforME, and \$8.50 of which goes to the State Police. Similarly, a person can purchase a driver's license report for \$7.00, of which \$2.00 goes to InforME and \$5.00 is deposited in the Highway Fund. Sales of these reports provide significant revenue. A law firm has requested receiving a copy of the crash data base on an ongoing basis. It has been determined that the data is public and the State Police must comply. Mr. Parr raised concerns about the revenue streams, but noted that the greater concern is privacy, because of the significant amount of personal information included in the database. He knows of at least one instance in which a person's driver's license number was used by an imposter, which affected the person's ability to cash a check. Lt. Chris Grotton added his remarks about the utility of the data being in electronic format, but spoke about his concerns about the ethical questions surrounding the commercial use of the data, and the State Police's inability to maintain the integrity of the data once it leaves their possession. Both Mr. Parr and Lt. Grotton noted that the debate goes to the heart of Freedom of Access: the State collects the information, and people are compelled to provide the information; so is the purpose the creation of an information bank that anyone can access, or the means for citizens to exercise their right and responsibility to know what government is doing. Dick Thompson, the Chief Information Officer, added his comments. The State has the data in that format because that is how the system was set up for the purposes of running the programs. If the purpose had been to provide the public with information, the design may have been different. The data is most valuable because it is in aggregate form. Mr. Leary mentioned that other states have contrasted individual needs with commercial purposes, but Ms. Meyer was reluctant to go down the road of commercial vs. noncommercial use, and gave examples of public benefit from broad access to data. She also noted that these requests represent entrepreneurial creativity, which we generally applaud.

The Advisory Committee referred the subject matter to the Legislative Subcommittee. Mr. Thompson will provide in-progress drafts of the Office of Information Technology's project to address the bulk data request question as it applies across State government.

- The Advisory Committee reviewed an e-mail request concerning release of investigative and intelligence information in an ongoing case, and tabled the matter.

The meeting was adjourned at 3:56 p.m.

Future Meetings

The Advisory Committee expects to meet at least 2 more times before the end of the year. The Advisory Committee has so far scheduled one meeting to be held on:

- **Wednesday, October 21st at 12:30 p.m.**

The Public Records Exceptions Subcommittee is scheduled to meet:

- **Tuesday, October 13th at 12:30 p.m.**

The Legislative Subcommittee is scheduled to meet:

- **Tuesday, October 13th at 10:30 a.m.**

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

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

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

Present:

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

Absent:

Rep. Dawn Hill
Richard Flewelling

Staff:

Peggy Reinsch
Colleen McCarthy Reid

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

Legislative Subcommittee Report

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

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

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

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

Public Records Exceptions Subcommittee Report

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

Review of Revised Discussion Drafts

❖ *Use of Technology in Public Proceedings*

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

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

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

❖ *Social Security Numbers*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Matters

❖ *Definition of "elected official"*

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

❖ *Bills in the Second Regular Session*

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

❖ *Law School Extern*

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

Next Meeting

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

Future Subcommittee meetings are scheduled for:

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

The meeting adjourned at 2:35 p.m.

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

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Right to Know Advisory Committee
December 1, 2009
(Draft) Meeting Summary

Convened 12:33 p.m., Room 438, State House, Augusta

Present:	Absent:
Sen. Barry Hobbins, Chair	Mark Dion
Rep. Dawn Hill	
Shenna Bellows	
Karla Black	
Robert Devlin	
Richard Flewelling	
Ted Glessner	
Suzanne Goucher	
A.J. Higgins	
Mal Leary	
Judy Meyer	
Kelly Morgan	
Linda Pistner	
Harry Pringle	
Chris Spruce	

Staff:
Peggy Reinsch
Colleen McCarthy Reid

Sen. Barry Hobbins convened the Advisory Committee, and asked the members to introduce themselves. Sen. Hobbins welcomed newly-appointed Advisory Committee member Kelly Morgan who has been appointed to represent newspaper publishing interests. Sen. Hobbins also outlined the agenda for the meeting.

