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FINAL REPORT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

MEMBERS

Arthur S. Drea, Jr., Esq., Chairman

John A. Clinton

Albert J. Gardner, Jr.

Judson P. Garrett, Jr., Esq.

Wayne Heckrotte

The Hon. Timothy R. Hickman

The Hon. Nancy Kopp

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John E. Donahue (Resigned March 1981)

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STATE OF MARYLAND
EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

January 8, 1982

The Honorable Harry Hughes
Governor, State of Maryland
State House
Annapolis, Maryland

Dear Governor Hughes:

On behalf of the entire Information Practices Commission, I want to thank you for giving us this opportunity to study the very important issues presented in your Executive Order creating our Commission. It is our pleasure to present to you this final report of the Commission with our specific recommendations. We hope that you and your associates and the various State agencies will find this report useful and enlightening.

As you know, our Commission was assembled during the summer of 1980 and we began meeting every two weeks in Annapolis in September of 1980. For the past five months, we have been meeting on a weekly basis. Unlike most study commissions and committees, ours was generously provided with funds for the purpose of hiring professional staff. We are grateful for your support in this regard and your recognition of the serious and complex problems which the Commission needed to address. In this regard, I know that all Commission members enthusiastically support the comments that I will make regarding our staff. It is no exaggeration to say that our professional staff has had a very large share in the development of this report, not only the research and drafting which was handled virtually totally by the staff, but also in the policy development and recommendations for implementation. Our Executive Director, Dennis M. Hanratty, Ph.D., has been the very heart and soul of this Commission since its inception. The thorough research, professional presentation, and high degree of intellectual support are largely his and the Commission acknowledges with pleasure his achievements. In addition, Dennis has been significantly aided by his staff, Thea Cunningham and Beth Thompson, who played major roles in research, drafting, and the mountain of clerical work necessary to produce this report. It has been our privilege and pleasure to work with these excellent people.

As any chairman of a commission or group such as this quickly learns, there are certain members who unstintingly give of their time and talent and who play major roles in the shaping of any final report. To those individuals I am exceedingly grateful and I wish to commend them to you. Our citizen representatives, Albert J. Gardner, Jr., Wayne Heckrotte and Judson P. Garrett, Jr., Esq., made major contributions through their knowledge and experience in the technical and policy making development of

this report. Their contribution is a major ingredient in the final work product. Our public representatives, Dennis M. Sweeney, Esq., John A. Clinton, Donald Tynes, Sr., and Robin J. Zee are among the finest examples of public servants who gave willingly of their talents and invaluable experience in State service to our Commission. It is certainly true that any group studying information practices in this State could easily go awry without the steadying, practical hand of knowledgeable public servants and we are grateful that you had the insight to appoint them. Likewise, our legislative representatives, the Honorable Timothy R. Hickman and the Honorable Nancy Kopp, gave a very high priority in their many public responsibilities to this Commission. The contributions of these two excellent legislators cannot be truly measured but it is certainly clear that their ideas and vast experience are everywhere present throughout this final work product. It is not possible in this brief cover letter to mention all of the individuals throughout the State government who have been extremely helpful to our Commission and our staff throughout the development of this report. With very few exceptions, we have been impressed by the dedication and sincere efforts of those who have assumed the additional burdens of responding to our requests and assisting our staff. There have been individuals from the federal government, from the Uniform Commission on State Laws, and from the private sector who have contributed their time and assistance to our Commission. We are grateful to all of these high-minded individuals and my failure to mention them personally in no way reflects on their significant contributions.

Permit me to make one final work about our recommendations. Since the beginning of our studies, Governor, we have been acutely aware of the continuing financial restraints imposed upon the State primarily through budget reductions at the federal level. Therefore, inherent in all of our considerations has been the subject of cost implementations. While in some ways it might have been very easy for us to recommend solutions to these complex problems by disregarding cost implications, we realize that that would be neither responsible nor well received. All of us have striven very hard to reach recommendations and to propose solutions which have minimal or no cost implications. We believe we have done that. For example, where we have found that there are significant and ongoing competing responsibilities between the rights to privacy for individuals and the rights of the public to have access to public records, we have chosen to recommend specific legislative proposals, certain administrative changes enacted through Executive Order, and in a number of cases the adoption of rules and regulations by the agencies themselves. A more simple, but far more costly approach might have been to recommend the establishment of a permanent board or commission to review these conflicting problems. We do not, at this time, rule out the possibility at some date in the future that such a reviewing body might be necessary. However, we believe at this point that the solutions that we recommend are very viable and involve virtually no additional cost to the State. Many of these decisions were not reached easily but constitute the result of long hours of study, debate, and compromise.

It is significant that there are no minority reports or dissenting opinions, and I know I speak for all Commission members and our staff when I say that we wholeheartedly endorse our recommendations and findings in this report. We can say to you, perhaps immodestly but nevertheless

accurately, that with the exception of the studies done by the Federal Privacy Commission at hundreds of times the cost, this is in all probability the best study that has been done in this complex subject area anywhere in the United States. We urge you and your associates and the State agencies to give these findings and recommendations the attention they deserve. Again, I say to you that we are all grateful for the opportunity to provide this report to you and the State of Maryland and we continue to stand ready to assist you in any way that you desire.

Sincerely,

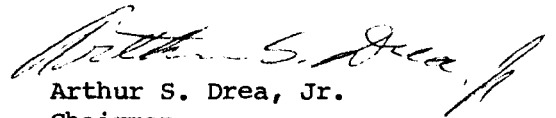

Arthur S. Drea, Jr.
Chairman

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SUMMARY OF RECOMMENDATIONS

The recommendations of the Information Practices Commission are discussed in later sections of this report and are proposed to be implemented by various means, including legislation, executive order, agency rules and regulations, and administrative changes. These various implementation measures are also discussed thoroughly, and, where appropriate, copies of proposals are included herein. This summary is intended to provide the reader with a brief, and necessarily incomplete, compilation of the principal recommendations of the Commission. For convenience, these recommendations can be arranged into three general categories: privacy considerations, Public Information Act considerations, and remedial and ongoing considerations.

