

Right to Know Advisory Committee  
September 17, 2014  
Meeting Summary

Convened 9:10 a.m., Room 438, State House, Augusta

Present:

Sen. Linda Valentino  
Rep. Kim Monaghan-Derrig  
Joe Brown  
Suzanne Goucher  
Fred Hastings  
Mal Leary  
Judy Meyer  
Chris Parr  
Linda Pistner  
Luke Rossignol

Absent:

Perry Antone  
Richard Flewelling  
Bill Logan  
Mary Ann Lynch  
Kelly Morgan  
Harry Pringle

Staff:

Peggy Reinsch, Colleen McCarthy Reid, Dan Tartakoff

**Introductions**

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

**Discussion of technology, cloud computing, social media**

Greg McNeal, Chief Technology Officer at the Office of Information Technology, Department of Administrative and Financial Services; Jennifer Smith, Director of Legislative Affairs and Communications, Department of Administrative and Financial Services; and Brenda Kielty, Public Access Ombudsman briefed the Committee on these matters. Mr. McNeal generally described for the Committee the various types of technologies utilized by state agency employees, noting that pursuant to a recent executive order, email is the official form of communication to be used by executive branch employees. While he acknowledged that some state agencies do have a Facebook, Twitter, or other social media presence, he suggested that these communication technologies are typically used to provide information to the public rather than to engage in a dialogue with individuals. Each agency individually manages its social media presence pursuant to the executive branch's social media policy as well as the agency's own corresponding policy. Committee members expressed interest in reviewing a copy of this social media policy, as well as any social media policy in place for the Legislature or legislative offices.

Mr. McNeal also described the use of cloud storage technology by executive branch agencies, noting that while state government servers are technically "cloud storage," unlike commercial storage providers, these servers are located on site and the State has complete control over the security, privacy, and management of stored data. State agency use of commercial cloud storage appears to be rare.

Regarding retention of emails, social media posts, and other electronic communications, Mr. McNeal noted that his office can typically recover deleted emails, which are archived nightly, while retention of social media records depends on the site in question, although most of these

sites have some sort of data recovery ability. Mr. McNeal acknowledged that the government has no control over personal email accounts of employees. Ms. Kielty added that under FOAA, it is irrelevant what sort of account or technology medium government business is transacted on; if it qualifies as a public record, an agency, office, etc. has a duty to reasonably try to acquire those records if a request is filed. She recalled dealing with a number of requests for records contained in an employee's or official's personal email accounts, noting that in all of these cases, the individual in question has voluntarily facilitated production of the records.

There was further discussion of the recent executive order instituting email as the official form of communication for executive branch employees and restricting cell phone use in the transaction of government business. The Committee requested that a copy of this order be produced for review. The Committee also agreed to discuss at the next meeting whether it should recommend that a spot check or audit of executive branch employee compliance with this order be conducted.

Ms. Smith explained to the Committee that, while there is an overarching communications policy for the executive branch, each agency has also developed its own communications policy incorporating those directives, which include retention rules for communications utilized by each agency. Ms. Kielty reiterated that all of these forms of communications the Committee had been discussing, when used to transact government business, are considered public records under FOAA. The major issue to be addressed here instead concerns retention of these often dynamic, changing records. For example, she noted, how do you adequately "capture" and then retain various iterations of a social media page as it is updated? Neither FOAA nor the retention schedules adequately answer this question in her opinion. Ms. Kielty agreed to bring back to the Committee some suggestions for addressing these specific issues.

Mr. McNeal also discussed document centric collaboration platforms, such as Google Docs or Office 365. To his knowledge, Google Docs is not utilized by state employees to conduct business; however, his office is looking into implementing Office 365 for executive agency use in the near future. Ms. Kielty noted that with these platforms, major areas of concern are the retention of drafts – does an agency have to, or can they even retain all versions of a document – and public meetings issues – if multiple members of a board, body, etc. are collaborating in real time on one of these documents, does this constitute a public meeting under FOAA?

### **Other state approaches**

Committee staff described various approaches to these issues taken by different states, noting initially that many states are just starting to address concerns raised by new communication technology within their public records and open meetings laws. Staff noted that, like Maine's FOAA, most state's public records laws are very broad and their definition of public record encompasses all new forms of communication. Instead, as Ms. Kielty had suggested, the issues to be dealt with in this context largely concern records retention and what constitutes a public meeting. Staff described pending legislation in Minnesota that, as originally proposed, would have exempted social media use from public meeting requirements so long as certain criteria were met. Staff shared a Mississippi ethics commission opinion finding that text messages contained on private phones of government officials, but used to conduct government business, were subject to the state's public records law. Staff provided an example of a state social media policy (Ohio), noting that a number of states had set forth similar comprehensive social media and communications policies for government employees and agencies. Committee members requested that staff compile a spreadsheet comparing and contrasting Maine's social media and communications policies with approaches taken by other states, municipalities, etc.

## **Resolve 2013, c. 112: Study of Social Media Privacy in School and the Workplace**

Committee staff summarized two bills – LDs 1194 and 1780 – that the Judiciary Committee and the Education Committee, respectively, worked on during the Second Regular Session. These bills, whose topics overlapped somewhat, were combined into this resolve to be studied over the interim. However, because the study did not receive the necessary outside funding, it was suggested that the Advisory Committee might consider addressing some of these privacy issues during its interim work. After discussion, however, Advisory Committee members decided that the issues to be addressed by the study were beyond the scope of the Advisory Committee and those members present unanimously voted to take no further action on this resolve.

### **Update on activities relating to LD 1818**

Committee staff updated the Committee on activities related to LD 1818, An Act to Facilitate Public Records Requests to State Agencies. Staff noted that since the last meeting, the Judiciary Committee had written a letter to the Legislative Council, requesting that the Council adopt measures to increase the ability of the public to make records requests online and to discuss coordination with State agencies on these goals. Additionally, Jonathan Nass, Senior Policy Advisor to Governor LePage wrote a letter to the Committee updating it on actions taken by the executive branch with respect to LD 1818, namely coordinating meetings between DAFS staff and the Public Access Ombudsman to implement a tracking and reporting tool for requests made to executive branch agencies. Ms. Kielty, the Public Access Ombudsman, stated that she was thus far pleased with the progress made in implementing the goals outlined in LD 1818.

### **Topics to be addressed at next meeting**

- Review and discuss state social media and communication policies;
- Review and discuss executive order regarding email communication and cell phone use policy for executive branch employees;
- Review draft language for bills related to LD 1821, An Act to Implement the Recommendations of the Right to Know Advisory Committee;
- Discuss issues and review draft language related to LD 1809, An Act Concerning Meetings of Public Bodies Using Communication Technology;
- Discuss other state approaches to abusive or repetitive public records requests;
- Discuss public records exceptions review process;
- Review draft Committee report.

### **Scheduling**

The Committee's third and fourth meetings are scheduled for Thursday, November 6, 2014 and Monday, November 17, 2014, respectively, both starting at 9:00 a.m. in Room 438, State House.

The meeting was adjourned at 11:59 a.m.

Respectfully submitted,  
Peggy Reinsch, Colleen McCarthy Reid, and Dan Tartakoff

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