



STATE OF MARYLAND
EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

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CHAIRMAN

October 26, 1981

OFFICIAL

Minutes-Governor's Information Practices Commission Meeting
October 13, 1981

The meeting of the Governor's Information Practices Commission was held on October 13, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Wayne Heckrotte, Senator Timothy Hickman, Mr. Dennis Sweeney and Mr. Donald Tynes.

The Commission approved as official the minutes from the meetings of August 24th, August 31st, September 14th and September 21st.

Mr. Drea felt that the Commission should continue its discussion of the Issues Paper. Mr. Dennis Hanratty recommended that, in preparing for next week's discussion of the Uniform Information Practices Code, Commission members should read the Code in conjunction with the Issues Paper. The intent of this exercise, Mr. Hanratty explained, would be to determine whether the Code provided an adequate resolution of the problems that the Commission had identified over the last several months. Both Mr. Hanratty and Mr. Drea expressed concerns about the section of the Code regulating disclosure of records to third parties.

Mr. Clinton asked Mr. Drea for the legislature's likely reaction to the Code. Could it be anticipated, Mr. Clinton inquired, that the legislature would adopt the Code in its present form, or would the Code merely be a starting point

for subsequent action? Mr. Drea felt that the legislature would be inclined to modify the Code in some form.

Mr. Drea also noted that the Code could be burdensome for many agencies in requiring them to go through their records and determine which records were disclosable and which were not.

Before proceeding with a continuation of the Issues Paper, Mr. Hanratty informed Commission members that he had received a telephone call from Ms. Mildred Wittan, Administrative Specialist with the State Board of Physical Therapy Examiners. Ms. Wittan wanted to express the continued concern of her Board, and, indeed, of all of the Health Professionals Boards, regarding the disclosure of licensure data. In Ms. Wittan's opinion, disclosure of this data constituted a violation of the privacy of individual licensees. Mr. Hanratty felt that disclosure of licensure data was a major issue confronting the Commission in that it affected a number of Departments of State Government. Mr. Clinton suggested that the Commission send a letter or press release to all agencies giving them a final date in which to appear before the Commission and express viewpoints. Mr. Drea felt that all agency responses should be in writing, given the tight time schedule that the Commission already faced.

The Commission then turned to an examination of the Issues Paper, considering the topic of inspection of voter registration lists. Mr. Clinton stated that it appeared that anyone can inspect voter registration lists. Mr. Hanratty noted that an Election Board can deny a person the right to purchase a list, if the list is to be used for commercial purposes, but that the same person can inspect the list and make copies of the list. Every county, with the exception of Baltimore County, refuses to disseminate in purchased voter registration lists all of the information originally collected from applicants. Therefore, commercial enterprises denied the right to purchase a list may become privy to more information by inspecting a list.

The Commission also discussed the issue of restricting the use of voter registration lists to political purposes. Mr. Hanratty reminded Commission members that it had been specifically requested to examine this issue by Delegate Helen Koss, Chairman of the House Constitutional and Administrative Law Committee. Senator Hickman noted that many people had expressed the view that they do not register to vote because they do not want to serve on juries. He stated, however, that this may only be an excuse for failure to register. Mr. Heckrotte suggested that individuals be informed when they register to vote that they become prospective jurors. He also noted that lists of prospective jurors could be obtained from other sources.

Mr. Hanratty felt that the issue was wider than merely using voter registration lists for jury purposes. He noted that Mrs. Marie Garber, former Elections Administrator for Montgomery County, had compiled a list of typical uses of voter registration lists; users included groups as varied as the League of Women Voters, the March of Dimes and county governments.

The Commission also discussed the copying of voter registration lists. Mr. Hanratty noted that the Attorney General had ruled that the right of inspection of voter registration lists also involved the right to copy such lists. Senator Hickman asked if copying had to be done by hand. Mr. Hanratty stated that it was his understanding that the Attorney General had ruled that Boards must allow photocopying of lists.

Mr. Drea observed that salary data of public employees was disclosable, and asked if members had any problems with that fact. Mr. Heckrotte stated that while he agreed with disclosure of salary information for public officials, the salaries of other public employees should remain confidential. Mr. Drea disagreed, expressing the view that disclosure of salary information constituted a significant check on agencies paying exorbitant salaries. Mr. Heckrotte countered that government agencies lose many qualified people because of the public character of salary

information.

