



HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

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OFFICIAL MINUTES

Governor's Information Practices Commission
Meeting of November 2, 1981

The Governor's Information Practices Commission met on November 2, 1981. All members of the Commission were in attendance for this meeting; the Commission consists of the following members: Mr. Arthur S. Drea, Jr. Chairman; Mr. John Clinton, Mr. Albert Gardner, Mr. Judson Garrett, Mr. Wayne Heckrotte, Senator Timothy Hickman, Delegate Nancy Kopp, Mr. Dennis Sweeney, Mr. Donald Tynes, and Mr. Robin Zee.

Mr. Drea began by informing the Commission members that Mr. Dennis Hanratty would make a brief presentation regarding the record-keeping practices of the State Department of Assessments and Taxation and selected portions of the Department of Licensing and Regulation.

Mr. Hanratty indicated that in his opinion, the most significant issue confronting the Commission regarding assessments and taxation records involved the disclosure of Homeowners' Property Tax Credit Program data. Mr. Hanratty noted that this data had become inadvertently subject to the disclosure provision of the Public Information Act. At the root of the problem, Mr. Hanratty asserted, were actions taken by the General Assembly during the 1979 session. Mr. Hanratty observed that an emergency bill (HB 668) was introduced at that time by Delegate Athey to assign a confi-

Confidential status to Homeowners' Property Tax Credit Program data. This bill was passed by the General Assembly and signed into law by the Governor on March 23, 1979. Because of the emergency status of the bill, the amendment became effective immediately.

During the same session, Mr. Hanratty noted, another bill was introduced pertinent to the Homeowners' Property Tax Credit Program. The basic purpose of Senate Bill 366, introduced by Senator Levitan on January 31, 1979, was to require the Comptroller to assist in the tax credit program. This bill was also passed by the General Assembly and signed into law by the Governor, becoming effective July 1, 1979.

Mr. Hanratty stated that it appeared that the General Assembly inadvertently wiped away the confidentiality measures appearing in House Bill 668 when it passed Senate Bill 366. Mr. Hanratty noted that although there was nothing in the purpose provision of Senate Bill 366 to indicate any intent to abolish the confidentiality statements contained in House Bill 668, the fact remained that the language now appearing in the Annotated Code is the language found in Senate Bill 366.

Mr. Hanratty then turned to a discussion of four sections of the Licensing and Regulation report which had not yet been considered by Commission members: 1) the licensing boards of the Division of Occupational and Professional Licensing; 2) Maryland Racing Commission; 3) Maryland State Athletic Commission; and 4) Insurance Division. Mr. Hanratty felt that there was a generic issue affecting all of these sections. Under the Public Information Act, Mr. Hanratty observed, virtually all licensee data is disclosable to anyone requesting it. Mr. Hanratty stated that the Commission needed to make a policy decision: should all licensee data continue to be available for public inspection, because there is a public purpose served by its disclosure or should some of this information be

restricted? In Mr. Hanratty's opinion, this was a very important issue that should be addressed by the Commission, particularly since the issue affected so many departments of State government.

Having completed consideration of the two remaining departmental reports, the Commission turned its attention to the ballot which had been sent to the members by the staff over the previous week. Mr. Drea stated that once the members had voted on the general issues contained in the ballot, the Commission could move into a second phase and determine whether the positions supported could best be achieved by an omnibus statute, modifications to existing statutes, or some other approach.

Mr. Drea maintained that the issues on the ballot needed to be voted upon by the members so that the Commission could establish firm positions, and asked if anyone had problems with proceeding. Mr. Heckrotte suggested that the Commission not debate each issue unless a member had a strong position on a particular issue. This suggestion was supported by Delegate Kopp, who added that many issues may not require any discussion. These comments were endorsed by the members of the Commission.

With this in mind, the Commission turned to the first five issues on the ballot:

I. Collection of Personally Identifiable Information

- A. An agency collecting personally identifiable information from an individual should inform that individual:
- a. of the principal purpose for which the agency intends to use the information: 1. YES _____ NO _____
 - b. of the consequences to the individual of not providing the information; 2. YES _____ NO _____
 - c. of his right to inspect such information, if such a right exists; 3. YES _____ NO _____
 - d. of the public or nonpublic status of the information to be submitted. 4. YES _____ NO _____
- B. To the greatest extent possible, personally identifiable information should be collected from the subject of the record system. 5. YES _____ NO _____

Delegate Kopp informed Commission members that she had voted "yes" to each of the above issues. Mr. Drea felt that issue #4 was particularly important; he suggested amending the issue to include the phrase "unless otherwise provided by law."

Senator Hickman stated that in addition to complying with the above requirements, an agency collecting personally identifiable information from an individual should inform that individual if nonpublic records are shared with other government agencies on a routine basis. He suggested that this information be indicated on standardized forms filed by individuals so that they are aware of where data was being forwarded. Mr. Drea recommended adopting the following language: "of the routine sharing of nonpublic information with other government agencies." Commission members voted in support of Senator Hickman's motion.

