

830878



HARRY HUGHES  
GOVERNOR

STATE OF MARYLAND  
EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

*Room H4*



ARTHUR S. DREA, JR.  
CHAIRMAN

September 14, 1981

OFFICIAL

MINUTES - Governor's Information Practices Commission - August 24, 1981

The meeting of the Governor's Information Practices Commission was held August 24, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. Robin Zee, Mr. Donald Tynes, Sr., Mr. John Clinton, Senator Timothy Hickman, Dennis Sweeney and Mr. Albert Gardner, Jr.

Mr. Dennis Hanratty noted that the materials requested from the Department of Health and Mental Hygiene had been received with the exception of a few forms. Only five agencies remain to be discussed by Commission members: the University of Maryland, the Central Collections Unit, Licensing and Regulation, Health and Mental Hygiene and the Comptroller's Office. Discussion of the first four agencies' record-keeping practices was scheduled for August 31, 1981, while Licensing and Regulation, Health and Mental Hygiene and the Comptroller's Office would be considered on September 14, 1981.

Mr. Drea stated that correspondence had been received from the Internal Revenue Service (IRS). IRS is concerned that the Commission may take some action which will prohibit IRS from accessing Motor Vehicle Administration (MVA) information. Mr. Hanratty sent IRS a copy of the Interim Report and indicated that the Commission would consider the issue at the appropriate time. Mr. Drea added that IRS was also concerned about the possibility of having to use disclosure logs. They stated that

logs which could be examined by the person in interest could tip off someone that IRS was interested in his file. Mr. Clinton suggested that a possible solution might be a separate agreement between IRS and MVA similar to that which exists between the IRS and the Comptroller's Office.

Commission members discussed the Natural Resources Police Force Application Form. Senator Hickman noted that he had spoken with the Superintendent of the Force who indicated that the form would be changed as soon as possible. Mr. Clinton and Mr. Tynes had also spoken to individuals at the Department.

Mr. Hanratty discussed the report on the record-keeping practices of the Office on Aging. Gaps in the report, Mr. Hanratty noted, could now be partially filled in since additional information was received subsequent to completion of the report. He pointed out that, as regards the Senior Aides Program, the physician is told that the information he provides pertaining to a program applicant is confidential. Yet, the person in interest is allowed access to this information. Mr. Hanratty stated that this access may be appropriate but the physician should be informed that "confidential" really means "except to the person in interest".

Mr. Hanratty stated that he had speculated in the report that Senior Aides Program files might be subject to the personnel files section of the Public Information Act and therefore not disclosable except to the person in interest or his supervisor. This speculation was confirmed by the Office on Aging.

Concerning the Family Support Demonstration Project, Mr. Hanratty noted that he had suggested in the report that the project might be federally funded. However, this was not the case. This is significant in that the Office on Aging stated that the information collected for this project was not disclosable. However, Mr. Hanratty questioned whether there is a statutory basis for nondisclosure of all project records. It is clear, he added, that medical data would not be disclosable. Mr. Hanratty suggested that Article 88 A, Section 6, which governs the Social Security Administration and the Income Maintenance Administration, might apply to Project Records in general. The records of the Social Security Administration are similar in character to those

of the Family Support Demonstration Project but under different control.

Senator Hickman informed the Commission that the Office on Aging at one time had pertained to the Department of Human Resources prior to being made a separate office by the Governor. In the discussion that followed, it was noted that if the project was once covered by this statute, the connection to the statute could be made. Mr. Drea asked Mr. Hanratty to check with Mr. Sweeney on this matter.

Mr. Hanratty informed Commission members that in the report on the Department of Personnel, the section on the Retirement System Data had indicated that the only type of information considered confidential would be vital records. Mr. Hanratty indicated that subsequently he had received a letter from the Assistant Secretary stating that it was the opinion of the counsel to the Retirement System that even vital records are disclosable. Counsel asserted that the vital records section applies only to the Department of Health and Mental Hygiene, not to vital records maintained by other departments.

Mr. Hanratty noted that when the report on the Office on Aging was issued, the Commission staff did not have any information regarding what types of data were collected through the Public Guardianship Program and the Nursing Home Ombudsman Program. However, this information was now available, and therefore copies of relevant forms were distributed to Commission members. Again, Mr. Hanratty stated, the Public Guardianship Program is a state program and there is no specific section of the Code insuring confidentiality. The Nursing Home Ombudsman Program, on the other hand, is federally regulated under the Older Americans Act.

