Legislative Subcommittee of the Right to Know Advisory Committee
June 28, 2010
Meeting Summary

Convened 1:06 p.m., Room 438, State House, Augusta

Present:	Absent:
Chris Spruce, Chair	Mal Leary
Robert Devlin	Linda Pistner
Richard Flewelling	
Judy Meyer	
Phyllis Gardiner	
Harry Pringle	
Shenna Bellows	
Kelly Morgan	
Karla Black	

Staff:
Peggy Reinsch
Carolyn Russo

Legislative Subcommittee Chair, Chris Spruce, convened the meeting of the Legislative Subcommittee of the Right to Know Advisory Committee at 1:06 p.m. and asked the members to introduce themselves. Chris Spruce then directed the Staff to steer the committee through its list of tasks.

Review of Legislative Subcommittee Tasks

The following ten tasks are under the purview of the Legislative Subcommittee. Staff gave a brief overview of all ten and highlighted numbers 1, 4, 5, and 8 as the four of focus for the present meeting.

1. Use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public;
2. Consideration of revision of penalties for violations of the freedom of access laws;
3. Whether partisan party caucuses should be specifically excluded from the definition of "public proceedings";
4. Protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents;
5. Policy on whether e-mail addresses are public records;
6. Central Voter Registry;
7. Social Security Numbers;
8. Use of technology in attending meetings;

9. Keeping records of public proceedings; and
10. Scope of review process (1 MRSA §434 criteria)

Communication Technologies

Senator Nutting and Representative Dostie shared their concerns about 1) penalizing full boards for the impropriety of one member; 2) for members of a body working behind the scenes and making decisions behind closed doors, especially in hiring and firing; and 3) for members of a body communicating through serial e-mails and coming to a meeting with predetermined decisions.

Staff followed with an overview of the use of communication technologies to ensure that decisions are made in proceedings that are open and accessible to the public. As part of the overview, a copy of LD 1551, *An Act To Further Regulate Communications of Members of Public Bodies* was supplied as was the rationale for the bill and the concerns and issues raised during the public hearing and work session for the bill. The following were also supplied for consideration and discussion:

- A copy of the Law Court case *Marxsen v. Board of Directors, M.S.A.D. No. 5,* (Me. 1991);
- State by State Statutes and Interpretations by Courts and Attorneys General with regard to public meetings via e-mail;
- The Maine Freedom of Access Webpage containing the "Frequently Asked Question" answer to whether members of a body can communicate with one another by email outside of a public proceeding;
- A concept draft of an amendment to prevent serialized meetings to circumvent the Freedom of Access laws proposed by Sig Schutz; and
- A detailed worksheet dealing with issues and concerns surrounding communication technologies.

This led to a discussion of the subcommittee members about how the current law is interpreted with regard to communication technologies and public meetings. The focus was on whether deliberating between members was appropriate before a meeting. The general consensus of the present Law Court interpretation of the Freedom of Access laws is that deliberating an issue beforehand is okay as long as it is to get information to make an informed decision at a public meeting. It is not legal to make collective decisions beforehand. Rep. Dostie raised the question of whether defining substantive matter versus general information would help clarify the issue. It was offered that such definitions are difficult in the abstract. There was general agreement that a conference call, if the public could hear the discussion, would be acceptable if everyone at the meeting agreed beforehand. Sen. Nutting reasserted his worry about serial calls to all members before a meeting.

Use of Technology in Attending Meetings

Staff shared a Right to Know Advisory Committee Revised Proposed Draft dated 12/1/09 on the limitation on meetings using technology. Also presented was a list of ten considerations for discussion. Dialogue ensued regarding the listed considerations.

Subcommittee members discussed how the exception in the Ethics Commission's statute works and cited the need for adequate safeguards. There was general agreement that currently the FOA laws mean members must be physically present unless a specific statute allows using remote participation. It was felt that a review of this restriction is worth considering given the advances in technology and the cost of bringing members of statewide boards, for example, together in one location. Some members cautioned that absentee voting would be difficult because members not in attendance would not be able to view documents. This led to a further discussion about safeguards such as having proper equipment to fax material to absentee members, absentee members being audible to all, precluding absentee members from participating in quasi-judicial proceedings where the credibility of witnesses must be evaluated, and having individual boards establish clear policies for remote participation. All agreed that a physical location was necessary for a meeting to take place and public notice was required. The subcommittee members agreed that the provided draft legislation, along with Sig Schutz' comments, was a good start and asked Staff to prepare an updated revision that reflected the subcommittee's concerns.

Protection of private information contained in e-mail and other correspondence with elected and other officials

Staff provided an overview of the discussion that took place in the Judiciary Committee about LD 1802, *An Act to Exempt Personal Constituent Information from the Freedom of Access Laws*, sponsored by Rep. Hill. Included in the materials was a chart comparing the approaches by different states with regard to e-mail sent or received by legislators, as well as the application of the federal Freedom of Information Act (FOIA) to various forms of private information. It was noted that the FOIA does not apply to the federal legislative branch.

Many people write to their legislators, the Governor and other government officials and reveal very personal, private information in the course of requesting assistance or advocating a position on policy matters. Subcommittee members doubted that the authors ever intended or considered that the information would be considered public and released as governmental public records. There was concern about the concept, as included in the original draft of LD 1802, that confidentiality rested on whether the person submitting the information wanted that information to be kept confidential.

Peter Merrill, who works with the Maine State Housing Authority, explained what happens in his work. He receives e-mails from legislators laying out constituents' personal details in a quest for housing or heating assistance, especially in the winter. Mr.

Merrill responds back, and there can be significant communication. He knows that the e-mails would have to be released as public records if anyone requested them, and that troubles him. Discussion revealed that the same type of correspondence is received by the Governor's Office. Although a warning or disclaimer might put people on notice, it might also discourage them from seeking help.

The Subcommittee turned its attention to a proposed amendment that Rep. Hill provided the Judiciary Committee at the public hearing on LD 1802. It narrowed the scope of the information to be protected, tying it somewhat to what is already designated as confidential by statute. The Subcommittee requested Staff to rewrite the proposed amendment to incorporate the changes discussed.

Confidentiality of e-mail addresses

Staff outlined the legislation proposed in the Second Regular Session that designated as confidential e-mail addresses in the possession of the Department of Inland Fisheries and Wildlife. The proposal was contained in LD 1651, *An Act to Clarify and Amend Laws Pertaining to Licenses Issued by the Department of Inland Fisheries and Wildlife.* The bill was referred to the Inland Fisheries and Wildlife Committee and the confidentiality proposal reviewed by the Judiciary Committee. Although there was significant discussion about e-mail addresses, and the possibility of providing an "opt-in" version, the bill was ultimately indefinitely postponed by the Legislature. The Judiciary Committee then asked the Right to Know Advisory Committee to review the issue. Staff explained that other jurisdictions have dealt with e-mail addresses through general privacy act-type legislation, although Texas law does designate such information confidential when it is provided by a member of the public for the purpose of communicating electronically with a governmental body.

The Subcommittee's discussion compared e-mail addresses with traditional mailing addresses. Bob Devlin expressed the view that an address is an address, and the transaction is a governmental transaction; mailing addresses are public, so it follows that e-mail addresses would be public, also. Shenna Bellows disagreed, identifying e-mail addresses as an entry point to individuals' private computers, making them susceptible to Denial of Service attacks, SPAM and other malevolent actions. Personal information could be accessed. The need is to know about how governmental actors are responding; e-mail addresses can be kept private without diminishing access to government. She noted that e-mail addresses are used by political opponents to target ordinary people via e-mail. Judy Meyer recognized the harassment concern, but pointed out that very often an e-mail address is the only identifying information about a person engaging in correspondence. It is simple enough to delete e-mail you don't like.

The Subcommittee agreed that any policy adopted should apply across all agencies. Mr. Spruce requested that Staff identify resources that can explain the practical implications of action on this question. Phyllis Gardiner noted that requiring private e-mail addresses

to be kept confidential by all agencies might involve significant costs which should be explored.

The Subcommittee tabled the discussion to be continued during the next meeting. Staff will contact the Office of Information Technology and other sources for assistance.

Next meetings

The Subcommittee's next meeting is scheduled for Monday, July 12, 2010, starting at 1:00 p.m. The agenda will include continuation of the topics discussed at this meeting, as well as looking at the scope of review for both existing and proposed public records exceptions, penalties for violations and whether the law should specifically mention caucuses with regard to open meetings.

A third Subcommittee meeting is scheduled for Monday, July 19, 2010, starting at 1:00 p.m.

The meeting was adjourned at 3:01 p.m.

Respectfully submitted
Carolyn Russo
Peggy Reinsch
Staff, Right to Know Advisory Committee

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Legislative Subcommittee of the Right to Know Advisory Committee
July 12, 2010
Meeting Summary

Convened 1:06 p.m., Room 438, State House, Augusta

Present:	Absent:
Chris Spruce, Chair	Shenna Bellows
Robert Devlin	
Richard Flewelling	
Mal Leary	
Judy Meyer	
Linda Pistner	
Harry Pringle	
Kelly Morgan	
Karla Black	

Staff:
Peggy Reinsch
Marion Hylan Barr

Legislative Subcommittee Chair, Chris Spruce, convened the meeting of the Legislative Subcommittee of the Right to Know Advisory Committee at 1:06 p.m. and asked the members to introduce themselves.

Issues from June 28, 2010 meeting

The Legislative Subcommittee continued discussion regarding whether e-mail addresses should be public records and ensuring that decisions are made in proceedings that are open and accessible to the public. Draft legislation was also reviewed regarding protection of private information contained in e-mail and other forms of communications between elected public officials and their constituents and regarding the use of technology by members attending meetings

- **Should e-mail addresses be public records**

At the Legislative Subcommittee's request, representatives from the Office of Information Technology and the Department of Inland Fisheries and Wildlife were asked to attend the meeting and share their thoughts on the practical implications of imposing a state-wide policy making e-mail addresses confidential, including concerns, costs, and implementation. Staff distinguished the difference between distribution lists and e-mail addresses found in e-mail chains.

Greg McNeal, Chief Information Officer and Paul Sandlin, Manager of eGovernment Services expressed their thoughts that e-mail addresses present a tough issue. E-mail is usually used as a communication channel, and is usually associated with a password.

After an e-mail transaction, how long should an e-mail address be maintained? They explained as a rule OIT does not release e-mail addresses but when another State agency receives a freedom of information request for that information, OIT administers the other agencies response. (OIT is the technical arm that maintains the data.) Mr. McNeal and Mr. Sandlin noted that some people care if their address is released, some do not; and some people have no idea that their addresses are collected. They believe that most people don't expect their e-mail addresses to be used or sold for commercial purposes. E-mail policies can make that clear.

Mr. McNeal said they looked at other states' sites, and noted that North Dakota includes opt-in/opt-out boxes, but there is no explanation of uses. When questioned, he said he views e-mail addresses the same as any other address. Mr. Sandlin also mentioned that e-mail addresses are often used as a type of credential for signing into an account on a website, such as Amazon, or gmail. He described the evolving nature of identity over the Internet, including the large number of applications that use e-mail addresses as the User ID.

Paul Jacques, Deputy Commissioner, and Bill Swan, Director of Licensing and Registration, of the Department of Inland Fisheries and Wildlife, explained the transition of much of the Department's licensing and permitting activities to electronic communications, which has allowed the Department to reduce staff and save costs. The e-mail traffic has increase from 30,000 a year to over 100,000 a year. They discussed an opt-out option, but if the e-mail addresses were maintained in any form, they would still be FOIA-able, even if an addressee opted out.

When the e-mail addresses were requested, a backlash was anticipated. The Department posted that the e-mail addresses had been requested and released, and once it was clear that the name identity of the requestor was also public, that information was posted, too. Reputable companies would comply with request by a consumer to opt out, but it would still be public. Mr. Swan noted that the Department keeps the e-mail list as a public service. All the Department's funding is through licensing, and the list is a great marketing tool for the Department.

Mr. Swan pointed out that an e-mail address is very different from a mailing address because of the ease and cost savings in the sender using e-mail. He also believes that e-mail is much more intrusive than regular mail; it is more like a phone call, in that you have to respond to it in some manner.

Mr. Swan noted that other states have imposed limitations on distribution of e-mail addresses. Mr. Jacques described the situation in Idaho in which people opposed to a new wolf hunt requested the e-mail addresses of all wolf license applicants; the Idaho Legislature is considering legislation to make the information confidential to prevent harassment of hunters by opponents.

The Department's best idea to address the e-mail issue is to give the person the option to not have the e-mail address become public information but still be able to communicate

by e-mail with the department. The Department has been selling its lists (not including e-mail addresses) for years. Mr. Swan did not think preventing the sale of the list after it is released would be helpful.

Mal Leary asked how to draw a distinction between the Department's commercial purpose in using the information and someone else doing business? Mr. Spruce saw the Department as trying to elevate e-mail addresses to the same level as Social Security Numbers in their need for protection, and he said he hadn't reached that point yet. Linda Pistner noted that for whatever reason, people are unhappy with the distribution of their e-mail addresses. Many people do not understand computers, and e-mail also can bring in spyware and viruses. Harry Pringle suggested that this issue may be quaint in 10 years as technology and society change. He suggested that there are two options: 1) the Texas model in which all e-mail addresses are confidential – this leads to expensive redaction efforts; and 2) allow the e-mail to be treated like any other identifier. Mr. Spruce said it is important to make it clear that when anyone is doing business with the State, it will be public; if you are uncomfortable with that, use a different form of communication. Mr. Spruce is not interested in the Texas model. Kelly Morgan suggested the safe behavior of using a separate e-mail address for all online ordering and other commercial transactions. Richard Flewelling agreed that anything other than a black and white policy will be enormously complicated to administer. Karla Black noted her surprise that the reaction to the IF&W release of e-mail addresses was so strong, and she believed we should be responsive to the public concerns, although she didn't know what the solution is. Mr. Leary did not think the number of complaints was that significant and cited a Pew Foundation study that indicated that most people treat their e-mail address like their mailing address.

