

Right to Know Advisory Committee  
Legislative Subcommittee  
December 1, 2009  
Room 438, State House, Augusta  
Meeting Summary

Present:

Chris Spruce, Chair  
Shenna Bellows  
Karla Black  
Robert Devlin  
Suzanne Goucher  
Linda Pistner  
Harry Pringle

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

Subcommittee Chair Chris Spruce convened the Legislative Subcommittee at 10:35 a.m.

**Communications outside of public proceedings/use of email issue**

At the last meeting, the subcommittee agreed not to recommend legislation but to develop guidance for elected officials on the Freedom of Access website. There was consensus that the example raised by Rep. Dostie in her previous remarks relating to actions of local officials was already a violation of law. Chris Spruce also noted that Rep. Dostie's proposed legislation will be considered in the next legislation session and individual Advisory Committee members will have an opportunity to comment at that time if they choose.

Staff reviewed the revisions made to the Frequently Asked Question (FAQ) draft based on comments from Harry Pringle; the FAQ is intended to provide guidance on email communications outside of public proceedings. The subcommittee approved the revised draft and agreed to recommend to the full Advisory Committee that the FAQ be added to the State's Freedom of Access website.

**Bulk data**

Beverly Bustin-Hatheway, Register of Deeds for Kennebec County, and President of the Registers of Deeds Association was given the opportunity to make comments in response to Sigmund Schutz's presentation at the last subcommittee meeting. Ms. Bustin-Hatheway noted that the issue impacts all state and local government records, but her remarks were focused on how bulk electronic data requests affect counties and particularly registries of deeds. Until recently, there had not been many requests for these records in Maine, but as requests become more frequent several public policy questions have arisen:

- Should the law set administrative standards and rules for the dissemination of public documents?
- Should requests for obtaining public records in bulk be an exception to the FOA law?
- Should the FOA law make a distinction between records requested in bulk for commercial purposes vs. non-commercial purposes?

- Should there be an exception for requests made in bulk by the media or for use by nonprofit entities?
- Should there be “notwithstanding” language in the FOA law that allows other statutes to prevail in setting fees for copies of public records?
- Should the law define “reasonable” fee? What measurements should be used to determine “reasonableness”?
- Should FOA permit a public agency to make a determination whether to sell public records as a bulk sale?
- Should government agencies be required to make bulk sales when there is an established procedure for allowing public inspection and copying of records in their custody?
- Are public agencies allowed to collect revenues for these sales to offset the burden on taxpayers to fund state and local government operations?

Ms. Bustin-Hatheway explained that the Maine County Commissioners Association and Maine Registry of Deeds Association will jointly propose 2 bills in the next legislation session to address the issue of bulk sales of records in the registries of deeds. The associations are concerned about the integrity of records after sale and the use of bulk data requests for commercial purposes and believe that the issue should be addressed in the next legislative session. Ms. Bustin-Hatheway also called the subcommittee’s attention to the written materials outlining the statutes enacted in other states relating to bulk data requests.

Linda Pistner inquired as to the costs incurred by Kennebec County to digitize the records in the Registry of Deeds and provide access to the database electronically. Ms. Bustin-Hatheway estimated that the total cost has exceeded \$1 million dollars and has taken several years to complete; the costs were paid for through a \$3.00 surcharge on documents recorded in the registry. Bob Devlin also clarified that, on an annual basis, the county budget reflects approximately \$100,000 to maintain the electronic database.

Ms. Pistner asked Ms. Bustin-Hatheway for more information about the proposed legislation in the next session. One of the bills will propose to raise the document fee for copying records in the registry of deeds to \$2.00 per page for the 2<sup>nd</sup> and subsequent pages; the sponsor of the other bill has asked that that proposal remain confidential until printed as a bill.

The Subcommittee then heard from Dick Thompson, Chief Information Officer, who was following up on a request from the subcommittee for further information on how other states address bulk data requests. Mr. Thompson highlighted the efforts of 2 states---Ohio and Kansas, noting that Ms. Bustin-Hatheway had already brought the Ohio law to the subcommittee’s attention. Under Ohio law, there appears to be authorization for the adoption of rules to address the costs of bulk data requests, including the costs of extraction. Mr. Thompson also pointed out the definition of “bulk data request” specifically recognizes a data entry within a database as a record. In Kansas, the law includes language stating that a fee for copies of public records that is equal to 25 cents or less per record is deemed a reasonable fee.

Staff also distributed a letter from Sigmund Schutz, at attorney who made a presentation at the last subcommittee meeting, providing his comments and recommendations relating to proposed legislation that might carve out exceptions in FOAA for requests for bulk electronic data.

The Subcommittee discussed whether to make a recommendation relating to bulk data requests to the Advisory Committee. Harry Pringle reminded the group that the Advisory Committee has been reluctant to distinguish requests for public records for commercial purposes from other types of

requests and suggested that, if the subcommittee wants to move forward, the focus should be on defining what is a reasonable fee for requests for bulk data and whether that fee should allow government to recoup the costs invested to make records accessible electronically. Mr. Pringle would support allowing government to recover a reasonable portion of its investment. Ms. Pistner generally agreed with Mr. Pringle, but noted that the Registry of Deeds has been able to recoup their investment through the surcharge but State government has spent millions of dollars which have not been recovered in that manner. Ms. Pistner suggested that the Law School extern might be able to further research this issue for the subcommittee although she recognized that the policy issues will be before the Legislature this session. Suzanne Goucher concurred that the best action might be to defer to the Legislature. Mr. Spruce wondered how helpful a recommendation from the Advisory Committee would be and wasn't sure whether the subcommittee could make any decision or recommendation. Mr. Devlin agreed that there will be a lively debate on the issue and the debate should take place in the Legislature. Karla Black said she understands the reluctance to weigh in on this issue, but raised concerns about the impact on state agencies as requests for bulk data continue to be made; she hoped that the Legislature will take action this session.

The subcommittee agreed not to make a specific recommendation to the Advisory Committee at this time, but decided that the issues and concerns discussed should be included in the Advisory Committee's report. The subcommittee also agreed to include this as a research topic for the extern.

Ms. Bustin-Hatheway reiterated that the issue needs to be addressed by the Legislature, especially as it relates to the ability of state, county and local governments to recoup their investments. Mr. Pringle noted that the public would not be served if an incentive is created not to digitize records if costs are not able to be recovered. Rep. Terry Hayes, member of the State and Local Government Committee, expressed her interest in having a public policy discussion within the Legislature focused on the difference between access and ownership.

The meeting adjourned at 11: 37 a.m.

Respectfully submitted by Peggy Reinsch and Colleen McCarthy Reid, Right to Know Advisory Committee staff