Mr. Drea asked if any responses had been received from Departments after they reviewed the draft reports. Mr. Hanratty replied that various comments had been received, with Economic and Community Development providing the most detailed reply. By and large, he added, the departments have accepted the factual statements. Comments have been fairly minor in character. However, Economic and Community Development had substantive disagreements with the issues raised in the "General Observations" section of the report. Their position, Mr. Hanratty explained, was that much of the

information in the report considered to be disclosable is in fact confidential. The Department suggested that this opinion was based on two points. First, federally supported programs are governed by the Federal Privacy Act and therefore information is confidential. Secondly, those records not pertaining to federal programs are confidential because the data is sociological in nature and therefore not disclosable under the Public Information Act. Mr. Hanratty disagreed with both of these points.

Returning to the Office on Aging Report, Mr. Hanratty noted that although the Office on Aging provides a variety of services (transportation, legal, etc.), it stated that personal information was collected by only the four programs discussed in the report. Commission members discussed the fact that, if legal services were provided on a referral basis, information would be maintained by the attorneys rather than the Office on Aging. Mr. Sweeney stated that Deborah Bacharach, the Assistant Attorney General for the Office on Aging, could probably answer any other questions of the Commission staff.

Mr. Hanratty proceeded with discussion of the report on the Department of Public Safety and Correctional Services. He noted that all record systems had not been included, since information was not presented for either the Criminal Injuries Compensation Board or the Inmate Grievance Commission. The report focused on the Maryland State Police, the Division of Correction, the Maryland Parole Commission and the Division of Parole and Probation.

The report first dealt with two issues affecting information practices statewide. The first issue is that of expungement of records. Three points were emphasized:

1. Expungement does not necessarily mean the physical destruction, but can mean the removal of records to a secure area with limited access.
2. Expungement is not an automatic process.
3. Nothing in the Code requires a law enforcement agency to inform the individual that he is eligible for expungement.

The report also included a discussion of the Criminal Justice Information System

(CJIS), which was a consequence of the Federal Omnibus Crime Control and Safe Streets Act of 1973. This Act established information practices requirements for states receiving federal funding to create information systems containing criminal history record information.

Mr. Hanratty delineated four features of the Criminal Justice Information System:

1. A central repository of criminal history record information.
2. Measures designed to permit access to the person in interest.
3. Procedures regarding the dissemination of data to third parties.
4. Security procedures.

Mr. Hanratty explained that all criminal history record information must be reported by criminal justice agencies to a central repository operated by the Maryland State Police. Information collected by the Juvenile Services Administration and juvenile courts is excluded. Criminal history record information is defined, Mr. Hanratty stated, as data initiated or collected pertaining to a reportable event (an arrest, conviction, escape, etc.). Investigatory data would not be in the central repository. In fact, most information maintained by the Department of Public Safety would not be found in the repository because it does not pertain to a reportable event. Mr. Hanratty added that information not in the Central Repository is also not governed by federal regulations developed as a consequence of the Act.

Criminal record information can be inspected and challenged by the person in interest with a \$5 fee unless the person declares indigency. This fee is consistent with federal recommendations. If a challenge is accepted as correct, the repository must notify any agency to which it has disseminated the information.

Regarding disclosure to third parties, Mr. Hanratty noted that the state regulations are more restrictive than Federal regulations. Federal regulations restrict the flow of non-conviction criminal history record information but not conviction data. In contrast, state regulations restrict both non-conviction and conviction data.

Information cannot be disseminated until the Repository verifies the identification of the requestor and the accuracy of the information. Logs must also be maintained.

Senator Hickman asked Mr. Hanratty if he felt that there might be changes if the Department of Public Safety and Correctional Services no longer received federal funds from the Law Enforcement Assistance Administration (LEAA). Mr. Hanratty replied that there would be no requirement on the state to continue Article 27, Section 742-755 if LEAA money disappeared. He added that he did not know if the state would continue these practices if this happened.

Mr. Drea stated that he was struck by the level of security of computerized records discussed on pages 11 and 12 of the report. Mr. Hanratty replied that the state had incorporated the security requirements of LEAA verbatim.

Mr. Zee asked if Mr. Hanratty found that security measures were more extensive where federal regulations exist. Mr. Hanratty stated that, generally, records affected by federal information practices requirements are in better shape. Mr. Drea added that he would agree that this was true.

