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STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

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February 19, 1982

OFFICIAL MINUTES

GOVERNOR'S INFORMATION PRACTICES COMMISSION
Meeting of November 16, 1981

The Governor's Information Practices Commission met on November 16, 1981. The following members were in attendance: Mr. Arthur S. Drea, Jr. Chairman; Mr. John Clinton, Mr. Robin Zee, Senator Timothy Hickman, Mr. Dennis Sweeney and Mr. Wayne Heckrotte.

Mr. Drea noted that the next four issues on the Commission's agenda pertained to deferred information practices bills:

VI. Bills from the 1981 Session Which Were Either Deferred for the Commission's Study or Referred to the Commission by the Sponsors

A. The Commission supports the passage of Senate Bill 1044 (Access to Psychological Records by the Person in Interest). 36. YES____ NO____

B. The Commission supports the passage of House Bill 1368 (Restrictions on Disclosure of Licensee Data) 37. YES____ NO____

C. The Commission supports the passage of House Bill 1366 (Restrictions on Disclosure of Motor Vehicle Administration data). 38. YES____ NO____

D. The Commission supports the passage of Senate Bill 52 (Confidentiality of Retirement Systems Data). 39. YES____ NO____

Mr. Drea noted that the General Assembly in its 1981 session had passed House Bill 1287, which grants the person in interest the right to examine medical records in hospitals and related institutions. The bill also permits the person in interest

access to psychological records, as long as the attending physician does not assert that access is medically contraindicated. In such a situation, the physician would be required to provide the person in interest with a summary of the record's contents.

Mr. Drea asked Mr. Hanratty to explain Senate Bill 1044, and to point out differences with House Bill 1287. Mr. Hanratty noted that Senate Bill 1044 would expand the rights of individuals to examine mental health data pertaining to them. Senate Bill 1044 stipulates that "a mental health professional or mental health facility may limit the disclosure of portions of a client's record to the client or client representative only if the mental health professional primarily responsible for the diagnosis or treatment of the client reasonably believes that the limitation is necessary to protect the client from a substantial risk of imminent, psychological impairment or to protect the client or another individual from a substantial risk or imminent and serious physical injury." In the event that the mental health professional decides to restrict any portion of the record from the client, the client would be entitled, under Senate Bill 1044, to designate an independent mental health professional to review the record. This independent professional must be in substantially the same or greater professional class as themental health professional who initially limited disclosure. The client would be permitted to review any materials in his file which in the opinion of the independent professional, did not pose a substantial risk of imminent psychological impairment to the client or a substantial risk of imminent and serious physical injury to the client or another individual. Finally, Mr. Hanratty noted that Senate Bill 1044 contained provisions either to amend a mental health record in accordance with a position of the client, or to permit the client to file a concise statement of disagreement to the content of the record. Mr. Drea noted that Senate Bill 1044 would require the attending professional to justify any non-disclosure of the record to the client.

After Mr. Hanratty's discussion of the bill's contents, the Commission proceeded to discuss the merits of Senate Bill 1044. Senator Hickman noted that he sat on a health subcommittee which was considering re-introducing Senate Bill 1044 in the 1982 session. However, he noted that hospitals, physicians and researchers were generally opposed to the motion of permitting review by an independent health professional. Senator Hickman stated that his subcommittee was waiting for the Information Practices Commission's position regarding Senate Bill 1044 before going ahead with the bill. Senator Hickman felt that, in his opinion, clients should have a right to see most mental health data pertaining to them. However, he suggested that it might suffice to permit a right of inspection to the client's legal representative.

Mr. Clinton and Senator Hickman suggested that health professionals are reluctant to criticize the actions of their peers. Therefore, it is unlikely,they argued, that the independent professional would overrule the orginal action or decision of the attending physician. However, Mr. Hanratty maintained that there undoubtedly exist "maverick" health professionals who believe as a matter of principle that clients should be permitted to examine their files.

Mr. Sweeney indicated that he could support some sections of Senate Bill 1044, but not all. While he endorsed the idea of granting access to the person in interest, he opposed the administrative burden that would be created by having to go back and send corrections to prior records recipients. Mr. Sweeney also opposed Senator Hickman's compromise proposal to permit access to the client's legal representative. In Mr. Sweeney's opinion, an individual should not be required to hire a lawyer in order to exercise a right.