Maine Statewide Longitudinal Data System

Department of Education Commissioner Susan Gendron, along with Project Director Bill Hurwitch, attended the meeting at the invitation of the Advisory Committee. Earlier this year, the members of the Advisory Committee were surprised and concerned when they heard about a new authorization to collect and use Social Security Numbers, especially when the Advisory Committee is laboring to develop an appropriate policy on the collection, use and protection of Social Security Numbers by public entities. Commissioner Gendron and Mr. Hurwitch summarized the Statewide Longitudinal Data System that is designed to track student enrollment history and achievement data over time. The program came to the attention of the Right to Know Advisory Committee because of LD 1356, now Public Law 2009, chapter 448: *An Act to Improve the Ability of the Department of Education to Conduct Longitudinal Data Studies*, which authorizes the Commissioner to collect and report individual student Social Security Numbers as a data point supporting the studies. Commissioner Gendron explained that the Department has been involved with the longitudinal data project for several years, and has recently applied for a federal grant to support the program. ARRA stimulus funds are being made available to states to track student achievement and teachers' effectiveness. New requirements mandate connecting

with the Department of Labor to include in the tracking individual earning power and whether employees were appropriately prepared for work through the education system. A goal of the ARRA-based program is to link student achievement data with teachers. (Under the \$5 billion in State Fiscal Stabilization Fund reserved for the U.S. Secretary of Education to make competitive grants, the U.S. Department of Education is conducting a national competition among states for a \$4.35 billion state incentive "Race to the Top" fund to improve education quality and results statewide. The Race to the Top fund will help states drive substantial gains in student achievement by supporting states making dramatic progress on the four reform goals and effectively using other ARRA funds.) In response to questions, Commissioner Gendron said that ARRA does not require collection of Social Security Numbers, but said that it increases the accuracy of the tracking and reporting. She explained that the implementation of chapter 448 has been delayed for a year because of the need to increase awareness about the passage of the law, as well as to provide guidance for its implementation by school systems.

Experience in Maine and in other states, particularly Florida, has shown that use of a student's Social Security Number, although only one of several data points used to identify individuals in longitudinal studies, significantly increases the accuracy of tracking and thus makes the information more useful. Under the new law, parents can refuse to disclose their child's Social Security Number, and students have that choice to make when they turn 18. Social Security Numbers are protected with other personal data under strict requirements of the federal Family Educational Rights and Privacy Act (FERPA). The State is applying for additional funds to be able to cover students from early childhood through adult education. Mr. Hurwitch explained that the Department is working with the Office of Information Technology to develop a table containing different identifiers to be able to track individuals using several identifiers, including SSNs. If a parent elects not to give permission to use the child's Social Security Number, the student can still be tracked. Although about ten states currently collect and use SSNs, he believes that Maine's statute gives the State a competitive advantage in how the SSNs can be collected and used. He assured the Advisory Committee that the longitudinal system is handled all in-house and is not outsourced.

Shenna Bellows questioned whether the use of Social Security Numbers in Florida has resulted in superior outcomes. Commissioner Gendron replied that Florida has been able to expand educational offerings based on the data, and is able to undertake more effective comprehensive planning. For example, Florida has been able to expand its online educational participation from 140,000 participants to 200,000 in one year. Maine's Jobs for Maine Graduates program is a positive example already occurring in this State. The Maine Learning Technology Initiative (school laptop program) will also rely on the data to be collected.

The Executive Summary of the Fordham University School of Law report, *Children's Educational Records And Privacy: A Study Of Elementary And Secondary School State Reporting Systems* (October 28, 2009), had been distributed to the Advisory Committee. Suzanne Goucher asked whether the Department had a chance to look at and address the privacy concerns that were raised in the study. Mr. Hurwitch explained that some of the data, at least from Maine, that was used in the study was outdated and did not reflect current practices. He agreed, however, that every state should examine the concerns raised in the report about privacy, and take appropriate action. Ms. Bellows was concerned about whether the information, particularly disciplinary information, would remain in a permanent record associated with a student. The Department has not determined how long the data will be retained, but will be developing a policy on that issue, which was raised in the Fordham study. Overall, the data will be used in the aggregate and not in ways that would identify individual students.

