Twelfth Annual Report
of the
Right to Know Advisory Committee

January 2018

Staff:
Craig Nale, Legislative Analyst
Colleen McCarthy Reid, Legislative Analyst
Office of Policy & Legal Analysis
13 State House Station
215 Cross Building
Augusta, ME 04333-0013
(207) 287-1670

Members:
Sen. Lisa Keim, Chair
Rep. Christopher W. Babbidge
James Campbell
Suzanne Goucher
Stephanie Grinnell
Richard LaHaye
Mary-Anne LaMarre
Mary Ann Lynch
Judy Meyer
Paul Nicklas
Christopher Parr
Linda Pistner
Luke Rossignol
William D. Shorey
Eric Stout

Twelfth Annual Report
of the
Right to Know Advisory Committee

January 2018

Staff:
Craig Nale, Legislative Analyst
Colleen McCarthy Reid, Legislative Analyst
Office of Policy & Legal Analysis
13 State House Station
215 Cross Building
Augusta, ME 04333-0013
(207) 287-1670

Members:
Sen. Lisa Keim, Chair
Rep. Christopher W. Babbidge
James Campbell
Suzanne Goucher
Stephanie Grinnell
Richard LaHaye
Mary-Anne LaMarre
Mary Ann Lynch
Judy Meyer
Paul Nicklas
Christopher Parr
Linda Pistner
Luke Rossignol
William D. Shorey
Eric Stout

Table of Contents

EXECUTIVE SUMMARY

This is the twelfth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2017 recommendations and a summary of relevant Maine court decisions from 2017 on the freedom of access laws. This report also summarizes several topics discussed by the Advisory Committee that did not result in a recommendation or further action.

For its twelfth annual report, the Advisory Committee makes the following unanimous recommendations:

- **Enact legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements;**

- **Amend 1 MRSA §412 to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices; and**

- **Establish a subcommittee to review the penalty and enforcement provisions in the Freedom of Access Act.**

In 2018, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report and to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Public Records Exception Subcommittee and FOAA Penalty and Enforcement Subcommittee will meet in the interim with the expectation to make recommendations to the Advisory Committee before the end of the year. The Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

I. INTRODUCTION

This is the twelfth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**.

More information on the Advisory Committee, including meeting agendas, meeting materials and summaries of meetings and its previous annual reports can be found on the Advisory Committee's webpage at http://legislature.maine.gov/legis/opla/righttoknow.htm. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Sen. Lisa Keim Chair	*Senate member of Judiciary Committee, appointed by the President of the Senate*
Rep. Christopher Babbidge	*House member of Judiciary Committee, appointed by the Speaker of the House*
James Campbell *(appointed Sept. 2017)*	*Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House*
Suzanne Goucher	*Representing broadcasting interests, appointed by the Speaker of the House*
Stephanie Grinnell	*Representing newspaper and other press interests, appointed by the President of the Senate*
A.J. Higgins *(resigned Oct. 2017)*	*Representing broadcasting interests, appointed by the President of the Senate*
Richard LaHaye	*Representing law enforcement interests, appointed by the President of the Senate*
Mary-Anne LaMarre	*Representing school interests, appointed by the Governor*
Mary Ann Lynch	*Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court*
Judy Meyer	*Representing newspaper publishers, appointed by the Speaker of the House*

Paul Nicklas	*Representing municipal interests, appointed by the Governor*
Christopher Parr	*Representing state government interests, appointed by the Governor*
Linda Pistner	*Attorney General's designee*
Luke Rossignol	*Representing the public, appointed by the President of the Senate*
William Shorey	*Representing county or regional interests, appointed by the President of the Senate*
Eric Stout	*A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor*
Vacant	*Representing the public, appointed by the Speaker of the House*

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

By law, the Advisory Committee must meet at least four times per year. During 2017, the Advisory Committee met five times: on September 6, September 20, October 12, November 15 and December 5. Each meeting was open to the public and was also accessible through the audio link on the Legislature's webpage.

II. COMMITTEE DUTIES

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

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

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

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

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

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

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

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. For its twelfth annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decisions related to freedom of access issues.

Greif v. Town of Bar Harbor

In *Greif v. Town of Bar Harbor*, 2017 ME 163, 167 A.3d 1272, Greif appealed a Superior Court decision determining that the Town of Bar Harbor acted properly in conducting an executive session for the purpose of consulting with the Town's attorney in response to a complaint about conduct of two town councilors. Greif alleged that the town council violated the Freedom of Access Act (FOAA) when it discussed the substance of his complaint about the two councilors during an executive session closed to the public. The Maine Supreme Judicial Court held that the town did not violate the FOAA when it held an executive session to consult with its attorney concerning the legal rights and duties of the town in response to the complaint (*see* 1 MRSA

§405, subsection 6, paragraph E). The Town Council acted appropriately to address the allegations and returned to regular session before taking official action to pass resolution providing that allegations in the letter did not warrant further review by council.

