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STATE OF MARYLAND  
EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES  
GOVERNOR

ARTHUR S. DREA, JR.  
CHAIRMAN

July 28, 1981

OFFICIAL

MINUTES-Meeting of the Governor's Information Practices Commission of July 6, 1981.

The Governor's Information Practices Commission meeting was held on July 6, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John A. Clinton; Mr. Robin J. Zee; Mr. Donald Tynes, Sr.; Delegate Nancy Kopp; Senator Timothy R. Hickman; and Mr. Albert J. Gardner, Jr.

A tentative schedule of reports to be discussed at the next meetings was disseminated along with minutes from the meetings of June 8 and June 22, 1981, and a report on the Public Information Act. The minutes from the meeting of May 26th were adopted as official by Commission members.

Mr. Drea noted that two large departments remained to be covered: Health and Mental Hygiene and Public Safety and Correctional Services. He enlisted the assistance of Commission members in getting the input required from these agencies. Delegate Kopp replied that both she and Mr. Judson P. Garrett had spoken with the Secretary of the Department of Health and Mental Hygiene, Mr. Charles R. Buck, and that Mr. Buck professed to have no knowledge of the situation.

The first report discussed examined on the Department of Human Resources. Mr. Dennis Hanratty stated that the report was provided according to the responses from

three principal divisions of the Department of Human Resources. He noted that information had just been received for several smaller programs not included in the report and that this would be added later.

Mr. Hanratty informed Commission members that he had become convinced that the most important factor influencing the record-keeping practices of state agencies, particularly the larger agencies, is the nature of relevant federal regulations. If the federal information practices regulations are fairly general in character, he explained, the state policies generally follow suit. As an example, Mr. Hanratty noted the Department of Education-Division of Special Education, which operates under extensive federal information practices requirements. As a consequence, the division at the state level is quite aware of information practices at the local level. In contrast, the Department of Human Resources does not need to comply with as strict a set of federal information practices regulations. In particular, the Department is not required to monitor the record-keeping practices at the local level.

For example, Mr. Hanratty elaborated, representatives at the state level indicated that local social service agencies are responsible for determining appropriate levels of security. However, state representatives seemed unaware of what specific security measures had been adopted.

Discussion followed on the confusion which has always existed as to whether the local social service agency belongs to the county or to the state. The Montgomery County offices, Delegate Kopp stated, are the only ones being funded by both the county and state.

Senator Hickman related a conversation he had concerning security with a supervisor in a local branch office. Senator Hickman was told that the terminal used to

obtain Unemployment Insurance information was located in the waiting room but was turned away from the client. He also discovered that the password had not been changed in two years.

Mr. Drea stated that even though some confusion exists as to whether authority rests with the state or county, the Commission could certainly recommend that a uniform security policy be adopted. Delegate Kopp indicated that she would like to hear any objections from the local officials regarding issues raised in the draft report. Discussion ensued on whether the draft report should be sent to local agency heads to obtain their reactions.

Mr. Hanratty interjected that it was his impression that the Department of Human Resources believed that it has a state-wide privacy regulation. The problem was that when compared to the information practices of the Division of Special Education, those of Human Resources appeared insufficient. Although the Department of Human Resources' regulations in the area of restricting access of data to third persons are extensive, there was nothing regarding access to the person in interest. Mr. Hanratty added that it seemed that the department is unaware of information practices at the local offices.

Senator Hickman suggested that, ultimately, responsibility for security should rest with the custodian of the data base. Mr. Drea added that the Public Information Act requires that every agency name a records custodian and wondered how this has been handled by Human Resources.

The Commission should also be cognizant, Mr. Hanratty stated, that current Congressional activity could affect the record-keeping practices of State agencies. If programs are eliminated and put into a block grant fashion, then corresponding regulations of those programs would also be eliminated. In some areas, he elaborated,

the State hasn't promulgated as detailed regulations as the federal regulations. Mr. Clinton wondered if the role of the Commission would change if this happened, and asked if there would be a greater responsibility on the Commission to fill the gap. Mr. Zee noted that the loss of federal funding may result in looser control because the individuals who used to perform monitoring responsibilities can no longer be hired. When money is limited, priorities often shift, he concluded.

In the discussion that followed it was suggested that the Commission could issue general guidelines requiring each agency to establish policies in specified areas. Compliance could be monitored by the legislative auditors. It was decided that the Governor's Office in Washington, D.C. would be contacted and asked to keep the Commission staff informed on the status of federally funded programs. In this manner, the Commission could evaluate the extent to which it may need to recommend measures to fill any gaps.

