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GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

August 6, 1981

OFFICIAL

Minutes - Governor's Information Practices Commission - Meeting of August 3, 1981

The meeting of the Governor's Information Practices Commission was held August 3, 1981 in the House Constitutional and Administrative Law Committee Room. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. Robin J. Zee, Mr. Wayne Heckrotte, Mr. Albert J. Gardner, Jr., Mr. Donald Tynes, Sr., Mr. John A. Clinton, and Senator Timothy R. Hickman.

The minutes from the meeting of July 6, 1981 were approved as official and the minutes of the meeting held on July 20, 1981 were distributed to Commission members.

Mr. Drea read a copy of the letter that was sent to Governor Hughes concerning the lack of cooperation the Commission has received from the Department of Health and Mental Hygiene. A copy of the letter was also sent to Mr. Charles R. Buck, Jr., Secretary of the Department. Mr. Drea noted that Ms. Beatrice Weitzel, the Department's liaison with the Commission, had indicated that a partial response would be sent to the Commission staff on Friday, July 31, but as of Monday, August 3, nothing had been received.

Mr. Drea discussed the problem that the staff had encountered with the University of Maryland. A survey was distributed to the University, he explained, requesting information on record-keeping practices. The replies were consolidated by the University and sent to the Commission. A sample reply was distributed to Commission members showing how responses had been grouped together. Mr. Drea pointed out that the consolidated replies were useless to the Commission staff. When the original responses were requested from the University, Mr. Drea added, the University replied that too much copying would be involved and that, in addition, some of the respondees were more candid than the University would have liked. A letter was sent to Dr. Brandt on July 13, 1981, requesting that the original responses be supplied to the Commission staff. As of August 3, 1981, no response had been received.

Discussion ensued on this issue. Mr. Zee and Mr. Tynes were asked to contact Dr. Brandt and bring this problem to his attention. (The materials requested have since been received by the Commission staff.)

Mr. Drea indicated that the schedule of the Commission needed to be reorganized. Seven reports remain to be discussed, Mr. Dennis Hanratty noted. Due to a lack of total responses from several agencies, completion of many of the reports had to be postponed. Because of this situation, it was decided that there would not be a meeting on August 17, 1981. The next meetings were scheduled for August 24, and August 31, 1981. There would not be a meeting on September 7, 1981.

The Addendum to the Human Resources Report was discussed by the Commission. Ms. Thea Cunningham explained that the Addendum concerned the record-keeping practices of the Maryland Energy Assistance Program, the Weatherization Program, the Training and Employment Office and the Bureau of Support Enforcement. All of these offices stated that the individual is allowed access to his records. The primary point of interest, Ms. Cunningham noted, is that several of the programs cited the Federal

Privacy Act as the governing authority for their collection or disclosure practices. As the Commission staff interpreted the Privacy Act, Ms. Cunningham added, it governs only records maintained by Federal agencies. A spokesman for the Department of Human Resources indicated that they had assumed that they were required to follow the provisions of the Privacy Act, since the program is federally funded. Ms. Cunningham stated that she had contacted the U.S. Department of Energy in Washington, D.C. which supplied the form used by the Weatherization Program. A spokesman for the Department of Energy stated that they had assumed that the Privacy Act governed the information practices of the states since the information was requested by a federal agency. The spokesman did not know where this requirement could be found in writing. Ms. Cunningham stated that she was unable to find anything in the Code of Federal Regulations concerning this requirement. These programs are covered, she added, by other federal requirements in the Code, as is the rest of the Department.

Mr. Drea suggested that the staff contact Mr. Dennis Sweeney and ask his advice on this issue. Mr. Hanratty noted that it seems as if the Department of Energy is requiring states to comply with the Federal Privacy Act when in fact they have no authority to do so. Mr. Heckrotte stated that perhaps the state is considered to be an agent of the federal agency. Mr. Hanratty responded that he found it curious that no other components of the Department of Human Resources, which are also funded by the federal government, cited the Privacy Act as regulating their activities.

The Commission then discussed the report examining the record-keeping practices of the Public Defender's Office. Ms. Cunningham explained that a great deal of personal information is collected on the applicant for appointed counsel. The Public Defender's Office stated that the client is allowed access to his file with the exception of psychiatric records. Mr. Drea asked how the passage of House Bill 1287 would affect this practice. Since hospitals are now required to supply the

individual with a summary of his psychiatric record, Mr. Drea noted, wouldn't this change the practice of the Public Defender's Office? The patient may not be able to obtain access to his psychiatric record in the Public Defender's Office, but he could then go to the facility and obtain a summary. Mr. Hanratty noted that the Public Defender's Office could send the individual directly to the facility. Mr. Drea suggested that it would be beneficial to find out if the Public Defender's Office was aware of the bill and its potential ramifications.

The final report discussed concerned the Department of Natural Resources. Mr. Hanratty noted that there were two areas that should be considered by the Commission: 1) the records of the Licensing and Consumer Services Section and 2) the personnel practices of the Natural Resources Police. The Licensing and Consumer Services Section, Mr. Hanratty explained, maintains approximately 900,000 records. The information contained in these records is, in many cases, confined to name, address and phone number. Other records, however, hold more extensive information such as birth date, age, height and eye color, length of residence in Maryland, and so forth. All of this information is disclosable under the Public Information Act, Mr. Hanratty noted. Licensees have no rights to prevent the dissemination of personal information and they are not notified concerning disclosures. The staff was informed by the Licensing and Consumer Services section that advertisers constitute the principal market for licensee computer lists. Advertisers are charged for computer time, paper, tapes and storage and 1¢ per page to cover expenses.