Transparency of Information Related to State Government Contracts and Spending

Chief Information Officer Dick Thompson updated the Advisory Committee on the State's efforts to make available information on contracts and spending. He provided a memo that summarized the types of information collected and organized to support the delivery of state programs and services. Public data frequently resides on internal systems, has proprietary formatting and is mixed with non-public data. The State generally deals with requests for information on an ad hoc basis. Mr. Thompson noted that two recent actions have demonstrated the advantage and challenges to making more data public as a strategic initiative. One is the requirement that ARRA stimulus funding reporting meet specific federal requirements. The State submitted data as required, but by the time it was posted by the federal government, it was at least 30 days old. Mr. Thompson believes the State can do better with its own posting system, although the myriad of funding sources - rather than simply ARRA-funded contracts and programs - complicates the process. He believes that OIT can build a flexible reporting system prospectively; capturing old data will be more problematic and expensive. Mr. Thompson also noted what he refers to as Maine Data Share, hosted by InforME. State entities can post tables of data for use by anyone. For example, the data used by the Office of Fiscal and Program Review to provide information to the Appropriations Committee and the Legislature around the budget is posted on Maine Data Share. OIT has been able to post transactional data there. Mr. Thompson does not believe he needs enabling legislation to carry out and expand the data-posting project. He is concerned that well-meaning legislation could actually limit the flexibility and creativity that need to be employed in order to provide the best access to information.

Reports of Subcommittees

- **Legislative Subcommittee Report**

Chris Spruce, chair of the Legislative Subcommittee, reported the most recent activities of the Subcommittee, which met on November 17th and immediately before the full Advisory Committee meeting. In its most recent meetings, the Subcommittee focused on two issues: 1) communications outside public meetings; and 2) requests for bulk electronic data.

Mr. Spruce explained that the discussion about communications among members of a governmental body, when those communications occur outside of public proceedings, was triggered by the suggested legislation proposed by Rep. Stacy Dostie. Rep. Dostie spoke with the Advisory Committee and the Subcommittee about the e-mail communications among selectmen that resulted in the termination of the employment of the town manager. She recommended a prohibition on communications outside of public proceedings. Mr. Spruce explained that the Legislative Subcommittee, recognizing that taking action outside of public proceedings is already prohibited by law, chose to focus on providing guidance to public officials about the use of e-mail and other forms of communication when the subject is the transaction of public business. Staff explained the new question-and-answer entry proposed to be added to the FAQ page of the State's Freedom of Access website.

Rep. Dostie presented the most recent version of her proposed bill, to be considered in the Second Regular Session, *LR 2130, An Act to Further Regulate the Communications of Members of Public Bodies*. Mr. Spruce noted that the Legislative Subcommittee chose not to propose a legislative fix; members of the Subcommittee knew that the Legislature would be discussing the e-mail issue

as legislation even if the Advisory Committee does not make a legislative recommendation. Linda Pistner added that the Attorney General’s Office gets inquiries about this issue frequently, and it could be addressed in some fashion. Judy Meyer questioned whether the FAQ entry dealt with the issue strongly enough. Bob Devlin noted that the Legislative Subcommittee was concerned about treading on the First Amendment, which prohibiting communications could do. Harry Pringle reminded the Advisory Committee about the big picture relating to this issue: Maine has a long tradition of elected officials conversing with constituents, and everyone having open discussions about problems and potential solutions. The problem to be addressed, he said, is making decisions outside of public meetings, whether by e-mail or in any other form.

Mr. Spruce moved that the Advisory Committee include the draft FAQ as a recommendation. Richard Flewelling seconded the motion. The vote was unanimous. The Advisory Committee thanked Rep. Dostie for her presentation of her legislation, but did not make a recommendation regarding the bill. Karla Black, who has taken on the responsibility of the State’s FOA website, asked whether the FAQ should be added before the Advisory Committee’s report is presented, and there was general support for adding the guidance information as soon as possible.

The second issue the Legislative Subcommittee reported on is requests for bulk electronic data. Mr. Spruce described the subject as having many tentacles, and being very big. The discussions have been largely around the registries of deeds (which are county offices) and state data, including requests for accident reports maintained by the State Police. Mr. Thompson, the State’s Chief Information Officer, provided information and guidance, and has explained the involvement of InforME, the State’s Internet portal. The Legislative Subcommittee has not formulated any recommendations at this time, but has identified the issue as one that could benefit from the attention of the Law School Extern during the Spring Semester of 2010. The Subcommittee is aware that legislation has been proposed to addresses at least some of the issues identified in the litigation involving MacImage of Maine, LLC and Hancock and other counties, so the Legislature will have the opportunity to deal with the questions during the Second Regular Session. Mr. Spruce envisions the Legislative Subcommittee being more active during the legislative session in an effort to serve as a resource to the Judiciary Committee and other committees of the Legislature.

