



HARRY HUGHES
GOVERNOR

813093

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION



ARTHUR S. DREA, JR.
CHAIRMAN

July 1, 1981

OFFICIAL AND FINAL COPY

MINUTES OF THE GOVERNOR'S INFORMATION PRACTICES COMMISSION-JUNE 22, 1981

The meeting of the Governor's Information Practices Commission was held on June 22, 1981. Members in attendance were: Mr. John Clinton, Acting Chairman, Mr. Judson P. Garrett, Senator Timothy Hickman, and Delegate Nancy Kopp.

The first part of the meeting was devoted to bringing Mr. Garrett, newly appointed to the Commission, up to date on recent activities.

The meeting of the Commission held at the Motor Vehicle Administration (MVA) in Glen Burnie was reviewed. Mr. Dennis Hanratty noted that a copy of the minutes provided by MVA and a copy of the minutes taken by the Commission staff had been sent to Commission members. After discussion, it was decided that a letter would be sent to MVA summarizing the points that were made in the meeting along with a copy of the Commission's version of the minutes.

Mr. Hanratty explained that after draft reports had been discussed among Commission members, they were being sent to the appropriate state agency. The reports have been accompanied by a letter requesting that any inaccuracies be corrected. Mr. Hanratty stated that to date he has received a response only from the Department of Education. Commission members decided that a more explicit letter should accompany the reports, stating that the Commission assumes there are no inaccuracies unless a response is received by a specified date.

Mr. Hanratty returned to the discussion of the meeting with MVA and expressed his

feeling that MVA had virtually conceded all of the points made in the report. In addition, he thought that a few other issues came to light that had not been discussed in the report. One of these, Mr. Hanratty noted, was the fact that Medical Advisory Board records turned over to the courts became the temporary property of the courts and are treated as public information. Discussion followed on other aspects of the meeting, including the following:

- 1) The expungement policy of MVA.
- 2) The practice of MVA in selling lists.
- 3) The lack of notification to individuals regarding the right to be removed from such lists.
- 4) The absence of a security risk analysis.
- 5) The lack of security at court terminals handling MVA records.

Delegate Kopp asked if any of the draft reports had been adjusted. Mr. Hanratty stated that they had not. He explained the process that he has used to gather information and compile it into reports. Any changes, he stated, will be incorporated into the final report.

Mr. Hanratty noted that he had found that federal information practices requirements imposed on state agencies are quite varied. For example, the Department of Human Resources operates under strict federal requirements prohibiting disclosure but limited regulations governing access to the person in interest. The Department of Education, on the other hand, is affected by detailed federal regulations pertaining to access. Discussion followed regarding whether federal regulations relating to state human services record-keeping practices were intended to limit access to the person in interest or whether they were just silent on the subject. The question was raised whether the Commission had the authority to expand upon federal regulations. Mr. Garrett thought the original intention of the federal government was to limit the ability of the person in interest to examine human service records. Mr. Hanratty concluded that unless a specific information practice issue is covered by federal regulation, the larger state agencies do not seem to have a policy one way or the

other.

Mr. Garrett asked about the stamp, "Working Papers-Not for Public Dissemination", used to mark draft reports. He felt that such a practice was not in keeping with the Public Information Act and that it would be difficult to deny access if someone requested a copy of a report. In discussion, it became evident that the meaning of the stamp was not to deny access to any reports but to insure that the reports were not disseminated to the public until they were determined to be factually accurate. Commission members agreed that this stamp should be modified to read "Working Papers-Subject to Revision."

Senator Hickman expressed the concern that the Commission has not yet asked agencies for a catalog of information systems or shown them a model draft of a privacy act. He felt that agency reactions would be essential before the Commission considers drafting an omnibus act. He also felt that their reactions would be vital in assisting the decision of the Commission in deciding whether to recommend an omnibus act or to suggest legislation in specific areas. Mr. Hanratty replied that in his informal discussions with agency officials, he had encountered objections to only two of the "Issues Regarding Privacy" contained in the Commission's Interim Report: disclosure logs and the catalog of record systems. The fear of most agencies, he explained, is that such measures would cause enormous paperwork requirements without producing concomitant benefits. Mr. Garrett suggested that part of the burden that agencies may anticipate is really already there, since by statute, records retention schedules are presently required from each agency. Mr. Hanratty observed however, that the information contained in these schedules is limited and not as extensive as would be required for a catalog of record systems.

