

Right to Know Advisory Committee  
January 30, 2008  
(Draft) Meeting Summary  
Convened 9:30 a.m., Room 438, State House, Augusta

**Present:**

Senator Barry Hobbins, Chair  
Representative Deborah Simpson  
Karla Black  
Robert Devlin  
Richard Flewelling  
Suzanne Goucher  
James T. Glessner  
Mal Leary  
Judy Meyer  
Linda Pistner  
Harry Pringle  
Chris Spruce

**Absent:**

Shenna Bellows  
Sheriff Mark Dion  
Maureen O'Brien

**Staff:**

Maryann Nowak  
Margaret J. Reinsch  
Colleen McCarthy Reid

Senator Hobbins convened the Advisory Committee.

**Recap of Judiciary Committee discussions on LD 1881 and LD 1923**

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Mr. Spruce summarized the action taken by the Judiciary committee on January 29, 2008, in which the Judiciary Committee unanimously passed LD 1881. He noted that at that meeting, Senator Weston presented her bill recommending a proposed change which would require a public agency or public official to acknowledge receipt of a request for public records.

The Judiciary Committee also considered LD 1923, An Act to Implement the Recommendations of the Right to Know Advisory Committee Creating the Public Access Ombudsman. Mr. Spruce explained that this was the third time this recommendation has been before the Judiciary Committee. Mr. Spruce also reported that there was concern among the Judiciary Committee regarding the ability to fund the position. Due to this concern the Judiciary Committee tabled the issue. Mr. Spruce noted the need to search for outside sources to fund the Ombudsman position.

Ms. Pistner reassured the Advisory Committee that the AG's office does as much as it can with the resources that it has. Ms. Pistner also noted the potential to get approval for the position without legislation contingent upon locating outside sources of funding. In response, Mr. Leary noted that grants are available to fund supplemental programs, but that the grants would probably not be available to directly fund an Ombudsman. Mr. Spruce agreed and noted the need to do more research into the availability of grants. Mr. Spruce offered to help in this research endeavor.

Christopher Parr, Staff Attorney for the State Police, asked whether LD 1923 addressed the qualifications required of the position. He requested to know if the position would be filled by an attorney. In response, Ms. Pistner replied that the assumption was that the position would be filled by an attorney since the nature of the position entails responding to legal inquires.

### **Presentation: Matthew Dunlap, Secretary of State**

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Secretary of State, Matthew Dunlap presented the report, Privacy, Public Access & Policymaking in State Redaction Practices: Dealing with Sensitive Data in an Era of Open & Accessible Public Records, White Paper, National Association of Secretaries of State (NASS) and National Electronic Commerce Coordinating Council (eC3), December 3, 2007. Mr. Dunlap described that the report was a result of a symposium held in Portland, Maine, on August 14-15, 2007. Mr. Dunlap gave an overview of events and issues that prompted the need to hold the symposium including, lawsuits, lack of authority to edit public records, and public outcry from a specific incident involving documents containing personally sensitive information dumped outside the archives building and exposed by Channel 13 news. Mr. Dunlap addressed policy changes that were discussed at the symposium. Mr. Dunlap stressed the need to find some middle ground between (a) redacting any and all personal information, and (b) redacting as little information as possible in order to preserve the integrity of the public document.

Mr. Dunlap discussed various corporations that are in the business of redacting information. Pertaining to the types of information that should be redacted, Mr. Dunlap mentioned SSN, taxpayer ID numbers, bank or financial account numbers, driver's license numbers, signatures, DOBs, and addresses. In addition to redacting information, Mr. Dunlap said that the key question revolved around what information should be collected in the first place. The overall objective of the white paper is to ensure consistency in the redaction process. Mr. Dunlap informed the committee of his plan to distribute the white paper to the entire Legislature.

In response to the presentation, Mr. Leary expressed his interest in learning how individuals were chosen to participate in the study. He asked if it would be better to have a broader group look at the issues. In response, Mr. Dunlap explained that the limited participation was a result of the time constraint. He also stated that the white paper was designed as a way to raise the issue and promote discussion. Mr. Dunlap reassured the committee that when the time comes for a fuller discussion, other constituents would be included.

Ms. Pistner raised issues regarding redaction of documents located in the records center, archives, and during the process when documents move from one location to the other. In response, Mr. Dunlap explained that the record center holds agency documents until authorization is received from the agency to recycle them, and that this process is separate from the archives. Ms. Pistner asked, when a document goes to these facilities, who screens for personal and confidential information. In addition, Ms. Pistner raised the point that confidentiality issues do not end when a document goes to the records or archives center. Mr. Dunlap stated that nobody screens the documents. Mr. Dunlap stressed his previous statement that personal information that is not relevant should not be collected.

