

Right to Know Advisory Committee  
August 19, 2014  
Draft Meeting Summary

Convened 10:03 a.m., Room 438, State House, Augusta

Present:

Sen. Linda Valentino  
Rep. Kim Monaghan-Derrig  
Joe Brown  
Richard Flewelling  
Suzanne Goucher  
Fred Hastings  
Bill Logan  
Mary Ann Lynch  
Judy Meyer  
Chris Parr  
Linda Pistner  
Harry Pringle  
Luke Rossignol

Absent:

Perry Antone  
Mal Leary  
Kelly Morgan

Staff:

Dan Tartakoff  
Peggy Reinsch

**Introductions**

Advisory Committee Chair Senator Linda Valentino called the meeting to order and the members introduced themselves.

**Public Access Ombudsman Update**

Public Access Ombudsman Brenda Kielty provided the Committee with an update on her recent activities and presented the Annual Report that summarizes the activities of the Ombudsman. Ms. Kielty explained the contacts she recorded and resolved; the bulk are from private citizens seeking advice. She also engaged in outreach and training and continues to provide information. Ms. Kielty stated that she has received lots of questions about whether the public have a right to speak at public meetings. She has also fielded questions about whether a public body can meet remotely and encouraged the Advisory Committee to make clarification of that question a priority. There have also been questions about whether certain organizations are subject to the FOAA.

Ms. Kielty reported that the Administration had committed to following through with the recommendations about coordinated access throughout the Executive Branch, but that she had not yet received an update on those activities.

Ms. Kielty mentioned that many people don't understand that it is important for the process of deliberation to be open. Members of a public body cannot use GoogleDocs or other types of technology to collect comments and make changes to proposals; those activities should be conducted in open public proceedings.

## **Update on Government Oversight Committee's Request to Attorney General Mills**

The Government Oversight Committee requested that both Attorney General Mills and Secretary of State Dunlap address the Committee's concerns that were identified when reviewing the document shredding and the contract award process within DHHS. Deputy Attorney General Linda Pistner explained that the two key questions of the inquiry are whether documents were properly retained and disposed of and whether there was appropriate supporting documentation for contracts that were out to bid. In response, a work group has been established to regularize document retention, work out retention schedules with Archives and establish training. Senator Valentino acknowledged that GOC would keep the Advisory Committee apprised as a courtesy.

Tammy Marks, Director of Records Management, Maine State Archives, introduced herself and explained how her office is working with state agencies. She recommends that each agency appoint a records officer to ensure that the appropriate records are retained for the established time periods. Ms. Marks said that her office is working on retention policies and procedures for saving email.

## **Summary of Freedom of Access Actions, Second Regular Session, 126th Legislature**

Staff summarized the FOAA legislative actions during the Second Regular Session of the 126th Legislature.

### A. RTK AC recommendations

- LD 1809, An Act Concerning Meetings of Public Bodies Using Communication Technology

A majority of the Advisory Committee supported legislation to clarify when members of public bodies can participate and vote in public meetings when they are not physically present. A majority of the Judiciary Committee amended the proposed language to limit its application to elected municipal and quasi-municipal public bodies. The majority of the Judiciary Committee accepted the opinion of the Attorney General that, without specific authorization, a public body cannot meet remotely. The legislation passed with a floor amendment. The Governor vetoed the legislation, and the veto was sustained. The veto message expressed the Governor's belief that public entities can currently allow members who are not physically present to participate using remote technology.

The Advisory Committee discussed whether it should continue to discuss this issue, recognizing the tension between the need for certainty and the fact that there is not much else the Advisory Committee can accomplish on the topic. An agreement was reached to readdress these issues at the third meeting to determine whether the Advisory Committee should make a recommendation, and to discuss any recommendations at the final meeting.

