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STATE OF MARYLAND  
EXECUTIVE DEPARTMENT  
GOVERNOR'S INFORMATION PRACTICES COMMISSION

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CHAIRMAN

February 3, 1982

OFFICIAL MINUTES

Governor's Information Practices Commission  
Meeting of November 9, 1981.

The Governor's Information Practices Commission met on November 9, 1981. The following members were in attendance: Mr. Arthur S. Drea, Jr. Chairman; Mr. John Clinton, Mr. Robin Zee, Senator Timothy Hickman and Mr. Dennis Sweeney.

The Commission began by dealing with a variety of administrative matters. The members adopted the draft minutes from the meetings of September 28th, October 5th, October 13th, October 19th, and October 26th. Mr. Drea informed members that the Commission meeting of November 16th would be very important. Mr. Drea stated that he hoped to complete consideration of issues at that time. Senator Hickman commented that the Commission still needed to determine whether it would recommend an omnibus information practices bill or whether a more particularized bill would be preferable. He felt that this decision would take a considerable amount of time. Mr. Drea agreed and said that the Commission would simply have to meet until the matter was resolved. Mr. Drea also noted that quite a number of decisions would have to be made if the Commission endorsed the concept of an information practices board.

Discussion then ensued regarding the nature of the Commission's Final Report. Mr. Clinton asked Mr. Hanratty if it would be possible to provide members with a draft outline of the Final Report and then permit members to review this draft. Mr. Drea felt that the Commission probably did not have sufficient time to consider this. Mr. Hanratty informed the Commission that the staff had already completed six reports on agency record-keeping practices. Mr. Drea stated the Commission should take a few minutes to discuss the structure of the report. He suggested that the report contain an introductory section, analyses of all agencies studied by the Commission, the Commission's conclusions, recommendations and summary. Mr. Clinton proposed that the report begin with an executive summary and then follow Mr. Drea's framework.

Mr. Hanratty stated that the draft reports of agency record-keeping practices have been sent to the respective agencies for review. He also noted that the agency chapters appearing in the Final Report may be slightly different from the reports examined by Commission members. He noted, for example, that the Maryland Automobile Insurance Fund report was originally written in the first person, but was changed to the third person. In addition, all appendices were being deleted in the Final Report.

Mr. Zee asked Mr. Hanratty if the reports of agency record-keeping practices could be placed in the appendix of the Final Report, rather than in the middle sections of the report. Mr. Clinton endorsed Mr. Zee's proposition. Mr. Drea felt that it really didn't matter where the agency chapters were located, as long as they appeared somewhere in the report. In Mr. Drea's view, agencies tend to take corrective action when the spotlight is on them.

Having considered these preliminary matters, members then returned to a consideration of the issues contained on the Commission's ballot. The

Commission began by examining the occupational and professional licensing question left pending from the November 2nd meeting. Mr. Drea noted that Mr. Hanratty had sent Commission members a list by agency, of all occupational and professional licensing data disclosable under the Public Information Act. Mr. Drea felt that this list served as a useful reference in enabling members to see the wide range of licensure information currently disclosable.

Having examined this list, Mr. Drea proceeded to discuss issues 57 through 59 which had been drafted by Mr. Hanratty at the request of the Commission members attending the November 2nd meeting. These issues read as follows:

57. The following personally identifiable data collected for the purposes of occupational and professional licensing shall be available for public inspection: name, business address, business telephone number, educational and occupational background, professional qualifications, non-pending complaints, and disciplinary actions when a finding of guilty was determined.

YES \_\_\_\_\_ NO \_\_\_\_\_

58. All personally identifiable occupational and professional licensing data other than that described in #57 shall be nondisclosable.

YES \_\_\_\_\_ NO \_\_\_\_\_

59. Disclosure of personally identifiable occupational and professional licensing data other than that described in #57 shall be subject to the discretion of the appropriate records custodians.

YES \_\_\_\_\_ NO \_\_\_\_\_

Mr. Drea asked Senator Hickman if these issues had correctly restated his motion of the previous week. Senator Hickman indicated that it had, but expressed concern regarding the phrase "non-pending complaints" contained in issue 57. Mr. Hanratty stated that "non-pending complaints" could be changed to "already resolved complaints." Mr. Drea felt that this new language would also resolve an issue raised by Mr. Sweeney regarding disclosure of complaints from homeowners.

Mr. Drea suggested that the expression "finding of guilty" in issue 57 be changed to read "finding of guilt or culpability." The Commission agreed

with Mr. Drea's suggestion. Senator Hickman stated that if a statute required individuals to demonstrate financial solvency or post bonds as a precondition to the issuance of licenses, then such information should be available for public inspection. Mr. Clinton suggested that this item could be regarded as "professional qualifications", and therefore would be covered by existing language in issue 57. However, Mr. Drea felt that it would be a good idea to phrase precise language to take care of Senator Hickman's concern. The Commission unanimously supported issue 57, as well as the amendment offered by Senator Hickman.