- **Public Records Exceptions Subcommittee Report**

Shenna Bellows, chair of the Public Records Exceptions Subcommittee, thanked Mr. Spruce for chairing the most recent subcommittee meeting in her absence when she was ill. Mr. Spruce asked staff to outline the Subcommittee’s recommendations as recorded in the chart, and explain the recommended amendments provided in draft form.

Description	Subcommittee Recommendation	Advisory Committee Action on Recommendation
Title 10, section 945-J, relating to the Maine International Trade Center	AMEND 3-0 vote	ACCEPTED 12-1 VOTE

Description	Subcommittee Recommendation	Advisory Committee Action on Recommendation
Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine	AMEND (use standard language) 3-0 vote	ACCEPTED 12-1 VOTE
Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas	AMEND 3-0 vote	ACCEPTED 12-1 VOTE
Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural Areas “shall not constitute records available for public inspection or disclosure”	AMEND 3-0 vote	ACCEPTED 12-1 VOTE
Title 12, section 6173, subsection 1, relating to marine resources statistics	ACCEPTED; no change 2-1 Vote	ACCEPTED 12-1 VOTE
Title 12, section 6445, relating to logbooks for lobster harvesters “disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173”	ACCEPTED; no change 2-1 Vote	ACCEPTED 12-1 VOTE
Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	AMEND 3-0 vote	ACCEPTED 12-1 VOTE
Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors “disclosure of any date collected under this section is subject to the confidentiality provisions of section 6173	ACCEPTED; no change 2-1 Vote	ACCEPTED 12-1 VOTE
Title 12, section 8869, subsection 13, relating to forest policy experimental areas	AMEND 2-1 vote	ACCEPTED 12-1 VOTE
Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	ACCEPTED; no change 2-1 Vote	ACCEPTED 12-1 VOTE

Description	Subcommittee Recommendation	Advisory Committee Action on Recommendation
Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	DIVIDED 2-2 vote 2 voting NO CHANGE ; 2 voting AMEND	MOTION TO AMEND FAILED 5-8 VOTE
Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	DIVIDED 2-2 vote 2 voting NO CHANGE ; 2 voting AMEND	MOTION TO AMEND FAILED 5-8 VOTE
Title 14, section 1254-B, subsection 2, relating to juror selection records and information	DIVIDED 2-2 vote 2 voting NO CHANGE ; 2 voting AMEND	MOTION TO AMEND FAILED 5-8 VOTE
Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	HOLD; REFER to CLAC for review	ACCEPTED 12-1 VOTE
Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	HOLD; REFER to CLAC for review	ACCEPTED 12-1 VOTE
Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	ACCEPTED; no change 4-0 vote	ACCEPTED 12-1 VOTE
Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	AMEND-reflect PL 2009, c. 331 3-0 vote	ACCEPTED AS FURTHER AMENDED 12-1 VOTE

Key discussion points:

- The FAME (10 MRSA §975-A) language should be amended to use the standard language the Public Records Exceptions Subcommittee developed for statutes in which confidential

status is provided for some information when a business or an individual applies for financial or technical assistance. The discussion of standard language was triggered by the Judiciary Committee's request that the Advisory Committee develop appropriate language that the Legislature can use as a model in applicable situations. The Subcommittee recommended two templates, one devoted to confidentiality of information when a business is the applicant, the other for individual applications for technical or financial assistance.

The Advisory Committee unanimously agreed to adopt the templates and respond to the Judiciary Committee as proposed in the draft letter.

- At the most recent meeting of the Public Records Exceptions Subcommittee, the members were evenly split with regard to amending the juror confidentiality provisions (14 MRSA §§1454-A and 1454-B). Two members of the Subcommittee recommended returning to the pre-2003 status of the law, which started with the presumption that all juror information - from the potential-juror questionnaires through the completion of the trial - was public, but that the court could prohibit disclosure "in the interests of justice." A draft of the proposed language was circulated via e-mail, but had not been discussed before the meeting. Suzanne Goucher explained that there is a need to ensure that trials are free and fair and open. Although the outside world cannot know what happens in the "black box" of the jury room, it is appropriate to know what goes in as well as what comes out. The proposed language still allows judicial discretion to deny access to the information. The criteria included in subsection 3 of section 1454-B of the current law provides sufficient guidance to the courts. There is an overriding public interest, she said, in knowing who is sitting in judgment. Mal Leary agreed, noting that the old language, which the draft proposed to be reinstated, was based on model language developed by a diverse group of chief justices and free press advocates.