- LD 1821, An Act to Implement the Recommendations of the Right to Know Advisory Committee

In 2013, the Advisory Committee unanimously supported the first three parts of the bill unanimously: Part A: Public records exceptions; Part B: Add a technology

member to RTK AC; and Part C: revise the Public Access Ombudsman reporting date. The Advisory Committee was divided on the fourth part, Part D: FOAA deadlines and appeals.

The Judiciary Committee voted to accept the recommendations with a few clarifications, but the Governor vetoed the bill, and the veto was sustained. The Governor's veto message expressed his frustration that the FOAA is often used to harass and delay the work of government entities. He felt the bill did not go far enough to remedy those problems.

Ms. Pistner said that the Attorney General's Office would like to submit language to fix the appeals language (amendment to 1 MRSA §409(1)). Senator Valentino noted the importance of breaking down the different recommendations from LD 1821 into separate bills for the new legislative session and to reexamine the Governor's veto message to determine if any of his suggestions for improving FOAA should be addressed by the Committee. There was agreement to discuss these issues again at the third meeting and finalize any recommendations at the last meeting.

- Relief from overly-burdensome FOAA requests

The Judiciary Committee reviewed the Advisory Committee's recommendations about providing an avenue for public agencies and officials to refuse to respond to overly burdensome public records requests, but did not support the standard of review that would apply. No legislation was printed.

The Advisory Committee agreed that the concept of providing relief from abusive requests is still worth further consideration, and directed staff to review options pursued in other states.

B. Public Access Ombudsman recommendations (PL 2013, c. 229)

- LD 1818, An Act to Facilitate Public Records Requests to State Agencies

The Judiciary Committee agreed to vote against LD 1818 because the Governor's Office agreed to implement the recommended changes without legislation.

The Advisory Committee requested a written update from Senior Policy Advisor Jonathan Nass, and requested that the Judiciary Committee contact the Legislative Council about the same coordinated access request.

C. Proposed public records exceptions reviewed by Judiciary Committee

The Judiciary Committee reviewed 7 proposed public records exceptions during the Second Regular Session, 126th Legislature.

**Existing Public Records Exceptions Review Process**

The Advisory Committee will not be reviewing any existing public records exceptions this year.

### **Public Records Exceptions on the Web**

Staff updated the Advisory Committee on the public records exceptions search function on the Internet, which may be accessed from the State's Freedom of Access webpage.

### **Collection and Maintenance of State Agency Documents**

Adam Fisher of the Maine State Library explained the project the library has undertaken to collect and maintain documents from state agencies. No action by the Advisory Committee is required at this time.

### **Topics and Projects for 2014**

The Advisory Committee began exploring the tasks to be undertaken in 2014.

- The Advisory Committee agreed to discuss member participation in public meetings through remote communication at the third meeting to allow the development of language and legal positions prior to the making of recommendations, which will occur at the final meeting.
- The Advisory Committee agreed to submit recommendations printed as LD 1821 as separate bills and with some changes to the appeals language.
- The Advisory Committee will include an update on LD 1818 on the agenda for a future meeting.
- The Advisory Committee will explore concerns about the inappropriate use of technology – text messaging, email, chat rooms, snap chat, shared documents, etc. – that take the place of public deliberations, especially when no physical record is kept of the communications. Discussion of these issues will occur during the second meeting. Staff were asked to research any approaches that have been taken by other states with respect to these technology issues.
- During the second meeting, the Advisory Committee will also address certain issues raised in Resolve 2013, chapter 112 concerning privacy of social media and cloud data storage by government entities.

### **Future Meetings**

Wednesday, September 17, 2014 at 9:00 a.m. if guest speakers on technology can be confirmed. If not, Wednesday, October 1, 2014 at 9:00 a.m. is the tentative back up date. Final meeting to occur prior to the Thanksgiving Break. Room 438 of the State House for all meetings.

The meeting was adjourned at 12:18 p.m.

Respectfully submitted,  
Peggy Reinsch and Dan Tartakoff