Christopher Parr, Staff Attorney to the Maine State Police, Department of Public Safety, said if he had been on the list, he would have complained to IF& W about its release. He also asked how distributing his e-mail address supports open government; does it give information about what the government does? Isn't the discussion really about context? A mailing address is not always given out, such as when interviewing crime suspects or victims; however, if the State makes e-mail addresses in general confidential, the effort required to redact that information from everything would create a huge burden on government.

Mr. Pringle asked staff to create a draft to protect lists of e-mail addresses compiled by government to allow citizens to do business with the government and differentiate those from e-mail addresses that appear in e-mail addresses. Ms. Morgan asked why it is okay to sell mailing lists but not e-mail lists, and Mr. Pringle agreed that if everyone believes they are the same, the discussion ends there. Mr. McNeal noted that there are distinct differences, in that a person's physical address is already available to the public via phonebook, E-911, etc. The only way to get an e-mail address is through a transaction or if a person gives it to you, which is the same with cell phone numbers - no one knows what it is unless the holder gives it out.

- **Proceedings in public**

The Subcommittee reviewed the draft prepared by staff to provide a general policy statement about communications outside of meetings not being prohibited, unless they are intended to circumvent the law, and to provide a definition of "meeting" that includes communication among members outside of being physically present as a quorum. The draft also included a clarification in the wording of the public notice requirement. Subcommittee members disagreed about whether to go forward with the definition of meeting and clarifying §406. Mr. Flewelling thought the definition was helpful for people to better understand the law and conform their behavior accordingly. Mr. Pringle thought it would cause more confusion. The goal is to make clear that decisions cannot be made in secret meetings, but we still want public officials to be well-informed when they do make decisions. If criminal penalties are going to be imposed, it is very important to give accurate guidance. Ms. Pistner did not see that the problem was actually addressed, and the proposal goes against her sense of what a meeting is: people getting together. After more discussion, the Subcommittee decided to go forward with a redraft of the amendment, amending only §401.

- **Protection of information in communications with elected officials**

The Subcommittee reviewed the draft prepared by staff that would protect certain information in communications between constituents and elected officials. Ms. Black was concerned that using the term "personal" did not provide much guidance because everything comes to the Governor's Office stamped "personal" or confidential; everyone assumes their information is confidential. Mr. Leary thought the draft was too broad, and recommended limiting the exception to information that would be confidential in the hands of an agency. Mr. Parr (State Police) wondered what happens to information forwarded by legislators to an agency. He was also concerned about using the term "information;" he needs to review each record to redact "information" that is not public. He believes that that level of redaction cannot take place because it is just not practical. He will not know if the information is confidential under any other provision of law. Ms. Meyer noted that people should be careful about sharing personal information, and should be aware what communications results in a public record.

The Subcommittee requested staff to redraft the proposal to reflect Mr. Leary's suggestion.

- **Holding meetings using technology**

The Subcommittee reviewed the draft legislation - an updated version from the proposal prepared last year - and commented on both specific concerns as well as general questions. Mr. Pringle stated that he is not inclined to support a general proposal allowing public bodies to meet with only a quorum present and all other members participating remotely. Ms. Black believes the draft was terribly complicated to just let a person call in to participate. Specific concerns about the draft included the prohibition of a member voting if additional materials are distributed at the meeting, the meaning of when attendance is not "reasonably practical," and the procedure when an official

emergency has been declared. Mr. Leary agreed with concerns, but reminded the Subcommittee that this is permissive, not required, and that selectmen have asked for some process for a long time. Ms. Morgan agreed it was good for emergencies. Mr. Flewelling noted that subsection 5 was unnecessary and recommended deleting it.

Mr. Leary thought it would be appropriate to make the entities that now have statutory authority to use technology for remote participation in meetings to comply with this statute. Ms. Black thought it was important to hear from them before this is imposed. Ms. Meyer proposed that remote participation be prohibited for public hearings, although Mr. Leary pointed out the Legislature recently amended its own rules to allow it to use the University of Maine System campus connections for a statewide hearing. Mr. Pringle supported a clarification that the change also would not apply to executive sessions.

The Subcommittee directed the staff to revise the draft.

- **Penalties**

The Subcommittee discussed the current penalties available for violations, and reviewed a chart describing the approach by other states. Ms. Pistner clarified that district attorneys do have authority to prosecute violations of the law, which are currently civil violations for which a maximum of $500 may be imposed against the public entity. Attorneys' fees also are available if the public entity acted in bad faith. There was general agreement not make violations criminal, but Mr. Leary suggested more "teeth" would be appropriate. Ms. Pistner and Ms. Black agreed that education is still the key to ensure understanding of the laws and compliance with them. There are more efforts that can be made to make sure everyone is up to date and understands the law and their responsibilities. Mr. Leary is interested in penalties that can be imposed against the single bad actor, not just the entity. Mr. Pringle was concerned whether anyone would run for office, and wondered whether officials could be insurable. Ms. Meyer would like to explore the fine being paid to the wrong party.

The Subcommittee asked staff to prepare a draft with different options to be considered.

- **Should the law be amended to specifically address caucuses?**

The Subcommittee reviewed materials collected by staff on how political caucuses at the state legislature level are treated in other states. Many state statutes exempt the legislature from the open meeting requirements, and some that do not exempt the legislature carve out an exception for their caucuses. Case law uniformly indicates that courts find challenges to be separation of powers issues, and declare the complaints not justiciable because the legislature has the inherent authority to control its own proceedings. Mr. Devlin noted that county and local governments are often elected on party basis, but they do not enjoy the same deference as at the state level. Mr. Leary

agreed that the courts in Maine would not enforce a requirement that caucuses be open and suggested that effort be spent on issues that can be changed more readily.

- **Scope of public records exceptions review process**

This issue is before the Subcommittee because the Judiciary Committee determined that the review statute did not explicitly require the review of statutes that affect the accessibility of public records. The concern is that a fee structure could be established that is so onerous that it results is constructively closing off records to inspection and copying by the public. The Subcommittee looked at the process conducted by other states that also review public records exceptions.

The Subcommittee directed staff to draft language to include accessibility issues in the review process.

The next Subcommittee meeting is scheduled for Monday, July 19, 2010, starting at 1:00 p.m.

The meeting was adjourned at 3:50 p.m.

Respectfully submitted
Carolyn Russo
Peggy Reinsch
Staff, Right to Know Advisory Committee

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Right to Know Advisory Committee
Legislative Subcommittee
July 19, 2010
Draft Meeting Summary

Convened 1:05 p.m., Room 438, State House, Augusta

Present:	Absent:
Chris Spruce, Chair	none
Shenna Bellows	
Robert Devlin	
Richard Flewelling	
Mal Leary	
Judy Meyer	
Linda Pistner	
Harry Pringle	
Kelly Morgan	
Karla Black	

Staff:
Peggy Reinsch
Marion Hylan Barr

Legislative Subcommittee Chair, Chris Spruce, convened the meeting of the Legislative Subcommittee of the Right to Know Advisory Committee at 1:05 p.m. and asked the members to introduce themselves.

Continuing issues

The Legislative Subcommittee reviewed draft legislation prepared based on the discussions during the July 12th meeting.

- **Protection of contact information lists of members of the public**

The Legislative Subcommittee had agreed that e-mail addresses should not be treated as confidential in all cases; there was interest in a draft that protected lists of email addresses. Staff prepared three different approaches to protecting lists of contact information provided by the public in communicating with or entering into transactions with governmental entities. The drafts were written broadly to cover names, telephone numbers, mailing addresses and e-mail addresses to provide the range of information protected in a few states. Shenna Bellows expressed interest in protecting e-mail addresses, and supported Option 3 (based on Texas law), but no other members supported any version of legislation. The Subcommittee was unanimous in recommending that a disclaimer be included on all webpages reminding and warning users that all information shared with the governmental entity through Internet contact is public information, and other methods of contact may be preferable.

- **Proceedings in public**

The Subcommittee reviewed the draft prepared by staff to provide a general policy statement about communications outside of meetings not being prohibited, unless they are used to circumvent the law. Linda Pistner noted that perhaps the wording needs to be reversed so that the emphasis is on complying with the law rather than circumventing the law. Harry Pringle didn't mind the order and in fact liked the First Amendment statement first, but he preferred focusing on the intent of the actions, rather than just whether the conduct was used to circumvent the law. Judy Meyer recommended amending an existing paragraph in §401 to clarify that serialized meetings are a type of clandestine meetings that the law is designed to prohibit. Staff will redraft, and the Subcommittee will send to the full Advisory Committee.

- **Protection of information in communications with elected officials**

The Subcommittee reviewed the revised draft prepared by staff that would protect certain information in communications between constituents and elected officials. Concern was raised about the use of the term "personal" when referring to protected medical, financial and other information: is it too narrow? Too vague? Mal Leary preferred limiting the protection to information that would be confidential in the hands of an agency. He reminded the Subcommittee that the Speaker and President think that some information may already be covered but that clarification is necessary. Ms. Meyer does not believe there needs to be any protection at all; this is information that people voluntarily provide to elected officials, and is not part of any application for assistance. Karla Black said she has never been comfortable relying on a DHHS statute to shield personal information sent to the Governor. Mr. Pringle recommended removing the last sentence stating that requests for action or votes are not protected, and moved to forward to the full Advisory Committee the draft with that deletion. Richard Flewelling seconded. Ms. Bellows expressed her concern about all the confidentiality provisions already in the law that protect business information and other non-personal information such as agricultural information. She also thought it important to clarify that requests for votes are public. The Subcommittee agreed that revision was necessary, and voted to table the issue until a redraft is reviewed.

- **Holding meetings using technology**

The Subcommittee reviewed the draft legislation which included suggested changes to the laws of the four entities that currently address telephone conferences or other deviations from traditional meetings. All agreed that the entities affected - the Finance Authority of Maine, the Ethics Commission, Emergency Medical Services Board and the Workers' Compensation Board - should have an opportunity to explain their use of the statutes and whether the new proposal would affect their ability to carry out their responsibilities. Mr. Flewelling recommended a clarification with regard to the application of the draft language to executive sessions. Mr. Pringle reiterated his opposition to the concept: if you get elected, you should attend. Linda Pistner believed

that the draft would not be improved through further discussion and moved that the Subcommittee recommend it to the full Advisory Committee. Mr. Flewelling seconded, and the vote was 7-2 (Ms. Pistner, Ms. Bellows, Mr. Leary, Mr. Devlin, Mr. Flewelling, Ms. Meyer and Ms. Morgan voting in favor, Mr. Pringle and Mr. Spruce voting against).

- **Penalties**

Staff provided a review of the different options and considerations for revising penalties. The major concepts were to allow a penalty to be assessed against an individual, including a culpable mental state (such as "knowingly" or "intentionally"), and increasing fine amounts. The law already authorizes attorneys' fees against the entity in bad faith situations, and the court is authorized to invalidate actions improperly taken during executive sessions. Inherent in the court's power is the ability to enjoin future violations. There was no interest in imposing criminal sanctions. Mr. Leary suggested allowing the individual bad actor to be fined, and giving the judge discretion to impose a fine of up to $5,000. Mr. Pringle did not agree; he did not think it makes sense to encourage citizens to run for school boards and then impose a penalty. He also said he thinks compliance with the law has gotten better. People make mistakes, they acknowledge it and apologize, and change their behavior. Ms. Meyer described this section of the law as "dormant" and asked how to make it more effective. Ms. Pistner thought education is improving compliance, and did not support changes. Mr. Leary recognized that there are honest mistakes, but he would like to be able to really go after people who knowingly and willfully violate the law. Mr. Pringle noted that his clients are usually trying to find the legal line between protecting information protected by statute and releasing information that is public; he doesn't know anyone who willfully violated the law. Mr. Flewelling asked staff to look into the history of the statute; there used to be a criminal penalty. Ms. Morgan understood some elected officials felt a violation of the law was not a big deal because fines are never imposed; she supported increased fines but not criminal penalties. Mr. Pringle noted that the penalty had just been upped by the ability to award attorneys' fees; citizen enforcement with paid attorneys' fees is the most effective enforcement tool. Mr. Pringle moved to make no changes, Mr. Flewelling seconded, and the Subcommittee voted 7-2 to support the motion. (Ms. Pistner, Mr. Pringle, Ms. Bellows, Mr. Spruce, Mr. Devlin, Mr. Flewelling and Ms. Meyer voting in favor, Mr. Leary and Ms. Morgan voting against)

- **Scope of public records exceptions review process: accessibility**

The Subcommittee reviewed a draft amending the scope of the review of proposed legislation by the Judiciary Committee (referred to as "the review committee" in the statute) during the legislative session. The draft includes a new consideration of whether the proposed legislation affects the accessibility of public records, as opposed to focusing on whether certain information is excluded from being a public record. Mr. Devlin noted that there is an ongoing struggle with technology about what is a public record and how it can be accessed. This is the tip of the iceberg; how the public agencies do business affects access. The Subcommittee voted unanimously (9-0) to send the draft to the full Advisory Committee.

- **Should the law be amended to specifically address caucuses?**

The Subcommittee clarified that it will not make a recommendation concerning caucuses to the full Advisory Committee.

