

STATE OF MARYLAND
EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN



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OFFICIAL

Governor's Information Practices Commission Meeting
Minutes from September 28, 1981.

The meeting of the Governor's Information Practices Commission was held on September 28, 1981. Members in attendance were: Mr. John Clinton, Mr. Wayne Heckrotte, Senator Hickman, Mr. Donald Tynes, and Mr. Robin Zee.

Commission members began with an examination of the draft report of the record keeping practices of the Comptroller's Office. The Commission determined that Mr. Dennis Hanratty would present the draft report and that Mr. Clinton would respond to the report on behalf of the Comptroller's Office. Mr. Clinton indicated that he had obtained reactions to the report from the various divisions and was also able to provide supplementary information for those sections of the draft report where the staff indicated some uncertainty about agency policies.

Mr. Hanratty felt that it would be useful for Commission members to take a close look at the Combined Registration Application form. The application form is significant, Mr. Hanratty stated, in that it is used to determine liability for any of the following taxes: Income Withholding, Retail Sales, Motor Fuels, Alcohol, Tobacco, Admissions/Amusements, and Unemployment Insurance. All applicants provide responses to the first eleven questions on the form while other sections are relevant only to specific applicants. Therefore, Mr. Hanratty noted,

every division of the Comptroller's Office maintaining personally identifiable data would appear to have, at a minimum, the following information: name of individual or corporation, address, telephone number, federal identification number or social security number, location of the records, type of ownership, nature of business activity, and names, titles, home addresses and social security numbers for all owners, partners, corporation officers or trustees.

Turning his attention to the records of the Retail Sales Tax Division, Mr. Hanratty suggested that the most significant issue from the perspective of the Information Practices Commission involves the disclosure of Combined Registration application form data. Mr. Hanratty observed that Article 81, Section 366 prevents the Comptroller or his employees from disclosing "...the amount of sales, the amount of tax paid or any other particulars set forth in any return..." of the Retail Sales Tax Division. Mr. Hanratty stated that the Assistant Attorney General assigned to the Retail Sales Tax Division had interpreted this statute in a narrow manner and had determined that the Division could only restrict that data which actually appeared on returns. Therefore, any information appearing on the application form was disclosable. Mr. Clinton agreed to check this comment with the Division.

Mr. Hanratty then discussed the record-keeping practices of the Income Tax Division. He suggested that the two most important areas to discuss involved disclosure of records and security of personally identifiable data. Mr. Hanratty began by noting Article 81, Section 300, which states that the Division cannot disclose "...the amount of income or any particulars set forth or disclosed in any return under this subtitle." The section also prohibits, Mr. Hanratty noted, disclosure of any federal tax return information.

Mr. Hanratty pointed to subsection (b) of Article 81, Section 300, which allows the release of income tax data to other states and to the federal government. Mr. Hanratty noted that Maryland has tax-sharing agreements with other states and with the Internal Revenue Service (IRS) and observed that these

agreements were discussed in the report. Mr. Hanratty felt that the agreement with IRS was particularly noteworthy as IRS has imposed strict requirements on the Comptroller's Office regarding the release of personal data.

Discussion ensued regarding the security of tax records. Mr. Hanratty noted that records are protected by an ACF-2 security system and that the Income Tax Division had taken such steps as adding a building security force, developing a security manual, establishing a remote facility for securing critical files, and installing a fire protection system. He also noted that the draft report contained a considerable amount of discussion about the various security measures required by the federal government as a precondition to reviewing federal tax data. Mr. Hanratty noted that federal inspectors had been very pleased with the results of their annual security audit.

Mr. Clinton supplemented Mr. Hanratty's presentation on security by providing the following statement to the Commission:

"(1) Regarding Security Risk Analysis: In 1978, the Annapolis and Baltimore Data Centers were the subject of the most extensive security risk analysis of any State data center. The analysis was conducted by Computer Resource Controls, Rockville, Maryland.

As part of this analysis of the ADC and BCD, specific security suggestions were given for the various divisions of the Comptroller's Office. These suggestions have resulted in tighter security in all divisions.

