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GOVERNOR'S INFORMATION PRACTICES COMMISSION

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Governor's Information Practices Commission
Meeting of December 14, 1981

The Governor's Information Practices Commission met on December 14, 1981. The following Commission members attended the meeting: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Albert Gardner, Senator Timothy Hickman, Mr. Dennis Sweeney, Mr. Donald Tynes and Mr. Robin Zee.

Mr. Drea opened the meeting by asking Mr. Hanratty to present the results of the Commission's mail ballot. Mr. Hanratty, noted, first of all, that a majority of members voted in support of the following statement:

"The phrase 'sociological data' shall continue to remain in the Public Information Act as a specific exemption to disclosure; however, agencies seeking to employ this exemption shall be required to promulgate rules which define, for their record systems, the meaning of 'sociological data: the exemption for 'sociological data' would continue as is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations."

Mr. Hanratty also observed that the Commission supported the position that "Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board." In addition, members approved the following position: "A request by the person in interest to correct or amend a record pertaining to him must be accepted or rejected by an agency within 30 days of the receipt of the request."

Mr. Hanratty noted that two positions on the ballot still remained to be resolved. First of all, Mr. Hanratty indicated that Commission members were evenly divided regarding the following position: "Licensing boards shall be granted the same discretion over the sale of mailings lists as that presently accorded the Motor Vehicle Administration." After discussing this matter at length, members attending the December 14th meeting determined that licensing boards should not have such discretionary authority.

Finally, Mr. Hanratty stated that a majority of the members voted to support drafting legislation to permit researchers to have access to personally identifiable data under specified circumstances; nonetheless, Mr. Hanratty noted that the proposal had been worded ambiguously and was therefore subject to various interpretations. Commission members thus determined to reopen the topic for discussion.

As an aid to the discussion, Mr. Hanratty distributed copies of those sections of the Indiana Fair Information Practices Act and the Uniform Information Practices Code pertaining to access to records by researchers. Mr. Zee expressed his concern regarding the absence of a definition of "researcher." He wondered whether these statutes applied to university-affiliated researchers only, or to individual requesters as well. Mr. Sweeney stated his view that the public interest was served by allowing, for example, medical researchers to examine records under controlled situations. Mr. Sweeney recalled that the Attorney General had determined recently that current statutes did not permit the examination of vital records by researchers seeking to discover the cause of sudden infant death syndrome. Senator Hickman felt strongly, however, that individuals whose names appear on cancer registries should not have to endure visits and phone calls from researchers. After considerable discussion, members decided to support legislation granting researchers access to personally identifiable records but only under tightly controlled circumstances. The Commission also decided to recommend that

researchers should not be permitted to contact records subjects without the approval and monitoring of the official custodian.

Having resolved the two remaining issues from the ballot, the Commission then turned its attention to the draft Proposed Executive Order on Privacy and to the draft legislative recommendations. Mr. Hanratty proceeded to discuss the contents of the Proposed Executive Order. Commission members debated whether the ten "principles of information practice" contained in section one ought to contain the word "should" or "shall". The Commission determined that "should" was more appropriate as the section was a purpose clause. Mr. Clinton noted the definition of "state agency" as being ". . . every agency, board, commission, department, bureau or other entity of the executive branch of Maryland State government," and asked whether this definition included agencies such as the Comptroller's Office. Mr. Sweeney stated that the definition was wide enough to include those agencies. Mr. Tynes directed the Commission's attention to Section 4 (b)(2), which would require an agency to make a final determination within a reasonable period of time after an individual requests review of an agency's refusal to correct or amend his record. After some discussion, the subsection was amended to require the determination within thirty days. Commission members also discussed Section 4 (b) (3), which would permit the person in interest to file a 200 word statement of disagreement if the agency refused to correct or amend his record in accordance with his request. Commission members decided to amend the language of that subsection to indicate that the statement could not exceed two sheets of paper.