Discussion then ensued regarding the various components of the Department of Human Resources. Mr. Hanratty noted that the Social Services Administration collects sensitive information, frequently from sources other than the subject of the record. Although the Social Services Administration operates under explicit COMAR regulations in the area of disclosure of information, no similar regulations are in effect regarding the issue of the access rights of the person in interest.

A second major issue, Mr. Hanratty explained, is the lack of awareness on the part of state officials with respect to security procedures at the local level.

In comparison to the situation found in the Social Services Administration, the Income Maintenance Administration does have a policy concerning access to records by the person in interest. First of all, the person in interest must have a specific reason for desiring to examine his file. Second, the Income Maintenance

Administration will permit the person in interest to examine only those parts of his file pertaining to his request. Finally, medical and psychological data will not be released.

Mr. Hanratty stated that officials in the Income Maintenance Administration were unaware of security measures enacted at the local level and agreed to obtain this information for the Commission.

Mr. Hanratty indicated that the record-keeping practices of the Employment Security Administration presented far fewer concerns to the Commission staff than was the case of either the Social Services or Income Maintenance Administrations. However, he suggested that clarification is needed from the Employment Security Administration regarding the access rights of the person in interest to medical and psychological information.

Mr. Clinton inquired as to who was responsible for gathering information on the Project Home form and also to what degree the information is available to the person in interest. Mr. Hanratty replied that he could not provide answers to either question, as representatives from the Social Services Administration did not attend his meeting with officials at the Department of Human Resources.

Mr. Hanratty summarized his findings that security of information and access to the person in interest were the major problem areas regarding the record-keeping practices of the Department. Third party disclosure restrictions were adequately covered. Delegate Kopp expressed the opinion that if security was weak, stringent disclosure measures became less meaningful.

Discussion followed on whether a meeting with Department officials would be beneficial. Mr. Hanratty did not feel that there was anyone at the Department who

could present the Commission with a comprehensive overview of current practices. Senator Hickman felt that the agency officials need to be involved and that their support would have to be enlisted if an omnibus privacy bill was to be recommended by the Commission. Mr. Zee agreed with this point. Commission members decided to send a copy of the report to Mr. Luther Starnes, to the Secretary of the Department, and to other pertinent officials, highlighting the concerns of the Commission. A request for a response within two weeks would be included. Then, Mr. Drea suggested, if a meeting was felt to be useful, one could be arranged. Delegate Kopp asked that the letter be quite explicit and that Mr. Hanratty reiterate his concerns about questions that were not answered at his meeting with the Department.

Discussion ensued on the need to review all reports on the record-keeping practices of state agencies by October in order to have time to prepare an omnibus bill, amendments, or changes in regulations. Mr. Drea felt that the best contribution of the Commission might be a thorough review of existing practices and a comprehensive report with specific recommendations. Senator Hickman disagreed, stating that this would be only a halfway measure. He felt that at the very least, general legal requirements should be established.

Mr. Hanratty next discussed the report concerning the Department of Personnel. He explained that personnel files were maintained both at the Department of Personnel and also at individual agencies. Indeed, several personnel files may exist within one department.

Mr. Hanratty stated that requirements of the Equal Employment Opportunity Commission (EEOC) affect what information is collected by the Department of Personnel. Basically, EEOC guidelines state that unless some item is directly related to an occupational purpose, then it should not be collected in a form visible to the screening officer. Mr. Hanratty expressed a concern that all applicants were required to supply

a driver's license number on the State personnel application form. If a personnel officer obtained a driving record, he would have much the same information that was restricted under EEOC guidelines (e.g. race, sex, date of birth, etc.)

Mr. Tynes added that although the application form was not sent to the hiring agency, many agencies use the same form in their interview process.

Discussion focused on whether the request for a driver's license number was necessary and who should be required to supply it. Mr. Tynes stated that the Department of Personnel had been considering changing this to ask-"do you have a driver's license?" Then, if the qualifications standard required a license, it could be checked in these circumstances.

Mr. Hanratty noted that though he did not check every personnel office in State government, he had come across some application forms that appeared to conflict with EEOC guidelines. Mr. Zee suggested that the Forms Committee might be informed of the Commission's concern over the lack of a standardized application form.