Mr. Clinton asked Mr. Hanratty for his thoughts regarding the usefulness of a catalog of record systems. Mr. Hanratty stated that he had not yet formed a definite opinion on the subject. Recalling the testimony of the two representatives of the Office of Management and Budget at the Commission's April 27, 1981 meeting, he noted that the federal experience indicated that few members of the public referred to the

records system catalogs found in the Federal Register when requesting materials. Thus, it might be possible to dispense with the publication requirement. He felt that the catalog itself is a good practice for agencies as a management tool in making officials sit down and acknowledge records that they are keeping. The catalog would also be helpful, Mr. Hanratty suggested, if there were an overseeing body in charge of information practices.

Regarding Senator Hickman's point about the Commission obtaining a catalog of record systems from the various agencies, Mr. Hanratty noted that to a certain extent the draft reports themselves provide such a catalog. He added, however, that there have been significant variations in agency responses. Some agencies have provided an extensive breakdown of their record systems, while others have lumped various systems together by division.

Discussion followed concerning those agencies that have not been reviewed by the Commission. The lack of response of the Department of Health and Mental Hygiene was brought up. Delegate Kopp and Mr. Garrett offered to speak with Secretary Charles Buck about the overdue input from the Department. Mr. Hanratty explained that considerable difficulty had also been encountered in obtaining copies of forms available to private collection agents at the University of Maryland Hospital.

Mr. Clinton opened discussion of the Regional Planning Council Report. Mr. Hanratty said that the Regional Planning Council has only one program-related record system-that pertaining to participants in the Section 8 housing program. Data pertaining to this program is forwarded to the Council from the individual counties. The Council noted that any requests for access or disclosure are referred to the county where the original form is kept. Mr. Garrett asked if such a practice was compatible with the Public Information Act. Mr. Hanratty replied that that was probably not the case, since the Council becomes a de facto custodian of the information. The Regional Planning Council told Mr. Hanratty that they have never had any requests from third parties not authorized to examine the data.

Discussion then turned to the subject of the Public Information Act. Mr. Garrett asked if the Commission was asking for procedures or policies that agencies have drawn up to implement the Public Information Act. Mr. Hanratty replied that a model regulation had been designed by the Attorney General's Office and was being used by many agencies. Mr. Hanratty noted, however, that few agencies provided any specificity in these regulations in identifying how particular record systems are handled. Mr. Garrett felt that such practices do not constitute compliance with the requirements of the Act. Another issue mentioned by Mr. Garrett was the cost of copying charged under the Public Information Act. He stated that fees are often used to discourage applicants from obtaining public information. Mr. Hanratty recounted the case of Mr. Lee Hoshall who was quoted a fee by the Baltimore City Police Department of \$1,787 for 600 pages.

Returning to the Regional Planning Council report, Mr. Hanratty stated that the Section 8 regulations promulgated by the federal government appeared to contain no references to information practices. Thus, he thought that state and local agencies were free to develop appropriate procedures on their own. Mr. Garrett expressed the opinion that it was too much to expect Mr. Hanratty to find all federal regulations governing each agency. He suggested that the legal counsel for each agency be contacted and asked to provide these in writing. Delegate Kopp added that this should be done even if Mr. Hanratty researches the regulations himself.

The Commission then turned its attention to the draft report examining the record-keeping practices of the Maryland Automobile Insurance Fund (MAIF). Mr. Hanratty explained that the situation at MAIF illustrates a generic problem. Unless there is a section of the Code or a federal regulation stating that records are confidential or unless records are specifically excepted in the Public Information Act, then the data held by a state agency is public information. There are a number of systems, Mr. Hanratty asserted, that consequently fall between the cracks. In Mr. Hanratty's opinion, the Public Information Act mandates the disclosure of a considerable amount of personally identifiable data that is sensitive and should be confidential.

Mr. Garrett proposed that the most that could be done now would be to identify the systems that concern the Commission and see if they lend themselves to general classification. The Commission could then determine the most appropriate means to address this problem.

Discussion ensued on the type of data collected by MAIF and possible reasons justifying the public character of the data. Mr. Garrett suggested that perhaps MAIF data should be public to ensure that the agency is performing its functions in an appropriate manner. Mr. Hanratty disagreed, asserting that such an approach could also be used to require public inspection of other types of records, such as human services data.

Mr. Clinton asked about the security of the claims systems records. Mr. Hanratty replied that the response of MAIF indicated that there did not exist any general security provisions in the manual portion of the claims record system, where the most sensitive data is maintained.

Mr. Clinton referred to the statement in the report that the MAIF applicant is not aware of the public status of his records. Mr. Hanratty asserted that this is a problem in many agencies. Discussion followed on the right of a citizen to be informed about both the uses of the data he provides to the government and the confidential or non-confidential status assigned to that data.

The next meeting was scheduled for July 6, 1981.