

**Committee to Study Compliance with Maine's
Freedom of Access laws**

Summary of November 19 Meeting

Room 438 State House

Augusta, Maine

Members attending:

Senator Peggy Rotundo, chair
Representative Ted Koffman, chair
Robert Schwartz
Todd Brackett
Richard Flewelling
Mal Leary
Steve McCausland

Linda Pistner
Judy Meyer
Chris Spruce
Elizabeth Prata
Dale Douglass
Jeff Ham

The chairs called the meeting to order. After introductions, Peggy Reinsch, OPLA legislative analyst, presented a summary of the freedom of access laws and exceptions to the freedom of access laws. The information presented included a compilation of public records confidentiality laws, a report (prepared by law firm Preti, Flaherty, Beliveau, Pachios & Haley, LLC) on Maine's "Right-To-Know" Law, and summary of the laws.

Charles Leadbetter from the Attorney General's office presented information on confidentiality guidelines referenced in the Criminal History Record Information Act. Mr. Leadbetter explained that there are 2 categories of information that the Act addresses: criminal history record information, and intelligence and investigative information. These 2 categories of information are mutually exclusive. Within the category of criminal history record information, there are 2 groups of information: conviction data and non-conviction data. Mr. Leadbetter provided a copy of the statutes under Title 16 MRSA, sections 611 through 623, which specifically address each type of data and their confidentiality requirements.

Speaking on behalf of the Maine Freedom of Information Coalition, Judy Meyer provided summary information on the "Report on Public Records Audit" prepared by the Maine Freedom of Information Coalition in November 2002. Ms. Meyer noted that a key reason for taking on this project was to raise awareness about compliance problems among legislators. She provided a handout to the committee outlining the protocol for the survey. This protocol is based on protocols used by other states that have conducted similar compliance surveys. Problems revealed by the audit included an inconsistent application of the laws and general confusion about the laws. The report indicated that there were abuses from both records requestors and the entity that was requested to provide the records. Ms. Meyer reviewed the 3 primary recommendations from the report: the legislature must address reproduction costs – what is fair and reasonable; MMA, MSMA, and ME Chiefs of Police Association must make greater efforts to provide training to members, written policies should be adopted by all public entities to ensure compliance.

Robert Schwartz, representing the Maine Police Chief's Association, presented a model policy that was prepared for law enforcement agencies to use in determining what records are confidential and what records are open to the public. Mr. Schwartz suggested that dispatchers, for example, should not be the responsible party for fulfilling records requests. There are other more appropriate individuals in agencies to take care of requests.

Dale Douglass, representing Maine School Management Association (MSMA), opined that the record requests made of the 3 different organizations (schools, towns, and municipalities) were not equal. The auditors requested expense reports from schools, which about 50% of schools do not keep. He explained that, while there are issues that need to be addressed, the problem may not be as bad as the data suggests.

Richard Flewelling, representing Maine Municipal Association (MMA), responded to one finding in the report, which noted that many municipal officials asked for a reason for the request. Mr. Flewelling commented that many communities do not keep the information requested, and the questions were intended to help clarify what specific information the requestor wanted.

Senator Rotundo asked committee members to share ideas about what issues should be addressed through this committee. The following suggestions were made:

- Move all exceptions to one section in statute in order to make it more user-friendly
- Before consolidating the exceptions, the obsolete exceptions should be removed.
- Address whether e-mail addresses held by a public body should be open to the public
- Clarify whether Maine's tribes should be exempted from the freedom of access laws. The Judiciary committee is looking for guidance on LD 1525, which addresses this issue.
- Look at response time for complying with requests – 5 working days may not be enough time
- Examine certain exemptions for information contained in reports that may reveal business information such as reports to the Maine Forest Service on harvest volumes.
- Consider adding a requirement that the body declining the request must be able to cite where in statute the exception is located.
- Deal with executive session abuse – there should be a precise rationale for calling an executive session while also preserving the confidentiality of the individual who is the subject of the session
- Attorney's fees should be recoverable. This should also apply to public bodies that must defend their actions.
- In determining fair reproduction fees, staff time should be considered.
- Clarify under what conditions public notice is required
- Consider the issues related to dissemination of information through various technologies such as legislative roll calls.
- Consider that there are different types of requests, some requiring more staff time and resources than others.
- When examining the exceptions, the committee should keep in mind that the inclusion of each exception was a policy decision by the legislature.