Mr. Sweeney expressed concern regarding the wording of issue #5. He felt that the phrase "to the greatest extent possible" created a significant loophole. Mr. Sweeney thought that it might be impossible to enforce this position and recounted some examples where data is typically not collected directly from the record subject. Mr. Drea responded that many more examples may exist; however, the intent of the Commission is merely to establish a principle.

After discussing the issues, Commission members voted unanimously to support issues 1 through 5.

The Commission then examined issues 6 through 8:

II. Access Rights of the Person in Interest

A. Except where expressly prohibited by law, the person in interest:

a. shall be permitted to examine all data pertaining to him;

6. YES _____ NO _____

b. shall be permitted to copy all data pertaining to him;

7. YES _____ NO _____

c. shall be permitted to request a correction of a particular record.

8. YES _____ NO _____

The Commission unanimously supported issues 6 through 8.

Commission members proceeded to consider issues 9 through 12:

B. Within a reasonable period of time after receiving a request from an individual in writing to correct or amend a record pertaining to him, an agency shall:

- a. amend the record in question; or
- b. inform the individual of its refusal to amend the record, the reason for the refusal, and the agency procedures for review of the refusal.

9. YES _____ NO _____

C. If, after appropriate agency review, an agency refuses to correct or amend the record in accordance with the request from the person in interest, the agency shall permit the person in interest to file with the record a concise statement of his reasons for disagreement with the agency's refusal.

10. YES _____ NO _____

D. If the person in interest files a statement of disagreement to a record in accordance with agency procedures, the agency must furnish a copy of that statement to:

- a. Any future recipients of the disputed portion of the record;
- b. any past recipients of the disputed portion of the record, to the extent that they can be identified.

11. YES _____ NO _____

12. YES _____ NO _____

Mr. Clinton asked whether it was assumed in issue 9 that an agency would have a reasonable period of time within which it would inform the individual of its refusal to amend the record. Commission members asserted that this was the case. The members voted unanimously to support issue 9. The Commission also unanimously endorsed issues 10 and 11.

Considerable attention was given to issue 12. Mr. Tynes suggested that it would be incumbent upon the subject of the record to inform past recipients and would be beyond the ability of an agency. Mr. Gardner proposed that a time limit be established in the notification of past re-

ipients. Mr. Hanratty emphasized that issue 12 presumed that agencies would be employing logs to record the dissemination of personally identifiable information. If disclosure logs were not used, then it would be impossible to determine the names of past recipients of data.

Mr. Hanratty therefore suggested to the Commission members that they first examine issue 14 and then return to issue 12. This suggestion was adopted by the Commission. Issue 14 read as follows:

- B. An agency disclosing personally identifiable data shall keep an accurate record of all such disclosures including, but not necessarily limited to, the date of the disclosure, the name and address of the recipient of the data, the statutory authority permitting the disclosure of information, and the purported use of the information by the recipient. This requirement does not apply to information released under a public information statute.

14. YES _____ NO _____

Mr. Gardner expressed opposition to issue 14 as presently constituted because of the absence of a time frame. Mr. Drea suggested that the Commission could recommend the imposition of a time limit on all disclosure logs. Mr. Heckrotte proposed that all logs could be expunged after a certain period of time. In Mr. Sweeney's opinion, the installation and maintenance of disclosure logs would be a very expensive proposition. If these logs were subsequently expunged, Mr. Sweeney felt that that would be a significant waste of money and time.

Mr. Drea observed that each agency could determine what personally identifiable information was disclosable under the Public Information Act and then maintain disclosure logs for the remaining data. Mr. Sweeney stated that this could be done, as long as this is the area where you would want to put your money. Mr. Sweeney again noted that disclosure logs would cost a considerable amount of money.

Mr. Zee agreed that the cost factor was a significant one to consider. However, he thought that the Commission should first make a decision as to whether or not disclosure logs were a good idea. Mr. Zee felt that the cost of the proposal could be examined later. Mr. Sweeney responded that the Commission should deal with the day-to-day experiences regarding what is real and practical.

Senator Hickman suggested that the issue might be resolved by notifying record subjects that information pertaining to them was being shared with other government agencies. Both Delegate Kopp and Mr. Drea agreed with this suggestion. Mr. Hanratty argued, however, that this would defeat the purpose of a disclosure log. In Mr. Hanratty's view, the basic purpose of a disclosure log is to enable an agency to contact recipients of data in the event that it is determined that inaccurate data had been disseminated. If an agency notified a record subject of the names of potential recipients without recording the actual names of recipients, the dates of disclosures, and the nature of information released, it would be impossible to correct errors.

Mr. Zee recommended that issue 14 be sent to all State agencies for their comments. Mr. Drea disagreed with this recommendation, arguing that there was not enough time to permit this. Mr. Zee responded that the Commission might find that there would not be substantive problems in the implementation and maintenance of disclosure logs.