Mr. Hanratty pointed out that issue 58 and 59 had been developed to give members a wide a choice as possible. Mr. Hanratty also pointed out a potential problem. A number of boards, Mr. Hanratty stated, collect home address rather than business address. Therefore, if the Commission supported issue 58, then a number of boards would not have to release any addresses. Senator Hickman expressed concern about this part, noting that consumers might not be able to contact licensees who had engaged in fraudulent practices.

Debate ensued as to the appropriateness of issues 58 and 59. Mr. Sweeney stated that, in his opinion, a valid public purpose is served by permitting public inspection to additional licensure data. Mr. Sweeney felt that it was important that licensing agencies be permitted to share information with other agencies. Therefore, Mr. Sweeney argued that issue 59 was more acceptable than issue 58. Mr. Drea commented that he could support issue 59 if it indicated that all other information is nondisclosable except that the custodian may release information for a compelling public purpose if provided by rule. No objection was raised to Mr. Drea's position and it was therefore adopted by the Commission. The members also supported a motion presented by Mr. Zee, who proposed that issue 57 be amended to require custodians to release home addresses if business addresses were unavailable. As issues 57 and 59 were supported by the Commission, Mr. Drea informed members that issues 19 through 21

were no longer relevant.

The Commission returned briefly to issues 15, 17 and 18 on the ballot. Mr. Hanratty noted that issue 17 was linked to the issue of sociological. Mr. Sweeney observed that issue 17 deals with Public Information Act situations. The Commission decided to come back to issues 15, 17 and 18 when it considered the Public Information Act.

The Commission then considered issue 22.

"J. An officer or employee of an agency who willfully discloses or provides an individually identifiable record to any person or agency is subject to criminal penalties."

22. YES \_\_\_\_\_ NO \_\_\_\_\_

Mr. Drea noted that, in his opinion, the criminal penalties provision contained in the Public Information Act was not as significant as the civil penalties provision. Mr. Drea therefore felt that it would be important to amend issue 22 to provide for civil as well as criminal penalties. Mr. Sweeney suggested that perhaps the Commission should delete reference to criminal penalties. Mr. Drea disagreed, stating that if the reference was not included in the area of disclosure of personally identifiable records, it should also be deleted from the Public Information Act. Mr. Sweeney expressed some reservations about the wisdom of establishing criminal penalties in this area. After some discussion, the Commission decided to support an amended version of issue 22 to include both civil and criminal penalties.

Issues 23 through 27 dealt with security of personally identifiable records:

IV. Security of Personally Identifiable Records

A. An agency maintaining personally identifiable data shall enact and implement appropriate safeguards to ensure the integrity, security and confidentiality of such data.

23. YES \_\_\_\_\_ NO \_\_\_\_\_

B. Records custodians shall be barred from disclosing administrative or technical information, including software, operating protocols, employee manuals or other information, the disclosure of which would jeopardize the security of a record-keeping system.

24. YES \_\_\_\_\_ NO \_\_\_\_\_

C. A team of data professionals should be employed to conduct a risk analysis throughout State government. The purpose of the analysis is to determine the appropriate level of security to be assigned to each computerized record system. This team may be drawn from data professionals already employed in State Government.

25. YES \_\_\_\_\_ NO \_\_\_\_\_

D. The State should assign a data professional for each agency on a permanent basis whose responsibility is that of monitoring the level of security assigned records containing personally identifiable information.

26. YES \_\_\_\_\_ NO \_\_\_\_\_

E. A person who, by false pretense, bribery, or theft, gains access to or obtains a copy of any individually identifiable record whose disclosure is prohibited to him is subject to criminal penalties.

27. YES \_\_\_\_\_ NO \_\_\_\_\_

Members of the Commission unanimously agreed with issues 23 and 24 and felt that the issues lent themselves to inclusion in an Executive Order.

The Commission gave considerable attention to issue 25. Mr. Clinton noted that issue 25 could also be included in an Executive Order. First of all, he suggested that the following phrase be added to the second sentence of issue 25: "and to formulate, review and audit appropriate levels of security." Senator Hickman also proposed eliminating the phrase, "should be employed" in the first sentence of issue 25 and replacing it with "should conduct." Mr. Drea also proposed replacing "appropriate level of security" with "appropriate security measures." The Commission voted to support issue 25, subject to the amendments introduced by Senator Hickman and Mr. Drea.

The Commission also endorsed issue 26, but made one change to the language. Senator Hickman recommended that the word "for" be changed to "at".

Mr. Drea proposed that the words "false pretenses, bribery, or theft" be eliminated from issue 27 so that it read as follows: "a person who gains access to or obtains a copy of any individually identifiable record whose disclosure is prohibited to him is subject to criminal penalties." Mr. Sweeney disagreed, noting that removal of these qualifiers might subject reporters to criminal penalties for disclosing personally identifiable data. Mr. Drea commented that his intent merely was to simplify the issue, but that he had no problem with leaving the issue as presented. The Commission members voted in support of issue 27 without amendments.

