

Right to Know Advisory Committee
Public Records Exceptions Subcommittee
December 1, 2015
Meeting Summary

Convened 11:48 a.m. Room 448, State House, Augusta

Present:
Sen. David Burns
Rep. Kim Monaghan
Mary Ann Lynch
Linda Pistner

Absent:
Luke Rossignol

Staff:
Craig Nale
Henry Fouts

Introductions

The meeting was called to order and all members introduced themselves.

Public records exceptions review discussion

Additional results of completed surveys from the public bodies administering the relevant public records exceptions, in addition to one previously item, were brought to the group for its consideration and discussion. As always, agency representatives had been invited to attend in person. During this meeting the Subcommittee reviewed the public records exceptions further detailed below.

(Note: Reference numbers below refer to the spreadsheet of public records exceptions used to track the review process. Copies of the spreadsheet are available on the Right to Know Advisory Committee website or upon request.)

Ref# 3: 1 M.R.S. §402, Sub-§3, ¶N, relating to Social Security Numbers

The Subcommittee voted 4-0 to recommend no modification. The importance of allowing nondisclosure of Social Security Numbers was recognized by all.

Ref# 4: 1 M.R.S. §402, Sub-§3, ¶O, relating to personal contact information concerning public employees other than elected officials

The Subcommittee voted 4-0 to recommend no modification.

Ref# 7: 1 M.R.S. §402, Sub-§3, ¶R, Title 1, relating to Social Security numbers in possession of the Secretary of State

The Subcommittee voted 4-0 to recommend no modification.

Ref# 9: 1 M.R.S. §1013, Sub-§2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions

The Subcommittee voted 3-0 to recommend no modification. According to the Ethics Commission this exception has not been used in the last 13 years, so they believe the exception is clear. The exception is important due to the sensitive nature of this information.

Ref# 10: 1 M.R.S. §1013, Sub-§4, relating to Commission on Governmental Ethics and Election Practices records other than complaints

The Subcommittee voted 3-0 to recommend no modification.

Ref# 11: 1 M.R.S. §1013, Sub-§3-A, relating to complaint alleging a violation of legislative ethics

The Subcommittee voted 3-0 to recommend no modification.

Ref# 38: 12 MRSA §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

The Subcommittee voted to table this item. This item, previously tabled on October 6, was discussed again. The Department of Inland Fisheries and Wildlife had provided more information on how the confidentiality provision was applied – it is currently an “opt-in” system, where a license applicant must affirmatively indicate in their application that they do not want their email address shared. The Department expressed its hope to transition to an “opt-out” system in the future. Additionally, the Department recommended to the Subcommittee that it would like confidentiality exceptions for use of the email addresses within the agency, for sharing applicant email addresses for law enforcement purposes, for court purposes, for marketing purposes and for sharing with other State agencies and third party contractors. For further discussion, the Subcommittee members wanted to see drafted proposed language for the change, and to also get clarification from the Department regarding the proposed third party contractors these email addresses would be shared with. Staff will work with the Department to get further information and to develop written draft legislation.

Ref# 44: 21-A M.R.S. §1003, Sub-§3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices

The Subcommittee voted 4-0 to recommend no modification.

Ref# 45: 21-A M.R.S. §1125, Sub-§3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet

The Subcommittee voted 4-0 to recommend no modification. The exception involves financial information not ordinarily available to the public.

Ref# 46: 21-A M.R.S. §1125, Sub-§2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet

The Subcommittee voted 4-0 to indefinitely postpone this item, as a recently passed citizen initiative repeals this provision.

Ref# 47: 21-A M.R.S. §196-A, relating to information contained electronically in the central voter registration system

The Subcommittee voted 4-0 to recommend no modification. A representative of the Department of the Secretary of State appeared before the Subcommittee and explained the need for the continuation of this exception for central voter registration system data. The Department had asked the Legislature for this provision because FOAA is intended to illuminate the activities of government – this data only pertains to personal information of voters. This policy reason still holds today. Releasing this data would raise issues of voter fraud and identity theft. A bill that would narrow this exception is heading to the Veterans and Legal Affairs Committee for the upcoming legislative session.

Ref# 49: 22 M.R.S. §2425, Sub-§8, relating to medical marijuana registry identification cards

The Subcommittee voted 3-0 to recommend no modification.

Ref# 52: 22 M.R.S. §4087-A, Sub-§6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman

The Subcommittee voted 3-0 to recommend no modification.

Ref# 55: 29-A M.R.S. §1301, Sub-§6-A, relating to the social security number of an applicant for a driver's license or non-driver identification card

The Subcommittee voted 3-0 to recommend no modification. The agency survey response indicated concern about a conflict with this exception to the public records covered under FOAA with a provision of Maine's motor vehicle laws that permits disclosure of Social Security Numbers pursuant to the federal Driver Privacy Protection Act, 18 U.S.C. §2721(a)(2). The group discussed this concern and concluded there was no conflict, because the public records exception allows, but does not require, nondisclosure of the SSNs (i.e., they are not designated as "confidential").

Ref# 63: 30-A M.R.S. §4706, Sub-§1, relating to municipal housing authorities

The Subcommittee voted 3-0 to recommend no modification

Ref# 68: 35-A M.R.S. §122, Sub-§1-B, ¶G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors

The Subcommittee voted 3-0 to recommend no modification

Ref# 69: 35-A M.R.S. §10106, relating to records of the Efficiency Maine Trust and its board

The Subcommittee voted 3-0 to table this item. The Subcommittee received comments from Efficiency Maine Trust that the word "and" at the end of subsection 1, paragraph 3 of this section should instead be an "or." The Subcommittee was reluctant to make a change without seeing the proposed amendment in formally.

Ref# 70: 36 M.R.S. §6271, Sub-§2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens

The Subcommittee voted 3-0 to recommend no modification

Ref# 71: 38 M.R.S. §1310-B, Sub-§2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans

The Subcommittee voted 3-0 to recommend no modification

Ref# 72: 38 M.R.S. §580-B, Sub-§11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program

The Subcommittee voted 3-0 to recommend no modification

Next meeting

The Subcommittee will hold its next meeting in 2016. While the items reviewed at this December 1, 2015 meeting will not be submitted to this year's Committee for inclusion in the January 2016 report, they will be included in the 2017 report when the review of all the scheduled exceptions is due.

Adjournment

Rep. Monaghan adjourned the meeting at 12:58 p.m.