Ms. Goucher requested to know how Maine is grappling with this issue compared to other states. In response, Mr. Dunlap stated that no state has yet to find a solution but that progress was being made. The current concern revolves around identity theft. Mr. Dunlap expressed his belief that it would better serve the public to help individuals recover from identity theft. One way of

accomplishing this is to build a “crumb trail” by keeping records of who is accessing public documents containing personal information.

Beverly Bustin-Hatheway, Register of Deeds, Kennebec County) expressed concern about private personally identifying information. In particular she raised the issue about how private personally identifying information is defined.

### **Plan to Present the 2008 Annual Report to the Judiciary Committee**

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Ms. Reinsch suggested various ways to get the Committee’s recommendations before the Judiciary Committee. She mentioned the option of either printing the bill and pulling people or identifying the relevant parties and asking them to come to a Joint Committee meeting. Mr. Spruce noted that the Legislative Subcommittee wanted to hear from the individual agencies regarding any concerns or comments they have to the proposed changes. Due to this information gap, Mr. Spruce said that he was open to a joint hearing between the Judiciary Committee and the Advisory Committee.

Ms. Reinsch stated that the bill could be printed, published, and then there could be public comment on it. She also noted the possibility of advertising on the web and in the paper to get greater input. Mr. Spruce asked if the hearing occurred, would there be time to resolve the issue in this session. Ms. Pistner responded that if there was a particular time frame, the Advisory Committee could put the proposed changes in brief summary form.

Mr. Spruce proposed that there could be a separate bill that deals with issues arising from a public response. Senator Hobbins asked if it would be more efficient to use the current bill as a vehicle to propose changes. Ms. Reinsch stated that the bill could be printed with the proposals, and that the proposals would be located in an unallocated section of the bill. There was general agreement among the members of the Advisory Committee that public involvement is important.

Ms. Pistner said that before the Judiciary Committee decides whether the proposed bill should be sent out, the bill should be presented as part of the report. Senator Hobbins agreed, and Ms. Reinsch reiterated that there could be an unallocated section that would raise the eight proposed changes. Ms. Pistner supported including an unallocated section since the eight sections on notice are some of the most substantive and interesting sections that need to be addressed. Ms. Reinsch then asked whether the Advisory Committee would prefer to make a presentation once the bill is printed, or make a presentation soon and appear again before a public hearing when the bills are presented. The Advisory Committee then agreed to make their presentation before the Judiciary Committee on Wednesday, February 27, 2008, 1 p.m.

Senator Hobbins stated that the Subcommittee’s chair persons should be there. Ms. Reinsch also suggested that Chris Parr’s recommendations be used to make a comprehensive review by the legislative subcommittee.

### **Pending Legislation and Proposed Public Records Exceptions**

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- **ACF: LR 3471, An Act To Designate Certain Application and Licensing Information Provided to the State Harness Racing Commission as Confidential**

Ms. Reinsch reviewed LR 3471, An Act to Designate Certain Application and Licensing Information Provided to the State Harness Racing Commission as Confidential. Ms. Reinsch explained that the bill would allow the Harness Racing Commission to limit the information that

they are required to make public when dealing with applications to build or operate public race tracks. The proposal was modeled after current protections already applicable for applications going before the Gambling Control Board. Due to the pending sale by Penn National of the race track in Bangor, this is considered an emergency issue. The Harness Racing Commission wants to make sure that confidential information about applicants is not released. The proposal by the Agriculture, Conservation, and Forestry Committee would make the Gambling Control Board's confidentiality section (8 M.R.S.A §1006) applicable to the Harness Racing Commission.

- **LVA: LD 2070, An Act to Improve the Campaign Finance Laws and Their Administration**

LD 2070, An Act to Improve the Campaign Finance Laws and Their Administration, is proposed by the Commission on Governmental Ethics. The legal and Veterans' affairs committee held a public hearing on the bill on January 28, 2008. LVA will work with the Judiciary Committee on any new confidentiality provisions.

The Supplemental Budget, LD 2173, contains a new public records exception for the audit working papers of the State Controller. Both the Office of Fiscal and Program Review and the State and Local Government Committee, the policy committee was jurisdiction over that part of LD 2173, are aware that the Judiciary Committee must review the new exception.

- **SLG: LR 260104, Committee Amendment to LD 1878, An Act to Generate Savings by Changing Public Notice Requirements**

In December 2007, the Advisory Committee voted to oppose LD 1878. Representative Joy presented an amended version of "An Act to Generate Savings by Changing Public Notice Requirements." In response to negative testimony regarding the original bill, Representative Hayes amended her bill. Representative Joy's presentation focused on (a) the use of a web portal to provide valuable information (b) \$200-300k savings annually by reducing column widths, and (c) descriptions of sample notices.