After discussing the matter at length, Commission members decided to reject issue 14. Voting against the issue were Mr. Drea, Mr. Garrett, Mr. Gardner, Mr. Sweeney, Mr. Clinton, Delegate Kopp, and Mr. Heckrotte. Voting in support of issue 14 was Senator Hickman. Mr. Tynes and Mr. Zee abstained.

Mr. Garrett stated that the Commission should still support issue

12, but that it should be amended to read as follows: "any past recipients of the disputed portion of the record, to the extent that they can be reasonably identified." Mr. Drea stated that if the Commission does not endorse issue 12, that does not mean that agencies would be prohibited from contacting past recipients. The Commission decided to reject issue 12.

The Commission examined issue 13:

III. Disclosure of Personally Identifiable Information

- A. Should the Commission attempt to define confidential or private data so as to exclude directory information from other types of personally identifiable information?

13. YES ___ NO ___

Mr. Drea felt that the Commission should not try to make the type of distinction envisioned by issue 13. Commission members agreed and decided not to support the issue.

Issue 15 was considered next:

- C. Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness shall not be made available for public inspection without the consent of the individual, unless expressly authorized by law.

15. YES ___ NO ___

The Commission voted unanimously to adopt issue 15.

Issue 16 was then considered by the Commission:

- D. All personally identifiable data, including the names and addresses of individuals, is nondisclosable without the consent of the individuals involved, unless disclosure is expressly authorized by law.

16. YES ___ NO ___

Commission members questioned the purpose of issue 16. Mr. Sweeney stated that enactment of issue 16 would prevent the compilation and release of the names of professors who teach at the University of Maryland. Mr. Garrett argued that issue 16 would make it impossible to publish the Maryland Manual.

Mr. Hanratty maintained that his intention in including issue 16 was to present members with a complete range of positions pertinent to the disclosure of personally identifiable data, from the dissemination of all information to the release of none. The Commission members unanimously rejected issue 16.

Issue 17 was next on the agenda:

- E. Biographical data pertinent to a specific individual, including such items as age, sex, race, religious affiliation, and educational and occupational background, shall not be made available for public inspection without the consent of the individual, unless expressly authorized by law. Biographical data does not include the names and addresses of individuals.

17. YES NO

Mr. Sweeney felt that the language in issue 17 was still objectionable since no privacy interest was served. Mr. Hanratty argued that the intent behind issue 17 was to ascertain the Commission's position on the release of certain information, such as race, which currently is disclosable under the Public Information Act. Mr. Hanratty pointed out, for example, that most of the biographical data of the Division of Parole and Probation was disclosable under the Public Information Act. Commission members decided, however, that it would be very difficult to make distinctions regarding which biographical items should be confidential. Senator Hickman stated, for example, that biographical data should be disclosed to the public. The Commission therefore decided not to support the issue as currently phrased.

The Commission then examined issue 18:

- F. An agency may disclose personally identifiable information from its file if that information has been designated as directory information. An agency which wishes to designate directory information shall give public notice of the following: a) The categories of personally identifiable information which the agency has designated as directory information; b) The right of the person in interest to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that person as directory information;

and c) The period of time within which the person in interest must inform the agency in writing that such personally identifiable information is not to be designated as directory information to that individual.

18. YES ___ NO ___

Mr. Drea stated that the Commission must vote no to issue 18 since the members previously had rejected distinguishing between directory and non-directory data. Commission members unanimously supported Mr. Drea's position.

The final problem covered by the Commission, the disclosure of licensure data, was covered in issues 19 through 21:

- G. All information collected from individuals seeking professional licenses shall continue to be available for public inspection. 19. YES ___ NO ___
- H. All information collected from individuals seeking professional licenses shall be confidential. 20. YES ___ NO ___
- I. Licensing boards may only release the names and addresses of licensees. 21. YES ___ NO ___

Mr. Hanratty noted again that his effort in presenting these three issues was to provide as wide a choice as possible for Commission members. Mr. Drea noted that most licensing data is disclosable under the Public Information Act. He also argued that there should be a uniform disclosure policy among all licensing boards. In Mr. Garrett's opinion, decisions regarding dissemination of licensing information only could be made on a profession by profession basis. For example, he felt that unfounded complaints are more damaging to a lawyer than to a plumber. Mr. Sweeney and Mr. Drea disagreed with this view. Mr. Drea told Commission members that if they did not deal with this issue, they would not be meeting their responsibility.

Senator Hickman proposed amending issue 19 to read as follows:

"All information collected from individuals seeking professional licenses which deal with name, professional address and telephone number, professional

qualifications, educational and occupational background and disciplinary actions that result in a guilty verdict shall continue to be available for public inspection." The Commission voted and agreed to consider this amendment. The Commission discussed, but did not resolve, the matter of public access to pending complaints pertinent to licensees. Mr. Clinton asked Mr. Hanratty if he would draft new language for issues 19 through 21 in the light of Senator Hickman's amendment. Mr. Hanratty agreed to do so.

The Commission adjourned at this point and scheduled its next meeting for November 9, 1981.