As stated elsewhere in this report, the Commission has devoted a considerable amount of its time and resources to questions related to individual privacy with regard to personally identifiable records maintained by State agencies. Many of the issues raised by privacy considerations are new in the sense that there is very little existing legislation or regulations dealing with this aspect. Consequently, some of the Commission's recommendations are necessarily quite basic. The Commission has recommended that any State agency collecting personally identifiable information should obtain that information directly from the subjects themselves, wherever that is feasible. The agency should fully inform the individual with regard to the use of the information obtained, the right to inspect the information, the penalties or consequences to the individual of failure to provide the information, and the public or non-public status of that information. It is also recommended that the subject of the records be permitted to examine, copy, and challenge the accuracy of the information in the records. This challenge should include the right to insert a statement of disagreement where appropriate. The Commission has recommended that this right of inspection by the person in interest be extended to include medical records in agency files.

Because privacy can only be protected if the records are secure from unauthorized inspection or tampering, the Commission is also recommending that all State agencies which maintain personally identifiable records enact appropriate safeguards to ensure the security of those records. Included in this recommendation is a proposal to assign a data professional in each agency to assume the responsibility for that security and also to create an interagency data security committee which would review, on an ongoing basis, the appropriate security measures assigned to each computerized record.

Some of the considerations which the Commission faced involved both privacy and public information implications. Among these were the thorough review of the handling of personally identifiable records by various licensing agencies and boards of the State. It was concluded by the Commission that certain information maintained by licensing agencies is appropriately disclosable to the public and that other information, while necessary for the proper functioning of the boards, is more appropriately maintained as confidential

to protect the privacy of the individuals. Therefore, the Commission has recommended that the following information pertaining to licensees should be disclosed to the public, upon request: name, business address and telephone number, educational and occupational background, professional qualifications, non-pending complaints and disciplinary actions involving findings of guilt or culpability, and financial information if required by statute. However, other personal information should be protected from disclosure in order to avoid an unreasonable invasion of privacy.

The same basic reasoning applied to retirement records maintained by Government agencies for their own employees. The Commission maintains that the privacy interests of members and retirees outweigh the interests of the public to inspect such records. Therefore, the Commission has recommended that most of the personally identifiable information contained in these records be accorded a confidential status. At the same time, however, the Commission believes that the public has a right to know if a particular individual is receiving a retirement or pension allowance supported in part by public funds. Consequently, the Commission has recommended appropriate amendments to the Public Information Act to accomplish these purposes.

Finally, in the area of privacy considerations, the Commission has made an important recommendation with regard to the protection of personally identifiable information in the hands of legitimate researchers. The Commission recognizes the critical importance to research of access to personally identifiable records. The Commission also recognizes, however, that the records subjects have a right to expect that information entrusted to Government agencies be handled in an appropriate manner. The Commission has recommended, therefore, that only when the researcher can satisfy certain privacy and security conditions should access be granted. These conditions are discussed at further length in this report.

In addition to the changes already mentioned for the Public Information Act (Article 76A of the Annotated Code of Maryland), the Commission believes that a number of other changes are also necessary. Because there is no specific time limit in the existing law requiring a custodian to respond to a request for information, the Commission recommends that a thirty day limit be incorporated in the law providing that the custodian either provide the information or deny the request within that period.

The Commission also recommends that the Public Information Act be amended to permit agencies to assess reasonable fees for the search and preparation of records for inspection and copying. The Commission believes that taxpayers should not be required to subsidize highly complex and very expensive records requests, many of which involve efforts of one company to obtain commercial and financial data about another company. At the same time, however, the Commission feels strongly that search and preparation fees should not be assessed if the total effort involves four hours or less of employee time. Assessing search and preparation fees for such manageable records would be contrary to the spirit of the Public Information Act.

Experience under the Act has shown a substantial inconsistency in the way that agencies apply the existing exemption to public disclosure for "sociological data." Because of this inconsistency, the Commission is recommending that agencies employing the exemption be required to adopt rules and regulations which define and clarify the meaning of sociological data for their agencies.

Time is provided for the agencies to adopt these rules. The Commission also believes that a specific exemption for financial data, including assets, liability, net worth, bank balances, and credit worthiness be specifically provided as an exemption to public disclosure under the Act.

It has come to the Commission's attention that security manuals used to explain and administer the various security systems for the maintenance of records are not specifically excluded from public disclosure. Obviously, these materials cannot, and should not, be disclosed under the Public Information Act and the Commission has so recommended.

The Commission finally recommends that the Act be amended to provide for civil and criminal penalties for violations of privacy protections, and to strengthen existing criminal penalties for violations of public information disclosure.

The Commission has considered and made recommendations with regard to certain problems which it perceived in specific agency information practices. The Commission is concerned with ongoing security, particularly as it relates to the myriad of personally identifiable records found throughout the various State agencies. With regard to this latter point, the Commission feels that it is imperative that State agencies be required to list publicly the various personally identifiable records systems which they maintain and to identify the purposes and procedures for handling these records. This listing can be done initially and then updated only as to significant changes. The Commission believes that this process would be particularly helpful to the agencies themselves and also would benefit the public by providing lists of systems actually maintained on individuals.

The Motor Vehicle Administration was studied extensively by the Commission and two recommendations are forthcoming. It is recommended that the expungement of Motor Vehicle records of violations be an automatic process according to the standards that already exist in the Transportation Article. At the present time, expungement only occurs upon request of the individual affected. This policy only rewards those drivers who are knowledgeable about the Annotated Code. In addition, the Commission recommends that motor vehicle records which are supplied to prospective employers be the same kind of record, regardless of the recipient. Current statutory language grants government employers a privileged status to receive information not available to other employers.

