



STATE OF MARYLAND  
EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

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GOVERNOR

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CHAIRMAN

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OFFICIAL

Minutes of the Governor's Information Practices Commission  
Meeting of October 26, 1981.

The meeting of the Governor's Information Practices Commission was held on October 26, 1981. The following members were in attendance: Mr. Arthur S. Drea, Jr. Chairman; Mr. John Clinton, Mr. Albert Gardner, Senator Timothy Hickman, Delegate Nancy Kopp, Mr. Donald Tynes, and Mr. Robin Zee.

Mr. Drea began the meeting by informing Commission members of the resignation of Mr. Roy Shawn and Dr. Harriet Trader. Mr. Drea indicated that Mr. Shawn had experienced further medical complications and that Mr. Shawn wished to forward his regrets to the other Commission members. Dr. Trader did not offer an explanation for her resignation.

Mr. Drea indicated that the resignations of Mr. Shawn and Dr. Trader left two vacancies on the Commission; however, he believed that these slots should remain vacant, since it would take too long for replacements to catch up on Commission work. Mr. Zee stated that the Commission was at the point of grappling with major issues. He thought that it would be beneficial to have someone on the Commission who had experience with these issues, and suggested representatives from the National Conference of Commissioners on Uniform State Laws. Mr. Drea responded that it was unrealistic to assume such representatives would be impartial about the Uniform Information Practices Code. Mr. Zee disagreed, stating that these representatives could engage in discussion or debate and provide alternative

points of view. Mr. Gardner supported Mr. Drea's basic position. Senator Hickman felt that it might be useful to have additional members for discussion purposes; at the same time, however, he suggested that it might be difficult for someone to catch up on all of the reading material. Mr. Hanratty suggested that there might be significant time problems to bringing someone at such a late date. If the Commission intended to make certain decisions at its November 2, 1981 meeting, it may simply be too late to submit a name to the Governor's Appointments Officer.

Senator Hickman informed the Commission that he had a meeting regarding toxic substances and the issue arose as to the existence of a cancer registry. Senator Hickman noted that although the Commission was told of the existence of a cancer registry, an official from the Department of Health and Mental Hygiene who had attended the toxic substances meeting indicated that such a registry did not exist. In response to a question from Mr. Clinton, Mr. Hanratty noted that the Department had provided the Commission with data regarding a Cancer Control File. He did not know if this was the same thing as a Cancer Registry. Mr. Gardner indicated that he had obtained information in the past about a Cancer Registry. Mr. Clinton offered to check this issue for the Commission.

The Commission then turned to a discussion of House Bill 112 (1980 session of the General Assembly). Mr. Drea began by noting that personally identifiable data is divided into three categories: 1) confidential, which is information that may not be made public and which cannot be examined by the subject of the record; 2) private, information which cannot be disclosed to the public but which may be examined by the subject of the record; and 3) public, which may be disclosed to the general public.

Mr. Zee indicated that he had notes from the time that the bill was originally considered by the General Assembly. Mr. Zee stated that C and P

Telephone had spoken against House Bill 112 because the bill would have eliminated Article 76A, Section 3(c) (v), which prohibits disclosure of "trade secrets, information privileged by law, and confidential, commercial, financial, geological, or geophysical data furnished by or obtained from any person."

Mr. Zee also noted that Mr. William Adkins, State Court Administrator, had opposed the bill because of the broad definition of "public agency" (lines 500-502), which is "...any Maryland office or body created by state or local authority." Delegate Kopp indicated that these objections had been addressed in amendments.

Senator Hickman asked Delegate Kopp if any thought had been given to keeping the current Public Information Act, and making modifications to the Act to address privacy issues. He thought that this approach might appear to be less threatening to some legislators than a wholesale elimination of the Public Information Act. Delegate Kopp indicated that the drafters of House Bill 112 were simply of the opinion that a fresh approach was preferable.