Dubois v. Department of Environmental Protection

In *Dubois v. Department of Environmental Protection*, 2017 ME 224, the Law Court considered an appeal from a Superior Court judgment affirming the Department of Environmental Protection's denial of a Freedom of Access Act request for public records related to Dubois Livestock, Inc. Although a large amount of records were provided to Dubois, the Department denied access to two categories of documents: those records developed in anticipation of litigation under the work product privilege and those records identifying complainants based on the informant identity privilege. The Department asserted that the records were protected from disclosure by the exception from the definition of public records in 1 MRSA §402, sub-§3, ¶B for records that would be privileged against discovery or use as evidence in the course of a court proceeding. The Law Court upheld the Department's denial of access to records based on the work product privilege, but remanded the proceeding to the Superior Court for further consideration related to the records identifying complainants.

The Department argued to the Law Court that the identities of those persons who made complaints about odors emitted from the Dubois Livestock property were "informants" and that the informant identity privilege in the Maine Rules of Evidence 509(a) would apply. Although the Department relied on the informant identity privilege in asserting that the identities of complainants were not public records, the Law Court noted that the Freedom of Access Act also makes an exception for records that have been designated confidential by statute. The Law Court pointed out there is an exception provided in the Intelligence and Investigative Record Information Act (16 MRSA §804) that protects from dissemination a record containing intelligence and investigative information if there is a reasonable possibility that the identity of a confidential source would be disclosed. However, since the Department did not assert the applicability of statutory confidentiality for investigate records and the trial court did not consider that issue, the Law Court was not able to address whether the statute protects the identities of complainants as confidential sources. The case was remanded to the trial court to receive additional evidence and to determine whether the records in question are excepted from the definition of public records.

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2017, the Advisory Committee chose to appoint one subcommittee, the Public Records Exceptions Subcommittee. The Advisory Committee has also recommended the establishment of an additional subcommittee on Freedom of Access Act penalties and enforcement in 2018, see recommendation in Part VII.

The Public Records Exceptions Subcommittee's focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The

guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 1 to 7-A no later than 2019. In accordance with 1 MRSA §433, sub-§2-A, the Advisory Committee is charged with the review of more than 90 exceptions in Titles 1 to 7-A. As a first step, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. The Subcommittee expects to receive those responses within a timeframe that will allow the Subcommittee to begin meeting after adjournment of the Second Regular Session of the 128th Legislature.

Representative Babbidge, Stephanie Grinnell, Paul Nicklas, Christopher Parr, Luke Rossignol and Eric Stout serve as members of the Subcommittee.

V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held five committee meetings. During its meetings, there were several topics discussed by the Advisory Committee that did not result in a recommendation or further action. The discussions of those topics are summarized below.

Freedom of Access Law Updates

The Advisory Committee reviewed and discussed recent statutory changes made to Maine's Freedom of Access Act through the end of 128th Legislature's First Regular Session. Two statutory changes were made in the First Regular Session: 1) the repeal of a redundant provision related to the confidentiality of social security numbers; and 2) the addition of language in 1 MRSA §408-A, subsection 8, paragraph F that allows an agency or official having custody of a public record to require payment of all costs before the public record is provided to the requestor.

Formation of Technology Subcommittee

The Advisory Committee discussed the recommendation from last year's report that the Committee establish a Technology Subcommittee. Some members expressed concern that a separate subcommittee singularly focused on technology might distract from the broader issues of public access. Eric Stout, who is the member with technology expertise, did not disagree with these sentiments, but noted there are instances when technology intersects with freedom of access issues and process, and a deeper understanding of how technology relates to these issues is beneficial. Members agreed that there appeared to be no need for a freestanding technology subcommittee, but that the Advisory Committee benefits from having an appointed member with technology expertise and that continued discussions of the impact of technology on public access would be welcomed as part of the Advisory Committee's ongoing discussion of many issues.

Public Access Ombudsman Update

Brenda Kielty, Public Access Ombudsman, updated the Advisory Committee and reviewed the duties of her position. Ms. Kielty noted that she views her position as an intermediary between government agencies and requestors of public records or for access to public proceedings, focusing on informal dispute resolution and education about the Freedom of Access Act. Ms.

Kielty informed the Advisory Committee of the website maintained by the Ombudsman, www.maine.gov/foaa, which includes the Ombudsman's Annual Reports and Frequently Asked Questions. In response to an inquiry from Christopher Parr, Ms. Kielty stated that the number of contacts from the public since 2013 continues to increase annually. Of the contacts made in 2016, 366 inquiries were related to public records and 112 inquiries were related to public proceedings.