New business

- **Review of protected information in the Central Voter Registration System (CVR)**

The Judiciary Committee requested that the RTK AC take a more in depth look at the information contained in the electronic voter information database, known as the Central Voter Registration System (CVR) to ensure that the appropriate balance is struck between public information and protection of personal information. Access to information is important to ensure the integrity of elections and the ability for elections to be carried out, while balanced against protecting personal information and not chilling citizens' interest in participating. The Subcommittee reviewed charts of information collected from voters when they register, the information maintained in the CVR at the local level and statewide, and who can access what data and for what purposes. Ms. Bellows believed that current law is straightforward, and thought the Legal and Veterans' Affairs Committee struck a good balance. She was happy to approve it as is, or go through the specific criteria step by step. Mr. Spruce reminded the Subcommittee that they had reviewed an earlier version last year. Mr. Leary noted that LVA House Chair Representative Trinward had used the criteria matrix to work through the legislation in Committee. He recommended that the Subcommittee approve the law as written, and the Subcommittee unanimously (9-0) agreed.

- **Social Security Numbers**

The Subcommittee started the discussion about protecting Social Security Numbers by reviewing a draft considered by the RTK AC last year, a description of how agencies that collect SSNs protect them from release, a list of Maine statutes that reference SSNs and an update on legislative actions in other states with regard to SSNs. Ms. Bellows thought spending more time reviewing the materials would be useful to her. Ms. Pistner noted that past attempts and designating SSNs as confidential resulted in large fiscal notes, at least partly because Secretary of State Matt Dunlap had identified significant expense for the Archives to review records and redact SSNs. She also noted that the California Identity Protection Act looked interesting from the summary, and may be worth reviewing. Mr. Leary reminded the Subcommittee that federal law directs that SSNs be used only for the Social Security Administration, and that there has been an effort to stop collecting SSNs when not absolutely needed. Mr. Pringle thought amending the list of public records exceptions to just state that SSNs are not public records would be useful. The Subcommittee discussed the interpretation that records that are not public records but

that are not specifically designated as confidential can be released at the discretion of the record custodian. Mr. Leary and Ms. Bellows both wanted to make sure that agencies can share the information when it is appropriate to do so.

Staff will prepare a draft, using the draft circulated in 2009 as a starting point.

- **Meeting records**

A majority of the RTK AC recommended legislation last year to require public bodies to make and keep basic records of all public proceedings for which notice is required under §406. LD 1791 was heard by the Judiciary Committee during the Second Regular Session, and converted into a Resolve directing the RTK AC to continue to review the issue, taking into account additional concerns, including retention of records, the validity of actions taken at a proceeding for which no record is prepared, and the breadth of the information to be included in the records. Mr. Pringle explained his opposition, which is that the requirement applies to everyone, even a two-person meeting to determine the maintenance of a ball field. Staff explained the record retention requirements that currently apply to state, regional and governmental entities.

Staff will prepare a new draft to address issues raised by the Judiciary Committee.

The next Subcommittee meeting is scheduled for Monday, August 30, 2010, starting at 1:00 p.m.

The meeting was adjourned at 3:35 p.m.

Respectfully submitted
Marion Hylan Barr
Peggy Reinsch
Staff, Right to Know Advisory Committee

Right to Know Advisory Committee
Bulk Records Subcommittee
July 21, 2010
DRAFT Meeting Summary

Convened 1:00 p.m., Room 438, State House, Augusta

Present:	Absent:
Bob Devlin, Chair	Karla Black
Richard Flewelling	
Judy Meyer	

Staff:
Peggy Reinsch

Bulk Records Subcommittee Chair, Bob Devlin, convened the meeting of the Bulk Records Subcommittee of the Right to Know Advisory Committee at 1:00 p.m. and asked the members to introduce themselves.

Overview of topic

Mr. Devlin noted the majority of his experiences with bulk records have been with the county registries of deeds. Registries are responsible for maintaining the security and integrity deeds. Deeds often contain personal information, such as Social Security Numbers and bank account numbers. Maintaining the integrity of the records as required by statute means that the personal information cannot be redacted. Different statutes have addressed different aspects of the concerns. One issue raised previously is the public investment made to bring the registries to this point.

Mr. Devlin explained that the Registries of Deeds have converted their records to electronic data for two main reasons. First, the records are much easier to store electronically, and they can be archived easier. Second, the electronic format is much more convenient for the customers. Most offices have a subscription fee, which has been well-received by customers. By subscribing, customers can access documents from their desks, and the information is available 24 hours a day.

Costs

Mr. Devlin explained that the current system to access deeds electronically in Kennebec County has been achieved through a heavy investment by the taxpayers. The county commissioners always believed that the investment was returned through the collection of copying fees paid at the office or online. If the anticipated copying fees are not collected, can the investment be recouped? Maintenance and vendor costs are ongoing responsibilities.

Richard Flewelling thought it was appropriate to define "bulk records" for the purposes of these discussions as data that is stored electronically. Requestors making lots of

copies of many pages of paper fall under the current copying costs statute. Focusing on electronically-stored records also allows a simpler discussion of recouping infrastructure costs.

Judy Meyer stated that she struggles with concept of the public supporting the development of electronic systems, and then the need to recoup the investment. The investment should be shared by everyone, whether businesses or individuals, as they all pay property taxes which support the counties and their functions. She asked whether the counties are seeking different kinds of fees.

Mr. Devlin noted that the new language (Public Law 2009, chapter 575[1]) spelling out the criteria to establish fees for copies of deeds does allow differentiation for types of records. He said hands-on service may be different than download costs, but in any case the fees must be reasonable. Each Registry of Deeds is working on what the costs will be. The basis is "actual costs" which include some investment as well as ongoing maintenance and contracts with vendors. Ms. Meyer agreed that as long as the costs are based on the same standards, that type of process seems fine. She also wanted to make sure the discussion is not limited to registries of deeds, as there are many different databases. She understood that 2¢ per record for a database with 12 elements may not be appropriate, when that price would be reasonable for a large database. Ms. Meyer likes the new language because it gives her the tools to question whether the fee is appropriately set. She suggested that the new language be incorporated into the Freedom of Access laws costs language (§408). Mr. Flewelling and Mr. Devlin agreed.

Integrity of records

Mr. Devlin explained that a significant concern of the counties' is the integrity of the records maintained by the Registries of Deeds, and the same concern is true for any public records database; bulk sales take the whole collection out of the control of the public records custodians. In some cases, it can set up competing registries of deeds, only one of which is official, but how is the consumer to know that? Mr. Flewelling said he believes that it is the responsibility of the customer to know who he or she is dealing with; *caveat emptor*. There was discussion about placing a watermark on documents

[1] Public Law 2009, chapter 575, §2 spells out the criteria county commissioners may consider it setting fees for copies of deeds:

> **14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request;

when the custodian provides a copy. Eric Stout, IT Project Manager and Assistant to the CIO in the Office of Information Technology, noted that once you release databases into the wild, there is no way to stop the repackaging of data. Beverly Bustin Hatheway, Register of Deeds for Kennebec County, said there needs to be some assurance that our records aren't being released into the wild, and recommended that a penalty be imposed for trying to pass off copies of records as official records.

Mr. Flewelling said he is extremely reluctant to go to a separate fee structure based on the ultimate purpose or use of the records. If a separate schedule is established for commercial use, how is that defined? Where is the line drawn legislatively? Such a distinction puts a new burden of inquiry on the records custodian, and requires the custodian to determine if the response is legitimate. Mr. Devlin noted that some states have made that distinction, and some require contracts in which the requestor agrees to not use the data for commercial purposes or release for different purposes. Mr. Flewelling said the restriction on further release of voter data is the rare exception in Maine.

Ms. Meyer said it would be hard to say no entities could compete with regard to public records, as we have already established InforME that collects fees that are higher than those collected at the local level for the same records. Further discussion identified that InforME isn't really in competition, but is a method for providing services that the State would provide on its own if it could.

Mr. Devlin raised the issue of requestors seeking computer codes and software to access the public records databases. There was discussion about reviewing the public records exception included in Title 1, §402, sub-§3, ¶M[2] to ensure that the wording covers the protection of software, coding and encryption to maintain the integrity of data and the systems the public records custodians maintain. Linda Smith, the Register of Deeds in Piscataquis County, stated that a lot of people contact the Registry for bulk sales. The idea of someone hooking into the county's database and downloading information scares her, especially the possibilities for corruption of files.

Private information

Mr. Devlin raised the question of private information contained in public records and whether it should be protected. For example, some deeds contain Social Security Numbers even though they are not necessary for recording. Registers cannot redact them without permission. Do you say that the database can't be released because the SSN is imbedded so deep? His concern is that the next request for the database will be from an offshore business that will use the SSNs. In some databases, personal information occupies separate fields so that it is easy to redact or not release. Ms. Meyer stated that a

[2] 1 MRSA §402, b-§3, ¶M provides the following exception to public records:

> M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

public record is a public record. She is worried about setting up another tier of review. Mr. Flewelling agreed that the best route would be to leave that issue alone; he does not want to increase the burden of inquiry on the custodian. As for Social Security Numbers in particular, Ms. Meyer suggested waiting until the Legislative Subcommittee develops recommendations on Social Security Numbers, and then piggyback on those recommendations.

Next meeting

Mr. Devlin will work with staff to identify appropriate dates for the next Subcommittee meeting.

The meeting was adjourned at 2:21 p.m.

Respectfully submitted
Peggy Reinsch
Staff, Right to Know Advisory Committee

Right to Know Advisory Committee
Legislative Subcommittee
August 30, 2010
Draft Meeting Summary

Convened 1:28 p.m., Room 438, State House, Augusta

Present:	Absent:
Chris Spruce, Chair - on phone	Karla Black
Shenna Bellows	Kelly Morgan
Robert Devlin	Linda Pistner
Richard Flewelling	
Mal Leary	
Judy Meyer	
Harry Pringle	

Staff:
Peggy Reinsch

Legislative Subcommittee Chair, Chris Spruce, was unable to attend the meeting in person, so he participated by speaker phone. Shenna Bellows convened the meeting of the Legislative Subcommittee of the Right to Know Advisory Committee at 1:28 p.m. and asked the members to introduce themselves.

Continuing issues

The Legislative Subcommittee reviewed draft legislation prepared based on the discussions during the July 19th meeting.

- **Proceedings in public**

The Subcommittee reviewed the draft prepared by staff to provide a general policy statement about communications outside of meetings not being prohibited, unless they are used to circumvent the law. Four different amendments were proposed to the statement of the underlying policy and legislative intent of the Freedom of Access laws, Title 1, section 401. Mr. Pringle thought it was important to dispel the myth that public officials cannot talk to each other outside public proceedings. Such a prohibition would be unconstitutional, he said, and does not promote good government. The one Law Court decision that mentions the issue supports public officials being informed through communications, including outside public proceedings. After discussion, the Subcommittee recommended that all four options, with some additional wordsmithing, be submitted to the full Advisory Committee for consideration.

- **Protection of information in communications with elected officials**

The Subcommittee reviewed the revised draft prepared by staff that would protect certain information in communications between persons, not just constituents, and elected officials. The draft states that a record involving communications between a person and an elected official is a public record except for information that meets one or more criteria. Information would be confidential if it 1) is excepted from the definition of "public record" in subsection 3; 2) is designated confidential by statute; or 3) would be confidential if it were in the possession of another public agency or official. Ms. Bellows was concerned that people communicating with officials, especially via e-mail, will assume that the contents of communications are confidential, and recommended that there be a pop-up window and other obvious notices that such exchange of information is public. Ms. Meyer opposed the draft; she envisioned it being used as a roadblock to cloak all communications from public access simply by adding in personal information. The Subcommittee voted 4-1 (Ms. Meyer opposing) to send the draft to the full Advisory Committee, with the change that it apply to communications with "public officials," not just "elected officials."

- **Social Security Numbers**

The Subcommittee reviewed a revised version of the 2009 draft which designated Social Security Numbers as NOT public records, and established limitations on the collection and release of SSNs. Ms. Meyer asked how the Courts deal with records that are submitted that contain SSNs. Mr. Devlin reminded the Subcommittee that the Registries of Deeds have a special situation in that their statutes prohibit changes in the documents once recorded; automatic redaction of SSNs by the Registers of Deeds would require a special amendment. Ms. Bellows emphasized that the collection, use and release of SSNs is an important issue, and that identity theft is a particularly difficult problem to resolve. Although Ms. Bellows approved of Vermont's comprehensive treatment with regard to SSNs, Mr. Pringle was concerned that such a broad approach would be difficult to take on. He mentioned that schools don't want to collect SSNs, for example. Ms. Bellows agreed that protection of SSNs would be more within the purview of a Privacy Committee, rather than a Freedom of Access Committee.

The Subcommittee agreed to recommend the minimalist approach - amending the current law to provide that SSNs are not public records - to the full Advisory Committee. The Registry of Deeds issue (that an additional amendment may be required) will be noted as an outstanding issue.

- **Meeting records**

The Subcommittee reviewed the latest draft of legislation requiring making a record of public proceedings. The draft addressed issues the Judiciary Committee identified as problematic with LD 1791, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Records of Public Proceedings. The draft

reduced the required contents of the records to matters decided or tabled, required maintenance of the record in accordance with the record retention schedules adopted independently of the Freedom of Access laws, and clarified that failure to make a record does not invalidate any action taken. Ms. Meyer recommended that paragraph C (concerning the subject matter of meeting discussions) be deleted. Mr. Pringle, although still opposed to the draft, agreed that deleting paragraph C made sense. Ms. Bellows agreed, and noted that the details of meeting records will be based on the audience. Mr. Flewelling also supported the draft, but wanted to make sure the Subcommittee was aware that such a requirement would most likely be considered an unfunded mandate. The Subcommittee voted 5-1 (Mr. Pringle in opposition) to support the revised draft.

