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Right to Know Advisory Committee
Legislative Subcommittee
October 6, 2008
(Draft) Meeting Summary

Present:
Chris Spruce, Chair
Shenna Bellows
Suzanne Goucher
Mal Leary
Linda Pistner
Harry Pringle

Absent:
Karla Black

Staff:
Peggy Reinsch

Subcommittee Chair Chris Spruce convened the Legislative Subcommittee and provided an overview of the planned agenda.

Existing Public Records Exceptions - Judicial Branch

Supreme Judicial Court Associate Justice Andrew Mead quickly listed the specific public records exceptions and the conclusions that each exception was important to preserve. He then described the Judicial Branch's approach to reviewing and making recommendations with regard to each provision. He mentioned that this was an endeavor that had not been on the Judicial Branch's agenda, but that issues involving public records were reviewed by Task Force on Electronic Court Record Access (TECRA), and the Court Records Retention Committee. The Court Records Committee, which Justice Mead chairs, reviewed the current exceptions individually and then the group caucused and shared their thoughts. Justice Mead drafted the initial responses, which the committee reviewed. The finalized responses were provided to State Court Administrator Ted Glessner to transmit to the Right to Know Advisory Committee. Justice Mead explained that there was input from the ground level people who deal with these records, which was then reviewed by the policymakers of the Judicial Branch.

Mal Leary emphasized the criterion that public records exceptions be as narrowly tailored as possible, and asked specifically about the fairly new provisions governing information about jurors. Justice Mead explained concerns that jurors had about parties, especially criminal defendants, finding out who they were. Jurors were happy to be referred to as "Juror 17" rather than by name. Although the legislation that was submitted was initiated by a legislator, the Judicial Branch supports changes that clarified the law and protected jurors. The Superior Court issued a standing order addressing limited access to juror information. Consistent with the statute, this order establishes the process by which an attorney or an unrepresented party may request and receive certain information about jurors. The statute also authorizes the court to exercise judgment in releasing the names of the jurors pursuant to a request for that information. The criterion for release is whether it is in the interest of justice. (Justice Mead noted that the Maine Heritage Policy Center's website allows access to the names of jurors who received payment from the State for their jury service, although it does not indicate on which jury they served. See www.MaineOpenGov.org) Justice Mead indicated that the statute could be drafted more narrowly, but then the flexibility to allow release of information to responsible people would be lost.

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Suzanne Goucher inquired about the frequency in which juror information is sought and how often denied. Justice Mead did not have that information available but agreed to collect it and make the statistics available. He personally has not heard of any denials, and he works closely with the staff in the Penobscot County Superior Court.

Linda Pistner asked about the legal advice clerks receive in determining which records need to be reviewed and what information must be redacted (e.g., Social Security numbers redacted from divorce filings). Justice Mead said that the clerks go to the presiding judge with their questions, and that the trial court chiefs (the Chief Judge of the District Court and the Chief Justice of the Superior Court) would rule on questions of broader application.

Requests the courts typically get for data are from “data miners,” Justice Mead said, but the requests get turned down because the courts do not have the technology to carry out the requested “data dumps.” Private investigators often seek information, but the court requires the people looking for information to go to the court for the information. Clerks delete the Social Security numbers, victim addresses, etc., then let the requester review and make copies of the redacted documents. This can create a tremendous burden on the clerks. It leaves the courts in a very unsatisfactory position with regard to privacy, but the Judicial Branch is stuck, Justice Mead said, because the lack of resources prevents the courts from addressing access.

Justice Mead agreed with Ms. Pistner that the old files, the “legacy files,” are the most problematic. He also emphasized that a person’s date of birth is more valuable in identity theft than Social Security numbers. This led to a discussion on the need for the courts to collect Social Security numbers in divorces. SSNs are collected mostly for support reasons, but it would be difficult to screen out cases in which no such issues could be raised. Justice Mead believes the courts are actually coming to grips with handling SSNs.