Mr. Parr also asked about whether a private citizen has standing under FOAA to challenge the validity of a public proceeding. Ms. Kielty responded that she believed 1 MRSA §409, subsection 2 provides authority to challenge the validity of an executive session by any person and may likely provide more general authority. She also noted that the Attorney General has only filed one lawsuit pursuant to its authority under §410. Further, Ms. Kielty remarked that, during a presentation to the Joint Standing Committee on Judiciary in the First Regular Session, it was suggested by Rep, Bailey that the Advisory Committee consider whether the current civil penalty ($500 per violation) for violations of FOAA in §410 is appropriate. Based in part on this discussion, the Advisory Committee agreed to recommend the establishment of a subcommittee on the penalty and enforcement provisions of FOAA in 2018. *See discussion of recommendations in Part VII.*

Discussion of whether to comment on proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records

At the suggestion of Judy Meyer, the Advisory Committee considered whether to offer comment on the proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records. Ms. Meyer stated she felt it would be appropriate for the Advisory Committee to comment on issues affecting public access to court records. In March 2017, the Chief Justice of the Maine Supreme Court established the Judicial Branch Task Force on Transparency and Privacy in Court Records. On September 30, 2017, the Task Force issued its report (the "TAP Report"), which recommended allowing everyone to obtain court-generated information online in non-confidential cases, other than juvenile cases, while parties (except juveniles) and counsel of record would have online access to both court-generated information and other case filings; anyone who is not a party or counsel in a case could access those other non-confidential case filings electronically from any courthouse. The Advisory Committee reviewed the draft Task Force report and recommendations, appendices with concurring and dissenting comments from Task Force members and correspondence to the Task Force and Chief Justice from several public interest organizations and news organizations. The Judicial Branch invited comments on the TAP Report by December 15, 2017.

Some members of the Advisory Committee acknowledged the TAP Report's recommendation to expand availability of court documents beyond the current system, which requires a person to visit a particular courthouse to view the physical records. These members also suggested that complete availability of court records via the Internet may not align with the FOAA's objectives of increasing government transparency when the court records pertain to private litigants. Other members of the Advisory Committee questioned why records that are currently public in physical form would not all be made available online to all members of the public, rather than only to parties and attorneys in the case.

The Advisory Committee acknowledged that it could be difficult to reconcile members' concerns; the Advisory Committee agreed that it would not submit comments on the TAP Report as a group, but that members could still submit comments individually.

Discussion of access to records and personal information related to licensed professionals and state and local government employees

At its first meeting in 2017, the Advisory Committee agreed to consider two bills carried over from the First Regular Session of the 128th Legislature in the Judiciary Committee: LD 1267 and LD 1541. The Advisory Committee also agreed to consider two other bills that died during the First Regular Session: LD 1633 and LD 146. All of the bills relate to confidentiality of personal information.

- LD 1267, An Act To Protect Licensing Information of Medical Professionals. This bill provides that information concerning the application for and granting of licenses issued by the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine is confidential, except that each board is required to allow inspection of certain information (the applicant's name, business contact information, educational and occupational background, orders and findings that result from formal disciplinary actions, evidence provided to meet financial responsibility requirements for licensure, for example).

- LD 1541, An Act To Protect Certain Administrative Licensing Files. This bill makes polygraph examiner and professional investigator administrative licensing files confidential by law, except the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible and records may be disclosed for criminal justice purposes or to a government licensing agency of this State or another state. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The Private Security Guards Act also is amended to ensure consistency with the changes made to the Polygraph Examiners Act and Professional Investigators Act.

- LD 1633, An Act Concerning Private Personal Information of Public Employees and Licensed Individuals. This bill is based on a recommendation of the Right To Know Advisory Committee concerning the protection of private personal information that may be considered public records. The bill directs the joint standing committee of the Legislature having jurisdiction over judiciary matters to balance the public's right to know about public employees and professional and occupational licensees and license applicants with the privacy and safety interests of the individuals involved when a proposed public records exception concerns the private personal information of public employees and professional or occupational licensees or license applicants.

- LD 146, An Act to Protect the Confidentiality of State and Local Government Employees' Private Information. This bill (and committee amendment put forward by the Judiciary

Committee) amends the law governing the confidentiality of personal information of municipal employees and county employees to parallel the same protections for state employees, with the addition of keeping as confidential any genetic information and information about the sexual orientation of the employee if contained in the records of the municipality. The bill also amends the state employee personnel records provisions to include confidentiality of genetic information and sexual orientation.

The Advisory Committee discussed some of the challenges associated with trying to determine the types of personal information that should be kept confidential and the types that should be accessible to the public with regard to professions and occupations licensed or regulated by the government and with regard to public employees. The Advisory Committee identified the two potential models available to policymakers: 1) make all licensing information public, except for certain types of information designated as confidential; or 2) make all licensing information confidential, except for certain types of information designated as public.

With respect to LD 1267 and LD 1541, staff reviewed how LD 1267 generally treats information submitted by license applicants to certain licensing boards as confidential unless otherwise specified in the law, and how LD 1541 treats license application information for polygraph examiners and professional investigators confidential except in certain specified circumstances. These bills raised questions within the Judiciary Committee about developing a comprehensive approach to professional licensing information accessibility where perhaps categories of information could be identified as either deserving default confidentiality or default public accessibility. Senator Keim explained that the Judiciary Committee became bogged down by the number of potential categories of information, the possible differences in expectations of privacy of various licensed professionals and public employees and with the task of reviewing existing confidentiality provisions to attempt to make those more uniform. Eric Stout contrasted Maine's exception-based Freedom of Access Act with the federal Privacy Act, which protects personally-identifiable information. With respect to LD 1633 and LD 146, the Advisory Committee did not discuss specific policy approaches, but felt that further information and discussion about professional licensing information would also be helpful in addressing the personal information issues raised in these bills.

