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GOVERNOR'S INFORMATION PRACTICES COMMISSION



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CHAIRMAN

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OFFICIAL -MINUTES OF GOVERNOR'S INFORMATION PRACTICES COMMISSION-May 11, 1981

Members in attendance at the May 11th meeting of the Information Practices Commission included: Mr. Arthur S. Drea, Jr., Senator Timothy Hickman, Mr. Dennis Sweeney, Mr. Wayne Heckrotte, Mr. Donald Tynes, Mr. Robin Zee and Mr. John Clinton.

The minutes from the January 19, 1981 meeting and the two public hearings were approved and adopted as official.

The focus of the meeting was the discussion of four reports which had been previously distributed to Commission members on the Motor Vehicle Administration (MVA), the State Scholarship Board, the Elections Board, and the State Department of Education.

Mr. Hanratty opened discussion of the MVA report by noting that a copy had been sent to Mr. Bertak, liaison with the Department of Transportation, with a request for comments from MVA officials. In addition, Commission members expressed a desire to meet with MVA representatives. After discussion, Commission members agreed to schedule this meeting tentatively for May 26 at 3 P.M. and to determine if it would be more convenient to hold the meeting at MVA.

Mr. Drea informed the Commission members that House Bill 1287 had passed in spite of the Commission's request that it be deferred. He noted that it had not yet been signed by the Governor. (House Bill 1287 was signed by the Governor on May 12, 1981.) Mr. Hanratty added that the bill is discussed in

the report on health facilities and that a copy of the bill is attached to the report. The Commission decided that it would not express an opinion on the bill to the Governor.

Mr. Hanratty reviewed the pertinent issues brought out in the MVA report. He noted that Appendix A contains a list of questions on record-keeping practices which was sent to MVA and that Appendix B consists of the responses of MVA. Mr. Hanratty stated that he has some disagreement with specific responses.

First, in response to a question concerning what type of personal information is collected, MVA replied that the Medical Advisory Board is the only area that collects personal information. Mr. Hanratty felt that the term "personal information" had been misinterpreted.

Second, when asked whether individuals have access to information pertaining to them, MVA replied affirmatively. Mr. Hanratty explained that this is true with the exception of the Medical Advisory Board files. These are in a special category which allows only limited access. Mr. Hanratty stated that the Procedures Manual that governs the policies of the Medical Advisory Board allowed access to "general" records to the person in interest. A lawyer is allowed access to "confidential" records but may not reveal information in those records to his client.

Mr. Sweeney added that, in his experience, no one was allowed to see the record held by the Medical Advisory Board. He suggested that this access to a lawyer may have come about as a result of a compromise settlement of a lawsuit. It was noted that quite a few cases referred to the Medical Advisory Board dealt with alcoholism, psychiatric problems, senility, etc., which are situations where personal information (if available to the person in interest) might be detrimental.

Senator Hickman added that at the White House Conference on Privacy held a few years ago, there was a notable disparity between states in their definitions of what information is personal, what is public, and what is confidential.

At this point, Mr. Drea interjected a procedural note. He suggested that the Commission members discuss all of the reports and then, when finished, return and summarize the issues which they feel should be addressed. The members agreed to this.

Mr. Hanratty mentioned a third area of disagreement with the responses of MVA. When asked if an individual is made aware of his access rights, MVA replied that access is provided in law. Currently, Mr. Hanratty suggested, the public is not told of their access rights in any of the materials issued by MVA. He felt that MVA should institute policies to educate the public of its rights.

A fourth problem identified by Mr. Hanratty involved the degree of awareness of individuals to the uses of information pertaining to them. Although MVA responded affirmatively, Mr. Hanratty suspected that many people do not know that anyone can obtain a copy of their driving records. In light of the fact that an individual is not informed through MVA materials that driving records are public information, it seemed unlikely to Mr. Hanratty that individuals are aware of the uses to which the information can be put.

Mr. Hanratty discussed the issue of disclosure logs as a fifth area of disagreement with the MVA report. The Administration indicated that such logs are maintained and that, for all records, name and address of subject, reason for request, and name and address of requestor are recorded. Mr. Hanratty noted that the forms used to view a driving record and to purchase a certified copy of such a record do not provide a space to record the reason for the request. Mr. Hanratty also stated that a staff member of the Commission had visited the MVA headquarters and asked to examine and obtain a driving record. The clerk did not ask the staff member to provide a reason for the request, nor did any verification of identity occur.

Mr. Zee asked about the purpose of verifying the identity of the requestor. Mr. Hanratty replied that this would allow the person in interest to examine the logs to determine who has been looking at his record; without verification of

identification, the logs could easily contain fictitious names.

Discussion ensued over the appropriateness of permitting public access to driving records. Mr. Sweeney questioned the justification of the public character of such records. Discussion among members centered on the many uses that agencies make of driving records and how information contained in a record can be detrimental to an individual seeking employment, even when driving is not required in his job. Members generally agreed that when an individual applies for a license, he should be informed of the uses to which the information can be put. Limited access (except for justifiable exceptions-law enforcement) was suggested. An individual could then authorize access to his record to whomever else he wanted, such as an insurance company.

The Medical Advisory Board was mentioned again by Senator Hickman. He cited the example of an individual over 70 who is required to appear before the board for review. Senator Hickman questioned whether an attorney can obtain the name of a person who files a complaint against another. Mr. Hanratty replied that, according to his interpretation, the attorney could find out but could not disseminate that information to his client. Senator Hickman suggested that in the case of malicious complaint, the attorney could ascertain who filed a complaint but the individual would not be able to sue.