The Subcommittee completed its work as assigned by the Advisory Committee. Staff will prepare a packet of recommendations from the Subcommittee to the full Advisory Committee for the meeting on September 23, 2010.

The meeting was adjourned at 2:18 p.m.

Respectfully submitted,
Peggy Reinsch, Marion Hylan Barr, Carolyn Russo
Staff, Right to Know Advisory Committee

Upcoming meetings:

Bulk Records Subcommittee: Thursday, September 23, 2010, 10:30 a.m.
Right to Know Advisory Committee: Thursday, September 23, 2010, 1:00 p.m.
Public Records Exceptions Subcommittee, September 27, 2010. 1:00 p.m.

Right to Know Advisory Committee
Bulk Records Subcommittee
September 23, 2010
DRAFT Meeting Summary

Convened 10:38 a.m., Room 438, State House, Augusta

Present: Bob Devlin, Chair; Richard Flewelling; Judy Meyer; Karla Black

Staff: Carolyn Russo & Marion Hylan Barr

Bulk Records Subcommittee Chair, Bob Devlin, convened the meeting of the Bulk Records Subcommittee of the Right to Know Advisory Committee at 10:38 a.m. and asked the members to introduce themselves.

Review of proposed draft

The Subcommittee reviewed draft language prepared at the request of members from the July 21st meeting that outlines the same process for determining reasonable fees for copies as was enacted into the Register of Deeds laws in Title 33, §751, sub-§14 pursuant to Public Law 2009, c. 575. The draft incorporated language like that in Title 33 into Title 1, §408, sub-§3 dealing with payment of costs for records under the freedom of access laws. Ms. Meyer reminded the Subcommittee that the trial involving MacImage and the counties would begin in about a week, and that one of the issues that the court would be looking at is what are "reasonable fees" (both under the old standard and the new standard). Because no one knows how long the litigation will take or how soon the court will issue an opinion, Ms. Meyer asked if it would make sense to wait before recommending another statutory change, since the court's decision might require that the RTKAC revisit the issue all over again.

Mr. Devlin noted that the draft language also enacted in Title 33 was in response to another court case, and that unless the court establishes a specific formula to determine fees, this language just directs that reasonable fees must be established. At the direction of the State and Local Government Committee, the Office of Information Technology convened a working group to look at bulk data requests, but that group's work has been put on hold because of the litigation against the counties. Mr. Devlin sees the RTKAC Subcommittee on Bulk Records as having a more global purpose – looking at all public records, not just registry deeds.

Because of the litigation, Ms. Meyer again suggested waiting and asking the Judiciary Committee to introduce a bill later in the session. The Subcommittee agreed to provisionally approve the language as drafted but to wait to move forward with it pending the outcome of the court case. (Mr. Flewelling made the motion; Ms. Meyer seconded; all members supported.) The Subcommittee's intent will be communicated to the full RTKAC and the Legislature. Staff will help identify options that may be used to move the draft language forward when it becomes appropriate (i.e., unallocated language giving Judiciary Committee authority to introduce bill after the court issues an opinion).

Mr. Devlin also asked interested parties in the audience to comment on the draft. Beverly Bustin Hathaway, Register of Deeds for Kennebec County, believes that the Subcommittee should

recommend the change to the whole committee and propose legislation for the Judiciary Committee to consider. Chris Parr, attorney for the Maine State Police, noted that he was not comfortable commenting on a draft he had just received but that something needed to be done regarding how to respond to bulk data requests. Mr. Parr noted that there is confusion about what constitutes a public record - is an entire database a record or are there many records within one database? Ms. Black agreed with Mr. Parr and suggested that the Subcommittee slow down and be thoughtful; bulk data is an important and difficult issue. She suggested that the Subcommittee meet again in a couple weeks after doing some work to find:

- Examples of definitions of "bulk data" and "bulk records"; and
- Responses from agencies and other governmental entities impacted – is the reasonable fee draft helpful? Will it create unintended consequences? Is the language missing something?

Mr. Flewelling was persuaded by Ms. Black's suggestion to slow down and do some fact finding before going forward. He withdrew his motion and Ms. Meyer withdrew her second and further discussion ensued. Kelly Hokkanen who administers InforME provided the Subcommittee with a handout that summarizes InforME's Bulk Data Services. She explained that there are different kinds of requests ranging from individual records to batches of records, whole databases, and regular records updates to subscribers. Ms. Hokkannen also raised another issue: because most agency fees are set by rulemaking, would the new language defining "reasonable fees" affect fees already set by rule? She and the Subcommittee agreed that this is another question to pose to agencies and entities that would be affected. John Smith from the Secretary of State's Office thought that the language and the regulatory authority in statute for rulemaking may work okay together but should be reviewed to ensure that is true. Mr. Devlin commented that the issue should not be just how much the fee is, but how the agency reached a "reasonable fee" and that an agency is authorized to charge a fee as long as it is reasonable. This came up in the context of persons who request a record under the freedom of access laws when the record is currently available for a fee under InforME.

Social Security Numbers (private information in public records)

The Subcommittee then discussed Social Security numbers (SSNs) that may be buried in public documents everywhere. The Subcommittee reviewed the recommended language of the Legislative Subcommittee that establishes a presumption that SSNs are not a public record (period). Mr. Devlin thought that there needs to be an exception for registries of deeds, since per statute they need authority to redact a SSN through a request from the individual to whom the SSN belongs. Ms. Black noted that there are SSNs in other documents besides deeds (i.e., financial records, licensing records) and although she agreed with the policy of excepting SSNs from public records, she had concerns regarding the costs and burden on staff to deal with redaction, especially in bulk data requests. Ms. Meyer also pointed out the number of SSNs that end up in court filings and records. Ms. Black would like to see responses and concerns of those agencies that would be affected. Mr. Devlin agreed and added municipalities to the list, and Ms. Meyer added individuals as well. She recommended that the subcommittee consider having a public hearing in order to provide an opportunity to hear everyone's concerns. Ms. Black agreed, noting that it was inappropriate to send the recommendation to the RTKAC with so many questions that need to be resolved before a bill is put forward. The Subcommittee will discuss the public hearing idea with the full RTKAC.

Public access and formatting; responding to requests for public records in bulk

The committee then discussed the format of public records, access and what are the obligations of agencies to provide access to data. Although agencies do not have to create documents that do not exist, they do have to provide what the requester seeks and provide it in a manner that is useable. Greg McNeal from the Office of Information Technology (OIT) said that he thought that formats are pretty standard; records are provided on disk, thumb drives, by email and in paper form. Ms. Bustin Hathaway raised the concern that some registries do not have the capacity to respond to a requester in a certain format. Ms. Hokkanen also pointed out that if data is in its original form (proprietary database or software), a requester may be unable to do anything with the records, so what is an agency's obligation to decipher codes and fields and provide documentation? Mr. McNeal added that there are times when the meaning of data is lost, and the only one that can make sense of it is the custodial agency. OIT and others are constantly looking at bulk data management and formatting changes to meet the needs of agencies. They are also constantly working on retention policies and ways to access and manipulate documents whose formats change over time. One of OIT's jobs is to ensure that the operational system is responsive to requests. If an agency has to have staff go back more than a year to find records, $10/hour for that service can add up fast.

Ms. Hokkanen explained that for simple data sets, there already exists an enterprise data catalog created by InforME that is free and searchable by category and key word. This service might be a solution for simple requests for straightforward data sets. Ms. Bustin Hathaway noted that she has been looking at other states' work in the area of creating and implementing bulk data policies and concluded that it takes years to accomplish.

Ms. Black also recognized and thanked Ms. Hokkanen for all of her help creating the existing Maine Freedom of Access website at http://www.maine.gov/foaa/

In summary, the issues raised/ information needed for next meeting(s) include:

- Examples of other states' definitions of "bulk data" and "bulk records";
- Input from agencies and other governmental entities regarding the proposed draft for reasonable fees;
- Explanations from agencies and other governmental entities regarding their statutory authority to set fees by rulemaking and whether the proposed language would conflict with their existing authority; and
- List of concerns, problems, costs, questions from agencies, municipalities and individuals regarding proposed change in law that excepts SSNs from public records under the freedom of access laws (may require public hearing).

Staff will work with the chair to schedule future meetings.

Meeting adjourned at 11:30 a.m.

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
September 27, 2010
Draft Meeting Summary

Convened 1:22 p.m., Room 438, State House, Augusta

Present:	Absent:
Shenna Bellows, Chair	Karla Black
Ted Glessner	AJ Higgins
Suzanne Goucher	
Linda Pistner	
Chris Spruce	

Staff:
Marion Hylan Barr, Peggy Reinsch, Carolyn Russo

Public Records Exceptions Subcommittee Chair Shenna Bellows convened the meeting of the Public Records Exceptions Subcommittee of the Right to Know Advisory Committee at 1:22 p.m. and asked the members to introduce themselves. Ms. Bellows the reviewed the tasks assigned to the Subcommittee.

- **Finance Authority of Maine, existing public records exceptions**

Background: At the request of the Judiciary Committee, in 2009 the Right to Know Advisory Committee developed templates to be used in the drafting of statutes pursuant to which technical or financial assistance could be sought from the State of Maine or other public entities. The Judiciary Committee sought guidelines for drafting consistent statutes that appropriately balance the public's interest in the information provided to the governmental entity and the privacy of the individual or organization applying for the assistance. The RTKAC approved two templates drafted by the Legislative Subcommittee: one that applies to information provided by an individual applying for assistance, and a different template for businesses seeking financial or technical support. The templates were used to draft a revision of the confidentiality provisions for the Finance Authority of Maine (FAME). Because of the timing of the recommendations and the Advisory Committee's report, FAME did not have an opportunity to comment on the revision until the language was included in LD 1792, An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions. At the Judiciary Committee's public hearing on the bill, FAME requested that the proposed language not go forward, and the Business, Research and Economic Development Committee supported deletion of the changes from LD 1792. The Judiciary Committee agreed to strike the proposal from the bill, but requested that

the Right to Know Advisory Committee revisit its recommendations concerning the templates and the FAME statute.

Bill Norbert, the Government Affairs Manager of FAME addressed the Subcommittee and explained that FAME is very satisfied with the current law, which has been in effect for 25 years. The statute is very clear about what information is accessible to the public, and there have been only 2 or 3 requests per year for information that is protected. The statute has been used as a model for other assistance programs, including the Maine Rural Development Authority and the Small Enterprise Growth Program. Another feature that Mr. Norbert thinks is very important is the subsection that explicitly states the information and documents, once submitted as part of an application, are public records.

Mr. Norbert noted that a category of information that is protected under the FAME statute but is not mentioned in the template and therefore would be public is any pre-application information that is shared with FAME. Business entities often consult with FAME about assistance and programs that may be available prior to deciding whether to submit an application. Releasing information about such preliminary inquiries can be detrimental to the business, unnecessarily worry employees or provide an advantage to a competitor. Not all such preliminary inquires lead to subsequent applications for participation in a program, so keeping that information confidential protects the interests of requestors. Once an application is made, the rest of statute applies, which allows public access to the bulk of the application.

Ms. Bellows asked Mr. Norbert if the templates could be improved by addressing categories of information covered by the FAME statutes, and he suggested adding language protecting sensitive personal information and records of third-parties (such as appraisals). Mr. Norbert thought the templates were a little vague; it would be betters to spell out the protected information in more detail so no one wastes time arguing over what is or is not confidential. One size does not fit all.

The Judiciary Committee requested the development of the templates, Mr. Spruce, said, to provide predictability and a good approach in drafting such provisions; the templates certainly can be adapted to the needs of specific agencies. The Advisory Committee's experience is that statutes are all over the place in addressing essentially the same issue; the templates can bring some consistency. Mr. Glessner wondered whether the Judiciary Committee is satisfied with the templates. He agreed that the templates should provide guidance by addressing certain information and providing a consistent format, but there should still be ample opportunity for additional information.

Mr. Spruce moved that the Subcommittee recommend no changes to the FAME statute, and Mr. Glessner seconded the motion. The Subcommittee unanimously agreed (5-0), and then agreed with Ms. Pistner to ask Sean O'Mara, the RTK AC Law School Extern, to review the templates and determine if there are standard exceptions throughout the statutes, and identify any appropriate additions, deletions or other changes.

- **Criminal History Record Information Act (CHRIA)**

Staff explained that the project to revise the Criminal History Record Information Act is moving forward, but slowly. The Criminal Law Advisory Commission has begun its process to try to update the Act, and at the same time the Maine Criminal Justice Information System (MCJUSTIS) Policy Board and the Technology Implementation Group of the Judicial Branch are exploring policy changes not necessarily directly related to what is confidential and what is public. These additional explorations are beyond the scope of the RTK AC, so staff and Special Assistant Charles Leadbetter are working on a more simple revision of CHRIA to address the freedom of sccess issues and necessary clarifications of current laws and practices. If the RTKAC chooses to go forward to address the confidentiality language, the large policy issues can be dealt with when those more comprehensive decisions are made. It is expected that a draft should be available for review next month, and the Subcommittee can decide then whether to recommend the more discrete changes immediately, or hold off until the other policy decisions are made. Mr. Glessner identified himself as a member of both the MCJUSTIS Policy Board and the Judicial Branch's Technology Implementation Group. He explained some of the issues the groups are wrestling with, including whether the State Bureau of Identification should be the sole repository for the public to contact to access criminal history records. He said that some of the technical issues are close to being resolved, leaving the bigger policy questions outstanding.