Finally, the Commission notes that there are significant variations across counties both in terms of the personally identifiable information collected from voter registration applicants and also regarding the nature of such information released pursuant to a request for public access. The Commission can perceive of no reason why the election law should not be standardized among the counties so as to require the same information in order to register to vote and to provide the same information pursuant to a request for access.

This is a brief overview of the recommendations of the Information Practices Commission and the reader is urged to pursue the detailed background and explanation for the recommendations in the body of the report which follows.

INTRODUCTION

We exist today in an information society. The last three decades represented a veritable revolution in the acquisition and processing of information. Today, companies throughout the world rather routinely engage in transactions in a manner that would have been impossible before the 1950s. Individual citizens have benefited from this information expansion in incalculable ways.

In the midst of this revolution, however, a great many people have reservations about the information explosion. Increasingly, citizens are demanding that limitations be placed on the collection and uses of information by public and private organizations. There are frequent requests to limit the types of information that can be collected from individuals by organizations, to mandate organizations to collect information from the individual himself, and so forth. In a word, demands are made on government today to protect personal privacy.¹

Privacy protection legislation has become important to so many citizens today because, as we have already noted, the character of our society has changed so much from the past. As the United States Privacy Protection Study Commission has recently observed, one hundred years ago our interactions with public and private organizations in society were not as commonplace as they are today.² Many people were self-employed, attained only lower-level education, and there was little contact with large agencies and the Federal Government. Records maintained on individuals were also minimal. The formal transactions conducted between one individual and other members of society were limited in scope. Face-to-face information exchanges provided the opportunity to divulge specific information and allowed for the correction of errors or misperceptions on the

part of others. In addition, information gathered was not extensive. Now, however, when transactions in almost every sphere of life require the divulgence of detailed personal information, the scenario has changed. Few individuals are able to obtain credit, insurance, and other necessities of modern living without the final determination being based on personal information.

Over the last decade, the concern of the American public about the potential abuse of personal information has also gradually increased. In the past, many employers collected extensive information on applicants and employees, including data relevant to hiring practices. Unfortunately, informal opinions, comments of supervisors and other non-related information were also often included in files. This possibly inaccurate or outdated information was potentially damaging to an employee when maintained in files without his knowledge. In addition to not knowing what information was collected, the individual could not be sure to what uses it was being put. Many people began to question just how much information really was required by organizations.

The use of computers as a base for record systems has also contributed to fears of the American public. Survey research often reveals that the public harbors deep suspicions about the eventual consequence of a fully computerized society. In point of fact, there are numerous advantages that accrue to a society relying on computerized, or automated, systems. The cost-effectiveness of computers permits the extension of services to a greater number of individuals than was ever before possible. These services are provided, in addition, with a higher degree of efficiency and accuracy. Finally, automation has strengthened, in many cases, the confidentiality of an individual's personal record. It is a more difficult process to make an unauthorized entry into a computer system than would be the case with a single manual file.

At the same time, however, the increased usage and concurrent growth in record-keeping abilities of organizations have potential negative ramifications. One of the major problems is that the expansion of our information-gathering ability has far outstripped the ability of individuals to determine what type of personal information is released and for what purposes. While we have taken great strides in increasing the amount and speed of information collection, storage, and retrieval, society has been somewhat slower in making provisions to allow the individual to monitor the development, use, disclosure, and correction of the information maintained on him. Compared to the face-to-face relationships of the past, the individual is often left defenseless to protect himself against possible errors and the indiscriminant dissemination of information.

In addition, while it may be more difficult to tap a computerized rather than manual system, the potential for harm remains much greater. The amount of information that could be available to a skilled individual capable of bypassing security procedures of a large organization is enormous. Time after time, computer systems that were hailed as impermeable to outside forces have been shown to be vulnerable. Among problems that have plagued automated systems have been weak supervision over physical access to computers, inadequate storage of programs and documentation, vulnerabilities in magnetic tape controls and poor designing of the manual handling of input/output data. Such problems either facilitate access to computer facilities on the part of non-employees or enable those who have authorized access to make unauthorized uses of the information contained in that system.³ Devising new ways to ensure security of automated records containing personal information while continuing to provide efficient and accurate services to citizens are major challenges in the 1980s.

It is evident from what has been said up to this point, then, that increasingly the public is demanding some measure of control over the nature of personal information given to organizations. This concern is apparent particularly in terms of information at the disposal of governmental units. Yet while it is important to observe this rising level of interest in the protection of personal records, we should not view this demand in isolation but instead should recognize that it is linked to another, equally important, issue: the right of citizens to gain access to the public records of government.

From its origins, one of the most distinctive features of the American polity was the dictum that the governed must be permitted to scrutinize the actions of those who exercise power in its name. The First Amendment to the Constitution establishing the principle of freedom of the press should be seen as a commitment on the part of the Founding Fathers to the view that the public needed to be informed of the operations of government. This attitude was expressed well by one of the chief framers of the Constitution, James Madison: "A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance; And the people who mean to be their own Governors, must arm themselves with the power, which knowledge gives."⁴

Yet while the foundations of our government rested on the premise of citizen access to public information, frequently the reality of the situation was very different. Regrettably this was often the case in recent times, when abuses of power went undetected as roadblocks were placed in the way of citizens monitoring government action. Contemporary restrictions on public access were all the more unfortunate due to the dramatic growth of the size of government. Three inter-related processes were at work. First of all, bureaucracies impacted on more and more areas of an individual's life. Second, the traditional distinction between legislatures as policy-making bodies and bureaucracies as policy-

implementing bodies was being obscured. Third, bureaucracies were largely unaccountable to constituents or to the electoral process. The cumulative effect of these changes was to heighten the need for public awareness of government behavior; the irony, of course, was the governmental response to place more restrictions on the flow of information.