Mr. Hanratty noted that the sixth response of MVA which appeared problematic involved the issue of risk analysis. MVA indicated that a risk analysis had been conducted, observing that authorized personnel only access certain information. Mr. Hanratty felt that this answer gave the impression that a risk analysis had not been performed. Commission members discussed what is entailed by a risk analysis. Mr. Heckrotte described it as a procedure to determine the worth of the information, the likelihood of there occurring unauthorized access to the information, and the potential loss if the structure housing the information was damaged. Senator Hickman noted that the Comptroller's Office appeared to have been the only state agency to have conducted a risk analysis.

Mr. Hanratty mentioned that he had received a complaint from a Montgomery County bus driver. The bus driver alleged that he had been charged with the unauthorized use of a vehicle while a minor, and that the matter had been handled through the juvenile justice system. When he happened to examine a copy of his complete driving record, he discovered that the juvenile conviction was included.

Senator Hickman explained that Montgomery County was the only county that informed the MVA of juvenile driving cases that were alcohol related. He noted that the 1981 General Assembly had passed a bill that would require the other counties to conform to the practice of Montgomery County.

With regard to the case of the Montgomery County bus driver, Mr. Drea observed that another area of concern was the fact that his employer had obtained a copy of the complete record, not merely the last three years. Mr. Drea noted that according to the responses received by MVA, the employer, Montgomery County government, should not have been provided with a copy of the complete record. However, if the request had been made by the Montgomery County police, the entire record would be provided. Mr. Hanratty noted that the bus driver also alleged that he had experienced considerable difficulties in obtaining a copy of a complete record for himself.

The final issue raised by the case of the bus driver involved that of expungement. Mr. Hanratty noted that MVA is required to expunge driving records if certain criteria are met. However, expungement is not an automatic process; the individual driver must request expungement. In Mr. Hanratty's opinion, this procedure only rewards those drivers who are knowledgeable about the expungement process. The Montgomery County bus driver asserted that he could have had his conviction expunged, but he was not aware of the fact that this could be done.

The Commission briefly examined the report dealing with Voter Registration Records. Mr. Drea noted that the report indicated that there were some variations in the type of information collected from individuals by the different

county boards of election. Mr. Drea observed, for example, that Prince George's County requires applicants to state whether they are military or civilian, while two counties require marital status. Mr. Heckrotte felt that the only types of information that should be collected were name, address and party affiliation. Mr. Hanratty noted that the report also indicated that there exist significant variations in the type of information disseminated by the boards. The Commission also discussed the appropriateness of using voter registration lists for other purposes, such as jury selection.

The third report discussed by the Commission was the State Scholarship Board. Mr. Hanratty expressed concern that there were no procedures governing the dissemination of information for the Senatorial Scholarships. Once financial data is sent to the 43 Senators, there is no one really responsible for the information and no regulations governing its protection. Discussion focused on whether the State Scholarship Board has the legal authority to issue regulations requiring Senators to safeguard the information. While this point was not resolved, it was agreed that the Senate itself could develop "in-house" regulations.

The final report examined the Department of Education. Mr. Hanratty noted that the record-keeping practices of the Department were impressive. Because the Department operates under fairly strict federal regulations, the Department of Education has developed a number of procedures such as disclosure logs and access to the person in interest, which might be considered state-wide by the Commission. Mr. Hanratty visited the Anne Arundel County Board of Education and found that the County had developed very strict standards regarding the dissemination of personally identifiable data. In general, the County Education Officials felt that the county has found that the federal privacy legislation had been quite beneficial in terms of protecting students' records.

Mr. Sweeney questioned whether the Department of Education would be a good comparison to all agencies. He felt that the personnel are highly sensitized

to these issues due to the nature of their training.

Returning to the main Education Report, Mr. Hanratty noted that Vocational Rehabilitation Records are less regulated than others, and directed the Commission's attention to a chart comparing these records with those of Special Education. Mr. Sweeney asked if there wasn't a state statute prohibiting the release of vocational rehabilitation records except by court order. Mr. Hanratty replied that he was not sure.

Mr. Hanratty noted that in his visit to the Anne Arundel County Board of Education, he discovered that the development by that board of a catalogue of record systems had not resulted in a reduction of the number of records or in a reduction of personal data collected. This point coincided with a concern expressed by Mr. Hanratty over the amount of information collected from individuals by education agencies. In the report examining the record-keeping practices of the Department of Education, a concern was expressed about the amount of personal data required by the Pupil Data System.

Mr. Zee asked about the jurisdiction of the Commission over the collection of data. Mr. Drea replied that the Commission can make recommendations in this area. Senator Hickman added that some states have a statute saying the individual is not required to answer any questions unless the agency has the statutory authority for asking the question.

Mr. Hanratty concluded the analysis of the Department of Education by referring to a list of questions that could be asked about the record-keeping practices of the Division of Vocational Rehabilitation.

In the discussion that followed, it was agreed that reports would be sent to the agencies after they had been reviewed by the Commission. A cover letter would highlight issues of interest to the Commission and request comments and feedback.

The meeting was concluded with the staff being instructed by the members to attempt to schedule a meeting with MVA officials on May 26th.