The Subcommittee agreed to wait until a draft is ready and all the options are explained before taking any action.

- **Review of existing public records exceptions**

The Subcommittee briefly went over the process to review existing public records exceptions as required by statute. Mr. Spruce recommended that the new proposed criterion - accessibility - be included in the process, even though that recommendation of the RTK AC has not yet been enacted into law.

Ms. Bellows noted that several agencies responded to the surveys on specific statutory exceptions, and the Subcommittee started its work with the laws over which the Bureau of Insurance has jurisdiction. Colleen McCarthy Reid assisted the Subcommittee in working through the provisions.

#	Title, section and description	Subcommittee recommendation
63	Title 24, section 2302-A, subsection 3, relating to utilization review data provided by nonprofit hospital or medical service organization	9/27: no change

64	Title 24, section 2307, subsection 3, relating to an accountant's work papers concerning nonprofit hospital or medical service organizations	9/27: no change
65	Title 24, section 2329, subsection 8, relating to alcoholism and drug treatment patient records of nonprofit hospitals and medical service organizations	9/27: table - no problem with exception, but check with TRecord about making language consistent
66	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input
67	Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	9/27: table - ask medical licensing boards for input
68	Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input
69	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input
70	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input
71	Title 24, section 2986, subsection 2, relating to billing for forensic examinations for alleged victims of gross sexual assault	9/27: no change - But note that records not in hands of public entity
72	Title 24, section 2986, subsection 3, relating to District Court hearings on storing or processing forensic examination kit of gross sexual assault	9/27: no change
73	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	9/27: table - ask Maine Trial Lawyers for input
74	Title 24-A, section 222, subsection 13, relating to insurance information filed with the Superintendent of Insurance concerning registration statements, tender offers, requests or invitations for tender offers, options to purchase, agreements	9/27: table - ask Consumers for Affordable Health Care, TRecord for input
75	Title 24-A, section 225, subsection 3, relating to insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent
76	Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem)
77	Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem)

78	Title 24-A, section 414, subsections 4 and 5, relating to insurance certificate of authority audit work papers	9/27: no change
79	Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions	9/27: table - ask Consumers for Affordable Health Care and TRecord for input
80	Title 24-A, section 796-A, relating to proprietary business information of special purpose insurance vehicle filed with the Superintendent of Insurance	9/27: no change
81	Title 24-A, section 952-A, subsection 4, relating to actuarial opinion of reserves	9/27: table - ask Maine Trial Lawyers for input

The Subcommittee members agreed to schedule at least two additional meetings. At the next meeting, the Subcommittee will try to complete all the insurance statutes, and the second meeting will include review of the Title 23 (Maine Turnpike Authority and Maine Department of Transportation) exceptions.

The meeting was adjourned at 3:10 p.m.

Respectfully submitted,
Peggy Reinsch, Marion Hylan Barr, Carolyn Russo
Staff, Right to Know Advisory Committee

Upcoming meetings:
Right to Know Advisory Committee: Thursday, October 21, 2010, 1:00 p.m.

Right to Know Advisory Committee
Bulk Records Subcommittee
October 27, 2010
DRAFT Meeting Summary

Convened 10:14 a.m., Room 438, State House, Augusta

Present: Bob Devlin, Chair; Judy Meyer; Karla Black
Absent: Richard Flewelling

Staff: Peggy Reinsch, Carolyn Russo & Marion Hylan Barr

Chair, Bob Devlin, convened the meeting of the Bulk Records Subcommittee of the Right to Know Advisory Committee at 10:14 a.m. and asked the members to introduce themselves. Mr. Devlin then asked if anyone in the audience wanted to speak to the Subcommittee in response to the inquiry that was sent to FOA contacts and interested parties. The Subcommittee sought input from state and municipal government agencies and other interested parties regarding proposed draft legislation for determining reasonable fees for bulk data requests. Specifically, the Subcommittee asked state agencies and other governmental entities for:

- Reactions/comments regarding the proposed draft for reasonable fees, which would amend Title 1 to include the reasonable fees language enacted in Title 30-A pursuant to Public Law 2009, chapter 575; and
- Explanations regarding how the entity's statutory authority to set fees by rulemaking is set up and whether the proposed draft language would conflict with that existing authority.

Those speaking to the Subcommittee included the following.

- Michael Malloy, an attorney who represents Androscoggin County in the MacImage case, told the Subcommittee that the parties had submitted their findings of fact and law and that the case is under advisement by Justice Tom Warren. Justice Warren may schedule oral arguments in the next few weeks.
- Beverly Bustin-Hatheway, the Kennebec County Register of Deeds, pointed out that the Subcommittee had received many comments from other counties, that the State and Local Government Committee had adopted a reasonable fee standard for county records and that the Judiciary Committee had requested that the RTKAC look at the issue of bulk sales. In her opinion, not speaking on behalf of all registers, Maine needs a bulk sales law. Maine needs a guide regarding data and fees for all custodians of records, not just deeds, and the reasonable fees language in Title 30-A is one way to set a standard. She also mentioned looking at other states' approaches, including examples that exclude from the fees the press and others with public safety purposes and that limit resale or restrict commercial use, if not in violation of interstate commerce limitations. For now, she recommended putting the reasonable fees standard in law and then working on a more comprehensive policy, tasking some entity with all stakeholders to create a model.

Subcommittee member Karla Black noted that she was concerned starting with the reasonable fees standard, as it tends to pit state agencies and municipalities against each other because different agencies use different fees. Discussing bulk requests will only expand the problem. Ms. Black stated that more considerations need to be taken into account before she can commit to putting the reasonable fees standard in the freedom of access laws.

Subcommittee member Judy Meyer said that she has heard many people say that the current law is confusing, and if the RTKAC puts the draft language forward now and we then receive Justice Warren's decision later, the result will be even more confusion. We may be doing a lot of work that may just be undone.

Mr. Devlin expressed that this is a big issue for many constituencies, and he did not want the Subcommittee to do nothing, if there was something that could be addressed now. (i.e., defining "bulk data"?)

- Secretary of State Matt Dunlap then addressed the Subcommittee, noting that the "reasonable fees" standard did not provide a bright beacon for custodians, that defining "bulk data" is very difficult, and that it is important to look at how the data is handled. The RTKAC's focus is on the public's right to know, while other entities must be concerned about citizens' privacy. Secretary Dunlap explained that the sale of bulk information by his office serves a valuable public service and the information sold is done so for one use (i.e., insurance companies use a record to set rates). Secretary Dunlap said that these issues really break down into 2 parts: 1) what is subject to freedom of access? (public) and 2) what is subject to bulk sale? It is also about money and the value of the public records, which is significant. Secretary Dunlap believes that there is a difference between government interactions and knowing what your neighbor's driving record is. You may have a right to one but not necessarily the other. Secretary Dunlap finished by stating that he thought that the Subcommittee's focus should be identifying when a public record should be subject to freedom of access and then determining appropriate fees for that access.

Ms. Black asked if the current law (reasonable fees in Title 30-A) is what is being challenged in the MacImage case. Mr. Malloy explained that one of the issues is which law should apply – the previous or current law. The parties have different views on what law should apply and what the result should be.

The Subcommittee then reviewed the written responses regarding the reasonable fees proposal and the potential implication on rules. Staff pointed out some themes, including: there is no definition for "bulk records"; the counties' focus may be more on technical issues – perhaps we are putting the cart before the horse with the pending litigation; and lumping bulk sales with freedom of access requests may not be needed at this point. Mr. Devlin asked again if it is possible to come up with a reasonable standard for copy charges, given that agencies differ. He noted that "reasonable" needs fine-tuning. Staff reminded the Subcommittee that the first RTKAC's original recommendation was to set a maximum fee for copies, but this was not acceptable to municipalities and state agencies so they went with the "reasonable fee."

Richard Cayer, a member of the public, then explained situations that he has experienced when requesting to inspect public records in Madawaska. The fees that he was charged, $350 and $500, did not seem reasonable, and there has been no explanation to him of the exact costs incurred to actually pull the requested information together. Mr. Cayer also described fact-finding meetings that he was excluded from; executive sessions were held that appeared to him to be called in violation of the law (without a statutory basis).

Ms. Meyer voiced her concern that she cannot support drawing a line between public records as one document and bulk data where only some of the records are public and some are not. Ms. Black asked if the differential didn't already exist now. (i.e., one report from InforME may be $15, but a database may be made available for free under a freedom of access request.)

Kelly Hokkanen from InforME explained that currently bulk records are sold at a discount in comparison to a per record fee. Some agencies have set up different systems for bulk sales. Ms. Meyer again expressed her concern about allowing fees to be set by rulemaking; the issue should be kept under the freedom of access law. Ms. Bustin-Hatheway shared that counties have discussed this issue a lot, as the counties change vendors and prices change. Ms. Meyer also pointed out that commercial restrictions on the use of public records would restrict her employer, the Sun Journal. The newspaper sells public information every day. She does not believe that the RTKAC should be deciding how public information is used. Mr. Devlin explained that the counties have tried to put a disclaimer on documents that are released, indicating that they are "not official copies" of the registry, and requesters have balked at this.

Ms. Bustin-Hatheway offered that PRIA (Property Records Industry Association) provides a summary of each state's approach to bulk sales (fees and whether they restrict purpose or use). Mr. Devlin continued that he believes that the "reasonable fees" language in Title 30-A has served us well, and he remains ready to put the language into Title 1. Ms. Meyer reminded the Subcommittee that they had discussed meeting later in the session and creating some kind of place holder for the issue, so that it could be revisited after the litigation is resolved. Staff again suggested including that as a recommendation to the Judiciary Committee. Ms. Hokkanen also mentioned that the Bulk Records Working Group created at the direction of the State and Local Government Committee has moved its reporting date up to at least March 15th. Ms. Black expressed that she was nowhere near ready to make informed comprehensive recommendations yet; although there may be some small recommendations to move the issue forward. She suggested that perhaps "bulk data" should be defined, even if we do not know the purpose for which it is used, but she could not support putting the "reasonable fees" language into the freedom of access law without knowing where the litigation was going to end up, especially with the agency feedback indicating that the language is confusing.

Mr. Devlin also mentioned that he did not think that the media's use should be affected (restricted), but Ms. Meyer responded that there should be no exceptions for the press – treating them differently than every one else would not be a good thing.

The Subcommittee then revisited the issue of redaction of SSNs. Staff reminded the Subcommittee that the full RTKAC had accepted the draft proposal of the Legislative

Subcommittee, which states that SSNs are not public. This change would give the record custodian the authority to redact a SSN but would not require the redaction. Ms. Black asked if this proposal would have an impact on Archives; if SSNs are not public, wouldn't Archives have an obligation to redact? Staff explained that there is an interpretation of a difference between "confidential" and "not public"; if a record is "not public", there is neither a public right to access the record nor a requirement that the custodian not release the record. The next step would be to tell the custodian what to do with the record. While this proposal is not perfect, it avoids some of the problems found with the prior SSN proposal that was rejected.

The Subcommittee then discussed the issue of public access to databases. Does the public have the right to access data or the entire database? There are some protections of software and technology in creating the database. How we look at this issue is difficult; the system originally contemplated a file cabinet of records that was searchable, and now there are databases with huge amounts of records, software and proprietary information. Ms. Hokkanen described the issue as a question of: "do you want access to information in the book or do you want the whole book?" She noted that making entire databases of public records available to the public was a problem, because what is an agency's responsibility to make the database "useable"? Must an agency translate data into another format? Mr. Malloy told the Subcommittee that all counties have different software vendors, and agreements with those vendors are confidential and proprietary. There are also security issues; if one is authorized to access county records by connecting a hard drive to a database, a county may want to have the vendor supervise that, and that will lead to additional costs for the county. Ms. Meyer noted that registries are complicated, but tax records are not.

Ms. Bustin-Hatheway stated that vendors with whom registries contract would not let anyone connect and access their systems directly; they would instead provide a "silent client" to load data on for security reasons so that the data cannot be changed. However, if requesters are buying and selling records in bulk from registries, there is no guarantee that the records that they are receiving are "authentic documents." The only official website for registry records is the Registry of Deeds. Ms. Meyers observed that requesters should be able to receive data requested if the request is reasonable, and if we impose such restrictions like records being accessible only by paper when they are on an electronic database, this defies where we are in record keeping. Do we want clerks printing paper copies? If records are electronic, they should be provided in electronic format, and the costs to provide the records should be charged and paid. Ms. Bustin-Hatheway clarified that vendors will give you data but will not give you codes. If people want bulk sales, we need to have a way to convert records, because vendors can't and won't give out their codes.

Mr. Devlin asked about InforME's role and about agencies responding to requests for bulk data now. Ms. Hokkanen explained that InforME does not respond to FOA requests. They instead respond to agencies requests for public services in bulk, and they develop service-level agreements with those agencies. InforME then serves as the mechanism by which an agency's data is made available to the public. Ms. Black asked if other state agencies are selling data through other means besides InforME. Ms. Hokannen answered that probably there are, but that the sales are probably more often one-time situations. She did not believe that other agencies

typically act as a service like InforMe, which provides requesters with monthly updates and other service agreements for ongoing access. InforME's purpose is to provide a gateway for public information, which requires funding. If public records are free through the FOA process, it will mean that InforMe will not be able to provide electronic services and ready access to the public. Ms. Black asked if it would be helpful to InforME to specify that when a state agency has contracted with InforME, a request for public records must be made through InforME and not the agency. Ms. Hokannen agreed that would be helpful, but Ms. Meyer said that she could not support forcing a requester to go to InforME instead of the custodian of the record. She noted that freedom of access requests are not free, and that requesters should be able to go through the department or agency that is the custodian of the records and pay the agency directly. Ms. Black then asked what the purpose of InforME is. Mr. Devlin answered that InforME is a portal for records, similar to that like the registries are working to create. Ms. Meyer expanded on that -- InforME is a portal for convenience.