It should come as little surprise to anyone that a consequence of this situation was a noticeable decline in confidence and trust of the public towards government officials. It is incumbent upon government, however, to take the steps necessary to reverse this trend. Nothing less than the continued health of our democratic system is at stake. It is axiomatic that a free society cannot survive if its government operates in secrecy. In order for the American people to exercise the rights and responsibilities pertaining to them under the Constitution, there must occur an open and accurate flow of information between government and the public.

Two critical issues, therefore, confront both federal and state government and demand resolution. First of all, governments must design appropriate measures to guarantee the privacy of personal records. Second, governments must permit citizens to have access to public records. It is in response to these dual concerns that Governor Harry Hughes issued an Executive Order in July 1980 and established the Information Practices Commission. The mandate of the Commission is to examine the personal record-keeping practices of State agencies with an eye towards achieving an appropriate balance of the individual's right to privacy, the information requirements of public organizations, and the public's right to be informed.

The Governor's Executive Order contained four specific instructions to the Information Practices Commission. First of all, the Commission was charged with conducting a thorough study of State agency policies and procedures in the

handling of records which identify individuals. Second, the Governor instructed the Commission to hold hearings at which members of the public would be able to present their views on all facets of information practices in State government. The Commission was directed furthermore to conduct meetings, research programs, investigations and discussions in the area of information practices. Finally, the Commission was ordered to submit interim and final reports containing any legislative proposals necessary to implement specific recommendations. Conscious of the Governor's mandate, the Information Practices Commission has fulfilled all of these requirements.

The Commission recognized from the onset both the enormity and importance of the Governor's first instruction to the Commission. Identifying the manner by which State agencies handle personally identifiable records is an enormous task because of the scope and variation of these records. Every agency in State government maintains personnel records pertaining to the employees of that agency. Virtually every agency also maintains records relating to specific programs of that agency and which identify individuals in one manner or another. In some cases, these program-related records contain little more than basic directory information about individuals. In contrast, some State agencies, such as the Departments of Health and Mental Hygiene and Human Resources, maintain files documenting intimate details of individual clients. These tremendous variations in the contents of agencies' files are reflected in the wide variety of State and federal statutes and regulations governing these files. Many personally identifiable records are available for public inspection, while others are strictly confidential. The Commission recognized that it would have to identify all of these statutory and regulatory distinctions.

While the Commission recognized the enormity of the Governor's directive, it also realized that the assignment was most important and necessary. It is impossible to formulate coherent public policy without the existence of solid

information. Yet this information was clearly lacking in the area of State policies and procedures in the handling of personally identifiable records. No one really knew what personally identifiable information was maintained in agencies' files. No one really knew if these files could be examined by the subjects of the records. No one really knew if, how and when these records were released to third parties. Finally, no one really knew if adequate security measures were in effect to protect information about individuals.

In response to the problem, the Commission determined that it would compile a general inventory of all records containing personally identifiable information which were in the possession of State Executive branch agencies. Each agency was asked to provide the Commission with a list of the name and nature of all record systems, or collection of records, which identified individuals. The Commission then conducted a detailed investigation of each listed record system.

First of all, the Commission asked a series of questions regarding the collection and maintenance of personally identifiable information. Agencies were requested to explain the types of information collected, the sources of information, methods used to verify with the subject of the record information obtained from third parties, procedures governing the handling of unsolicited comments, methods used to categorize information and the manner of maintaining data. The Commission then asked agencies to delineate procedures used to permit the person in interest (i.e. the subject of the record) to examine, copy and contest the accuracy of information pertaining to him. A third set of questions directed to agencies concerned the disclosure of personally identifiable information. The Commission inquired about agencies' practices concerning disclosure of data to third parties, the nature of statutes and regulations governing such disclosure, procedures used to record disclosures, methods in

effect to inform the person in interest of such disclosures, and procedures employed to verify the accuracy of information prior to disclosure.

Finally, the Commission asked agencies to document the general security measures taken to protect personally identifiable data. Agencies were asked to indicate, among other things, if measures had been taken to prevent the unauthorized altering of computerized data by employees and if a risk analysis had been conducted to determine the appropriate level of security for each record system.

The Commission's inventory of personal record systems appears in the following section of this report. This inventory may well be the most extensive and comprehensive study of its kind in any state. The inventory has served as an invaluable tool for the Commission in identifying any inconsistencies and problems in agency record-keeping practices.

In the course of constructing its inventory of personal record systems, the Commission also asked State agencies to explain their policies and procedures in responding to requests for public records under the Public Information Act. Article 76A, Section 1 et seq. of the Maryland Annotated Code establishes a broad right of access to public records. This right of access to public information is available to any individual; one does not need to justify the reason why one should be provided with such information. Unless the record requested falls within a specified restricted agency, such as records pertaining to criminal investigative proceedings, the information must be provided by the records custodian to the individual making the request. If the request is denied, an appeals process is set into motion that could conceivably end up overturning the original refusal by the custodian to grant access. Furthermore, civil and criminal penalties are in effect to punish a records custodian who willfully and knowingly refuses to disclose a record to which a requester is entitled.

It became clear to the Commission at an early stage that there was a high level of consistency in the manner by which State agencies comply with the requirements of the Public Information Act. This is certainly not to suggest that there are no problems in either the Public Information Act itself or in agency procedures in responding to the Act. Indeed, these problems are documented in this report, along with the Commission's recommendations for corrective action. The Commission did not believe, however, that a useful purpose would be served by a detailed discussion of each agency's Public Information Act practices, since, as has been noted, these practices are quite consistent across agencies. In addition, much detailed information on this subject is contained already in the Commission's inventory of personal records, since many personally identifiable records are disclosable under the Public Information Act. Therefore, discussion of access to public records will be confined to one chapter in this report.