Mr. Heckrotte felt that the Commission was simply not qualified to deal with an area as controversial as access to mental health data. He suggested that the Commission abstain on this issue. Mr. Drea agreed with Mr. Heckrotte's assessment. Mr. Drea noted that House Bill 1287 only became law a few months ago. The Commission should give that law a chance to operate and see if any problems develop. Senator Hickman concurred with Mr. Drea. While Mr. Zee felt that the Commission lacks

certain information in this area, the Commission was established to make recommendations pertinent to information practices and should therefore take a stand on this issue. Mr. Sweeney agreed. Mr. Hanratty reminded members that the Commission had written last session to the Chairman of the Senate Finance Committee requesting deferral of Senate Bill 1044 so that the bill could be studied by the Commission. In Mr. Hanratty's view, the Commission had an obligation to make a decision one way or the other regarding Senate Bill 1044. Mr. Heckrotte stated that he would have to vote no since he could not determine if the bill served a useful purpose. The Commission decided to support Mr. Heckrotte's position.

As the Commission had already made its determinations regarding the disclosure of occupational and professional licensing data, the Commission decided not to support either House Bill 1368 or House Bill 1366.

The Commission then examined Senate Bill 52. The bill sought to prohibit the disclosure of most personally identifiable data in the possession of public retirement systems; however, the sponsors did seek to permit the identification, upon request, of whether a person was receiving any retirement or pension allowance from a public retirement system. Members agreed that retirement data was sensitive and should not be available for public inspection. However, Mr. Drea and Mr. Sweeney expressed concern with the basic design of the bill. Mr. Sweeney disagreed with the effort of the bill to amend the definition of public records as contained in the Public Information Act.

Mr. Hanratty pointed out that the bill would permit a retirement system to classify certain data as non-disclosable to the person in interest. Mr. Hanratty noted that, in practice, the State Retirement System does not permit the person in interest to examine medical data pertaining to him unless authorized by the physician providing the data. Commission members disagreed with that policy, maintaining that Senate Bill 52 should be changed to allow access to the person in interest. Thus, the Commission endorsed the concept of confidentiality of retirement information, but decided not to support the particular language found in Senate Bill 52.

Having concluded its examination of information practices bills from the previous session, the Commission turned its attention to issues relating to specific agencies. The Commission first examined issue 40:

VII. Issues Relating to Specific Agencies

A. The person in interest shall have the right to inspect medical records pertaining to him in agency files. 40. YES____ NO____

Mr. Hanratty explained that a number of State agencies do not permit the person in interest to examine medical data. Such restrictions were imposed by, among other agencies, the State Retirement System, the Social Services Administration, and the Medical Advisory Board of the Motor Vehicle Administration. Mr. Hanratty indicated that these agencies do not permit access to the person in interest unless consent is received from the attending physician. In the case of the Medical Advisory Board, access is granted to the client's legal representative only with the promise that data not be released to the client. The Commission unanimously voted to support issue 40.

Since Issues 41 and 42 were related concerns, they were considered together by the Commission:

B. There should be standardization of the data elements collected by the various county election boards. 41. YES____ NO____

C. There should be standardization of the data elements disseminated by the various county election boards. 42. YES____ NO____

Mr. Sweeney and Senator Hickman stated that they opposed mandatory standardization of elections data. In their view, the counties should be permitted to make their own determinations on these issues. Mr. Drea disagreed. Mr. Drea argued that such variations in elections record-keeping practices constituted an unreasonable extension of the motion of home rule. In Mr. Drea's view, election laws are State laws and elections records should be handled in

the same manner. A majority of the Commission members supported Mr. Drea's position. Mr. Hanratty proposed to the Commission members that they direct their recommendations to the Election Laws Task Force. Mr. Hanratty informed the Commission that he had spoken with Mr. Donovan Peeters, staff member of the Task Force, and that Mr. Peeters had indicated that the Task Force was considering a number of issues pertinent to voter registration records. The Commission supported Mr. Hanratty's recommendations.

Examination was then made of Issue 43:

D. Access to voter registration lists should be restricted to public interest purposes only. 43. YES____ NO____

Mr. Hanratty stated that Issue 43 is similar in character to the current statute governing access to voter registration lists. At the present time, such lists may not be used for commercial solicitation or other business purposes. Mr. Hanratty noted that the Attorney General had indicated in 1977 that while the intent of the framers of this statute may have been to permit access to voter registration lists for political purposes only, the language of the statute authorized any uses other than commercial solicitation or other business purposes. Thus, non-profit charitable organizations and non-profit, non-charitable organizations should be furnished a voter registration list provided that the applicant representing these entities is a registered voter in Maryland and signs an affidavit stating that the list will be used in non-commercial ways.

Thus, Mr. Hanratty stated that if the Commission supported Issue 43, it would essentially ratify current practices. However, the matter would change significantly if Issue 43 was adjusted to strict access to voter registration lists for political purposes only. Such an adjustment, if adopted by the legislature, would invalidate a number of current uses of voter registration data, such as soliciting charitable contributions, recruiting members for non-profit organizations and identifying candidates for jury duty. After debating this issue, the Commission voted to endorse Issue 43.