Mr. Hanratty compared the computer list contract used by the Department of Natural Resources with that used by the Motor Vehicle Administration (MVA). He noted that MVA's contract is much more restrictive. The purchaser must indicate the intended use of the information, restrictions are imposed on the reselling of information, recipients are prohibited from using the information for any mailing promoting the sale of real estate, insurance, involving sweepstakes or giveaways, and MVA can

prevent objectionable mailings. In addition, the individual may contact MVA and request that his name be deleted from the mailing list. These points are all absent in the Licensing and Consumer Services Contract.

Mr. Hanratty also pointed out that MVA may only sell lists if it approves of the purpose for which the list is to be used. There is no such statement in the regulations governing the Natural Resources Department. However, the legislature did impose a great amount of specificity in terms of information to be collected from licensees by the Licensing and Consumer Services Section.

Mr. Zee thought that both contracts were subject to the Attorney General's Office review and coordination. He noted that Mr. Hanratty would find similar variations between contracts when he examined the Department of Licensing and Regulation. Discussion ensued. The point was made that the Attorney General's Office determines the legal sufficiency of contracts and is not concerned with the content of the contract.

Senator Hickman stated that it had occurred to him that the Commission could make recommendations to the Governor that he deem certain things be done by his cabinet agencies. Also, some of these changes could be accomplished by Executive Order or gubernatorial policy. Mr. Drea added that he had envisioned that most of the Commission's recommendations would take the form of suggested adoption of regulations by departments. The minority of the recommendations would involve legislation. Senator Hickman noted that there could be an Executive Order for Privacy and then a law could be passed a couple of years later.

Mr. Hanratty brought up the issue of standardization on personnel forms. He felt that a need existed to standardize personnel forms used throughout the state. Mr. Zee indicated that he had written to the State Records Administrator and will

transmit a copy of the minutes highlighting this point.

Discussion turned to the personnel practices of the Natural Resources Police Force. Mr. Hanratty noted that some of the information requested from applicants by the Force was quite detailed:

- a. Marital Status: date of marriage/information on fiancée, who officiated, any separation/annulment/divorce and the reason
- b. Financial Status: property owned, insurance premiums, mortgage payments, amount owed to creditors
- c. Arrests: any detentions, tickets/parking violations of applicant or spouse
- d. Medical Data: anyone in the family tested for nervous or mental disorder.

Mr. Hanratty added that this information is verified through the use of a polygraph. He stated that this seemed to be in direct violation of Article 100, Section 95-B which states that agencies cannot require the applicant or employee to submit to a polygraph as a condition of employment or continued employment.

In discussion of this application form, it was noted that it seemed to be an attempt to outdo the Maryland State Police. Mr. Heckrotte noted that the National Security Agency background investigation form was not as detailed as the form used by the Natural Resources Police.

Mr. Tynes stated that the Department of Personnel had reviewed the form and found it unacceptable. Many of the questions asked were not felt to be job related. Furthermore, Mr. Tynes added, statistics on minorities and females in the Natural Resources Police Force suggest that the form may discriminate against women and minorities. Senator Hickman noted that a constituent had complained to him that he was told that one had to know someone in politics to be a Park Ranger.

Mr. Hanratty stated that he believed the application form to be internal to the Police Force and not a standard Departmental form.

Mr. Drea suggested that this form be discussed with the Department. Mr. Tynes was designated to contact the appropriate individual in the Department and inform him that this situation exists. In the discussion that followed, the point was made that the Commission would then have the option at the time of the final report of including or deleting the form. Mr. Hanratty felt that the form should be included in the final report and wondered how many applicants had been screened out in the past by the use of the form. Members expressed the feeling that 95% of the report would be ignored because of one sensational item. It was concluded that Mr. Tynes would contact Mr. Herbert Sachs, Director of Operations for the Department of Natural Resources, and that the Commission would decide whether to include this issue in the final report at a later date. Mr. Gardner noted that the objective should be to achieve a correction.

Mr. Drea noted that in his agency, Park Police applicants are informed that an FBI check will be done and fingerprints are taken. But detailed information to the extent requested by the Natural Resources Police Force was not required. Several Commission members expressed curiosity as to the types of information requested on the Maryland State Police Application Form.

Mr. Hanratty stated that another issue before the Commission concerned the directory type information (i.e. name, address, telephone number) collected by the various other sections of the Department of Natural Resources. Should this information continue to be disclosable under the Public Information Act or should restrictions be imposed on its dissemination? Mr. Hanratty thought that the Commission might consider the practice of local education agencies (LEAs) regarding directory information. Before releasing directory information, LEAs must inform parents at the

beginning of the school year of the categories of information considered to be directory in character. Parents then have a specified period of time by which to inform the schools that they object to the dissemination of directory information concerning their children. Mr. Heckrotte agreed with the principle behind this system, but expressed concern that it could be applied to other government agencies without incurring significant expenditures.

Senator Hickman informed Commission members that he was serving on a Joint Committee of the Legislature which was examining Senate Bill 1044 (Mental Health Information) from the previous session. He thought this issue might be of interest to the Commission. Mr. Drea noted that the Commission had thought the Bill had a number of worthwhile provisions which were not included in House Bill 1287. He asked Senator Hickman to keep the Commission informed, and stated that the issue could be discussed in the next month to six weeks. Mr. Hanratty added that Mr. Zee had notified the Commission that there would be a meeting of Senator Clark's Committee on Pensions August 12th dealing with Public Information Regulations.

The next meeting of the Commission was scheduled for August 24, 1981.