The second basic directive given to the Commission was to hold hearings at which the public might present its views on information practices. The Commission held public hearings in Baltimore and Annapolis and invited the public to comment on any aspect of record-keeping practices by government agencies. This experience proved to be highly beneficial for the Commission. Members of the public raised problems, particularly regarding the Public Information Act, which had not come to the Commission's attention through other means. At least three recommendations of the Commission are a direct outgrowth of testimony provided at these public hearings.

The Commission was charged further with conducting meetings and carrying out investigations and discussions pertinent to the field of information practices. Recognizing that both the federal government and a number of states had enacted omnibus statutes in recent years pertaining to information practices, the Commission felt that Maryland could learn a great deal from these varying

experiences. Therefore, the Commission carefully considered the provisions of the Federal Privacy Act of 1974 and held a special meeting at which representatives from the Office of Management and Budget discussed their experiences in monitoring the compliance of federal agencies with the Act's provisions.⁵ The Commission also examined thoroughly the omnibus privacy statutes that have been enacted in California, Minnesota, Ohio, Indiana, Virginia, Arkansas and Utah, and discussed a number of features of these statutes with data specialists in the respective states.⁶ In addition to an examination of statutes already in effect, the Commission analyzed a number of examples of proposed legislation. First of all, the Commission met with representatives of the National Conference of Commissioners On Uniform State Laws to receive a thorough briefing on that body's Uniform Information Practices Code. The Commission also examined the Government Information Practices Act, sponsored by the National Conference of State Legislators. Finally, the Commission considered a number of information practices bills that had been introduced in the Maryland General Assembly over the previous decade.

The final instruction given to the Information Practices Commission by the Governor, the issuance of a final report containing legislative proposals to implement specific recommendations, flows directly from the first three instructions. The Commission believes that it has gained a significant amount of experience and expertise as a result of the examination of State agency record-keeping practices, the testimony presented at public hearings, and the analysis of relevant legislation in other jurisdictions.

The Information Practices Commission is pleased, therefore, to present this Final Report, accompanied by a series of legislative proposals. The Commission believes that its report and proposals will make a significant contribution to an increasingly important area of public policy.

NOTES

1. For an analysis of research findings relating to increases in privacy concerns, see Louis Harris and Associates, Inc. and Alan F. Westin, The Dimensions of Privacy. A National Opinion Research Survey of Attitudes Toward Privacy (Stevens Point, Wisconsin: Sentry Insurance, 1979).
2. U.S. Privacy Protection Study Commission, Personal privacy in an information society. Report of the Privacy Protection Study Commission, 1977. For a further discussion of privacy concerns, see U.S., Department of Health, Education and Welfare, Secretary's Advisory Committee on Automated Personal Data Systems, Records, computers, and the rights of citizens, 1973; National Academy of Sciences, Computer Science and Engineering Board, Project on computer databanks in a free society: computers, record-keeping and privacy; report. Alan F. Westin and Michael Baker, Project directors. (New York: Quadrangle, 1972); Alan F. Westin, Privacy and freedom (New York: Atheneum, 1970); U.S., Congress, Senate, Committee on Government Operations and Committee on the Judiciary, Privacy: the collection, use, and computerization of personal data, Hearings before an Ad Hoc Subcommittee on Privacy and Information Systems and the Subcommittee on Constitutional Rights on S. 3418, 93d. Cong., 2d sess., 1974; U.S., Congress, Senate, Committee on the Judiciary, Federal Data Banks and Constitutional Rights, 93d. Cong., 2d. sess., 1974; U.S., Library of Congress, Congressional Research Service, Privacy: Information Technology Implications, Louise E.G. Becker, Issue Brief Number IB 74105, 1980; U.S., Library of Congress, Congressional Research Service, Privacy: Concepts and Problems, Sarah P. Collins, Issue Brief Number IB 74123, 1980; and David F. Linowes, A Research Survey of Privacy and Big Business (Urbana-Champaign, Illinois: m.p., 1979).
3. See Donn B. Parker, "Computer abuse perpetrators and vulnerabilities of computer systems", Proceedings of the National Computer Conference 45 (1976): 65-73; and Robert H. Courtney, Jr., Security Risk Assessment in Electronic Data Processing Systems (n.p.: MEC, 1975).
4. U.S., Congress, Senate, Committee on the Judiciary, Freedom of Information Act Source Book: Legislative Materials, Cases, Articles, 93d. Cong., 2d. sess., 1974, p.6. For a further discussion of issues relating to citizen access to public information, see U.S., Congress, House, Committee on Government Operations, and U.S., Congress, Senate, Committee on the Judiciary, Freedom of Information Act and amendments of 1974, Source Book: Legislative History, Texts, And Other Documents, 94th Cong., 1st sess., 1975; U.S., Congress, House, Committee on Government Operations, A Citizen's Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents, 95th Cong., 1st sess., 1977; and U.S., Congress, Senate, Committee on Government Operations, Government in the Sunshine, Hearings before a subcommittee of the House Committee on Government Operations on S. 260, 93rd. Cong., 2d. sess., 1974.

NOTES (continued)

5. As background information to the Federal Privacy Act of 1974 (5 United States Code 552 a), the Commission examined the following materials: U.S., Office of Management and Budget, Information Systems Policy Division, Administration of the Privacy Act of 1974, January 4 1980; U.S., Office of Management and Budget, Circular No. A-108, July 1, 1975, September 30, 1975, May 17, 1976, January 31, 1978; U.S., Office of Management and Budget, Privacy Act Guidelines, July 1, 1975; U.S., Federal Personal Data Systems Subject to the Privacy Act of 1974, First Annual Report of the President, 1975; U.S., Federal Personal Data Systems Subject to the Privacy Act of 1974, Second Annual Report of the President, 1976; U.S., Federal Personal Data Systems Subject to the Privacy Act of 1974, Third Annual Report of the President, 1977; and U.S., Federal Personal Data Systems Subject to the Privacy Act of 1974, Fifth Annual Report of the President, 1979.