Staff outlined additional materials provided to the Advisory Committee: a comparison of the categories of personal information protected from disclosure for public employees (State employees, county and municipal employees, and Maine State Housing Authority employees); a comparison of the discussion draft amendments to the carry over bills related to licensed professionals, LD 1267 and LD 1541; and a copy of the Federal Privacy Act and the definition of "record", which limits the scope of the federal law to records containing information that identifies an individual.

The Advisory Committee reviewed the categories of personal information protected as confidential in State employee personnel records and were generally supportive; members wondered why LD 146 was not enacted, which would have made the personnel records law for county and municipal employees consistent with the provision for State employees. Senator Keim explained that there were concerns about the breadth of the proposal; she and others felt additional time and consideration of the transparency and privacy issues was needed. The

Judiciary Committee felt it would be beneficial for the Advisory Committee to review the categories of personal information, including complaint information about specific individuals, protected as confidential under current law and in proposed legislation for public employees and licensed professionals.

During the discussion, the Advisory Committee noted that the appropriate policy approach may depend on context. For the purposes of the Freedom of Access Act and transparency, the current default that records are public unless designated as confidential makes sense. But, from an administrative perspective, the alternative approach may be more practical as it seems easier to break out specific information that can be made public rather than the more labor intensive process to redact confidential information.

The Advisory Committee discussed the privacy interests associated with personnel records and licensing files. Christopher Parr explained his view that individuals' privacy rights are equally as important as the right of the public to know about the activities of its government and that government has a duty to be responsible in collecting, retaining, securing and disseminating the personal information it collects from and about individuals. Mr. Parr suggested that an additional criterion be added to the prescribed criteria for review of existing and proposed public records exceptions: "Whether public disclosure of the record or information contributes significantly to public understanding of the operations or activities of government."

Members expressed some interest in the approach taken in LD 1267's proposed amendment as a starting point. Members also agreed that the disclosure of personal information designated as confidential in the aggregate should be permitted as long as an individual could not be identified. The Advisory Committee did review a discussion draft and consider what types of personal information should be designated as confidential and under what circumstances confidential information may be disclosed. The discussion draft, based in part on draft amendments suggested to LD 1267, would protect as confidential certain categories of personal information and allow limited disclosure of that confidential information under certain conditions and to certain authorized entities. The draft would also clarify that disclosure of personal information designated as confidential should be permitted in the aggregate as long as an individual could not be identified from that aggregated information.

Although the Advisory Committee did review the discussion draft prepared by staff that could be used as a template by the Legislature when considering legislation addressing access to records and personal information related to licensed professionals, the Advisory Committee agreed that it had not had sufficient time to consider this issue and make recommendations to the Judiciary Committee. The Advisory Committee took no further action.

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN ELEVENTH ANNUAL REPORT

The Right to Know Advisory Committee made the following recommendations in its eleventh annual report. The legislative actions taken in 2017 as a result of those recommendations are summarized below.

Recommendation: Communicate the Advisory Committee's interpretation of 1 MRSA §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, §3.	**Action:** The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee's belief that the exception "is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State . . . or to prohibit disclosure of information about spills or discharges of hazardous materials." The Advisory Committee also recommended that the Judiciary Committee consider submitting a committee bill to allow additional input from stakeholders and further expressed concerns about the scope of the exception. The Judiciary Committee considered the Advisory Committee's recommendation and felt a bill would be a good vehicle for raising potential issues with the law but ultimately did not feel stakeholders could express concerns that would be helpful in drafting proposed legislation.
Recommendation: Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants.	**Action:** The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee's determination that a uniform policy on the confidentiality of licensed professionals' contact information must balance the professionals' privacy and safety interests with the public's interest in determining a professional's training and competency. The Advisory Committee recommended focusing on keeping categories of information confidential, such as personal contact information, unless personal contact information is the only way to identify the professional or when the professional affirmatively opts to allow the information to be disclosed. In response, the Judiciary Committee considered two bills (LD 1267 and LD 1541) related to the confidentiality of professional licensing information. The Judiciary Committee has carried those bills over to any special or regular session of the 128th Legislature and has asked that the Advisory Committee provide input on resolution of the issues presented in those bills.
Recommendation: Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for	**Action:** The Advisory Committee sent a letter to the Health and Human Services Committee about the Department of Health and Human Services proposed Data Release Rule, 10-144 CMR, ch. 175, which would have affected the release of certain data held by the Maine Center for Disease Control and Prevention. The Advisory Committee expressed concerns about the proposed rule's limitation

Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases.	on the release of records. The Department of Health and Human Services rescinded the proposed rule.
Recommendation: Enact legislation to clarify that government entities may require advance payment before providing a public record to a requestor.	**Action:** The Legislature accepted the recommendation of the Advisory Committee and passed Public Law 2017, chapter 158, which enacted Title 1, §408-A, sub-§8, ¶F, and allows an agency or official having custody of a public record to require payment of all costs before the public record is provided to the requestor.
Recommendation: Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013.	**Action:** The Legislature accepted most of the recommendation of the Advisory Committee and passed Public Law 2017, chapter 163, which amended Title 35-A, §10106, sub-§1 to change the criteria for designation of records of the Efficiency Maine Trust as confidential, except that the Legislature did not accept the recommendation that the director of the Efficiency Maine Trust be allowed to determine which records contain information that would give a user a competitive advantage and instead kept that authority in the Efficiency Maine Trust Board. The Legislature accepted the recommendation of the Advisory Committee that a redundant public records exception for social security numbers be repealed.
Recommendation: Communicate with the Joint Standing Committee on Health and Human Services about potential repeal of the Mental Health Homicide, Suicide and Aggravated Assault Review Board.	**Action:** The Advisory Committee sent a letter to the Health and Human Services Committee notifying it of the apparent dormancy of the Mental Health Homicide, Suicide and Aggravated Assault Review Board but asked the Committee to consider whether the Board should be revived or if the provision of law establishing the Board should be repealed. The Health and Human Services Committee drafted a bill to repeal the Mental Health Homicide, Suicide and Aggravated Assault Review Board and, after holding a public hearing on the bill, voted to repeal it. The Legislature repealed the board and its associated public records exceptions in Public Law 2017, chapter 93.

VII. RECOMMENDATIONS

The Advisory Committee makes the following recommendations.

- **Enact legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements**

The Advisory Committee renewed its discussion of proposed legislation to clarify the law relating to remote participation in public proceedings. For several years, the Advisory Committee has discussed the issue and has proposed recommended legislation that has not been enacted. Several members of the Advisory Committee noted their belief that remote participation in public proceedings is occurring at the local level despite the lack of clarity in law. Members expressed concern that there is no uniform understanding of whether remote participation is permitted and under what circumstances and that, without the enactment of legislation, it is the "wild west" due to the lack of a legal framework. Members also expressed concern that the use of messaging and texting may be restricting the transparency of public proceedings and the public's access to those proceedings.

The Advisory Committee was reminded that the Office of the Attorney General advises state agencies that remote participation is not permitted under current law unless specifically authorized (there are several examples in the law that specifically authorize participation in public proceedings by telephone or other electronic communication). However, it was acknowledged that because FOAA is silent with regard to remote participation generally, there is ambiguity because there has been no litigation or court decision to provide other legal guidance.

The Advisory Committee reviewed past efforts of the Legislature, including amendments developed by the Joint Standing Committee on Judiciary, and the Advisory Committee to amend the Freedom of Access Act to provide additional guidance or requirements around allowing members of public bodies to participate in meetings of those bodies when not physically present: LD 258 (126th Legislature); LD 1809, the Judiciary Committee Amendment to LD 1809 and the Governor's veto message on LD 1809 (126th Legislature); LD 448 (127th Legislature); LD 1241, the Judiciary Committee Amendment to LD 1241, a Senate Amendment to LD 1241 and the public law of the enacted version of LD 1241 (127th Legislature); and LD 1586 (127th Legislature).

Advisory Committee members discussed the view of the Office of the Attorney General that remote participation is not allowed under the Freedom of Access Act because members of a public body must be present and subject to the public's eye, which is the position taken in a 1979 Opinion of the Attorney General. Advisory Committee members compared that opinion with the Governor's veto message on LD 1809, which reflects the Governor's view that the Freedom of Access Act does not prohibit remote participation as long as the other requirements of the Act are met, such as the notice and recordkeeping requirements. The Advisory Committee expressed some concern that agencies, boards and commissions of state government, including the Public Utilities Commission, appear to be allowing members to participate in meetings remotely

without express statutory authorization or more clarity in the Freedom of Access Act. The Advisory Committee noted that eight public bodies are currently authorized in statute to allow members to participate in meetings remotely.

Advisory Committee members questioned why previous efforts to enact legislation regarding remote participation have failed. Members noted that bodies with urgent needs to meet and make decisions for financial or public safety reasons had been successful at obtaining express authorization for remote participation, but that other attempts to define the circumstances under which remote participation is authorized or the bodies that may allow remote participation had been opposed by bodies whose existing policies would contradict those requirements or who would be excluded from the proposal. The discussion focused on whether elected members should be allowed to participate remotely rather than face their constituents in person and on whether a quorum of the body should be required to be physically present at the meeting.

The Advisory Committee decided to resume discussion of proposed legislative changes with LD 1586 as the starting point. LD 1586 was introduced to the 127th Legislature as a result the Advisory Committee's discussions in 2015. LD 1586 proposed to allow a body subject to the Freedom of Access Act, except a publicly-elected body, to conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if certain conditions were met. At the outset, members agreed that it is appropriate for statutory clarifications to be made with regard to remote participation. The Advisory Committee's discussion focused on LD 1586 and whether the scope and conditions of LD 1586 should continue to be recommended for remote participation in public proceedings.

Using an outline of the issues raised in previously discussions of remote participation and by LD 1586, the Advisory Committee indicated, by straw vote, their initial opinion on policy questions related to remote participation by members of public bodies at meetings of those bodies. The Advisory Committee also reviewed a comparison of LD 258 from the 126th Legislature and LD 1586 from the 127th Legislature, as well as the provisions in law regarding remote participation in Massachusetts, Connecticut, New Hampshire and Vermont. The straw votes indicated that a majority of the Advisory Committee supported: allowing remote participation based on the entity's function; allowing remote participation by elected officials; requiring a physical quorum to be present at the advertised meeting location; allowing voting only by members who are physically present; prohibiting remote participation in executive sessions; prohibiting remote participation in adjudicatory matters; and requiring remote participants to be able to access materials available at the meeting.