Harry Pringle said he didn’t see the need to change any of the statutes the Judicial Branch covered, and made a motion to accept those without change. Mr. Leary objected to the laws dealing with juror information, and asked for additional time to think about whether the balance had been struck appropriately. Mr. Pringle revised his motion to exclude the juror information statutes. Ms. Goucher seconded the motion, and asked Justice Mead to provide information about the Judicial Branch’s experience with requests for juror information. Shenna Bellows asked about demographic data on jurors. She also raised the question of whether jurors are agents of the government when they carry out their responsibilities, and therefore, should they be treated as such? Justice Mead added that the courts need to be seen as a public agency holding private records. Just because Kirstie Alley’s divorce started in Maine, should her financial records that are part of the file here be public?

The Subcommittee voted to accept without change all the sections reported by the Judicial Branch, exception the juror provisions (32, 33 and 34). (See list at end of summary.)

At Ms. Bellows request, Justice Mead will provide a copy of the jury questionnaire.

Existing Public Records Exceptions - Teacher confidentiality

The subcommittee had before it draft legislation to address both the conflict between State (public) criminal history record information and FBI, fingerprint-based (confidential) criminal history record information. There was significant discussion about the meaning of the existing

law when enacted over a two year span, and whether information that is public can be maintained as confidential by a state agency. The intersection with the federal regulations governing information obtained from the fingerprint-based requests makes the resolution difficult. Ms. Bellows expressed concern about persons having to deal with incorrect criminal history information within confidential files, and then the added burden of having that false information released to the public. Mr. Leary indicated that the concern, though valid, does not really affect the questions presented; if the State has bad information, any one can get it. (20-A, section 6103, subsection 8 provides procedures for a teacher to address criminal history information about that person that he or she believes is incorrect.) Mr. Pringle asserted that it does not make sense to make public records confidential in other state agency hands.

Shawn Keenan, Legal Counsel for the Maine Education Association, was asked to share his thoughts. He noted that state data can be different coming from the FBI if the FBI report is based on fingerprints. Mix-ups don't happen with fingerprinting as they can with name and date-of-birth records. He said the Department of Education cannot separate Maine information from the FBI reports received by the Department, and that the FBI information may contain more than conviction data (which is public in Maine). He also mentioned that DOE's rules allow mere evidence that a person has injured a child to be used to suspend, etc. Mr. Keenan said there are many reasons for disciplinary actions, not just old criminal convictions. Ms. Bellows queried whether a person whose credentials have been denied may release the reasons for that denial. Mr. Keenan said that the Department releases that information to the person, but he, as counsel, recommends that the person doesn't release it to the public. The subcommittee did not reach consensus on whether the reasons should be released, and decided to ask both the Department of Education and the Maine Education Association for their positions and thinking on the release of such information. That information should be received by the subcommittee prior to the November 13th subcommittee meeting. The Subcommittee agreed to send the draft to the Advisory Committee, and will not expect any discussion at the subcommittee meeting.

Existing Public Records Exceptions - Marine Resources

At the September 10th meeting, David Etnier and Samantha Horn-Olsen from the Department of Marine Resources explained the public records exceptions found in the marine resources laws. They included proposed changes in a few of the sections. Mr. Spruce at that time expressed the need to make statutes as consistent as possible, and suggested that exceptions for "confidential business record information" be replaced with the term "proprietary business information" that is used elsewhere in the statutes. Staff distributed a draft proposal that included both the DMR recommendations and Mr. Spruce's recommendations. Ms. Horn-Olsen was present and corrected the drafting to ensure that the DMR can provide copies of complete aquaculture reports to the affected municipalities, even though some of the information is business proprietary information and cannot be disseminated any further. The subcommittee voted 5-1 to accept the changes as draft and corrected. (Ms. Bellows did not agree that there is a conflict between trade secrets and information for the public, from a public policy perspective, and voted against the motion to accept without change.) (See list at end of Summary.)

Existing Public Records Exceptions - Title 21-A (voting records)

At the September 10th meeting, Julie Flynn and Nicole Ladner from the Office of the Secretary of State explained the public records exceptions related to voting information. No changes were proposed, although the Secretary of State will be submitting a report in March 2009 to the Legal

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Affairs Committee about the confidentiality provisions concerning the central voter registration database. Ms. Flynn agreed to provide the Right to Know Advisory Committee a copy of that report once it is submitted. The subcommittee voted unanimously to accept the Title 21-A provisions without changes. (See list at end of Summary.)