Ted Glessner asserted that the old language was changed for good reason. The "interests of justice" standard could be a very high bar, and not address the privacy or embarrassment concerns of potential jurors who are required to answer very personal questions on the questionnaire, questions that are required in order to determine if there is a possibility of bias based on the type of case. He said that concerns had been developing over time, and that Associate Justice Mead of the Supreme Judicial Court had communicated concerns he had heard from jurors and potential jurors. Mr. Pringle explained that he does not support changes, based on the testimony of Justice Mead. He sees a chilling effect on the finding of persons to serve as jurors. Jurors have expressed concerns about their own personal safety, especially when serving on criminal trials. Mr. Pringle defers to Justice Mead, who has a large volume of trial court experience, and knows this issue. Mr. Leary countered that, although he has great respect for Justice Mead, he believes that the factors a court can consider, as listed in section 1454-B, subsection 3, give the court all the room it needs to make appropriate decisions on releasing the information. Mr. Glessner said that in his conversations with justices, the justices have expressed a great deal of concern. Ms. Bellows echoed Mr. Glessner's remarks, and asserted that the highest level of protection should be afforded the juror questionnaires. Release of that information would be detrimental to the privacy of the individual. Ms. Pistner agreed, and noted that Justice Mead had informed the Subcommittee that most requests for information have been granted; the only ones who have been turned down have not seemed to have legitimate need or interest in the information. Being a separate branch of government, and not subject to the Freedom of Access laws, the Judicial Branch should be given some leeway to establish their own appropriate procedures. Ms. Pistner said she was loath to upset the current law without a demonstration that people

are inappropriately denied information when it is requested. Mr. Leary moved to adopt the proposed draft with an amendment that would include the factors of section 1454-B, subsection 3 in section 1454-A as it applies to juror information before a trial has been completed. Mr. Spruce seconded, and the motion failed 5 - 8. (Voting in favor of the motion: Ms. Meyer, Ms. Morgan, Ms. Goucher, Mr. Spruce, Mr. Leary; Voting against the motion: Mr. Glessner, Mr. Pringle, Rep. Hill, Ms. Bellows, Ms. Black, Mr. Flewelling, Ms. Pistner, Mr. Higgins.)

- The Public Records Exception Subcommittee recommended that the Criminal History Record Information Act (CHRIA) be referred to the Criminal Law Advisory Commission (CLAC) for revision with regard to the criminal justice aspects. The intention is for CLAC to refer the confidentiality/public access issues back to the Right to Know Advisory Committee.

The Advisory Committee voted unanimously to do so, and approved the draft letter to John Pelletier, who serves as Chair of CLAC.

- The Public Records Exceptions Subcommittee agreed to re-recommend the revision of the law providing confidentiality for disciplinary actions taken by the Commissioner of Education with respect to education personnel. This is the same recommendation made last year and included in the Judiciary Committee's bill, but it was deleted without consideration because another bill (LD 1191, An Act To Improve Teacher Confidentiality Laws, now PL 2009, c. 331) was being considered by the Education and Cultural Affairs Committee. Commissioner Gendron informed the Advisory Committee that the Department of Education does not oppose the draft language. Ms. Meyer moved that the Advisory Committee recommend the proposed language, amended to include the release of the reasons for the action. Ms. Goucher seconded the motion. The vote was 13-1 in favor. (Voting in favor of the motion: Ms. Meyer, Ms. Morgan, Ms. Goucher, Mr. Spruce, Mr. Leary, Mr. Glessner, Mr. Pringle, Sen. Hobbins, Rep. Hill, Ms. Black, Mr. Flewelling, Ms. Pistner, Mr. Higgins; Voting against the motion: Ms. Bellows.)
- The Central Voter Registration System (CVR) has been before the Advisory Committee in the past. The current law provides that all the information in the CVR is confidential, and then provides access to some data for certain purposes. The entire section has operated with a self-repeal date, which was extended last year, partly because of the concern that the confidentiality was very broad, so that giving the protection from public access on a temporary basis while the information and its uses were being reviewed, was the only way to make the public records exception "narrowly tailored." Julie Flynn, Deputy Secretary of State, had addressed the Public Records Exceptions Subcommittee at the most recent meeting, but the members delayed action because legislation is being prepared to revise some of the access aspects of the CVR. Ms. Flynn provided a copy of the draft bill, to be considered by the Legal and Veterans' Affairs Committee during the Second Regular Session, as well as a section-by-section chart explaining each change. Ms. Flynn reminded the Advisory Committee that the CVR is a different type of database - access to the information does not help the public determine if election officials are doing their jobs appropriately, but actually tracks the activities of voters. She questioned how much access to that information is in the public interest, especially if voters are concerned about individually-identifiable information being circulated. She believes there is a very real possibility of a chilling effect, that individuals will not register and vote if they fear that their person information will be available or distributed. Ms. Flynn noted the enormous amount of data in