Rep. Babbidge told the Advisory Committee that he is uncomfortable with remote participation and concerned that it will become the norm or expectation; he felt that requiring a member's physical presence at a meeting should be the expectation. Rep. Babbidge also raised concerns that authorizing remote participation in law lessens a member of a body's accountability for his or her decisions; that members may not have full access to all relevant materials if participating remotely; and that it is inappropriate for executive sessions to be conducted with some members participating remotely.

Upon further discussion, the Advisory Committee refined the details of proposed remote participation requirements. Members agreed that the body must adopt a policy on remote participation, which would govern the use of remote participation by that body to the extent not prescribed by state law. One member felt that the policy should be approved by voters represented by the body. Members further agreed that remote participants should not be allowed to cast a vote in a proceeding that is adjudicatory in nature and that the Legislature should be prohibited from allowing remote participation in its meetings. Staff prepared draft legislation reflecting the initial straw votes of the Advisory Committee.

Members discussed specifically how to address adjudicatory proceedings and executive sessions. Members agreed to add language to the draft to prohibit remote participation by a member at an adjudicatory hearing. With regard to executive sessions, members discussed whether remote participation should be allowed in executive sessions: some felt that, because no votes may be taken in an executive session, restricting access to those sessions would merely require remote participants to make decisions during a regular session of the body without the benefit of the executive session discussion; others felt that, because executive sessions by nature involve sensitive information, the uncertainty about being overheard, intercepted, or having confidentiality otherwise compromised requires those sessions to occur only in person. Members expressed support for the language in the draft as proposed, which leaves the decision to each body as to whether remote participation is permitted but requires that the policy establish procedures for the privacy of any executive session.

Members also talked about the provision in the draft prohibiting remote participation by the Legislature and whether the draft should further prohibit other elected bodies from allowing remote participation. While previous proposals did contain language distinguishing elected bodies, the Advisory Committee agreed to move forward with the proposal as drafted, which allows bodies with publicly-elected members to adopt policies allowing remote participation. Judy Meyer indicated to the Advisory Committee that the Maine Press Association would not support the draft proposal before the Legislature on this basis.

Members discussed whether other state agencies should be prohibited from allowing remote participation at their meetings, but did not determine which particular agencies would be prohibited or how to define the categories of bodies that would be prohibited. Members considered including whether to include a provision in the draft legislation to sunset the provisions in current law that authorize certain state agencies to conduct meetings through remote participation or whether to recommend separate legislation. Members agreed not to recommend proposed legislation at this time but agreed that the Advisory Committee should first contact each state agency to get more information from these agencies and discuss the current provisions in law.

The Advisory Committee unanimously recommends draft legislation to prohibit remote participation in public proceedings by a member of a public body unless the body establishes a policy for remote participation that meets certain requirements. The draft legislation does the following:

- Reinforces the purposes of the Freedom of Access Act and specifies that the remote

participation requirements may not be used to defeat the purposes of FOAA;

- Prohibits bodies subject to the Freedom of Access Act to conduct public proceedings through telephonic, video or other electronic means of communication unless the body has adopted a written policy or rule that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the noticed location to hear all members of the body or unless the body is expressly authorized to allow remote participation by law;
- Requires public notice and hearing on the proposal to adopt a written policy or rule on remote participation prior to the policy or rule's adoption;
- Establishes that if the policy or rule allows remote participation in executive sessions, the policy or rule must establish procedures and requirements that ensure the privacy of the executive session;
- Prohibits remote participation in adjudicatory proceedings;
- Requires a quorum of the body to be physically present at the noticed meeting location unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time requiring action;
- Clarifies that, if a body conducts a proceeding without a physical quorum present, that the body may take action at that proceeding only on the matters for which immediate action is imperative;
- Requires each member participating remotely to identify for the record all persons present at the remote location, that all votes are taken by roll call and that remote participants receive documents or other materials presented or discussed at the proceeding in advance or when made available at the meeting, if the technology is available;
- Prohibits the Legislature from allowing participation of legislators through telephonic, video or other electronic means of communication; and
- Adds specific references to state agencies that are authorized to use remote-access technology to conduct meetings exempting those agencies from the new remote participation requirements.

See recommended legislation in **Appendix C**.

- ❑ **Amend 1 MRSA §412 to require municipal officials to complete Freedom of Access Act training when appointed to offices for which training is required if elected to those offices**

Under current law, 1 MRSA §412 requires officials elected to certain public offices to complete training on the Freedom of Access Act. The law requires public access officers and the following elected officials to be trained: the Governor; the Attorney General, Secretary of State, Treasurer of State and State Auditor; members of the Legislature elected after November 1, 2008; commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; officials of school administrative units; and officials of a regional or other political subdivision who, as part

of the duties of their offices, exercise executive or legislative powers. Brenda Kielty, the Public Access Ombudsman, noted in an update to the Advisory Committee that the section's application to only elected officials in the listed positions may create some disparity among trained officials simply because some officials are elected to those positions while others are appointed.