Mr. Devlin then asked the Subcommittee what the next step might be. Ms. Meyer noted that although the discussion has been great and useful, the agenda and outcomes at another meeting will not change until we have a ruling in the MacImage case. Staff agreed to outline the questions and issues raised by the Subcommittee, so that they could be presented to the full RTKAC. Mr. Devlin adjourned the meeting at 12:12 p.m.

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Right to Know Advisory Committee
Public Records Exceptions Subcommittee
November 4, 2010
Draft Meeting Summary

Convened 2:10 p.m., Room 438, State House, Augusta

Present:	Absent:
Shenna Bellows, Chair	Linda Pistner
Karla Black	Chris Spruce
Ted Glessner	
Suzanne Goucher	
AJ Higgins	

Staff:
Peggy Reinsch, Carolyn Russo, Marion Hylan Barr

Public Records Exceptions Subcommittee Chair Shenna Bellows convened the meeting of the Public Records Exceptions Subcommittee of the Right to Know Advisory Committee at 2:10 p.m. and asked the members to introduce themselves.

- **Review of existing public records exceptions**

The Subcommittee then moved directly into its review of existing public records exceptions. The Subcommittee first heard from Tom Record, Senior Staff Attorney at the Bureau of Insurance, who responded to questions regarding certain exceptions in Title 24-A raised by the Subcommittee at the October meeting. Questions included why certain reports and records were not subject to subpoena, at what point reports become "public", and whether to leave in statute provisions that have never been used or have not been used for a very long time. The Subcommittee also heard feedback from Charlie Soltan, who represents a number of insurance companies, and Jeff Austin, Vice President of Government Affairs and Communications at Maine Hospital Association. The Subcommittee completed its review of the Title 24-A exceptions, and specific recommendations are found in the chart below.

In its discussion of the Title 24-A exceptions, the Subcommittee talked about the issue of records that are both confidential and not subject to subpoena. Mr. Record indicated that Title 24-A language is based on model policies for accreditation purposes pursuant to the National Association of Insurance Commissioners (NAIC), and he was not sure if changing the subpoena language would impact accreditation. States must adopt the same or substantially similar language to that in the model law to retain accreditation status. Ms. Bellows noted that she was concerned about under-regulation of some of the insurance businesses and that she was uncomfortable with exceptions that are so broad and except records from subpoenas in court proceedings. Ms. Black indicated that she was uncomfortable amending the language, since we do not know how that would impact accreditation, the Bureau of Insurance and consumers. Although the other members present felt comfortable with the reasons for the exception from

subpoena, Ms. Bellows expressed that in principle she would vote against the motion to leave those exceptions with no change and did. Ms. Bellows did not offer a minority report though. There was a suggestion that the Subcommittee recommend that the Judiciary Committee look at the general question of information not being subject to subpoena. The Subcommittee agreed to make that recommendation.

Ms. Bellows also recommended that all rate filings be public from the date they are filed and dissented from majority decisions to retain confidentiality until approved. Ms. Bellows expressed concern about not making public information that deals with insurance fraud. Mr. Soltan explained that people might not come forward and report if they knew that disclosure would be made public.

The Subcommittee then discussed the issue of examinations of viatical or life settlement companies and why these reports are not made public when filed. Ms. Black also reminded the Subcommittee that the issue and the most recent statute were just debated, and she would not recommend revisiting it now. Mr. Record added that the issue has been discussed 5 years in a row. Ms. Bellows, again in principle, voted against the Subcommittees recommendation for no change. Ms. Bellows recommended that this issue be flagged for future review by the IFS Committee.

The Subcommittee then made recommendations to exceptions in Title 22 as suggested by the Department of Health and Human Services. The Subcommittee made no changes, except to repeal part of Title 22, §1065, which is a provision dealing with information that is no longer reported to DHHS (the department requested the repeal). As noted in the chart that follows, in 2011 the Subcommittee will review and make recommendations regarding the remaining tabled exceptions in Title 22, Maine Turnpike Authority and Department of Transportation exceptions in Title 23, and Maine Health Security Act exceptions in Title 24. Although Tim Terranova from the Board of Medical Licensure was present, the Subcommittee meeting adjourned before the members were able to take up the Title 24 exceptions. Staff will draft amendments for consistent language as indicated by the chart.

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
1	Title 22, section 17, subsection 7, relating to records of child support obligors	11/4: no change
2	Title 22, section 42, subsection 5, relating to DHHS records containing personally identifying medical information	11/4: no change
3	Title 22, section 261, subsection 7, relating to records created or maintained by the Maternal and Infant Death Review Panel	11/4: no change
4	Title 22, section 664, subsection 1, relating to State Nuclear Safety Program facility licensee books and records	11/4: no change

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
5	Title 22, section 666, subsection 3, relating to the State Nuclear Safety Program concerning the identity of a person providing information about unsafe activities, conduct or operation or license violation	11/4: no change
6	Title 22, section 811, subsection 6, relating to hearings regarding testing or admission concerning communicable diseases	11/4: no change
7	Title 22, section 815, subsection 1, relating to communicable disease information	11/4: no change
8	Title 22, section 824, relating to persons having or suspected of having communicable diseases	11/4: no change
9	Title 22, section 832, subsection 3, relating to hearings for consent to test for the source of exposure for a blood-borne pathogen	11/4: no change
10	Title 22, section 1064, relating to immunization information system	11/4: no change
11	Title 22, section 1065, subsection 3, relating to manufacturer and distributor reports on distribution of influenza immunizing agents	11/4: REPEAL Sub-§3 or all
12	Title 22, section 1233, relating to syphilis reports based on blood tests of pregnant women	11/4: no change
13	Title 22, section 1317-C, subsection 3, relating to information regarding the screening of children for lead poisoning or the source of lead exposure	11/4: no change
14	Title 22, section 1494, relating to occupational disease reporting	11/4: no change
16	Title 22, section 1596, relating to abortion and miscarriage reporting	11/4: no change
17	Title 22, section 1597-A, subsection 6, relating to a petition for a court order consenting to an abortion for a minor	11/4: no change
25	Title 22, section 2425, subsection 8, paragraph A, relating to information submitted by qualifying and registered patients under the Maine Medical Use of Marijuana Act	11/4: no changes
26	Title 22, section 2425, subsection 8, paragraph B, relating to information submitted by primary caregivers and physicians under the Maine Medical Use of Marijuana Act	11/4: no changes
27	Title 22, section 2425, subsection 8, paragraph C, relating to list of holders of registry identification cards under the Maine Medical Use of Marijuana Act	11/4: no changes

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
28	Title 22, section 2425, subsection 8, paragraph F, relating to information contained in dispensary information that identifies a registered patient, the patient's physician and the patient's registered primary caregiver under the Maine Medical Use of Marijuana Act	11/4: no changes
29	Title 22, section 2425, subsection 8, paragraph G, relating to information that identifies applicants for registry identification card, registered patients, registered primary caregivers and registered patients' physicians under the Maine Medical Use of Marijuana Act	11/4: no changes
30	Title 22, section 2425, subsection 8, paragraph J, relating hearing on revocation of a registry identification card under the Maine Medical Use of Marijuana Act unless card is revoked	11/4: no changes
31	Title 22, section 2698-A, subsection 7, relating to prescription drug marketing costs submitted to the Department of Health and Human Services	11/4: no change
32	Title 22, section 2698-B, subsection 5, relating to prescription drug information provided by the manufacturer to the Department of Health and Human Services concerning price	11/4: no change
40	Title 22, section 3474, subsection 1, relating to adult protective records	11/4: no change
41	Title 22, section 3762, subsection 3, relating to TANF recipients	11/4: no change
42	Title 22, section 4007, subsection 1-4, relating to a protected person's current or intended address or location in the context of child protection proceeding	11/4: no change
43	Title 22, section 4008, subsection 3-A, relating to the child death and serious injury review panel	11/4: no change
46	Title 22, section 4018, subsection 4, relating to information about a person delivering a child to a safe haven	11/4: no change
47	Title 22, section 4021, subsection 3, relating to information about interviewing a child without prior notification in a child protection case	11/4: no change

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
48	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	11/4: no change
49	Title 22, section 4306, relating to general assistance	11/4: no change
50	Title 22, section 5328, subsection 1, relating to community action agencies records about applicants and providers of services	11/4: no change
51	Title 22, section 7250, subsection 1, relating to the Controlled Substances Prescription Monitoring Program	11/4: no change
53	Title 22, section 8707, relating to the Maine Health Data Organization	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link?
65	Title 24, section 2329, subsection 8, relating to alcoholism and drug treatment patient records of nonprofit hospitals and medical service organizations	9/27: table - no problem with exception, but check with TRecord about making language consistent 11/4: AMEND language
66	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input; *Consumers for Affordable Health Care input requested* 11/4: Tabled until 2011
67	Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	9/27: table - ask medical licensing boards for input 11/4: tabled until 2011
68	Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	9/27: table - ask medical licensing boards for input 11/4: tabled until 2011
69	Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4: tabled until 2011
70	Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4: tabled until 2011
71	Title 24, section 2986, subsection 2, relating to billing for forensic examinations for alleged victims of gross sexual assault	9/27: no change - But note that records not in hands of public entity
73	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	9/27: table - ask Maine Trial Lawyers for input

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
74	Title 24-A, section 222, subsection 13, relating to insurance information filed with the Superintendent of Insurance concerning registration statements, tender offers, requests or invitations for tender offers, options to purchase, agreements	9/27: table - ask Consumers for Affordable Health Care, TRecord for input 11/4: Divided report - no change 3-1 (SBellows)
75	Title 24-A, section 225, subsection 3, relating to insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent 11/4: AMEND - language
76	Title 24-A, section 226, subsection 2, relating to insurance examination reports furnished to the Governor, the Attorney General and the Treasurer of State pending final decision	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem) 11/4: AMEND - language
77	Title 24-A, section 227, relating to information pertaining to individuals in insurance examination reports	9/27: table - no problem with exception, but check with TRecord about making language consistent (deem) 11/4: AMEND - language
79	Title 24-A, section 423-C, subsection 4, relating to insurance reports of material transactions	9/27: table - ask Consumers for Affordable Health Care and TRecord for input 11/4: divided report - no change 4-1 (SBellows)
81	Title 24-A, section 952-A, subsection 4, relating to actuarial opinion of reserves	9/27: table - ask Maine Trial Lawyers for input 11/4: AMEND language; otherwise no change 3-1 (SBellows)
86	Title 24-A, section 2169-B, subsection 6, insurance scoring model	10/18: Table - ask TRecord, how can private orgs enforce prohibitions on scoring on illegal factors? 11/4: divided report - no change 3-1 (SBellows)
88	Title 24-A, section 2204, subsection 4, relating to insurance investigative information (definition)	10/18: Table - more info 11/4: no change

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
89	Title 24-A, section 2304-A, subsection 7, relating to insurance rate filings	10/18: Table - with #97 (filings) 11/4: divided report - no change 3-1 (SBellows)
89.5	NEW (11/1/10) Title 24-A, section 2304-C, subsection 3, relating to physicians and surgeons liability insurance rate filings	11/4: divided report - no change 3-1 (SBellows)
90	Title 24-A, section 2315, relating to information submitted to fire insurance advisory organizations	10/18: Table - repeal? Ask CSoltan, TRecord 11/4: REPEAL, note to IFS
91	Title 24-A, section 2323, subsection 4, relating to reports of insurers concerning loss and expense experience	10/18: Table - why keep if doesn't apply to anything Need more info 11/4: no change
91.5	NEW (11/1/10) Title 24-A, section 2325-B, subsection 9, relating to mandatory property and casualty insurance market assistance program policy form and rate filings	11/4: divided report - AMEND confidential until approved 3-1 (SBellows)
94	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records?
95	Title 24-A, section 2412, subsection 8, relating to insurance contracts and forms	10/18: Table (filings) 11/4: divided report - no change 3-1 (SBellows)
97	Title 24-A, section 2736, subsection 2, relating to rate filings on individual health insurance policies	10/18: Table (filings) 11/4: no change
100	Title 24-A, section 2842, subsection 8, relating to relating to alcoholism and drug treatment patient records for group and blanket health insurance	10/18: no change 11/4: AMEND language
106	Title 24-A, section 4245, subsections 1 and 3, relating to health maintenance organizations accreditation survey report	10/18: Table (subpoena) 11/4: divided report - no change 3-1 (SBellows)
107	Title 24-A, section 4406, subsection 3, relating to delinquent insurers	10/18: Table - why keep if doesn't apply to anything 11/4: no change
109	Title 24-A, section 6458, subsection 1, relating to risk-based capital standards for insurers	10/18: Table (subpoena) 11/4: divided report - no change 3-1 (SBellows)
110	Title 24-A, section 6708, subsection 2, relating to examination of captive insurance companies documents	10/18: Table (subpoena) 11/4: divided report - no change 3-1 (SBellows)

#	TITLE, SECTION & DESCRIPTION	SUBCOMMITTEE RECOMMENDATION
112	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of viators	10/18: Table - ask TRecord, (subpoena) 11/4: divided report - no change 3-1 (SBellows) - but flag than inconsistent with treatment of examination reports
113	Title 24-A, section 6818, subsections 6 and 8, relating to fraudulent viatical or life insurance settlements information provided for enforcement	10/18: Table - why isn't fraud information public? (subpoena) 11/4: divided report - no change 3-1 (SBellows)

- **Other remaining issues**

In addition to the remaining exceptions for review, the Subcommittee will receive a draft of the new Criminal History Record Information Act from the Criminal Law Advisory Commission for action in 2011. CLAC continues to revise the draft, and the Judicial Branch and the Department of Public Safety continue to discuss issues regarding the maintenance and dissemination of criminal history record information. Staff will continue to work with these groups to prepare for the next interim, at which time the Subcommittee will meet.