Having concluded issues pertinent to security of personally identifiable data, the Commission next considered issues 28 through 35:

V. Catalogue of Record Systems

A. An agency maintaining personally identifiable records should submit an annual report (to the Attorney General's Office) identifying:

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| a) the name and location of such records;                                                                                                       | 28. YES _____ NO _____ |
| b) the categories of individuals contained in the record system;                                                                                | 29. YES _____ NO _____ |
| c) the categories of records maintained in the system;                                                                                          | 30. YES _____ NO _____ |
| d) the uses of such records;                                                                                                                    | 31. YES _____ NO _____ |
| e) policies and procedures regarding storage, retrievability, access controls, retention, disposal, accuracy and security of such records;      | 32. YES _____ NO _____ |
| f) agency procedures whereby an individual can be notified on request if the system of records contains a record pertaining to that individual; | 33. YES _____ NO _____ |
| g) and the categories of sources of records in the system;                                                                                      | 34. YES _____ NO _____ |
| h) This report shall be open to public inspection.                                                                                              | 35. YES _____ NO _____ |

Mr. Hanratty noted that he had prepared background materials for issues

28 through 35. First of all, he noted that each member had received materials which described the way that the State of California maintained a catalogue of record systems. In addition, Mr. Hanratty stated that he developed an analysis of the concept of such a catalogue. In his analysis, Mr. Hanratty had observed that support for a catalogue of record systems has been based on two claims: 1) a catalogue serves as a useful management tool in enabling an agency to take an inventory of its record systems and to review the record-keeping practices; 2) a catalogue provides a means for individuals to identify record systems which may contain data about them and informs them how to go about accessing these records. Mr. Hanratty stated that , in his opinion, the experience of the Federal Privacy Act suggests that the first claim may be valid, while the second claim may be invalid.

Mr. Hanratty noted, first of all, that the Office of Management and Budget had reported a significant decline since 1975, both in the number of federal record systems and in the total number of individually identifiable records maintained by federal agencies. However, Mr. Hanratty also observed that there was no evidence to indicate that the public was availing itself of the catalogue of record systems. Federal agencies must publish notices in the Federal Register describing the nature of all personally identifiable record systems. Despite this fact, very few individuals cite a particular record system by name when submitting a request for access. This suggested, in Mr. Hanratty's opinion, a rather low level of awareness of the catalogue.

Mr. Hanratty made four recommendations to the Commission members, if they decided to support the implementation of a catalogue of record systems. First of all, Mr. Hanratty recommended that the Commission not endorse the idea of publishing the catalogue in the Maryland Register. Mr. Hanratty stated that publication of the catalogue would be extremely expensive, and would not serve a useful purpose.

Second, Mr. Hanratty urged that one agency be assigned the duty of examining the reporting sheets submitted by all agencies. In Mr. Hanratty's view, the reporting sheets would be useless unless one agency carefully scrutinized them. Mr. Hanratty further recommended that the Commission make efforts to inform the public about the catalogue's existence, perhaps by placing copies of the reporting sheets in loose-leaf binders and depositing these binders in regional libraries throughout the State. Finally, Mr. Hanratty suggested that an agency should be exempted from submitting a new sheet for a record system if there has not been a substantive change in that system from the previous year.

Commission members made various comments to Mr. Hanratty's recommendations, as well as to issues 28 through 35. Mr. Sweeney stated that he was quite skeptical that an effective means existed to inform the public about the availability of the record. Instead, Mr. Sweeney suggested that each agency maintain a list of personally identifiable record systems for that agency. Mr. Hanratty expressed concern, however, that the catalogue would become useless unless agencies were forced to submit reporting sheets to another agency for review. Senator Hickman thought that this might keep agencies on their toes.

Senator Hickman stated that, in his opinion, the Commission has not yet received accurate information from some agencies regarding their handling of personally identifiable data. Mr. Drea disagreed, maintaining that the Commission did receive accurate reports from the great majority of agencies.

Mr. Drea recommended the development of a catalogue of record systems. He informed Commission members that issues 28 through 35 were drawn from a bill that had been sponsored by Senator Hickman and vetoed by Acting Governor Blair Lee. Senator Hickman expressed the view that he still supported the concept of such a catalogue. Mr. Clinton suggested that the reports could be sent to the Records Management Division of the Department of General Services. Mr. Zee stated that once the catalogue had been established, it would be effortless to operate. However,

Mr. Sweeney voiced his concern that the catalogue would only create a generalized, non-specific, mass of information. In addition, he felt that the quality of the responses would vary greatly. All members of the Commission except Mr. Sweeney voted to endorse the motion of a catalogue of record systems. The Commission also voted to endorse all of Mr. Hanratty's recommendations with the exception of the recommendation to place copies of the reporting sheets in regional library repositories.

After concluding consideration of the catalogue of record systems, the Commission adjourned until November 16, 1981.