The Commission next considered a number of issues pertinent to the Motor Vehicle Administration:

E. The Motor Vehicle Administration should publicize the fact that individuals may have their names deleted from computer lists. 44. YES____ NO____

F. Inspection of personally identifiable data of the Motor Vehicle Administration should be limited to those with a legitimate need to examine such data. 45. YES____ NO____

G. Motor Vehicle Administration records that are disclosed for employment purposes should contain the same information, whether the record is disclosed to a governmental agency or to a private employer. 46. YES____ NO____

H. The Motor Vehicle Administration shall expunge driving records automatically, provided that drivers meet the requirements stipulated in the Annotated Code. 47. YES____ NO____

I. The Motor Vehicle Administration shall not expunge driving records automatically, but shall make a vigorous effort to familarize motorists with the expungement policy. 48. YES____ NO____

The Commission unanimously endorsed Issue 44. Members noted that this proposed requirement could be accomplished in a variety of ways, such as including a statement in the Drivers' Handbook or through the insertion of a statement in license application or renewal information. Commission members asked Mr. Hanratty to provide further explanation of Issue 45. Mr. Hanratty noted that a number of bills had been introduced in recent sessions of the General Assembly to place limitations on the disclosure of driving records. Mr. Hanratty mentioned, for example, that Delegate Collins had sponsored bills to limit driving records to such groups as prospective or current employers, insurance companies, and law enforcement officials. However, the Commission generally felt that the public disclosure of driving data did not constitute an unreasonable invasion of privacy and therefore decided not to support Issue 45.

The Commission turned its attention to Issue 46. Mr. Drea informed Commission members that a section of the Transportation Article requires the Motor Vehicle Administration to release an entire driving record in response to a request from a government agency. In contrast, a non-government requester would be restricted to a thirty-six month version of the record. The Commission felt that these differing standards were inappropriate when the disclosure was to be used for employment purposes, and therefore voted to support Issue 46.

Mr. Hanratty observed that Issues 47 and 48 should be examined together, as they represented two alternatives to the current expungement policy of the Motor Vehicle Administration. Mr. Heckrotte indicated that in his opinion, there was no reason why driving records could not be expunged automatically. Mr. Clinton agreed with this position. Mr. Heckrotte asked Mr. Hanratty if the Motor Vehicle Administration had provided him with any information explaining its objections to automatic expungement. Mr. Hanratty stated that he had received a letter from the Motor Vehicle Administration indicating that automatic expungement would be burdensome; however, Mr. Hanratty noted that additional details were not provided. The Commission voted to endorse Issue 47.

The next issue examined by the Commission dealt with disclosure of Workmen's Compensation Commission records:

J. The Annotated Code should be revised to require the consent of the person in interest before there occurs any release of personally identifiable data from the files of the Workmen's Compensation Commission. 49. YES____ NO____

Mr. Clinton felt that the Commission should support Issue 49. However, Mr. Sweeney disagreed. Mr. Sweeney noted that Workmen's Compensation Commission hearings are open to the public. At those hearings any item of information contained in Commission files could be introduced. He also observed that if a Commission decision is appealed to a court, the file would be disclosable like any other court record. Therefore, Mr. Sweeney did not believe that Workmen's

Compensation Commission records should be confidential. In response, Mr. Hanratty noted that he had examined various Commission files and found that they contained a great deal of sensitive medical data. In Mr. Hanratty's view, such data deserved protection. Mr. Drea observed, however, that this would constitute a legal fiction, since files made confidential could be available for inspection elsewhere (e.g. a court). The Commission decided not to support Issue 49.

The next four issues examined by the Commission concerned the record-keeping practices of the Department of Health and Mental Hygiene:

K. The Department of Health and Mental Hygiene shall clarify, for the purpose of disclosure of medical records, the terms confidential and non-confidential information. 50. YES____ NO____

L. The Department of Health and Mental Hygiene shall promulgate regulations pertinent to the disclosure of medical records files. 51. YES____ NO____

M. A standardized disclosure policy should exist for all licensing boards of the Department of Health and Mental Hygiene. 52. YES____ NO____

N. A standardized expungement policy should exist for all licensing boards of the Department of Health and Mental Hygiene. 53. YES____ NO____

These issues had been thoroughly examined by the Commission when it had considered the record-keeping practices of the Department of Health and Mental Hygiene. Therefore, the Commission voted in favor of all four issues.