In response to the concern that amending the law may constitute a municipal mandate, Garrett Corbin offered the preliminary opinion of the Maine Municipal Association ("MMA"). Mr. Corbin expressed that, although the training is offered online and at no cost, the addition of appointed officials would probably be considered a relatively insignificant mandate because it would occupy additional staff time. Mr. Corbin further expressed his view that MMA's legislative policy committee would likely support the change, with the understanding that the list of officials would not expand, that the frequency of training would not increase from its current amount and that the training would continue to be offered online.

By unanimous vote, the Advisory Committee recommends that 1 MRSA §412 be amended to require that officials appointed to the same elected positions listed in §412, sub-§ 4 also be required to complete the training. The Advisory Committee also agreed that the draft legislation would be recommended as a separate bill.

See recommended legislation in **Appendix D**.

- ❑ **Establish a subcommittee to review the penalty and enforcement provisions in the Freedom of Access Act**

During several meetings, the Advisory Committee discussed enforcement of the Freedom of Access Act and the current $500 civil penalty for every willful violation of the Freedom of Access Act. One member noted that the amount of the penalty has not been changed in many years and suggested that the penalty could allow for some discretion in the amount and could accrue to a special fund meant to advance the objectives of the Freedom of Access Act. Under the Freedom of Access Act, any civil penalty is paid by the violating agency with taxpayer dollars and does not benefit the aggrieved person. Other members commented that other states levy the fine against the violator in his or her individual capacity rather than against the person as a government employee.

The Advisory Committee agreed that it needed further information before making any recommendation for changes to the penalty provision. By unanimous vote, the Advisory Committee established a subcommittee to the review the penalty and enforcement provisions in the Freedom of Access Act. The Advisory Committee named Judy Meyer, chair of the subcommittee; Rep. Babbidge, Eric Stout, Chris Parr, Linda Pistner and Luke Rossignol will serve as members of the subcommittee. The Advisory Committee will begin meeting in 2018.

VIII. FUTURE PLANS

In 2018, the Right to Know Advisory Committee will continue to discuss the unresolved issues identified in this report and to provide assistance to the Joint Standing Committee on Judiciary relating to proposed legislation affecting public access. The Public Records Exception

Subcommittee and FOAA Penalty and Enforcement Subcommittee will meet in the interim with the expectation to make recommendations to the Advisory Committee before the end of the year. Finally, the Advisory Committee looks forward to another year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

APPENDIX A

Authorizing Legislation: 1 MRSA §411

§411. Right To Know Advisory Committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor.

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

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

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

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

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

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

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

6. Duties and powers. The advisory committee:

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

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

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

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available;

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

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

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the

integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

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

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

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

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

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

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

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

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

APPENDIX B

Membership List

Right to Know Advisory Committee
Membership List

Appointments by the Governor

Christopher Parr
Department of Public Safety
State of Maine
104 State House Station
Augusta, ME 04333

Representing state government interests

Mary-Anne LaMarre
406 East Side Trail
Oakland, ME 04963

Representing school interests

Paul Nicklas
67 Pine Street, Apt. 2
Bangor, ME 04401

Representing municipal interests

Eric Stout
Office of Information Technology
State of Maine
145 State House Station
Augusta, ME 04333

A member with broad experience in information technology

Appointments by the President of the Senate

Senator Lisa Keim
1505 Main Street
Dixfield, ME 04224

Senate member of the Judiciary Committee

Richard LaHaye
Chief, Searsport Police Department
3 Union Street
Searsport, ME 04974

Representing law enforcement interests

Stephanie Grinnell
The Republican Journal
156 High Street
Belfast, ME 04915

Representing the press

Luke Rossignol
Bemis & Rossignol
1019 State Road
Mapleton, ME 04757

Representing the public

William D. Shorey — Representing county or regional interests
Board of Waldo County Commissioners
39-B Spring Street
Belfast, ME 04915

[Vacant] — Representing broadcasting interests

Appointments by the Speaker of the House

Representative Christopher Babbidge — House member of the Judiciary Committee
84 Stratford Place
Kennebunk, ME 04043

[Vacant] — Representing the public

Suzanne Goucher — Representing broadcasting interests
Maine Association of Broadcasters
69 Sewall Street, Suite 2
Augusta, ME 04330

Judy Meyer — Representing newspaper publishers
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400

James Campbell — Representing a statewide coalition of advocates of freedom of access
Maine Freedom of Information Coalition
48 Monroe Road
Searsport, ME 04974

Attorney General's Designee

Linda Pistner — Designee of the Attorney General
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333-0006

Chief Justice of the Supreme Judicial Court's Designee

Mary Ann Lynch — Member of the Judicial Branch
Government and Media Counsel
Administrative Office of the Courts
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112-4820

APPENDIX C

Recommended Legislation to prohibit remote participation in public proceedings unless the body establishes a policy for remote participation that meets certain requirements

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

Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

This section governs participation in a proceeding of a body subject to this subchapter by a member of that body when the member is not physically present. It is the intent of the Legislature that actions of those bodies be taken openly and their deliberations be conducted openly. Remote participation through telephonic, video or other electronic means may not be used to defeat the purposes of this subchapter as stated in section 401.