Minutes/records of meetings of public bodies

Advisory Committee member Judy Meyer raised the issue about whether public bodies are required to take minutes or make records of proceedings. If they are not required to do so, should they be? At earlier meetings, the subcommittee discussed the issue without reaching any conclusion. Rather than dropping the question, the subcommittee voted to add it as a project for the new Law School extern. The project should include a description of the law, where the law or practice is a problem and a comparison with at least some other states. Ms. Goucher mentioned that there is a raging debate about when minutes/meeting records become a public record: the instant written? Not until adopted, so drafts are not public? Some states have three-day waiting periods.

The meeting adjourned at 3:12 p.m.

Public Records Exceptions - actions taken

Judicial Branch

- #31 on chart Title 14, §164-A, sub-§3, relating to the Maine Assistance Program for Lawyers - accepted without change
- #35 on chart: Title 15, §101-C, sub-§3, relating to records necessary to conduct an evaluation concerning mental responsibility for criminal conduct - accepted without change
- #38 on chart: Title 15, §3301, sub-§6-A, relating to information about a juvenile against whom a juvenile petition has not been filed - accepted without change
- #39 on chart: Title 15, § 3308, sub-§7, relating to juvenile proceedings - accepted without change
- #49 on chart: 19-A MRSA §908, relating to Social Security Numbers on divorce records - accepted without change
- #51 on chart: 19-A MRSA §1653, sub-§6, relating to addresses of children and victims in cases concerning parental rights and responsibilities involving domestic abuse - accepted without change
- #51.1 on chart: 19-A MRSA §1753, sub-§5, relating to identifying information under the Child Custody Jurisdiction and Enforcement Act if health, safety or liberty of a party of child would be jeopardized by disclosure - accepted without change (previously accepted 7/30/08)
- #55.1 on chart: 19-A MRSA §4008, relating to identifying information under the Protection from Abuse statutes if health, safety or liberty of a party or child would be jeopardized by disclosure - accepted without change (previously accepted 7/30/08)

Marine Resources

- #14 on chart: 12 MRSA §6072, sub-§10 relating to aquaculture lease seeding and harvesting reports - Amend (vote 5-1)
- #15 on chart: 12 MRSA §6072-A, sub-§17-A, relating to aquaculture leasing research and development - Amend (vote 5-1)
- #16 on chart: Title 12, §6077, sub-§ 4, relating to the aquaculture monitoring program - Amend (vote 5-1)
- #17 on chart: Title 12, §6078-A, sub-§1, relating to the Aquaculture Monitoring, Research and Development Fund concerning harvest information from leaseholders - Amend (voted 5-1)

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Secretary of State

- #72 on chart: Title 21-A, §22, sub-§2, relating to ballots - accepted without change
- #73 on chart: Title 21-A, §22, sub-§3, ¶A, relating to records pertaining to a voter certified as a participant in the Address Confidentiality Program - accepted without change
- #74 on chart: Title 21-A, §22, sub-§3, ¶B, relating to residence and mailing address of a voter when voter submits statement to registrar stating good reason to believe physical safety jeopardized - accepted without change
- #75 on chart: Title 21-A, §22, sub-§§5 and 6, relating to registered voter applications - accepted without change
- #76 on chart: Title 21-A, section 196, first ¶, relating to information contained electronically in the central voter registration system - accepted without change
- #76-A on chart: Title 21-A, §624, sub-§1, relating to that portion of the voter list relating to the Address Confidentiality Program participants - accepted without change
- #77 on chart: Title 21-A, §737-A, sub-§7, relating to disputed ballots - accepted without change
- #78 on chart: Title 21-A, §764, relating to applications and envelopes for absentee ballots - accepted without change

Future meetings:

- ◆ Legislative Subcommittee, November 13, 2008 at 1p.m.
- ◆ Education and Training Subcommittee, November 17, 2008 at 11:30 a.m.
- ◆ Full Advisory Committee, November 17, 2008, 12:00 noon

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

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