the CVR, consisting of 2000 data fields and hundreds of data tables. The new bill provides basically the same access to data as currently law, although she pointed out a couple of instances in which access is expanded. Some information is available, but only for specific purposes.

Mr. Spruce explained that the Public Records Exceptions Subcommittee had not taken action on the existing public records exception because of the new legislation. He recommended that the Advisory Committee continue its usual practice of not taking a position on proposed legislation, but continue to follow this bill as it is introduced in the Legal and Veterans' Affairs Committee. Individual members can testify or provide comments. Presumably, the Judiciary Committee will be reviewing any confidentiality provisions. The Advisory Committee agreed, and thanked Ms. Flynn and Rep. Trinward, House Chair of the Legal and Veterans' Affairs Committee, for briefing the Advisory Committee on the bill.

Mr. Spruce moved that the Advisory Committee officially accept the rest of the recommendations contained in the Public Records Exceptions Subcommittee's chart, and Mr. Pringle seconded the motion. The vote was 13-1 in favor. (Voting in favor of the motion: Ms. Meyer, Ms. Morgan, Ms. Goucher, Mr. Spruce, Mr. Leary, Mr. Glessner, Mr. Pringle, Sen. Hobbins, Rep. Hill, Ms. Black, Mr. Flewelling, Ms. Pistner, Mr. Higgins; Voting against the motion: Ms. Bellows.)

Review of Revised Discussion Drafts

❖ *Social Security Numbers*

The Legislative Subcommittee had developed draft legislation to protect Social Security Numbers. The draft had been circulated widely for comments, and a summary of those comments, concerns and suggested changes was presented. A copy of the Vermont law protecting Social Security Numbers was distributed as an example of how other states address the concerns.

Mr. Leary stated that he didn't think the draft legislation was ready to be considered by the Legislature. The Vermont law would be worth reviewing for any ideas for improvement. He moved that the issue of protecting Social Security Numbers be tabled until the Advisory Committee resumes its work in 2010. Mr. Pringle seconded the motion. The Advisory Committee voted unanimously in favor of tabling the issue.

❖ *Use of Technology in Public Proceedings*

Draft legislation had been prepared to explicitly address the issue of participation by members in public meetings through the use of technology, rather than being present in the room. Members of the Advisory Committee were concerned about the logistics of adopting a policy that met the requirements of the draft, and whether attendance should be required unless not reasonably practical. Ms. Goucher could not identify a pressing need to have the draft become law, and moved that the issue be tabled to 2010, when the Advisory Committee can address the remaining questions and refine the approach. Mr. Spruce seconded the motion, and the vote was unanimous in favor of the motion.

❖ *Taking and Keeping Minutes of Public Proceedings*

Staff reviewed the draft legislation already approved by a majority of the Advisory Committee. The draft legislation requires government entities to make a basic record of its actions. The record must be completed within a reasonable time and is, of course, a public record.

Review list of Bill Titles for Second Regular Session

Staff provided a list of bill titles of proposed and carried-over legislation for the Second Regular Session. Titles that may have some relation to Freedom of Access Issues were highlighted, but text of bills was not yet available for review.

Externship update

Staff announced that Mariya Burnell, a third-year student at the Maine School of Law, has been placed with the Advisory Committee for the Spring 2010 semester as part of the Law School's externship program. Ms. Burnell's responsibilities may include tracking legislation, as well as staffing the Legislative Subcommittee. Ms. Pistner will provide supervisory responsibilities as required by the program, and the Office of the Attorney General will provide work space.

Annual Report

Staff distributed the skeleton of the report that the Advisory Committee is required by statute to submit by January 15, 2010. Staff agreed to have a draft report to members by December 11, 2009.

The meeting adjourned at 3:45 p.m.

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