The Subcommittee does not plan to meet again before the end of the legislative session in 2011.

Adjourned 4:30 p.m.

RIGHT TO KNOW ADVISORY COMMITTEE

LEGISLATIVE SUBCOMMITTEE MEETING
DRAFT AGENDA
November 18, 2010
11:00 a.m.
Room 437, State House

Welcome and introductions

I Pending issues

A. Draft legislation: protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (examples from other states)

B. Draft legislation: Making and maintaining records of public meetings (amendment proposed by MMA)

C. Website disclaimer or warnings about public nature of emails

D. Draft legislation & issues discussed: the requirement for education and training of public officials

E. Review of feedback from entities whose current statutes allow meetings via communication technology when less than a quorum is physically present: Finance Authority of Maine, the Emergency Medical Services Board, the Ethics Commission, and the Workers' Compensation Board

II Other business

Full Advisory Committee meeting scheduled for Thursday, November 18, 2010, 1:00 p.m.

Adjourn

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Redraft for Review on 9/23/10

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Confidential communications

Sec. 1. 1 MRSA §402, sub-§5 is enacted to read:

5. Public officials' communications. A record involving communications between a person and a public official is a public record except for information contained in the record that:

A. Is excepted from the definition of public record in subsection 3;

B. Is designated as confidential by statute; or

C. Would be confidential if it were in the possession of another public agency or official.

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Legislator/Elected Official E-mail

Colorado

24-72-202 (6)(II)

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in section 24-72-204 (1).

Montana

2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

New Jersey

47:1A-1.1 Definitions

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

- information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

- any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;

Rhode Island

§38-2-2 Definitions.

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(A) All records which are identifiable to an individual applicant for benefits, client, patient, student, or employee, including, but not limited to, personnel, medical treatment, welfare, employment security, pupil records, all records relating to a client/attorney relationship and to a doctor/patient relationship, and all personal or medical information relating to an individual in any files, including information relating to medical or psychological facts, personal finances, welfare, employment security, student performance, or information in personnel files maintained to hire, evaluate, promote, or discipline any employee of a public body; provided, however, with respect to employees, the name, gross salary, salary range, total cost of paid fringe benefits, gross amount received in overtime, and other remuneration in addition to salary, job title, job description, dates of employment and positions held with the state or municipality, work location, business telephone number, the city or town of residence, and date of termination shall be public.

. . .

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(ii) However, any reasonably segregable portion of a public record excluded by this section shall be available for public inspections after the deletion of the information which is the basis of the exclusion, if disclosure of the segregable portion does not violate the intent of this section.

Delaware

Title 29, § 10002. Definitions.

(g) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored,

recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public:

> (16) Emails received or sent by members of the Delaware General Assembly or their staff;
>
> (19) Any communications between a member of the General Assembly and that General Assembly member's constituent, or communications by a member of the General Assembly on behalf of that General Assembly member's constituent, or communications between members of the General Assembly.

Texas

Sec. 552.109. EXCEPTION: CERTAIN PRIVATE COMMUNICATIONS OF AN ELECTED OFFICE HOLDER. Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section 552.021 *(availability of public information)*.

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Right to Know Advisory Committee
REVISED PROPOSED DRAFT
Record/Minutes of Public Proceedings

(Initial changes from LD 1791 indicated in *italics;* MMA changes double underscored)

Sec. 1. 1 MRSA §403, as amended by PL 2009, c. 240, §1, is repealed and the following enacted in its place:

§403. Meetings to be open to public; record of meetings

1. *Proceedings o*pen to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public; *and* any person must be permitted to attend a public proceeding ~~*and any public record or minutes of such proceedings that are required by law must be made within a reasonable period of time after the proceeding and must be open to public inspection*~~.

2. Record of public proceedings. Unless otherwise provided by law, ~~*records of all public proceedings*~~ *a record of each public proceeding* for which notice is required under section 406 must be made within a reasonable period of time after the ~~*proceedings*~~ *proceeding* and *must* be open to public inspection. At a minimum, ~~*a*~~ *the* record must include:

A. The date, time and place of the public proceeding;

B. The members of the body holding the public proceeding recorded as either present or absent; *and*

~~C. The general substance of all matters *proposed, discussed or* decided; and~~

~~D~~ *C.* All motions and votes taken, by individual member, if there is a roll call.

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

4. Maintenance of record. *Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.*

5. Validity of action. *The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.*

6. Advisory bodies exempt from record requirements. *Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.*

Draft for Review on 10/21/10

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Public records and proceedings training

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

§412. Public records and proceedings training for certain elected officials

1. Training required. ~~Beginning July 1, 2008, an~~ 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 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. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

1-A. Training for certain appointed officials. Beginning July 1, 2011, an appointed county clerk or municipal clerk shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The appointed clerk shall complete the training not later than the 120th day after the date the appointed clerk takes the oath of office to assume the person's duties. For appointed clerks subject to this section serving in office on July 1, 2011, the training required by this section must be completed by November 1, 2011.

2. Training course; minimum requirements. The training course under ~~subsection~~ subsections 1 and 1-A must be designed to be completed by an official 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 appointed clerk 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 appointed clerk 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 or appointed clerk shall keep the record or file it with the public entity to which the official was elected.

4. Application. This section applies to the following ~~elected~~ 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. The following county government officials who are elected: ~~Commissioners~~, commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members ~~of county governments~~;

E-1. Appointed county clerks;

F. The following municipal government officials who are elected: ~~Municipal~~ municipal officers, clerks, treasurers, assessors and budget committee members ~~of municipal governments~~;

F-1. Appointed municipal clerks;

G. Elected ~~Officials~~ officials of school units and school boards; and

H. Elected ~~Officials~~ 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, an airport authority established pursuant to Title 6, chapter 10, 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.

****

Other issues previously discussed:

- Require training for legislators every year (or session?), even those trained in prior sessions
- Require training for all appointed officials who perform the same tasks as elected officials who are required to complete training
- Require training for all supervisors who oversee the work of officials who are required to have training
- Initial training enough or repeated training at some interval?

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Using technology to conduct public proceedings

PART A

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

§403-A. Public proceedings through other means of communication

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

2. Voting. A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

PART B

Finance Authority of Maine

Sec. B-1. 10 MRSA §971 is amended to read:

§971. Actions of the members

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

1. Placement of call. A conference call to the members must be placed by ordinary commercial means at an appointed time.

2. Record of call. The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

3. Notice of emergency meeting. Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission *(any changes?)*

Sec. B-2. 21-A MRSA §1002 is amended to read:

§1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Emergency Medical Services Board

Sec. B-3. 32 MRSA §88, sub-§1, ¶D is amended to read:

§88. Emergency Medical Services' Board

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

1. Composition; rules; meetings. The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1~~. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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FINANCE AUTHORITY OF MAINE
Business & Education at Work for Maine

5 Community Drive, PO Box 949, Augusta, ME 04332-0949 TEL: 1-800-228-3734 / 1-207-623-3263
E-mail: info@famemaine.com URL: www.famemaine.com FAX: 1-207-623-0095 TTY: 1-207-626-2717

October 27, 2010

Hon. Barry Hobbins, Chair
Right to Know Advisory Committee
c/o Peggy Reinsch
Office of Policy and Legal Analysis
13 State House Station
Augusta, ME 04333

Chris Spruce, Chair
Legislative Subcommittee
Right to Know Advisory Committee

Dear Senator Hobbins and Mr. Spruce:

Thank you for your letter dated October 12, 2010 requesting FAME's comments to the proposed draft legislation concerning use of technology to conduct public proceedings. We appreciate the opportunity to respond to the proposed change to our existing statute, which is set forth at 10 M.R.S.A. § 971.

As you noted in your letter, statutory language regarding FAME has been in place regarding this matter for some time now, and use of technology to conduct public proceedings has been used by it rarely, but well. We do have some concerns regarding the proposed changes, however, and wish to offer some suggestions for improvement:

First, as a general matter, the proposed changes appear to allow all agencies that currently are not allowed to use technology in the conduct of public proceedings to now do so (even in cases of non-emergency), but, ironically, would no longer allow FAME this possibility *except in case of emergencies* that meet all of the newly proposed requirements. If one examines the proposed change to FAME's statute, 10 M.R.S.A. § 971 (the shaded box on the sheet you provided), our emergency meetings now must meet all the requirements in proposed 1 M.R.S.A. § 403-A, as well as FAME's current statutory requirements. For obvious reasons, we prefer to maintain our current ability to conduct emergency proceedings electronically in limited circumstances, which constitute an emergency in the realm in which we operate. These include having to make a credit decision on less than three days' notice based on the exigencies of a situation, and may include having to conduct a meeting that was regularly scheduled, but is now impossible for members to attend because of poor weather, so that the businesses awaiting financing may receive a timely decision. Additionally, if other public entities will have the ability to use electronic communications for non-emergency matters, we would like to have that same capacity. More specific concerns follow:

- In proposed 1 M.R.S.A. § 403-A(1)(C), a quorum of the body would now be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. Although ideal, this new

- requirement is problematic for FAME in cases of emergency when telephonic participation of members is necessary and quorums are only achievable by counting telephonic participants. We have found this option useful when dealing with business assistance emergencies in the past, and have only used this approximately three times in the past five years. We urge the committee to consider removing this requirement for emergency situations.

- Subsections (1)(H) and (2)(A) create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although FAME always attempts to furnish all materials in advance to board members, sometimes last-minute business request materials are provided that are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.

- Subsection (1)(I) would forbid remote member participation in the case of a public hearing. FAME requests that an exception be made for the common case of *pro forma* public hearings in the rulemaking process. The Administrative Procedures Act requires that one-third of board members be present. FAME prefers to have greater member participation and not inconvenience our members with additional meetings, so we typically conduct our rulemaking hearings on monthly, regular board meeting days (a quorum of seven required here, but remote participation, although rare, counts toward a quorum). To do otherwise would require a minimum of five (of our fifteen) board members (who are busy and live in all parts of the state) to gather physically more frequently for just this purpose. This is impractical and logistically challenging. Besides, written comments for public hearings are already allowed under the law.

- Subsection (3)(A) seemingly limits emergency meetings to cases largely inapplicable to FAME (a Governor-declared emergency or health emergency). What about FAME-related emergencies like potential business closings or payroll issues on a Friday evening? Currently, under 10 M.R.S.A. § 971, FAME is able to conduct emergency meetings provided three days' notice is given. The exceptions here should be broadened to allow for our current statute and other statutory cites, or these requirements should be deleted. We can easily satisfy Subsections (3)(B) and (C), however.

In sum, FAME prefers to keep its current statute on the books, unamended. We are happy and able, however, to comply with the bulk of the proposed changes to Title 1, if necessary, but urge you to consider the needs and practicalities of our members and our

mission. In rare but important cases, FAME members need to meet at a moment's notice to save a business or respond to a financial emergency. Requiring our members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. We are glad to assist in any way possible.

Very truly yours,

Bill Norbert

William S. Norbert
Governmental Affairs and
Communications Manager

HylanBarr, Marion

From: Bradshaw, Jay
Sent: Thursday, October 21, 2010 10:27 AM
To: HylanBarr, Marion; Reinsch, Margaret
Cc: Jordan, Anne H
Subject: Right to Know Committee proposed statutory changes

Marion & Peggy,

Thanks for sending the proposed changes to my attention.

I offer for your consideration the following comments:

§403-A

1.C – as part of our ongoing budget curtailments, the Board of EMS only meets every other month. However, there may be times when this extended meeting interval would have a negative effect on our operation. At these times, we may need to conduct a very brief meeting (some have lasted < 30 minutes) and rather than having folks literally travel from all over the state, we set up a conference room with a speaker phone and the majority of members participate using that option. The room is the posted meeting location and is open to the public. MEMS staff, the AG's office, and local Board members attend in person. This proposed change would prevent us from conducting business using this technology and have a negative effect on either our business work flow or the budget (if we went back to more frequent in person meetings). From a budget standpoint, an in person meeting costs us > $1,000 because of the travel reimbursements (we have 2 members from Aroostook County who come down the night before the meeting). A conference call meeting usually costs us < $100.

1.D – not sure what is meant by "reasonably practical" or why that would need to be stated. Both the current and prior Administrations have consistently promoted using technology to reduce expenses and expand participation. This seems to be an unclear restriction and a step backwards.

1.G – is it necessary to take a roll call vote if the outcome is unanimous?

1.I – our statute (32 § 88.2.B) requires that we conduct public hearings in each region affected by the change (which in effect means in each of 6 regions) and was amended many years ago to include that we "...may use available technology." We have always met the other staffing requirements at one or more sites, but enabling Board members and the public to attend via videoconference has greatly expanded the ability for input to proposed changes.

The other proposed changes do not seem like they would have an untoward effect on us.

Thanks for the opportunity to comment – and please let me know if you would like additional information.