Senator Rotundo asked staff to draft a letter to the Legislative Council requesting an extension to mid-January. The goal is for the committee to complete its work in early January.

A committee member suggested that the next meeting include presentations from MMA, MSMA, and Maine Chiefs of Police Association on what is currently happening with training and education, and what can be done to improve it.

Linda Pistner, representing the Attorney General's Office, suggested that it might make sense to recommend a process for evaluating each exception. For example, the committee could recommend that each joint standing committee of jurisdiction evaluate certain exceptions by adding a sunset date. Members discussed the fact that committees are likely to have limited to go through this process. A question arose about how many exceptions are being added each year. Peggy Reinsch explained that 20 exceptions were added in the last 6 months.

The committee discussed what information and concerns should it consider as it moves forward. Members made the following suggestions:

- Get information on private sector copying costs. Costs should also reflect how much staff time is needed to fulfill these requests, not just the cost of the paper and ink.
- How many requests are being made of municipalities, school districts, and police departments, and how many of these require significant staff to time to research.
- What's going on in other states with respect to sunshine laws and exceptions.
- The definition of "public record" should be clarified to address voice mail. This is a concern of municipal officials.

Senator Rotundo expressed her intent to complete recommendations and legislation by early January. The purpose of this goal is to allow the Legislature to start work on it immediately since the Legislature intends to adjourn in early April.

Chris Spruce, representing the public, made a suggestion for structuring the next 3 meetings. The second meeting could focus on costs of records and compliance training/policies for record requests. The third meeting might be used to look at all the exceptions and any issues with respect to open meetings. The last meeting might be set aside for developing possible legislation and finalizing committee recommendations.

Senator Rotundo asked members if there was interest in establishing a subcommittee to examine and make recommendations regarding all the exceptions. The committee discussed how to create a process to evaluate such a large number of exceptions. A suggestion was made to apply a test for determining whether a sunset clause should be added. If, for example, the exception should be permanently protected, no sunset clause would be added. The committee unanimously voted to create a subcommittee for this purpose. Subcommittee members will be Jeff Ham, Judy Meyer, Steve McCausland, Linda Pistner, Harry Pringle, and Chris Spruce. Todd Brackett said he may be able to participate. The subcommittee was tasked with looking at the exceptions, then making recommendations on removing exceptions that are not needed and determining which exceptions should be forever shielded. Finally, the subcommittee should make recommendations on creating a document that will help users understand the exceptions.

Mal Leary, representing the Maine Freedom of Information Coalition, noted that other states have an office to answer questions for the general public, but Maine has no such office. It might be useful to see what other states are doing. Linda Pistner confirmed that the Attorney General's office serves this function for state agencies, but not for the general public or municipalities. Ms. Pistner agreed to collect information on what requests are being made of state agencies.

The next meeting date and time were set for Wednesday, December 10th @ 1:30 – State House room 438. The third meeting was set for Wednesday, December 17th @ 1:30 – State House room 438. The committee decided to wait until a later meeting to set a date and time for the fourth meeting. The subcommittee will meet on Wednesday, December 3rd @ 1:30 – OPLA conference room.

The possibility of holding a public hearing was discussed. It was suggested that it may make sense to wait until the committee has a proposal to respond to before inviting further public input. It was noted that there was a press release announcing these meetings, and anyone can e-mail OPLA staff through the web site with their comments.

The meeting was adjourned.