In addition to the 1978 study, other steps have been taken:

a. In 1980 the Executive Protection Division of the State Police conducted a survey of the physical security of the Income Tax and Treasury Buildings. This led to the installation of the halon fire protection system (p.9 - Draft Report) as well as increased security control over the tunnel connecting the two buildings.

b. An internal auditor in General Accounting Division(GAD) has also done a risk analysis of the financial systems in all of the Comptroller's divisions.

2. Regarding Storage of Backup Data: A (Department of General Services) DGS warehouse is used as a storage site for critical data held by ADC and BDC. Each user agency identifies the material to be kept on backup. (Department of Human Resources) DHR and (Department of Health and Mental Hygiene) DHMH store their backup material at their own locations."

Mr. Hanratty felt that there was really little difference between the manner in which Individual Income Tax Returns Data was handled, and the handling of Corporation Tax Returns and Estimated Tax Returns; therefore, he did not believe that the Commission needed to take a look at these latter two systems. However, he did believe that the Commission should examine the Employer Withholding Account Application record system, since the data for this system comes from the Combined Registration Application form. Mr. Hanratty expressed some concern as to whether this record system was confidential under Article 81, Section 300. He noted that while the Income Tax Division doesn't disclose this information, it appeared to him that this might not be in accordance with current statute; in Mr. Hanratty's opinion, the statute covers only that data appearing on income tax returns, and not all information of the Income Tax Division.

Mr. Clinton responded by issuing the following statement:

"The Income Tax Division - upon the advice of a long line of Assistant Attorneys General - has always interpreted the work "returns" broadly to include any return/exchange of information from the taxpayer. This includes estimated payments, forms, correspondence, withholding, account applications and anything else received from the taxpayer. The Assistant Director of the Income Tax Division said to me when we discussed this portion of the draft report: " In the final analysis, the purpose of Article 81, Section 300 is to protect the rights and privacy of the taxpayer." Income Tax information (in any form - not simply that supplied on the 502 return) is very personal and due that protection. The Income Tax Division will continue to provide that protection until it is required to change as a result of legislative action."

The Commission then moved to a discussion of the Alcohol and Tobacco Tax Division. Mr. Hanratty thought that the Commission should examine the disclosure of these records. He noted that there does not exist any statute which states that tax records of the Alcohol and Tobacco Tax Division are confidential. However, Mr. Hanratty also commented that Division tax records had been classified as confidential by a 1959 Attorney General's Opinion. The Attorney General relied

heavily on the concept of legislative intent in determining that disclosure of amusement tax returns would frustrate the desire of the legislative to treat income tax data and retail sales data as confidential. This opinion was applied subsequently to other tax records of the Comptroller's Office, such as the Alcohol and Tobacco Tax Division.

Mr. Hanratty stated that it was important to realize that this opinion only applied to tax returns and not to all information. So, it would appear therefore that license and permit data of the Alcohol and Tobacco Tax Division should be disclosed under the Public Information Act.

Mr. Clinton commented that it had never been the intention of the Comptroller's Office to treat license and permit applications data as confidential; the only information that could not be disclosed was tax data. Mr. Clinton also provided supplementary information in order to clarify some questions Mr. Hanratty had raised in the draft report. Mr. Clinton indicated, first of all, that the person in interest could examine, copy or challenge any license or permit data pertaining to him. Mr. Clinton also pointed out that the Alcohol and Tobacco Tax Enforcement Unit does have police and law enforcement powers, including arrest and search and seizure, and that therefore the Unit does have certain discretionary authority to prevent the person in interest from examining background investigation data pertaining to him. Finally, Mr. Clinton provided the following statement regarding the disclosure of Credit Control File records:

"The Credit Control List is published periodically by ATTD. Retailers on this list must pay wholesalers by cash or check. The purpose of this list is to tell wholesalers to whom they can extend credit. The list is public information. However, the background details as to why XYZ Liquor is on the list is not public information."