Except as provided in subsection 7, a body subject to this subchapter may not allow a member of the body to participate in any of its public proceedings through telephonic, video or other electronic means of communication unless in accordance with this subchapter and only when the requirements of this section are met. The Legislature may not allow its members to participate in public proceedings of the Legislature through telephonic, video or other electronic means of communication.

1. Policy adopted. After notice and public hearing, the body has adopted a written policy or rule that authorizes a member of the body who is not physically present to participate in a proceeding of that body in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the location identified in the notice required by section 406 to hear all members of the body. If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session.

2. Quorum. A quorum must be physically present at the location identified in the notice required by section 406, unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time in which action must be taken. The determination that a quorum is not required under this paragraph must be made by the presiding officer of the public body and the facts supporting that determination must be included in the record of the meeting. A body may not consider matters other than those requiring immediate action in a proceeding held pursuant to this subsection when a quorum is not physically present.

3. Disclosure. Each member who is participating in the proceeding remotely must identify for the record all persons present at the location from which the member is participating. This is a continuing obligation throughout the meeting.

4. Voting. All votes taken during the proceeding must be taken by roll call.

5. Adjudicatory proceedings. A member who is not physically present at the location identified in the notice required by section 406 may not participate and may not vote in an adjudicatory proceeding.

6. Access to materials. Each member who is participating in the proceeding remotely must receive any documents or other materials presented or discussed at the proceeding in advance or when made available at the proceeding if the transmission technology is available. Failure to comply with this subsection does not invalidate an action of the body.

7. Exceptions. A member of the following bodies may participate in a public proceeding of the body when not physically present:

A. The Finance Authority of Maine, as provided in Title 10, section 971;

B. The Commission on Governmental Ethics and Election Practices, as provided in Title 21-A, section 1002, subsection 2;

C. The Maine Health and Higher Education Facilities Authority, as provided in Title 22, section 2054, subsection 4;

D. The Maine State Housing Authority, as provided in Title 30-A, section 4723, subsection 2, paragraph B;

E. The Maine Municipal Bond Bank, as provided in Title 30-A, section 5951, subsection 4;

F. The Emergency Medical Services Board, as provided in Title 32, section 88, subsection 1, paragraph D; and

G. The Workers' Compensation Board, as provided in Title 39-A, section 151, subsection 5.

SUMMARY

This bill implements the recommendation of the Right to Know Advisory Committee to clarify when members of public bodies may participate remotely in proceedings of those bodies. The bill prohibits a body subject to the Freedom of Access Act from allowing its members to participate in its public proceedings through telephonic, video or other electronic means of communication unless the body has adopted a written policy that authorizes remote participation in a manner that allows all members to simultaneously hear and speak to each other during the proceeding and allows members of the public attending the proceeding at the noticed location to hear all members of the body. If the policy allows remote participation in executive sessions, the policy must establish procedures and requirements that ensure the privacy of the executive session. The bill requires a quorum of the body to be physically present at the noticed meeting location unless immediate action is imperative and physical presence of a quorum is not reasonably practical within the period of time requiring action. The bill requires each member participating remotely to identify all persons present at the remote location, that all votes are taken by roll call, and that remote participants receive documents or other materials presented or discussed at the proceeding in advance or when made available at the meeting, if the technology is available. The bill prohibits members who are not physically present at the meeting location from participating and voting in adjudicatory proceedings.

The bill prohibits the Legislature from allowing its members to participate in its public proceedings through telephonic, video or other electronic means of communication, but allows the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Maine Health and Higher Education Facilities Authority, the Maine State Housing Authority, the Maine Municipal Bond Bank, the Emergency Medical Services Board, and the Workers' Compensation Board to continue allowing remote participation at their meetings as currently authorized in law.

APPENDIX D

Recommend Legislation to require municipal officials to complete Freedom of Access training when appointed to offices for which training is required if elected to those offices

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

Sec. 1. 1 MRSA §412 is amended to read:

§412. Public records and proceedings training for certain ~~elected~~ officials and public access officers

1. Training required. A public access officer and an ~~elected~~ official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the ~~elected~~ official takes the oath of office to assume the person's duties as an ~~elected~~ official or the person is designated as a public access officer pursuant to section 413, subsection 1.

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings;

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and

C. Penalties and other consequences for failure to comply with this chapter.

An ~~elected~~ official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the ~~elected~~ official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The ~~elected~~ official shall keep the record or file it with the public entity to which the official was elected or appointed. A public access officer shall file the record with the agency or official that designated the public access officer.

4. Application. This section applies to a public access officer and the following elected and appointed officials:

A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

D.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school administrative units; and

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

SUMMARY

Current law requires public officials elected to certain positions to complete a training on the requirements of the Freedom of Access Act. This bill implements the recommendation of the Right to Know Advisory Committee that officials appointed to those same positions also be required to complete the training.