6. Among statutes considered by the Commission are the following: Cal. Civil Code sec. 1978; Minn. Stat. Ann. sec. 15-162 et seq.; Ohio Rev. Code Ann. sec. 133-16 et seq.; Ind. Stat. Ann. sec. 4-1-6; Ark. Stat. Ann. sec. 16-804; Va. Code sec. 2-1-377; and Utah Code Ann. sec. 63-2-59. The following state publications pertinent to information practices were also utilized: California, Legislative Analyst, A Report of the Implementation of the Information Practices Act: Chapter 709, Statutes of 1977, 1980; California, State Personnel Board, Office of Information Practices, Guidelines to the Information Practices Act of 1977, 1979; Virginia, Department of Management Analysis and Systems Development, A Manual For Complying with the Freedom of Information Act and the Privacy Protection Act, 1980; Iowa, Citizen's Privacy Task Force, Final Report, 1979; Donald A. Gemberling, "Minnesota Government Data Practices Act: History and General Operation", Minnesota CLE Notebook (1981); and Hawaii, Legislative Reference Bureau, Hawaii's New Right to Privacy: Making Public the Con Con's Intentions, 1979.

REPORTS OF AGENCY
RECORD-KEEPING PRACTICES

COMMISSION ON HUMAN RELATIONS

The Commission on Human Relations administers and enforces the Maryland Public Accommodations Law, Discrimination in Housing Law, and the Fair Employment Practices Law. It is authorized to eliminate discriminatory practices based on race, sex, color, national origin, religion, marital status, physical handicap, mental handicap, or age.

One program-related record system containing personally identifiable information was identified by the Commission on Human Relations, Case Files consisting of all documents, records and other papers pertaining to the processing of complaints. The Commission maintains approximately 1,000 open case files; approximately 2,000 closed case files are stored at Commission headquarters, while 15,000 closed files are housed in state record centers.

A. Collection and Maintenance of Information

Article 49B of the Annotated Code stipulates certain conditions under which personally identifiable data is gathered by the Commission on Human Relations. Article 49B, Section 9(a) authorizes a person who asserts that he was aggrieved by an alleged discriminatory practice prohibited by Article 49B to file a written complaint under oath with the Commission. The complaint must specify the name and address of the person or entity responsible for committing the discriminatory act, as well as other information that may be required by the Commission. In operational terms, the standard Complaint of Discrimination form requests the name and address of the complainant, the name and address of the respondent, an indication as to

whether discrimination was based on color, or race, or sex, and so forth, an indication as to the nature of the discriminatory act, and a general description of the discriminatory act.

In addition to responding to complaints filed with the Commission, Article 49B, Section 9(b) permits the Commission to file complaints on its own initiative. Such complaints may be filed if ". . . the Commission has received reliable information from any individual or individuals that any person has been engaged or is engaged in any discriminatory practice within the scope of this article, and after a preliminary investigation by the Commission's staff authorized by the chairman or vice-chairman it is satisfied that said information warrants the filing of a complaint. . . .".

After a complaint has been filed, additional investigatory data is generated by the staff of the Commission. Should the Commission determine that there is probable cause that a discriminatory act has occurred, the staff will seek to eliminate the discrimination by conference, conciliation and persuasion. If this effort produces an agreement for the elimination of discrimination, the respondent signs the agreement and an order is entered by the Commission.

If the staff is unable to develop an agreement to end the discriminatory practice, Article 49B, Section 11(a) stipulates that the entire file shall be "certified to ". At that point, the case reaches the public hearing stage, when further data may be introduced.

As is evident from the above discussion, data is gathered from a wide range of sources, including the complainant, the respondent and individuals interviewed by staff investigators. If a complaint involves a violation of

Titles VII and VIII of federal law, information may also be received from the Equal Employment Opportunity Commission and the Department of Housing and Urban Development. The Commission on Human Relations indicated that information that is considered to be suspect and that is obtained from third parties is verified with the subject of the record. The Commission also stated that complainants and respondents are given copies of any substantive and important documents.

Case files of the Commission are maintained in manual form and are indexed by case number.

B. Access Rights of the Person in Interest

The Commission on Human Relations indicated that complainants, respondents, and their attorney have a limited right of access to files, and are provided copies of certain information contained in those files. The Commission asserted that the adversarial character of its proceedings afforded both complainants and respondents the opportunity to challenge data contained in Commission files.

C. Disclosure of Records to Third Parties

Of particular significance for an understanding of the Commission's disclosure practices is Article 49 B, Section 13:

- "a) During the investigation of any complaint alleging a violation of (Sections) 5,7,14,15,16, or 22 of this article, and until said matters reach the stage of public hearings, the activities of all members of the Commission and employees thereof in connection with said investigation shall be conducted in confidence and without publicity, and the Commission shall hold confidential any information in relation thereto, including the identity of the complainant and the respondent, except that
 - i) Any information may be released at any time if the release has been agreed to in writing by both complainant and respondent; and

- ii) The identity of the complainant may be disclosed to the respondent at any time;
- b) Any member of the Commission or employee thereof, who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than \$1,000.00 or imprisoned not more than one year or both."

It is important to recognize that this provision only accords a confidential status to certain types of Commission cases which have not yet reached the public hearing stage: 1) violations of Section 5 (discrimination in public accommodations); 2) violations of Section 7 (discrimination by agencies, officers or employees of the State); 3) violations of Sections 14,15,16 (discrimination in employment); and 4) violations of Section 22 (discrimination in home financing). It does not affect pre-public hearing records pertaining to violations of Section 8 (discrimination by persons and businesses licensed or regulated by the Department of Licensing and Regulation), Sections 20 and 21 (housing discrimination other than discrimination involving home financing), and violations of Article 43, Section 556 D (discrimination by hospitals and related institutions against a patient on the basis of race, color or national origin). Pre-public hearing records pertinent to Article 49B, Sections 8, 20 and 21, and Article 43, Section 556D are disclosable under the Public Information Act, unless the custodian determined that disclosure would result in substantial injury to the public interest; such a determination however, would necessitate the custodian applying to the appropriate circuit court within ten working days for an order permitting him to continue a policy of nondisclosure.

