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OFFICIAL

Minutes-Governor's Information Practices Commission Meeting of
October 5, 1981.

The Governor's Information Practices Commission met on October 5, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Senator Timothy Hickman, Delegate Nancy Kopp, Mr. Donald Tynes, Mr. Wayne Heckrotte, Mr. John Clinton, Mr. Dennis Sweeney, and Mr. Judson Garrett.

Mr. Drea began the meeting by noting that the following Monday was a State holiday and thus, it would not be possible to hold a meeting on that date. However, Mr. Drea observed that the Commission could not afford to miss any time at this point. After some discussion, the next meeting of the Commission was scheduled for October 13, 1981 at 4 p.m., in the Clipper Room of the World Trade Center. Mr. Dennis Hanratty reminded Commission members that the meeting on October 19, 1981 would be devoted to an examination of the Uniform Information Practices Code as drafted by the National Conference of Commissioners on Uniform State Laws. Mr. Ronald Plessner, a former Director of the Federal Privacy Commission and a member of the Committee responsible for drafting the Uniform Code, would appear before the Information Practices Commission at that time. Mr. Drea informed the Commission members that an invitation had also been extended to Mr. Michael Cramer, one of the Maryland representatives on the Uniform Information Practices Code drafting committee.

Mr. Drea requested the cooperation of the members in holding weekly meetings for the remainder of the month. Mr. Drea noted that once the Commission had determined its course of action in response to the issues confronting it, the staff could begin preparation of the Final Report. During that period, which could take from two to four weeks, no meetings would be held. The Commission would then reconvene to approve or disapprove the Final Report; if approved, the Report could be forwarded on to the Governor for his consideration.

Mr. Drea began discussion of the Issues Paper by stating that the issues in the report had been well-presented. Mr. Heckrotte challenged that assertion, maintaining that the Issues Paper did not really contain a discussion of issues. First of all, Mr. Heckrotte argued that the Issues Paper was much too long. Instead of a report that was 54 pages in length, Mr. Heckrotte felt that the report should only be about 5 pages. Furthermore, he felt that the report provided too much detail about particular record systems and did not focus on the general issues. He thought that it would be preferable to have a report which stated, first of all, whether or not there was a problem and second, what was the nature of the problem. Mr. Heckrotte emphasized that his criticism was really not directed at the staff but at the Commission itself.

Mr. Garrett commented that he felt that the staff had done a good job in collecting data from agencies and presenting that data to the Commission members. He noted that the entire process had been an excellent learning experience regarding agency record-keeping practices. That having been said, Mr. Garrett also felt that Mr. Heckrotte was substantially correct in his comments regarding the Issues Paper. In Mr. Garrett's opinion,

the Issues Paper dealt with symptoms rather than with the issues themselves.

Mr. Heckrotte added that all of the issues in the paper were legitimate, but were simply too broad. He felt that the Commission did not need to go into each and every agency. The Issues Paper, he asserted, was a good reference report which could accompany the Commission's final report. The final report, however, should be quite short.

Mr. Drea responded by stating that he did not feel that the final report would look anything like the Issues Paper. He envisaged the Issues Paper as an internal Commission document designed to identify problems. Mr. Drea also noted that a wide range of options were available to members to deal with information practices problems. The Commission could decide to support an Omnibus bill. It could also recommend the establishment of another body which would resolve privacy and public information problems. Mr. Drea observed that the Commission could recommend amendments to various sections of the Annotated Code. Finally, the Commission could recommend that the Governor change agency record-keeping practices by Executive Order. Mr. Drea anticipated that this decision would be made only after a thorough review of current agency practices.

Mr. Sweeney felt that the Commission would be well-advised to deal with the common problems. He thought that the Uniform Information Practices Code might be helpful in this regard. Mr. Drea stated he was leaning against supporting the Uniform Code at this time. Mr. Drea observed that he was impressed with the uniformity in record-keeping practices that appears to exist across state agencies. He felt that it was only natural that there be some diversity. There are a number of special cases, he maintained, that could be dealt with more appropriately through rules and regulations rather than through statutes. On the other hand, Mr. Drea noted that there were some particular

statutes that should be addressed. He cited the example of the statute governing Workmen's Compensation Commission records. Mr. Drea felt that the Information Practices Commission would be lax in its responsibility if it did not make some type of recommendation in this area.

