

Right to Know Advisory Committee
Legislative Subcommittee
November 3, 2006
(Draft) Meeting Summary

Room 438, State House, Augusta

Present:

Chris Spruce, Chair
Shenna Bellows
Suzanne Goucher
Mal Leary
Linda Pistner

Absent:

Karla Black

Staff:

Colleen McCarthy Reid
Peggy Reinsch

The Subcommittee members reviewed the responsibilities assigned to the Subcommittee, and discussed each one separately.

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released;

The Subcommittee agreed to bring forward any problems in statutory wording. The eventual goal is to have standardized language that will result in clear understanding by all, both custodians and members of the public, with regard to whether a record is accessible.

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

The Subcommittee began by looking at the recommendations from the previous study committees on Freedom of Access issues, and decided whether to again support proposals that have not yet been put into place.

- Freedom of Access Ombudsman: The Subcommittee agreed there is a need for a Freedom of Access Ombudsman. Similar positions take different forms in other

states, such as Connecticut, Florida, Virginia, and Indiana. The Subcommittee agreed to at least start with the idea that the Ombudsman would be located in the Attorney General's office, and agreed to work with the Attorney General to come up with a budget. Ms. Pistner thought that half a position may be sufficient. The jurisdiction and authority of the Ombudsman was discussed. The idea that the Ombudsman would issue advisory opinions was supported. Ms. Pistner's office will provide numbers.

- The Subcommittee agreed to propose to the Right to Know Advisory Committee that legislative recommendations be submitted that create and fund the Freedom of Access Ombudsman.
- Training and support: The Training and Education Subcommittee did not support mandatory training for elected officials at their meeting on October 26th. This Subcommittee agreed that narrowly tailored training requirements should be supported. The requirement would apply to elected officials only (as in Texas). The training would consist of working through the information posted on the State's FOA website, with perhaps some additional specifics directed at elected officials and their responsibilities. Once the elected official has completed the review, he or she would send an e-mail to the State FOA website to indicate completion, and that completion information would be public information. Some details need to be worked out, but a low level of complexity should be maintained. The Help America Vote Act has placed a computer terminal in each municipality, so access to training should not be a problem. The great majority of elected officials is very conscientious and they want to do the right thing. No penalty should be imposed.

The Subcommittee agreed to ask the AG to look at whether such a requirement that applies to elected officials would be a mandate.

- The Subcommittee agreed, hopefully in concert with the Training and Education Subcommittee, to propose to the Right to Know Advisory Committee that legislative recommendations be submitted that require all elected officials to complete basic FOA training within a certain time of taking office.
- E-mail and digitizing Archives: The Subcommittee agreed to continue monitoring the Secretary of State's project.
- Consequences for violations: The Subcommittee talked about higher penalties and attorneys fees, but agreed that the violations should not be criminalized. The most egregious – the intentional withholding of records when the custodian knows they are public – should have significant consequences. Current law imposes a \$500 fine on the entity that violates the FOA laws. Advisory opinions issued by the Ombudsman may help resolve problems before litigation. The Connecticut Ombudsman can sue to enforce the law.

The Subcommittee agreed to review what other states are doing, how they approach compliance and enforcement. The Subcommittee recognizes that the Compliance and Resources Subcommittee will be working on this issue as well.

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;

The Subcommittee discussed the two parts of the public records exception review process: existing, on the schedule as established in statute; and proposed, as bills a ready to be reported out of committee during the Legislative Session.

- Review of existing exceptions: The first set of recommendations is due January 2008, so the “heavy lifting” must begin in July 2007. The Subcommittee agreed that using law student interns would be a very good way to obtain the background information (at least the legislative history) and set the stage for the Advisory Committee’s work, via this subcommittee, on whether to retain, amend or delete each exception. Ms. Pistner agreed to draft an outline of the work the Subcommittee would like the law student interns to do, and she will also draw up a first draft of the survey that will go out to the agencies that administer the exceptions.
- Review of proposed exceptions: The Subcommittee agreed that it needs to develop the process to review proposed exceptions. That might best be worked out with the Judiciary Committee. Timing can be a difficulty, depending upon when the review is required during the Legislative Session.

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

The Subcommittee agreed that the process to help the Judiciary Committee, and any other committees of the Legislature, will have to be worked out. Bill titles will be available soon after Cloture, but more information will be needed before one can determine whether a bill will affect public access issues.

The Subcommittee will request that the first hour (9:00 a.m. to 10:00 a.m.) of the time set aside for the Advisory Committee to meet on Monday, November 13th be reserved for subcommittees to continue their work before convening the Advisory Committee as a whole.

Prepared by Peggy Reinsch 11/4/06

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