Regards,
Jay

Jay Bradshaw, Director
Maine Emergency Medical Services
Department of Public Safety
45 Commerce Dr., Suite 1
152 State House Station
Augusta, ME 04333
(207) 626-3860
(207) 287-6251 (fax)
www.maine.gov/dps/ems

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

By E-Mail and Inter-Office Mail

To: Legislative Subcommittee of the Right to Know Advisory Committee

From: Jonathan Wayne, Executive Director

Cc: Danielle Fox, Analyst, Joint Standing Committee on Legal and Veterans' Affairs

Date: November 17, 2010

Re: Comments on Proposal Concerning Telephone Meetings

Thank you for the opportunity to comment on the proposal concerning public meetings facilitated with telephone or other electronic participation. During the last 28 days before an election, the Maine Commission on Governmental Ethics and Election Practices is *required to meet within one calendar day* of the filing of any complaint or question with the Commission (21-A M.R.S.A. § 1002(1)). This requirement, itself, poses challenges for the Commission. During this period, the Commission is authorized by § 1002(2) to meet by telephone. In practice, most members prefer to travel to Augusta to meet in person. Once in a while, however, a Commissioner must participate by telephone and is in a location that does not have a high speed internet connection.

Only one element in the subcommittee's proposal would present a practical problem for the Ethics Commission. I view it as a surmountable problem in our case, but I wanted to bring it to your attention because it could affect other agencies or municipal boards. In our case, most matters are considered by the Commissioners and decided within a single meeting. The Commission has an open policy of accepting written materials during the course of a meeting. Sometimes members of the public arrive at the meeting intending to comment and bring written materials with them. Some of them are concise and germane, but some of them are not.

Under proposed 1 M.R.S.A. § 403-A(2)(A), a member who was participating electronically could vote on an issue only if the member has received *all* of the additional materials presented to the members in person. To meet this requirement, an employee of the Commission would have to be on call to ensure that every handout provided by every member of the public could be immediately converted to a pdf and be e-mailed to the Commissioner who is participating by phone. Unfortunately, the part of the state's e-mail system that we use sometimes blocks the transmission of large attachments. The diverse public bodies in Maine subject to the open meetings law may have other technological obstacles to transmitting last-minute written materials to members who are

participating remotely. Therefore, I wonder if the authority of the member to vote when last-minute materials are presented to the body should be left to the discretion of the board or to the individual member, rather than a blanket prohibition that applies to all public bodies statewide.

That said, I do not see the need for the Ethics Commission to receive any exception to the general requirements. In my view, we can work around whatever the Legislature enacts.

If the subcommittee's proposal is considered in the 2011 legislative session, I would suggest deleting 21-A M.R.S.A. § 1002(2) within the subcommittee's proposal.

Thank you for taking the time to seek input from the Ethics Commission.

RIGHT TO KNOW ADVISORY COMMITTEE

LEGISLATIVE SUBCOMMITTEE MEETING
DRAFT AGENDA
November 24, 2010
12:00 noon
Room 438, State House

Welcome and introductions

I Pending issue

Revised draft legislation: protection of private information contained in e-mail and other forms of communication that are sent and received by public officials, particularly communications between elected public officials and their constituents (confidential exceptions in public records)

II Other business?

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Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Confidential communications

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

(The following are not public records:)

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit and financial information;

(c) Information pertaining to the personal history, general character or conduct of the person or any member of the person's immediate family;

(d) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action; or

(e) An individual's Social Security number; or

(2) Would be confidential if it were in the possession of another public agency or official.

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Redraft for Review on 11/24/10

Right to Know Advisory Committee
Legislative Subcommittee
DRAFT: Confidential communications

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

(The following are not public records:)

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is excepted from the definition of public record in this subsection;

(2) Is designated as confidential by statute; or

(3) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit and financial information;

(c) The personal history, general character or conduct of the person or any member of the person's immediate family;

(d) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action; or

(e) An individual's Social Security number.

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THE PRIVACY ACT OF 1974

5 U.S.C. § 552a

As Amended

§ 552a. Records maintained on individuals

(a) Definitions

For purposes of this section--

(1) the term "agency" means agency as defined in section 552(f) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"--

(A) means any computerized comparison of--

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of--

(I) establishing or verifying the eligibility of, or

5 §7070. PERSONNEL RECORDS

Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service of the Executive and Legislative Departments shall be reported to the director at such time, in such form and together with such supportive or pertinent information as he shall by rule prescribe. [1985, c. 785, Pt. B, §38 (NEW).]

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data that the director considers pertinent. [2007, c. 466, Pt. A, §21 (AMD).]

Records of the Bureau of Human Resources shall be public records and open to inspection of the public during regular office hours at reasonable times and in accordance with the procedure as the director may provide. [1985, c. 785, Pt. B, §38 (NEW).]

The following records shall be confidential and not open to public inspection, and shall not be "public records," as defined in Title 1, section 402, subsection 3: [1985, c. 785, Pt. B, §38 (NEW).]

1. Papers relating to applications, examinations or evaluations of applicants. Except as provided in this subsection, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the State for use in the examination or evaluation of applicants for positions as state employees.

A. Notwithstanding any confidentiality provision other than this subsection, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O. [2007, c. 597, §5 (AMD).]

B. Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference. [1989, c. 402, §1 (NEW).]

C. This subsection does not preclude union representatives from access to personnel records, consistent with subsection 4, which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 402, §1 (NEW).]

[2007, c. 597, §5 (AMD) .]

2. Personal information. Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:

A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders; [1985, c. 785, Pt. B, §38 (NEW).]

B. Performance evaluations and personal references submitted in confidence; [1985, c. 785, Pt. B, §38 (NEW).]

C. Information pertaining to the credit worthiness of a named employee; [1985, c. 785, Pt. B, §38 (NEW).]

D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family; [1997, c. 124, §2 (AMD).]

D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and [2007, c. 597, §6 (AMD).]

E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this paragraph, "final written decision" means:

(1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; [1997, c. 770, §1 (AMD).]

This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;

[2007, c. 597, §6 (AMD) .]

3. **Other information.** Other information to which access by the general public is prohibited by law.

[1985, c. 785, Pt. B, §38 (NEW) .]

4. **Disclosure of certain information for grievance and other proceedings.** The Director of Human Resources may release specific information designated confidential by this section to be used in negotiations, mediation, fact-finding, arbitration, grievance proceedings and other proceedings in which the State is a party. For the purpose of this subsection, "other proceedings" means unemployment compensation proceedings, workers' compensation proceedings, human rights proceedings and labor relations proceedings.

Confidential information provided under this subsection shall be governed by the following.

A. The information to be released shall be information only as necessary and directly related to the proceeding as determined by the Director of Human Resources. [1987, c. 673, §1 (NEW).]

B. [2007, c. 240, Pt. HH, §12 (RP).]

C. The proceeding for which the confidential information is provided shall be private and not open to the public; or, if the proceeding is open to the public, the confidential information shall not be disclosed except exclusively in the presence of the fact finder, the parties and counsel of record, and the employee who is the subject of the proceeding and provisions are made to ensure that there is no public access to the confidential information. [1987, c. 673, §1 (NEW).]

The State may use this confidential information in proceedings and provide copies to the employee organization that is a party to the proceedings, provided the information is directly related to those proceedings as defined by the applicable collective bargaining agreement. Confidential personnel records in the possession of the Bureau of Human Resources may not be open to public inspection and may not be "public records," as defined in Title 1, section 402, subsection 3.

[2007, c. 240, Pt. HH, §12 (AMD) .]

SECTION HISTORY
1985, c. 785, §B38 (NEW). 1987, c. 673, §1 (AMD). 1989, c. 402, §1 (AMD). 1991, c. 229, §1 (AMD). 1991, c. 729, §1 (AMD). 1997, c. 124, §2 (AMD). 1997, c. 770, §1 (AMD). 2007, c. 240, Pt. HH, §12 (AMD). 2007, c. 466, Pt. A, §21 (AMD). 2007, c. 597, §§5, 6 (AMD).

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20-A §6101. RECORD OF DIRECTORY INFORMATION

20-A §6101. RECORD OF DIRECTORY INFORMATION

The following provisions apply to employee records. [1981, c. 693, §§5, 8 (NEW).]

1. Contents. A school administrative unit shall maintain a record of directory information on each employee as follows:

A. Name; [1981, c. 693, §§5, 8 (NEW).]

B. Dates of employment; [1981, c. 693, §§5, 8 (NEW).]

C. Regular and extracurricular duties, including all courses taught in that school administrative unit; [1981, c. 693, §§5, 8 (NEW).]

D. Post-secondary educational institutions attended; [1981, c. 693, §§5, 8 (NEW).]

E. Major and minor fields of study recognized by the post-secondary institutions attended; and [1997, c. 452, §1 (AMD).]

F. Degrees received and dates awarded. [1997, c. 452, §1 (AMD).]

G. [1997, c. 452, §2 (RP).]

[1997, c. 452, §§1, 2 (AMD) .]

2. Access. The following provisions apply to access of employee records.

A. The record of directory information shall be available for inspection and copying by any person. [1981, c. 693, §§5, 8 (NEW).]

B. Except as provided in paragraph A, information in any form relating to an employee or applicant for employment, or to the employee's immediate family, must be kept confidential if it relates to the following:

(1) All information, working papers and examinations used in the examination or evaluation of all applicants for employment;

(2) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(3) Performance evaluations, personal references and other reports and evaluations reflecting on the quality or adequacy of the employee's work or general character compiled and maintained for employment purposes;

(4) Credit information;

(5) Except as provided by subsection 1, the personal history, general character or conduct of the employee or any member of the employee's immediate family;

(6) Complaints, charges of misconduct, replies to complaints and charges of misconduct and memoranda and other materials pertaining to disciplinary action;

(7) Social security number;

(8) The teacher action plan and support system documents and reports maintained for certification purposes; and

(9) Criminal history record information obtained pursuant to section 6103. [1995, c. 547, §4 (AMD).]

C. Any written record of a decision involving disciplinary action taken with respect to an employee by the governing body of the school administrative unit shall not be included within any category of confidential information set forth in paragraph B. [1981, c. 693, §§5, 8 (NEW).]

[1995, c. 547, §4 (AMD) .]

3. Commissioner's review. The commissioner shall have access to any of the records or documents designated as confidential in this section for carrying out the commissioner's duties pursuant to section 13020. Copies of any such records or documents shall simultaneously be provided to the employee.

The commissioner shall also have access to support system documents for carrying out the commissioner's certification and support system approval duties pursuant to chapter 502 and to other confidential employee records for carrying out the commissioner's school approval duties pursuant to chapter 206.

[1987, c. 620, §2 (AMD) .]

SECTION HISTORY
1981, c. 693, §§5,8 (NEW). 1983, c. 470, §5 (AMD). 1983, c. 806, §60 (AMD). 1983, c. 862, §58 (AMD). 1985, c. 506, §A37 (AMD). 1987, c. 620, §§1,2 (AMD). 1995, c. 547, §§2-4 (AMD). 1997, c. 452, §§1,2 (AMD).

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30-A §503. PERSONNEL RECORDS

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the county for use in the examination or evaluation of applicants for positions as county employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 402, §2 (RPR).]

B. County records containing the following:

(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [1997, c. 770, §2 (AMD).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1997, c. 770, §2 (AMD) .]

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or [1991, c. 729, §6 (NEW).]

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [1991, c. 729, §6 (NEW).]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[1991, c. 729, §6 (NEW) .]

2. Employee right to review. On written request from an employee or former employee, a county official with custody of the records shall provide that employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the county official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained.

A. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits of which the county official has possession. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

B. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY
1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1989, c. 402, §2 (AMD). 1991, c. 229, §2 (AMD). 1991, c. 729, §6 (AMD). 1997, c. 770, §2 (AMD).

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30-A §2702. PERSONNEL RECORDS

30-A §2702. PERSONNEL RECORDS

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Except as provided in this paragraph, applications, resumes, letters and notes of reference, working papers, research materials, records, examinations and any other documents or records and the information they contain, solicited or prepared either by the applicant or the municipality for use in the examination or evaluation of applicants for positions as municipal employees.

(1) Notwithstanding any confidentiality provision other than this paragraph, applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired.

(2) Telephone numbers are not public records if they are designated as "unlisted" or "unpublished" in an application, resume or letter or note of reference.

(3) This paragraph does not preclude union representatives from access to personnel records which may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union representatives which are otherwise covered by this subsection shall remain confidential and are not open to public inspection; [1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD); 1989, c. 402, §3 (RPR).]

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the creditworthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or

(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and [1997, c. 770, §3 (AMD).]

C. Other information to which access by the general public is prohibited by law. [1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

[1997, c. 770, §3 (AMD) .]

1-A. Investigations of deadly force or physical force by law enforcement officer. The name of a law enforcement officer is not confidential under subsection 1, paragraph B, subparagraph (5) in cases involving:

A. The use of deadly force by a law enforcement officer; or [1991, c. 729, §7 (NEW).]

B. The use of physical force by a law enforcement officer resulting in death or serious bodily injury. [1991, c. 729, §7 (NEW).]

In cases specified in paragraphs A and B, regardless of whether disciplinary action is taken, the findings of any investigation into the officer's conduct are no longer confidential when the investigation is completed and a decision on whether to bring criminal charges has been made, except that if criminal charges are brought, the findings of the investigation remain confidential until the conclusion of the criminal case.

[1991, c. 729, §7 (NEW) .]

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

[1987, c. 737, Pt. A, §2 (NEW); 1987, c. 737, Pt. C, §106 (NEW); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

SECTION HISTORY
1987, c. 737, §§A2,C106 (NEW). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,10 (AMD). 1989, c. 402, §3 (AMD). 1991, c. 229, §3 (AMD). 1991, c. 729, §7 (AMD). 1997, c. 770, §3 (AMD).

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