Mr. Drea pointed to lines 554 to 593 of House Bill 112, which delineate the responsibilities of the Government Information Practices Board. He stated that the Commission has already performed some of these duties, such as reviewing the record-keeping practices of public agencies. Mr. Drea noted in particular lines 561 to 563, which require the Board to "determine by rule what personal information may be collected and maintained by a public agency, but only if discretion is not expressly provided by law", and lines 564 to 567, which require the Board to "determine by rule whether the personal information maintained by a public agency shall be classified as public, private or confidential but only if discretion is not expressly provided by law." In subsequent discussion, Mr. Hanratty stated that the Board could neither decide to prohibit inspection of driving records, nor permit inspection of income tax records, since both sets of records were governed by specific statutes. In contrast, the Board could establish rules regarding State Retirement System records, since they are not affected by any particular statute. Mr. Drea felt that these provisions would resolve a number of the issues that the

Commission has already discussed. Mr. Zee noted that although agencies can set fees for copies of government information (lines 817 to 818), the bill does not give the Board the authority to review such fees.

Mr. Drea felt that the appeals section of the bill (lines 568 to 573) was too vague; the section states as follows: "within 30 days after the filing of an appeal pursuant to Section 5A(B), (the Board shall) determine questions relating to the availability of public records for inspection or the collection, maintenance, classification, dissemination, accuracy, and completeness of personal information or any other issue arising under this Act." Mr. Tynes felt that additional clarification was provided by lines 652 to 657, which states that "any person aggrieved by any action or inaction of a public agency regarding the availability of public records for public inspection or the collection, maintenance, classification, dissemination, accuracy, or completeness of personal information may file an appeal with the Board pursuant to rules promulgated by the Board."

Mr. Clinton noted that individuals may file information practices disputes with the Board under lines 652 to 657, and that actions may be filed in the circuit court under lines 865 to 872. He asked if individuals may chose either of these paths. Mr. Drea stated that the judicial path may only be pursued after the individual had exhausted his administrative remedies.

Mr. Drea reminded members that a Board does not exist to administer the Public Information Act. He also noted that lines 596 to 622 constitute principles which would guide the Board in its decisions. Mr. Drea asked for comments on the principles section from Commission members. Mr. Zee asked if the term data subject included only the living or both the living and deceased. Mr. Drea stated that he believed both categories were included.

Mr. Drea expressed concern that the Board would be given a great amount of authority, and could change the policies of agencies regarding personally identifiable information. Mr. Drea also stated that the enactment of House Bill 112 would result in the repeal of the Public Information Act. Mr. Drea noted that

lines 623 to 644 provide a list of factors that the Board should consider in making its determinations; however, Mr. Drea felt that some of these factors were so general as to be without meaning. He observed, for example, that the term, "accepted custom" could mean almost anything.

Senator Hickman inquired as to why it was necessary to have a board issue rules and regulations. In his opinion, it would be difficult for a group of board members to issue regulations for each agency. Senator Hickman felt that it would be preferable to have the regulations developed by the records custodians with examination of these regulations by the Board. Delegate Kopp commented that the regulations developed by the Board would lead to greater uniformity across agencies. She also noted that the Board included the Secretaries of those Departments with the largest and most sensitive record systems, so the Board would be in touch with the records custodians.

The Commission then considered that section of House Bill 112 pertaining to the subject of a record system. Mr. Drea noted in particular lines 673 to 675, which gives the subject of the record the right, upon request, to "be informed by a public agency whether the individual is the subject of personal information collected, maintained, or disseminated by that agency." Mr. Hanratty asked if an agency would have to examine every record system containing personally identifiable information to determine if it maintained any data about the requester. Delegate Kopp thought that this was correct.

Mr. Drea noted that House Bill 112 permits the subject of the record to file an appeal in order to challenge the accuracy of a record; however, the individual does not have the right to include a contrary statement into the file. Mr. Clinton expressed the view that, in certain occasions, it is very desirable to include conflicting positions in a file and to submit both positions to requesters. Delegate Kopp also thought that this area was an important right that should exist.

Mr. Zee expressed concern over the word "emergencies" appearing in line 702. In his opinion, the word may cause a considerable number of problems unless it is defined. Mr. Clinton felt that it would be very difficult to place limitations on the word.

Mr. Zee identified lines 727 to 729 as potentially troublesome; these lines prohibit disclosure, unless disclosure is required by another law, of "records given to an agency in confidence if the production of these records could not have been compelled by the agency under existing law or regulation." Mr. Zee felt that this subsection could have an impact on commercial and financial data provided by companies seeking bids from the State.