Mr. Hanratty indicated that he did not see any substantive issues in the other record systems of the Comptroller's Office that needed to be discussed by Commission members. Mr. Clinton provided the following information concerning security of General Accounting Division records, a topic which the staff had

identified in the draft report as requiring additional information:

"A. Disbursement Transmittal File: These records are viewed as public records. Prior to audit, they are kept in a locked vault. After audit they are available to the public so no special precautions are taken. They are secured as normal business records would be. If there is any tax refund information in this file, it is handled under Article 81, Section 300 and is not disclosable.

B. Transaction History and Vendor Indebtedness Records: The ACF-2 data security package applies to both of these record systems. GAD has imposed individual controls under ACF-2 on a need-to-know basis. Persons seeking access to information in these files must go through the division security officer for access."

Mr. Clinton finally noted that disclosure of employees tax withholding deductions are prohibited both by Article 81, Section 300 and by federal law.

The Commission next turned its attention to the record-keeping practices of the Department of Licensing and Regulation. Mr. Hanratty proceeded to discuss each section of the Department for which he had received information. Mr. Hanratty noted that the Savings and Loan Association Files contained information that largely pertained to savings and loan associations rather than to individuals. However, he did point out that there is some data in the file which is personally identifiable, in particular the amount of deposits and level of indebtedness to a savings and loan association by the officers and directors of the association, and the name, address and number of shares owned by a stockholder in a stock-chartered association. Mr. Hanratty observed that all of this information was considered to be confidential by statute.

The Commission then examined the Division of Occupational and Professional Licensing, which is responsible for licensing individuals engaged in various business activities. Mr. Hanratty noted, first of all, that records of the Maryland Home Improvement Commission were all disclosable under the Public Information Act. The same was true, Mr. Hanratty observed, for records of the Maryland Real Estate Commission. The Commission requires resident brokers license applicants to provide a resume of real estate activity for the last three years,

including the approximate number of listings obtained, the approximate number of sales completed, the approximate number of rental accounts handled, the estimated total volume of cumulative business during the past three years and the names and addresses of brokers over the past three years. Mr. Hanratty indicated that he had not yet received any data pertinent to the licensing boards. Mr. Zee offered to contact Mr. Gordon Wilcox, Coordinator of the Department of Licensing and Regulation, to see if this information would be forthcoming.

At that time, the Commission shifted its attention to an examination of the Division of Labor and Industry, which is responsible for the expungement of laws and regulations pertaining to workers and employees. Mr. Hanratty noted that Apprenticeship and Training Council Unit Files and Fee Charging Employment Agency Unit Files were both disclosable under the Public Information Act. Mr. Hanratty felt that this was curious, since the two record systems contained essentially the same data. Mr. Hanratty also noted that Employment of Minors records, Lie Detector records, Railroad Safety records and Safety Inspection records all contained personally identifiable data and were all disclosable under the Public Information Act.

Mr. Hanratty felt that Commission members should take note of the Maryland Occupational Safety and Health File. He pointed in particular to the Health Effects Unit, which provides medical-related support to the Maryland Occupational Safety and Health Act personnel. The Health Effects Unit is governed by very explicit regulations regarding collection, disclosure and security of employee medical records. With respect to collection of data, the Health Effects Unit must provide a written access order signed by the Commissioner of Labor and Industry. The access order must indicate the statutory purposes for which access is desired, an explanation as to why there is a need to receive personally identifiable data, a description of the type of data to be received, the names, addresses and telephone numbers of all personnel expected to review and analyze the data, and the anticipated period of time during which data will be retained.

Data released to the Health Effects Unit can only be disclosed to : 1) any person whose name appears on the access order; 2) an Assistant Attorney General working for the program; 3) a contractual physician; 4) the National Institute for Occupational Safety and Health; 5) the Attorney General or a State's Attorney; and 6) a public health agency under very strict conditions. Medical records must be kept separate from other files, and must be secured in a locked cabinet or vault. Logs must be kept to record the uses and transfers of any medical data. Finally, the inter-agency mail system cannot be used to send medical data.

The Commission adjourned and scheduled its next meeting for October 5, 1981.