In response to a question from Senator Hickman, Mr. Hanratty explained that a requirement of LEAA was that criminal history record information in the central repository could be maintained in a facility like the Baltimore computer facility but that the Law Enforcement Agency must have control over how the information is used.

Mr. Hanratty began discussion of the section of the report on the record-keeping practices of the Maryland State Police. He noted that the employment application form used was not as detailed as that used by the Natural Resources Police Force but more so than the MS-100 form used by the Department of Personnel. Items collected on the application form, Mr. Hanratty stated, include marriage certificate number, creditor information, data on the use of alcoholic beverages, and whether the applicant has ever seen a psychologist or psychiatrist.

Mr. Hanratty pointed out that the authorization for release of information form submitted by applicants covers every conceivable area and that neighborhood character

reference interviews are quite subjective. Mr. Drea noted that Commission members should keep in mind that a great deal of the information is important. This employee's duties are different from any other state employee's duties, Mr. Drea said, and he is also the most likely to be disabled on the job. Therefore, questions on physical ability would be very relevant. Mr. Hanratty stated that he was not sure which questions were appropriate and which were not.

Mr. Sweeney noted that the evaluation form is probably more objectionable. Discussion followed on the subjective character of the forms and the fact that the "interview with the family" form did not provide any direction to the interviewer. The criteria used for evaluating the information is also unclear. Mr. Hanratty stated that he questioned the collection of so much financial information. Commission members pointed out, however, police officers have a greater chance of being exposed to bribery and graft than other employees and therefore these financial questions were pertinent.

Mr. Hanratty asked Mr. Sweeney if an unsuccessful applicant has the same access rights as an employee under the Public Information Act. Mr. Tynes noted that other state applicants who are not selected are allowed to review their files, test results, etc.

Mr. Hanratty discussed the Internal Affairs Unit files which are protected by Article 27, Section 727-734 of the Law Enforcement Officer's Bill of Rights. Under these sections, a law enforcement officer has certain rights: 1) if he is interrogated he has the right to a complete record of the interrogation, 2) adverse material cannot be put in his file until he reviews and comments on it, and 3) he has the right to written notification of any complaints filed against him. Mr. Drea added that he had considerable experience with this section and that it works well. It protects officers from many ridiculous charges, he explained, by giving a guarantee of a thorough investigation and requiring the complainant to come forth in written fashion.

Mr. Hanratty proceeded to the discussion of the Licensing Division which maintains application and investigative forms such as Firearms Dealer Licenses, Private Detective

Licenses, etc. He noted that there is no specific section of the Code dealing with these records and that therefore, they are disclosable under the Public Information Act.

Mr. Hanratty stated that he had some questions with respect to the Maryland State Police Manual which indicates that the person in interest can be denied access to records for specific reasons stated on page 20 of the manual. This, Mr. Hanratty felt, was not permissible under the Public Information Act, which states that these records have to be investigatory in character. In addition, Mr. Hanratty added, page 21 of the manual states that officials may deny requests from applicants who are not the person in interest to review records compiled for any law enforcement purpose. Mr. Hanratty felt that this was an overstatement. Review of investigatory records can be limited, but review of those records disclosable under the Public Information Act cannot be restricted. Mr. Hanratty concluded that information on the licensing applications and permits is, on the whole, disclosable under the Public Information Act.

Mr. Hanratty added that Central Accident Records are also disclosable; these records contain information on any individual involved in an accident. Mr. Clinton asked if there was any connection between these records and MVA. Mr. Hanratty replied that he thought that they were separate files.

Mr. Hanratty proceeded to the discussion of the Division of Correction. He explained that the Inmate Base File is a complete compilation of materials pertaining to the movement of the offender through the correctional system. Questionnaires which are subjective in character, Mr. Hanratty noted, are sent to relatives and the replies are included in the Base File. Mr. Hanratty stated that there exist no specific Division regulations on the access rights of the person in interest. However, responses received from the Division of Correction indicated that inmates have access to base file information. Mr. Hanratty pointed out that persons completing questionnaires, such as relatives and educational officials, are informed that the information will be confidential. At the same time, however, the response of the Division indicates that



the person in interest is allowed access to these questionnaires.