Commission members gave particular attention to Section 5, which would require agencies maintaining personally identifiable information to develop adequate security measures. The draft of subsection (b) read as follows: "Each State agency shall assign a data professional on a permanent basis whose responsibility is that of monitoring the level of security assigned to

computerized personal information systems." After some discussion, the subsection was modified to read: "Each State agency shall assign a data professional the responsibility to monitor the level of security assigned to computerized personal information systems." The Commission also reviewed subsection (c), which had appeared in the following draft form:

"The Data Security Task Force is hereby created. The Task Force shall consist of _____ data professionals drawn from the following State agencies: _____. The Task Force shall conduct a risk analysis throughout State agencies. The purpose of the analysis shall be to determine the appropriate security measures to be assigned to each computerized personal information system, and to formulate, review, and audit such appropriate levels of security. The Task Force shall submit a final report by _____."

At the request of the Chairman, Mr. Clinton agreed to revise this subsection and to submit a draft to the Commission for the following meeting.

The Commission then proceeded to examine the draft legislative recommendations. Mr. Hanratty began by reviewing the draft language pertinent to the Public Information Act. Mr. Hanratty noted, first of all, that the following definition of "personal records" had been added to Section 1:

" . . . any information pertaining to an individual whose identity can be ascertained therefrom with reasonable certainty either by name, address, number, description, finger or voice print, picture or any other identifying factor or factors." Mr. Hanratty stated that the definition had been necessary because of the creation of Section 4A, "Report of Personal Records." The Commission made two changes regarding the definition. First of all, members decided to modify the first words of the definition to read ". . . any public records containing information . . .". In addition, Commission members moved the definition to Section 4A. Mr. Sweeney had noted that some records custodians might become confused if Section 1 contained both "public records" and "personal records" definitions.

Since the Commission had already examined the "personal records" definition, members determined that they would proceed to an examination of Section 4A, which reads as follows:

- "a) Each State agency shall submit a report to _____ describing the personal records its maintains. The report shall include:
- i) The name of the agency and the division within the agency that is maintaining personal records, and the name and location of each set of personal records;
 - ii) A brief description of the kinds of information contained in each set of personal records and the categories of individuals concerning whom records are maintained;
 - iii) The major uses and purposes of the information contained in each set of personal records;
 - iv) Agency policies and procedures regarding storage, retrievability, access controls, retention, disposal, accuracy and security of each set of personal records;
 - v) Agency policies and procedures regarding access to personal records by the person in interest; and
 - vi) The categories of sources of information for each set of personal records.
- b) Each State agency maintaining personal records shall submit the report described in subsection (a) by July 1, 1983. Thereafter, a report shall be submitted annually which shall describe only those sets of personal records which were eliminated or added since the previous report, or which changed significantly since the previous report.
- c) Any State agency maintaining two or more sets of personal records may combine such records for reporting purposes, if the character of such records are highly similar.
- d) The _____ shall be responsible for establishing regulations prescribing the form and method of filing reports of personal records.
- e) All reports of personal records shall be available for public inspection."

The Commission made a number of revisions to the draft of Section 4A. First of all, subsections a and d were modified to require the forwarding of reports to the Secretary of the Department of General Services. Subsection a(4) was changed to read: "Agency policies and procedures regarding storage, retrievability, retention, disposal, and security (including access controls) of each set of personal records;" Subsection a(5) was revised as follows: "Agency policies and procedures regarding access and challenges to personal records by the person in interest; ". Finally, Section 4A was renumbered to appear as Section 5A.

Mr. Hanratty noted that an amendment had been added to Section 2 c, deleting the words "within a reasonable time" and replacing them with the phrase "within thirty calendar days of the receipt of the request". Commission members removed the word "calendar."

The Commission then turned its attention to a number of amendments which had been made to Section 3c of the Public Information Act. Subsection (i) currently prevents the disclosure, except as otherwise provided by law, of "medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports." Mr. Hanratty proposed the following amendment to this subsection:

" If the custodian denies the right of inspection to records on the basis of sociological data, he shall be required to promulgate rules which define, for the records in his possession, the meaning of sociological data. The exemption for sociological data shall continue as presently administered until July 1, 1983, by which time rules shall be adopted by the custodian."

After discussing the proposed amendment, the Commission decided to adopt the language offered by Mr. Sweeney: "After July 1, 1983, a custodian may deny the right of inspection to records on the basis of sociological data only pursuant to rules which define, for the records in his possession, the meaning and scope of sociological data."