Mr. Tynes stated that the Department of Personnel makes a distinction between public officials and other state employees. The Department will respond to requests for names and salaries of public officials, but not for other employees. In cases where the Department receives requests for names and salaries of all employees receiving over a certain specified salary, the Department assesses a fee. Mr. Hanratty questioned whether the Department had the statutory authority to deny requests for salary data for any public employee. Mr. Drea seconded that concern, noting that there is no section of the Public Information Act giving any discretion to records custodians in the handling of salary information.

Commission members turned their attention to the sale of computer lists containing personally identifiable information. Mr. Drea noted that the specifications contained in the computer list contract of the Motor Vehicle Administration and felt that this contract could be emulated by other agencies. He also observed that regulations should be adopted that would involve the imposition of a fine on those who misuse the information that they obtained.

Mr. Drea noted the confusing character of Division of Correction regulation DCR 200-1 and felt that this regulation should be cleaned up. In this regard, the Commission also briefly touched upon the topic of disclosure of sociological data. Commission members agreed that this was an area requiring modification. Mr. Drea asked Mr. Hanratty if any comments had been received from the Department of Public Safety and Correctional Services regarding the Commission's draft report. Mr. Hanratty stated that he sent a copy of the report to Mr. William Clark, Special Assistant to the Secretary, requesting comments but had not received any response. Mr. Hanratty also noted that he had sent a followup letter to Mr. Clark, indicating that if the Commission did not receive any comments by November 2, 1981, it would be forced to assume that the Department agreed with everything contained in the draft report.

Commission members turned to the topic of disclosure of medical records. Mr. Drea noted that situation currently existing in the Department of Health and Mental Hygiene, where disclosure is governed by Departmental guidelines without any legal status. He felt that it would be much more preferable for the Department to adopt regulations in this area. Mr. Drea observed that the Commission had discussed this point with Ms. Beatrice Weitzel, Executive Assistant to the Secretary of the Department of Health and Mental Hygiene, during her visit to the Commission last month.

The Commission noted the confusing character of the Vital Records statute in the Annotated Code. Mr. Hanratty informed members that the Code Revision Commission was in the process of revising this statute and would send a draft copy to the Information Practices Commission at the end of October.

Commission members turned their attention to the area of expungement of records. Mr. Drea felt that a differentiation should be made between expungement of Motor Vehicle Administration records and criminal records. He did not believe that the Commission should involve itself in the subject of expungement of criminal records, given the sensitivity of the field. Mr. Clinton suggested that, at a minimum, individuals should be informed that they may be eligible for expungement of driving records. Mr. Heckrotte stated that, based on his experience in the data processing field, it would be more expensive for agencies to notify individuals that they are eligible for expungement than it would be to expunge automatically. Mr. Drea instructed Mr. Hanratty to solicit the Motor Vehicle Administration's objections to automatic expungement and also to find out if any profit was received by the State through the sale of computer lists.

The Commission considered a number of topics associated with the Public Information Act. There appeared to be general agreement that a time period should be imposed on agencies by which they would be forced to release public documents. Members generally felt that thirty days was an adequate period of time.

Mr. Drea also observed that there was considerable confusion regarding the cost of providing copies of documents. Should costs represent only the actual operating expenses of the copier, or could they also involve such things as the time spent by employees in searching for specific documents, or expenditures associated with removing non-disclosable portions of documents? Mr. Drea felt that copying charges should be limited to copier expenses. Mr. Sweeney expressed some reservations about this portion. He informed Commission members that he had spent a good deal of time interpreting the "confidential commercial or financial data" section of the Public Information Act. He noted that companies routinely file requests under the Public Information Act for commercial or financial data about their competitors. Those companies that originally submitted the data object to its disclosure, claiming that the information is confidential. The Attorney General's Office, therefore, must invest numerous hours with the companies responsible for originally submitting the information, going over documents line by line to determine if the data is confidential. In Mr. Sweeney's opinion, the requesting companies should be required to pay something for these services, since the intent of their requests is not one of serving the public interest but rather to attain competitive advantage. Commission members discussed a possible arrangement where agencies would provide a certain number of hours to a company free of charge, but after that, would begin assessing overhead charges. Mr. Sweeney offered to draft new language in this area and to present it to the Commission for its consideration.

Commission members discussed the problem presently existing in the area of confidentiality of letters of reference, noting that the phrase "letters of reference" can also include unsolicited letters of comments about applicants for public positions. Mr. Drea suggested that the Public Information Act should specify what is meant by a letter of reference.

The Commission also noted the variability in agency practices regarding the confidential status of sociological data. Mr. Hanratty felt that the term should be eliminated from the current statute. Mr. Drea asked Mr. Hanratty to see if he could come up with an adequate definition of the term.

The meeting adjourned, with the next meeting scheduled for October 19, 1981.