Mr. Spruce was concerned about the type of publication the notices are going to be printed in. He mentioned that free papers are not subject to audit, therefore there is no indication of how many people will read the notices. Ms. Meyer stated that she was uncomfortable about the lack of specific information on the sample notices. Specifically, she was concerned about the lack of fiscal information and statutory authority. There was a proposal to reconsider the Advisory's decision to oppose LD 1878.

Mr. Pringle concurred with the proposal. He expressed his support for "take no action." In response, Ms. Meyer mentioned that the number of people exposed to the notices in paid papers can be tracked whereas it is not possible to account for the number of people who pick up free newspapers. Mr. Spruce was in agreement, and stated that the web portal alone is inadequate. Mr. Devlin explained his belief that the statutory authority should be published. In addition, he mentioned that in many small communities, the free paper is the local paper. Representative Simpson informed the committee that 42% of Maine households do not have internet access. Representative Simpson questioned whether the proposed legislation would hinder access to information that affects their daily lives.

Mr. Devlin inquired into the subscription rates of paid papers across the state. In response, Mr. Austin stated that the alternative paper is only available when subscription rates

are below a 30% threshold. Mr. Flewelling remarked that the proposed amendment was a reasonable approach. He noted that given the lack of information, he does not feel competent to make a decision on which means of publication are most effective.

Mr. Glessner reminded the committee that their concern in the beginning was a change in practice, and that the current proposal is consistent with current practice.

*Motion: To reconsider on the committee's prior position regarding the original bill.*

*Result: Unanimous vote in favor of the motion.*

Senator Hobbins opened the floor to consideration of the amended version of the bill.

*Motion: To table.*

*Result: Unanimous vote in favor of the motion.*

### **Freedom of Information Coalition Grant**

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Ms. Nowak discussed her research regarding funding opportunities for the committee's use. Mr. Leary and Mr. Spruce offered to assist efforts to obtain funding.

Mr. Spruce proposed requesting more time to present LD 1923. Ms. Goucher asked whether the Ombudsman needs to be statutorily mandated if the funding source was private. Ms. Goucher said that she would like to see the Judiciary committee send the bill to the Appropriations Committee as a statement of its importance, and as a way to put the Committee on record. In response, Representative Simpson mentioned that if in fact funding is available, and the position needs statutory authorization, then it does not make sense to send it to the Appropriations Committee.

Ms. Pistner noted the possibility of including statutory language that would allow the bill to go forward without funding. Mr. Leary stated that grant process is going to take longer than the current Legislative Session. Ms. Goucher reaffirmed her position and expressed concern over killing the bill due to a lack of funding. Ms. Goucher suggested that the committee take the position recommending the Judiciary Committee to act favorably on the bill. Mr. Leary agreed, and said that it was important to keep on putting the bill before the appropriations committee in order to keep the idea alive. He also supported Ms. Pistner's suggestion of including statutory language.

*Motion: To take a position in support of the Ombudsman Bill, LD 1923, with included statutory language that would allow the position to go forward contingent upon obtaining private funding, and urge the Judiciary Committee to take appropriate action on the bill.*

*Result: Unanimous vote in favor of the motion.*

### **Public Hearings in Different Locations**

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Ms. Reinsch raised the issue of holding various public hearings across the state in an effort to get comments and hear anecdotal stories. Senator Hobbins inquired into the current state of the budget. Ms. Reinsch did not know the balance, but said she would find out. Ms. Goucher asked whether the committee met its required number of meetings for 2007. Ms.

Reinsch believed that they had, but that she was uncertain if the requirement applied to the fiscal year or the calendar year.

Senator Hobbins requested input on holding meetings. In response, Representative Simpson said that it would be informative to hear from the general public. Various members of the Committee expressed support in favor of holding public hearings. Ms. Goucher mentioned the possibilities of teaming up with MMA to use municipal auditoriums. Mr. Leary suggested holding the meetings in geographically diverse areas. He stated that the meeting should be where the people are and suggested using the ATM system. The Committee then discussed how many meetings should be held and agreed that four would be appropriate.

Mr. Flewelling asked whether the committee could use the state website to create a forum in which individuals not able to physically attend the meetings could express their concern. Ms. Black recognized the validity of the idea but questioned whether they have the resources and technology to get it done.

Senator Hobbins brought up the issue of locations and mentioned Bangor, Lewiston/Auburn, and Portland. Ms. Reinsch suggested assigning the task of arranging the logistics of the meetings to one of the Subcommittees. Mr. Pringle and Ms. Meyer added that it would be a better idea to hold the meetings after the legislative session in May. Mr. Pringle also suggested holding one central meeting and organizing satellite locations where people can comment via satellite at Maine campus locations.

#### **Next Scheduled Meeting**

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The Committee is scheduled to make its presentation before the Judiciary Committee on Wednesday, February 27, 2008, 1 p.m.