The Commission also considered an amendment to subsection 3 (c)(iv), which currently prevents the disclosure of letters of reference, unless otherwise provided by law. Mr. Hanratty proposed adding the following language in accordance with an earlier decision of the Commission: "letters of reference, exclusive of letters of reference pertaining to individual persons seeking appointment to positions of a significant public policy-making character on boards and bodies." Commission members discussed the issue and determined that they would not recommend revision of subsection 3(c)(iv) but would instead seek an advisory opinion on the subject from the Attorney General.

The Commission examined four proposed additions to Section 3 c. The Commission approved the addition of subsection 3(c)(xi), which would prevent, except as otherwise provided by law, "records describing an individual person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness, except that such records shall be available to the person in interest." The Commission also approved without change the addition of subsection 3(c) (xiii), which would prevent, except as otherwise provided by law,

"retirement files or records on individual persons, except that such files or records shall be available to the person in interest and to his appointing authority. After the death of the person in interest, such files or records shall be available to any beneficiary, the personal representative of the estate of the person in interest, and any other person who demonstrates to the satisfaction of the administrators of the retirement and pension systems a valid claim of right to benefits. Upon request, the custodian shall indicate whether a person is receiving any retirement or pension allowance."

A third amendment would have prevented the disclosure, except as otherwise provided by law, of "administrative or technical information, including software, operating protocols, employee manuals, or other information, but

only if inspection would jeopardize the security of a record." The Commission decided to replace this amendment with the following language: "security manuals or any public record directly related to the maintenance of security."

Finally, the Commission considered subsection 3(c)(xii), which would have prohibited the disclosure, except as otherwise provided by law, of

"occupational and professional licensing records on individual persons, except that the custodian shall permit the right of inspection to the following data: names, business addresses, business telephone numbers, educational and occupational backgrounds, professional qualifications, non-pending complaints, and disciplinary actions involving findings of guilt or culpability. If the custodian does not maintain business addresses and business telephone numbers, then he shall permit the right of inspection to home addresses and home telephone numbers, should such information exist in his files. The custodian may permit the right of inspection to other data on individual persons, but only if inspection is required for a compelling public purpose and is provided by rule or regulation. Upon written request from an individual licensee, the custodian shall delete that person's name from licensee lists purchased from the custodian."

The Commission made two changes to the above language. First of all, the first sentence was amended to include: " and evidence provided to the custodian in order to satisfy a statutory requirement of financial responsibility." The members also deleted the second sentence and replaced it with the following statement: " If the custodian cannot provide business addresses, then he shall permit inspection of home addresses."

The Commission approved without modification the following amendment to Section 4, drafted by Mr. Sweeney:

" c) Except as provided in subsection (b), the official custodian may charge reasonable fees for the search and preparation of records for inspection and copying.

d) The official custodian may not charge any search or preparation fee for the first four hours of official or employee time that is needed to respond to a request for information.

e) The official custodian may waive any cost or fee charged under the subtitle if a waiver is requested and the official custodian determines that a waiver would be in the public interest. The official custodian shall consider, among other relevant factors, the ability of the requester to pay for the cost or fee."

Commission members also approved the following amendments to Section 5A:

a) An officer or employee of an agency or authorized recipient of records who willfully discloses or provides a copy of any personal records to any person or agency, with knowledge that disclosure is prohibited, shall be guilty of a misdemeanor and, upon conviction therefore, shall be punished by a fine not to exceed \$100.

b) Except as otherwise provided by law, a person who, by false pretenses, bribery or theft, gains access to or obtains a copy of any personal records whose disclosure is prohibited to him is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$100.

Two changes were made pertinent to Section 5A. First of all, Commission members increased the fines for violations of subsections (a) and (b) to \$1000. Second, members instructed the staff to draft language adding a civil penalty for statutory violations in the handling of personally identifiable records.

The Commission finally approved two proposed amendments to the Transportation Article. Section 12-111(3) currently reads as follows: "Any record or record entry of any age shall be open to inspection by authorized representatives of any federal, State or local government agency." The Commission supported the addition of the following language:

" . . . except that records requested by any federal, State or local government agency that are solicited for employment purposes shall contain only that information which is available for inspection by a nongovernment requester." In addition, the Commission supported amending Transportation Article Section 16-117.1 to require automatic expungement of a licensee's public driving record, as long as the licensee satisfies the provisions stipulated in the Annotated Code.