In Mr. Zee's opinion, lines 730 to 734 should be modified to permit the person in interest to examine "...the contents of real estate appraisals made for any public agency, relative to the acquisition of property, or any interest in property for public use..". Mr. Drea felt that a determination as to whether the person in interest should be permitted access to such records should be dealt with on a case by case basis.

Mr. Hanratty suggested to the Commission members that they consider inserting language into a privacy act or into the Public Information Act that would prohibit disclosure of agency security manuals. He felt that this would alleviate situations similar to that faced a few years ago by the Comptroller's Office where a requester sought to obtain sensitive security data under the Public Information Act.

Mr. Drea noted that House Bill 112 does not contain a number of prohibitions found in the Public Information Act, such as restrictions on the disclosure of personnel files, school district data which is personally identifiable, and library circulation records. Mr. Drea stated that he assumed that these records would be classified by the Board as private or confidential, if they were not already covered by an existing law.

Mr. Zee noted the expansive language in lines 744 to 746, which requires an agency to restrict disclosure, unless otherwise provided for by law, of "workpapers, including preliminary drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended." Delegate Kopp suggested that examination of workpapers could have the effect of inhibiting agency decision making. Mr. Zee observed that the language of the bill would restrict workpapers not only prior to the making of a decision but afterwards as well. On a related note, Delegate Kopp and Mr. Drea informed Commission members about the concerns of Mr. Carvel Payne, Director of the State Department of Legislative Reference. Mr. Payne believes that bill drafting materials generated at the request of a legislator should be confidential, unless the legislator subsequently introduced the bill into the General Assembly. In other cases, however, Mr. Payne feels that these materials should be treated as confidential working papers.

Mr. Zee pointed to lines 767 to 769, which states that "in no event may a person remove government information from an agency without written authorization of the agency." Mr. Zee noted that a former Comptroller had taken his papers with him when he left office. Mr. Zee thought that lines 887 to 890 provide for criminal penalties for removing papers from State offices.

Mr. Hanratty stated that House Bill 112 does not make clear whether search fees or other administrative expenses may be passed along to a requester who seeks copies of government information. In response to a question from Mr. Tynes, Mr. Drea indicated that Mr. Sweeney was presently drafting language regarding fees for public records, and would present this language to the Commission upon completion.

The Commission noted lines 819 to 821, which states that agencies "shall establish procedures to protect all government information from deterioration, mutilation, tampering, loss and unauthorized destruction", and lines 822 to 824, which indicates that agencies "shall make available to any person on request and to the Board a current list of categories of personal information collected and maintained by it."

Mr. Hanratty observed that House Bill 112 does not require that agencies maintain logs to record the dissemination of personally identifiable information. In response to a question from Delegate Kopp, Mr. Hanratty cited as an example the requirements of the Criminal Justice Information System (CIJUS). The Central Repository of the Maryland State Police must maintain logs in all cases involving the dissemination of personally identifiable criminal history record information. The purpose of the log is to enable the State Police to inform recipients of data if it is determined that information was incorrect.

Mr. Drea noted lines 873 to 876, which states that "if the court finds that the public agency has acted improperly, the court may award costs, including attorneys' fees, and such damages, compensatory and punitive, as the court may deem appropriate under the circumstances." Mr. Drea questioned the meaning of the work "improperly".

Mr. Drea informed the Commission members that Mr. Hanratty had examined House Bill 112 and found that a number of requirements of the Uniform Information Practices Code did not appear in House Bill 112. Mr. Drea stated that Mr. Hanratty made the following observations: 1) agencies are not required to use disclosure logs; 2) agencies are not required to compile a catalogue of record systems; 3) the person in interest may contest the accuracy of information pertaining to him, but may not insert a statement of disagreement into the file; 4) the bill permits the person in interest to contest the accuracy of information, but does not state whether he may copy and examine such information; and 5) the bill does not indicate whether fees of varying kinds may be passed along to a requester.

Before adjourning, Mr. Drea indicated that Commission members would be asked to vote on a number of issues at the Commission's November 2nd meeting.