

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:
Bob Devlin, Chair
Richard Flewelling
Judy Meyer

Absent:
Karla Black

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 575¹) 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 in 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, ¶M² 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