Disclosure of Inmate Base File records, Mr. Hanratty added, is governed by DCR 200-1, copies of which were distributed to Commission members. Mr. Hanratty suggested that the Commission consider recommending that DCR 200-1 be replaced. Too many issues are unclear, he alleged. For instance, it cannot be determined from the regulation, whether sociological and medical records that might cause harm to the inmate are given a higher degree of confidentiality than other records. In addition, it is not certain whether the managing officer has the discretionary authority to release certain items from the base file. Mr. Hanratty concluded that the regulation states what are not to be considered "sociological" records. Should the reader assume that everything else is sociological, he asked? At a minimum, Mr. Hanratty suggested, the regulation should be rewritten.

The Commission then discussed various aspects of Commitment Files and medical records maintained by the Division of Correction. Regarding Commitment Files, Mr. Hanratty stated that the Division asserted that these were governed by 200-1. However, he pointed out, DCR 200-1 clearly states that it applies only to Base File and Medical Records. Mr. Hanratty noted that access to medical records will be affected by House Bill 1287. The survey responses received from the Maryland Correctional Institution in Hagerstown and the Maryland House of Corrections Jessup indicated that the person in interest could not examine medical records in some instances. This will presumably be changed. In addition, Mr. Hanratty stated, disclosure logs concerning medical records files are not maintained and this is a requirement of DCR 200-1. Mr. Hanratty noted that the Division had stated that DCR 200-1 governs MAP files but he questioned this statement.

Mr. Hanratty moved on to a discussion of Personnel Files at the Division of Correction. He stated that the application form for correctional guards is very similar to the MS 100 form. Since correctional guards have sensitive positions, Mr. Hanratty found this surprising. Apparently, he stated, the Division of Correction feels that there is no need to collect the amount of information from correctional guard

applicants as from applicants for the police force. Discussion followed and members pointed out that the Division probably would not have many applicants if they were screened to the extent that police force applicants were.

The Maryland Parole Commission was next on the agenda. Mr. Hanratty stated that access is not permitted to materials considered confidential, such as medical and psychological reports, but that an oral summary must be provided to the person in interest. Mr. Sweeney inquired as to the basis for the confidentiality requirement. Mr. Hanratty replied that it was an in-house policy and that the Parole Commission had stated that executive clemency records may be disclosed under the Public Information Act. Mr. Sweeney noted that the Secretary of the State also keeps some of the executive clemency records. He had found it is unclear regarding which records of the Maryland Parole Commission are releasable and which are confidential.

The Commission then turned its attention to the Division of Parole and Probation. Mr. Hanratty noted that the Public Information Act guidelines of the Division posed a number of problems. The Division uses a three step test to determine if a record is disclosable:

- 1) Is the information confidential?
- 2) Is the information investigatory in nature?
- 3) Would disclosure cause substantial injury to the public interest?

Mr. Hanratty noted that the Division also divides sociological data into that which is confidential and that which is nonconfidential; this appears to be inconsistent with the Public Information Act. This term "sociological information" needs clarification, he concluded. Mr. Sweeney added that this was further complicated by the broad definition of the word "person" in the Public Information Act.

Mr. Zee stated that he was impressed by the fact that the Division had developed extensive guidelines. Mr. Hanratty agreed and noted that the issues had been carefully considered. Mr. Hanratty brought up an additional point. It appears that confidential and non-disclosable records will be disclosed upon consent of the person

in interest. He believes that this gives more authority to the person in interest than is authorized under the Public Information Act. Mr. Sweeney stated that the practice in the Attorney General's Office has been to interpret Section 3c of the Act by looking at who is protected. By implication, the person in interest can waive that protection.

Mr. Hanratty stated that if a law enforcement agency maintains an investigatory record, disclosure of that record can be prevented if access would be contrary to the public interest. He felt that the Division of Parole and Probation could simply use this section rather than the more complicated formula it presently employs in deciding issues regarding disclosure of investigatory records.

Mr. Hanratty pointed out that much of the information contained in the Probation Parole Master Name File would appear to be disclosable under the Public Information Act. However, the Division considers the information to be sociological data and therefore restricts access. There are a number of items collected which are not classified as either confidential or non-confidential sociological data and therefore presumably these are disclosable. Mr. Hanratty wondered what criteria are being used to distinguish between sociological and non-sociological data, since name and address are considered to be sociological, while race and sex are not sociologica

Mr. Drea asked that information be obtained for two areas which were not included in the report. He added that Mr. Hanratty could compile and review the information and decide if it needs to be discussed with the Commission.

The next meeting was scheduled for Monday, August 31, 1981.