Due to the fact that complaints involving employment and housing have federal rights attached to them, the Commission on Human Relations shares case files in these areas with the Equal Employment Opportunity Commission and the Department of Housing and Urban Development.

In the event that personally identifiable data is released, the Commission asserted that it verifies the accuracy of information prior to disclosure. Complainants and respondents are notified if disclosure of data occurs. While the Commission does maintain disclosure logs as such, it does keep written records of disclosure.

D. Security of Personally Identifiable Information

The Commission indicated that all staff having custody of personally identifiable data are instructed regarding the need for appropriate security. Security guards are on duty from 8 a.m. to 8 p.m. each working day. The Commission also stated that its work sharing agreement with the Equal Employment Opportunity Commission and the Department of Housing and Urban Development stipulates that recipients of data must be guided by the legal disclosure requirements of the providing agency.

COMPTROLLER OF THE TREASURY

The Comptroller of the Treasury is charged constitutionally with a wide range of responsibilities pertaining to the State's fiscal affairs. Among duties assigned to him are the preservation of all public accounts, the granting of warrants to be paid by the Treasury, and the collection of all taxes and revenues. The Comptroller identified the following divisions as maintaining program-related personally identifiable information: Retail Sales Tax Division, Income Tax Division, Alcohol and Tobacco Tax Division, Motor Vehicle Fuel Tax Division, Central Payroll Bureau, General Accounting Division and Miscellaneous Revenue Division.

I. Retail Sales Tax Division

The Retail Sales Tax Division identified two record systems drawn from Combined Registration Applications and Retail Sales Tax Returns. As there appear to be similar procedures regarding collection, access, disclosure and security of personally identifiable information for both systems, the Division provided one response for a general Retail Sales Tax File.

1. Retail Sales Tax File

As indicated above, information for this file is garnered from Combined Registration Applications and Retail Sales Tax Returns. Information is used for such purposes as the collection of taxes, delinquency control and verification of taxes that are due. The Combined Registration Application form, introduced in Fiscal Year 1981, is completed by taxpayers seeking licenses and registrations for income tax withholding, retail sales, motor fuel, alcohol, tobacco, admissions and amusements, and unemployment insurance. Approximately

32,000 applications were received by the Retail Sales Tax Division in the first year, with a projected total of approximately 120,000 to 125,000 applications over a four year period. There are approximately 95,000 Retail Sales Tax Licensees.

A. Collection and Maintenance of Information

The following types of data appear in this file: name of individual or corporation, address, telephone number, federal identification number or social security number, location of records, type of ownership and nature of business activity. The names, titles, home addresses and social security numbers are requested for all owners, partners, corporation officers, or trustees. Applicants must also indicate their Maryland Sales Tax Number, the number of locations for retail sales tax, and, if relevant, the names of Alcoholic Beverage License Holders and classes of licenses.

The Commission was informed that all information is provided by the individual or the corporation. Individuals are therefore aware of the general type of information contained in this file. Unsolicited comments concerning individuals may be investigated by the Division. At present, application information is maintained in a manual form. Retail Sales Tax Returns are computerized.

B. Access Rights of the Person in Interest

The person in interest may examine data pertaining to him. Copies are provided by the Division for a nominal fee. The accuracy of information may be contested by the person in interest.

C. Disclosure of Records to Third Parties

Disclosure of Division records is regulated principally by Article 81, Section 366, which states the following:

"Except in accordance with proper judicial order, or as otherwise provided by law, it shall be unlawful for the Comptroller or any deputy, agent, auditor, or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid or any other particulars set forth or disclosed in any return required by this subtitle. Nothing herein contained shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representatives of the State of the report or return of any taxpayer who shall apply for a review or appeal from any determination or against whom an action or proceeding is about to be instituted to recover any tax or penalty imposed by this subtitle."

In an unpublished opinion dated April 26, 1979, the Attorney General indicated that this section of the Annotated Code only assigns a confidential status to the amount of sales, the amount of tax or other particulars appearing on Retail Sales Tax Returns. Thus, disclosure of other types of information collected by the Division, such as application forms, cannot be restricted under this Section. Indeed, the Division must release, upon request, lists of the names of those who have a Maryland Retail Sales Tax License. Even though a name of a licensee is information that appears on a tax return and thus might appear to be a "particular", the Attorney General has determined that such an interpretation would be inconsistent with Article 81, Section 362, which requires that taxpayers display their licenses at their place of business. The Assistant Attorney General assigned to the Comptroller's Office has advised that any information appearing on the Combined Registration Application form which may be shared with the Internal Revenue Service is not disclosable. The Internal Revenue Service and the Income Tax Division of the Comptroller's Office have entered into an agreement for the sharing of certain tax data. As a practical matter, therefore, any information on the Combined Registration application form which is collected

jointly by the Income Tax and Retail Sales Tax Division would not be disclosable, as disclosure could violate the Comptroller's agreement with the Internal Revenue Service. All of the data elements discussed previously with the exception of Maryland Sales Tax Number, the number of locations for retail sales tax, and the names of Alcoholic Beverage License Holders and classes of licenses are collected jointly by the Income Tax and Retail Sales Tax Divisions.

Information considered to be nondisclosable under Article 81, Section 366 may be disseminated, under Article 81, Section 365(f), to the State Department of Assessments and Taxation and the United States Treasury Department. When information is disclosed, the subject of the record is neither informed of the dissemination itself nor of the recipient's name. The accuracy of the information disclosed is not verified prior to dissemination. Logs are not maintained to record the disclosure of personally identifiable data.

D. Security of Personally Identifiable Information

The Retail Sales Tax Division indicated that manual records are kept under lock and key. Access to computerized data requires the use of passwords. In order to alter computerized records, individuals must employ proper data entries which must be attested to and approved through various layers of supervision.