Mr. Hanratty took up discussion of the Data Processing Division of the Department of Personnel. This division includes the legislature in the category of "duly elected and appointed officials who supervise the work of executive branch employees"; as a consequence, therefore, information is released to members of the legislature upon request. Mr. Hanratty noted, however, that the Administrative Services Division does not include legislators in this category and thus routinely denies access. Mr. Drea stated that he did not think that members of the legislature were meant to be included in this language. Mr. Hanratty noted that this issue had never been formally addressed by the Attorney General's Office. Mr. Hanratty added that a prior opinion of the Attorney General indicated that legislative auditors could be permitted access to personnel files if access was necessary in order to perform a statutory duty. Thus, it could

be that members of a legislative committee charged with departmental oversight responsibilities might argue that access to specified personnel files was a necessary aspect of their oversight function.

Delegate Kopp said that it was difficult to imagine when a member of the legislature would need access to an individual state employee's personnel file. Mr. Tynes noted that the Department of Personnel had received several inquiries for specific information from legislators concerning an employee and that the Department indicated that information would be supplied if the employee signed a release. Mr. Drea did not see how anyone could get around the requirement "duly elected and appointed officials who supervise" the work of executive branch employees. This, he felt, would restrict it to the legislator's personal staff.

In response to Mr. Zee, Mr. Tynes explained that files maintained at the Department of Personnel contained the original appointment and any promotion actions. Agency files were usually more extensive and would include such items as disciplinary actions. A file within a division may contain even more information, such as documentation of sick leave abuses. Discussion followed on the manual being prepared by the Department of Personnel that will discuss the type of information that should be in the file, what can be removed, and so forth.

Mr. Drea inquired as to the custodian of personnel records that were maintained in agencies or divisions rather than the Department of Personnel. Mr. Tynes thought that the appointed authority or the personnel chief of the agency would be the official custodian.

The Commission discussed the fact that letters of reference are removed from the employee's file before he is provided access to it. It was noted that an employee is not told that letters of reference are removed before he examines his file; the



employee is only informed of this fact if he inquires. It was suggested that a log could be kept indicating what, if anything, had been removed and why it was removed. Commission members discussed the pros and cons of confidentiality of letters of reference.

Delegate Kopp stated that she would like to know what information is in personnel files and to determine whether there should be a clear rationale and written directives governing such information. She would also like to know the basis on which information is kept in the Department of Personnel. Mr. Drea asked Mr. Tynes to check into this.

Mr. Clinton reminded the Commission that a security risk analysis had been conducted at the Annapolis and Baltimore Data Centers. The data collected by the Data Processing Division of the Department of Personnel was maintained at these facilities. Mr. Clinton asked that this fact be noted in the final report.

Mr. Hanratty moved on to discuss the State Retirement System. He identified two existent problems: 1) medical data provided by physicians was not available to the person in interest; and 2) most of the sensitive data maintained by the system is disclosable under Article 76-A. He noted that the public character of retirement data was of considerable concern to the Retirement System itself.

Mr. Hanratty explained that Senate Bill 52 (introduced in the 1981 General Assembly) would have limited the amount of information available to the public. Data would be restricted during the lifetime of the member or retiree to the person in interest or his supervisor. After the death of the member, it would be available to beneficiaries and claimants and representatives of the beneficiaries' estates.

Delegate Kopp asked if Senate Bill 52 would permit information to be available

to an individual who had been formerly married to the member or retiree. Mr. Hanratty thought not. Mr. Drea added that it could be obtained through a court order in this situation.

Mr. Drea expressed his belief that an argument could be made that no retirement information should be disclosable. Discussion followed on the respective amount of contributions provided by the State and the employee.

Mr. Hanratty introduced the final section to be discussed concerning the State Accident Fund. The major problem with the Fund, he stated, is that it has routinely been denying requests for data without apparent statutory authority to do so. Mr. Hanratty added that the supervising attorney to the Fund stated that information maintained was accessible to the best of his knowledge. Discussion focused on the difficulty that State agencies encountered when trying to obtain information from the State Accident Fund. Mr. Zee recounted an incident involving a former employee of his department. After being denied access to the information, he had requested to see the regulation or statute allowing the denial and has yet to receive a response.

The meeting concluded with a discussion of House Bill 1287. It was noted that medical records in facilities other than hospitals were not covered by this bill.

The next meeting was scheduled for July 20, 1981.