Issue 54 pertained to a public access question:

VII. Public Information Act Issues Not Previously Found in this List.

A. Within a period of thirty days after receiving a request for access to public records: an agency must either: a)provide the requested materials; or b) deny the request. 54. YES____ NO____

The Commission next examined Issue 55, which stated as follows:

B. In all cases involving a denial for request for access to public records, the requester must be informed of :

a) the specific reasons for the denial; b) the name and position or title of the individual responsible for the denial; and c) the various appeal options available to the requester.

55. YES____ NO____

Mr. Hanratty informed Commission members that the Public Information Act already contained language highly similar to Issue 55. The Commission therefore decided against taking any further action on this issue.

Issue 56 was then examined by the Commission:

C. Unsolicited letters of comment pertinent to individuals seeking positions other than merit positions shall be available for inspection to the general public. 56. YES____ NO____

Mr. Drea noted that this issue was a direct result of the letters of reference controversy which Councilwoman Esther Gelman of Montgomery Count had presented to the Commission. Mr. Drea observed that the Montgomery County Attorney, Mr. Paul McGuckian had determined that unsolicited letters received by the County Executive regarding applicants for positions as members of the Washington Suburban Sanitary Commission (WSSC) were letters of reference and therefore confidential under the Public Information Act. Councilwoman Gelman disagreed with this determination, arguing that members of the public do not send letters concerning WSSC applicants under the assumption that such letters will be treated as privileged communications. In Councilwoman Gelman's opinion, these letters were "letters of comment" rather than "letters of reference" and therefore subject to the disclosure provisions of the Public Information Act.

Mr. Drea maintained that a person who applies for a public position recognizes that he is going to be scrutinized. Thus, he supported issue 56. In Mr. Drea's view, however, it was insignificant to determine whether a letter of comment was solicited or unsolicited. He therefore proposed eliminating the word "unsolicited" from issue 56.

Mr. Zee asked Mr. Drea to explain the meaning of the phrase "merit positions."

Mr. Drea indicated that "merit positions" was the phrase used in Montgomery County to describe civil service employees. Mr. Drea stated that the intent of Issue 56 was to require disclosure of letters of comments pertaining to public officials rather than those in civil service positions.

Mr. Drea proposed the following language for Issue 56: "Letters of comment for persons seeking positions for significant policy-making boards and bodies should be disclosable." A majority of Commission members voted to support issue 56.

Senator Hickman inquired as to the status of unsolicited letters directed to public officials from constituents seeking assistance. Mr. Drea and Mr. Sweeney stated that these letters were disclosable. Senator Hickman argued that he has always treated such letters in a confidential fashion. He noted that many letters from constituents contain very sensitive information, such as personally identifiable medical or financial data, which in his opinion must be protected. Mr. Sweeney countered that the public should be able to inspect constituent letters to make sure that public officials were not engaging in unethical practices. Senator Hickman proposed a motion that a specific amendment be inserted into the Public Information Act mandating the confidentiality of constituent letters of assistance to public officials. The Commission determined that it needed additional time to consider this motion.

Having concluded its examinations of Issues appearing on the Commission's ballot, members then discussed at length the types of legislative initiatives to be adopted. Senator Hickman expressed his view that it was important for the Commission to balance access to public information with concern for individual privacy. He noted that he would support an omnibus privacy statute and/or an information practices board. Realistically, however, he did not think that there was a groundswell of support in the General Assembly for either an omnibus statute or a board.

Mr. Sweeney maintained that the types of information practices problems encountered by the Commission were not substantial enough to justify abolishing the Public Information Act and replacing it with an omnibus statute. Mr. Drea added that there were weaknesses in the model information practices codes examined by the Commission.

Senator Hickman suggested that the Commission might consider structuring its recommendations in the form of an Executive Order. He though that convincing the Governor of the virtue of a proposed Executive Order would be an easier task than going ahead with an omnibus privacy bill. Senator Hickman said that if the Governor promulgated an Executive Order on privacy, the General Assembly would enact it in statutory form the following year. He noted that this was what happened with the Open Meetings Law.

Mr. Drea felt that the Executive Order approach would not work. He pointed out that a number of the Commission's proposals, such as those affecting licensure data, required legislative action. However, after additional discussion, Mr. Drea suggested that some of the Commission's proposals could, in fact, be accomplished by Executive Order. He therefore proposed the development of an Executive Order which will include all of the Commission's recommendations which do not require expressed authority from the General Assembly. All other recommendations could be developed in bill form and submitted to the General Assembly. The Commission voted to support Mr. Drea's proposal.

Mr. Drea asked Mr. Hanratty to come back to the Commission with a proposed Executive Order encompassing the Commission's recommendations and to develop legislation in accordance with those recommendations. The Commission agreed not to schedule another meeting until Mr. Hanratty was ready to present those drafts to the Commission. The meeting was then adjourned.