Mr. Sweeney stated that he was surprised at the small number of problems that appear to exist throughout state agencies. He was not sure that the problems that do exist were of such a magnitude as to warrant a radical solution. Senator Hickman observed, however, that many abuses might not necessarily be revealed through the use of a survey.

A number of possibilities were discussed by Commission members regarding the shape of the Commission's final recommendations. Delegate Kopp observed that the Commission could inform the Governor about any record-keeping practices that should be examined; the Commission could furthermore give the Governor a series of recommendations. Then, the Governor's staff could examine problems in further depth. Mr. Clinton suggested that the Commission could also recommend a broad omnibus act which would require agencies to have written procedures in the area of information practices. It would also be possible, however, for the Commission to deal with more specific problems. Some members also expressed the opinion that the Governor should be made aware of the fact that many agencies are not familiar with the statutes that govern their record-keeping practices.

The Commission then turned its attention to a discussion of the points raised in the Issues Paper. Commission members first considered the topic of collection of extraneous information. Mr. Garrett noted that the Public Information Act already contains a statement that requires agencies to collect

only that information which is relevant and necessary. Mr. Sweeney noted, however, that this provision might not be enforceable. Commission members also discussed the need for a review of personnel forms used throughout the State to determine if extraneous information was collected. Mr. Tynes informed the Commission that a review of agency personnel practices was being carried out by the Equal Employment Opportunity Commission. Mr. Drea expressed support for an amendment that would standardize the types of information collected by various election boards. Indeed, he saw no reason why a Uniform Voter Registration form could not be used. Mr. Drea felt that any effort at standardization would be supported by the State Elections Administrator.

The Commission next considered issues affecting access to information on the part of the person in interest. Mr. Dennis Hanratty felt that access to the person in interest was one area where the Commission could deal with general issues. Mr. Hanratty expressed the opinion that, in ordinary circumstances, the person in interest should be permitted to examine, copy, and contest the accuracy of information pertaining to him. Mr. Hanratty noted that if a particular record system was disclosable under the Public Information Act, then the person in interest would have a right to inspect and copy records pertaining to him. Of course, the same rights would be available also to a third party. However, the Public Information Act does not give a person in interest a statutory right to challenge the accuracy of information.

Mr. Hanratty cited favorably the procedures followed by the Division of Special Education in permitting access to parents of students. Mr. Hanratty felt that, with few exceptions, these policies could be adopted statewide.

Mr. Hanratty also expressed a view that the Commission should address itself to examination of those record systems which do not permit access to the person in interest. Mr. Garrett stated, however, that he did not believe that the Commission had expertise to deal with such areas as access to psychological records.

Discussion ensued over the right of access of the person in interest to those records considered to be nondisclosable under the Public Information Act. Mr. Sweeney noted that, in his opinion, it would be illogical to assume that the General Assembly intended to create a situation where an individual could not examine his own library circulation records or confidential financial data which he submitted to an agency. Mr. Sweeney suggested that the Public Information Act be revised to state that, unless specified otherwise, a person in interest has a general right to inspect records pertaining to him.

The Commission then began consideration of issues pertinent to the disclosure of records to third parties. Mr. Hanratty noted that a number of record systems containing sensitive, personally identifiable information are available for public inspection. He felt that in this particular area of the report, Commission members should take a close look at each of the record systems listed in the paper to determine whether they should be confidential or disclosable. Mr. Hanratty also stated that there may be cases in which some of the data of a particular record system would be disclosable, while other data would be undisclosable. For example, members may decide to recommend release of names and addresses of licensees, while restricting release of other types of licensee information.

Mr. Drea noted that, in his view, all personally identifiable information should be confidential except in those instances where disclosure would be beneficial to the general public. Mr. Drea maintained that the determination of record-keeping practices should not be left in the hands of the agency.

Each agency should be thoroughly reviewed and recommendations presented.

The meeting adjourned at this time.