The Comptroller's Office informed the Commission that in 1978, a private consulting firm, Computer Resource Controls of Rockville, Maryland was employed to conduct an extensive security risk analysis of the Annapolis and Baltimore Data Centers. As part of this overall analysis, specific security suggestions were given to the various divisions of the Comptroller's Office, resulting in higher security. The Commission was also informed

that a survey of physical security of the Income Tax and Treasury Buildings in 1980 by the Executive Protection Division of the State Police resulted in the installation of a halon fire protection system as well as increased security control over the tunnel connecting the two buildings. The Comptroller's Office furthermore indicated that a risk analysis of all division financial systems has been performed by an internal auditor with the General Accounting Division.

II. Income Tax Division

The Income Tax Division maintains four program-related, record systems containing personally identifiable information: Individual Income Tax Returns, Corporation Tax Returns, Estimated Tax Returns, and Employer Withholding Account Applications.

1. Individual Income Tax Returns

Individual Income Tax Returns are used by the Division to determine the income tax liabilities of filers. There are approximately 8,500,000 returns in this system.

A. Collection and Maintenance of Information

The following personal data appear on Income Tax Returns: name, address, social security number, marital status, name of employer, income, and number of dependents. This system would also contain such information as the nature and source of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, and tax payments.

The primary source of information for this system is the individual himself. In some cases, however, information that is personally

identifiable is received from the Employment Security Administration and the Internal Revenue Service (IRS). This usually takes the form of an audit adjustment made to the individual's federal tax return or an accounts receivable notice. Data received by the Income Tax Division from IRS has already been disclosed by that agency to the individual in question, and therefore its contents could be verified or challenged. Unsolicited comments are investigated by the Division to determine their validity; should the Division consider these comments to be accurate, the taxpayer is contacted and given an opportunity to rebut them.

Income Tax Returns are computer processed; the original documents that are submitted, however, are maintained manually.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him. Information is released to the person in interest only in response to a written request.

In addition to permitting access to the person in interest, the Income Tax Division will allow examination of returns by the following groups: 1) a Committee, Trustee or Guardian of the person in interest, if the person in interest has been determined to be legally incompetent; 2) the Administrator, Personal Representative or Trustee of the estate of the person in interest if the person in interest has died; 3) a Receiver or Trustee in Bankruptcy, if the person's in interest property has been placed in the hands of this Receiver or Trustee; and 4) an attorney for any of the above mentioned groups.

A combined separate return may be inspected and copied by either spouse provided that the requesting spouse had signed the original return. Either spouse may examine a joint income tax return. A return that was

captioned in two names but signed by only one spouse and processed as a joint return may be inspected by the filing spouse and by the nonfiling spouse upon affirmation of intent to file a joint return.

C. Disclosure of Records to Third Parties

Income Tax Returns are regarded as confidential by Article 81, Section 300(a):

"Except in accordance with proper judicial or legislative order and except to an officer of the State with proper judicial or legislative order and except to an officer of the State having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the State or any political subdivision to divulge or make known in any manner:

- 1) The amount of income or any particulars set forth or disclosed in any return under this subtitle;
- 2) Any federal return, federal return information, or copies of a federal return or return information required by State law to be attached to or included in the State return."

The language of subsection (a)(1) is strikingly similar to that previously found in Article 81, Section 366. Given the fact that the Attorney General determined in 1979 that the name of an individual paying a retail sales tax was not considered to be a "particular" and thus protected from disclosure, the question may therefore be raised as to whether or not the Income Tax Division would have to honor requests for names of individual income tax payers. It should be recalled, however, that part of the Attorney General's rating in 1979 based on the fact that retail sales licensees must display, publically, copies of their licenses at their place of business. No such requirement exists regarding Income

Tax records.

Subsection (b) of Article 81, Section 300 permits the release of income tax data to other states and to the federal government under certain circumstances:

"In the event the United States government or any other State allows this State's official to examine its income tax returns or any class thereof, or to receive tax return information, then this state, upon application by the proper authorities of the United States or such other State to the Comptroller, shall allow the proper officials of the United States government or of such other State, whose official duties require them to make such inspection, to inspect the income tax returns of such corresponding class of such income tax returns filed hereunder or to receive tax return information. Disclosure to the proper officials of such other state may be made only in those instances where the laws of such other state provide adequate confidentiality for such exchanged tax returns or tax return information."

For the purposes of analysis, one may consider the memorandum of agreement between the State of Maryland and the District of Columbia to be a typical transfer of tax information agreement between Maryland and another state. The agreement stipulates that upon a written request from the Comptroller or one of his Deputy Comptrollers, Division Directors or Assistant Division Directors, the Director of Finance and Revenue of the District of Columbia will release a copy or abstract of the report or return pertaining to a District taxpayer, to the extent that the tax levied is similar in nature in both the State and the District. The identical service is provided by the Comptroller in response to a District request. The requesting jurisdiction must indicate that the information is pertinent to an ongoing investigation, audit or inquiry. In the event that data is released, the recipient is bound by the confidentiality statutes of the sender.

Tax information sharing agreements between the State and the federal

government are far more extensive in character. The representative of the Comptroller of the Treasury authorized to receive federal tax data operates under strict requirements regarding to whom he may release information. For example, the representative may release data to a legal officer of the Comptroller directly engaged in preparation for a civil or criminal proceeding; however, information can only be disclosed if the taxpayer is or may be a party in the proceeding, and if the tax return can affect or be related to a resolution of an issue in the proceeding. In addition, no federal returns will be disclosed if disclosure would identify a confidential informant or cause serious damage to a federal tax investigation.

Should personally identifiable tax information be disclosed to other states or to federal government, the subject of the record is not informed of this disclosure. The accuracy of all information is verified prior to disclosure. Although disclosure logs are not maintained, a photocopy of the disclosure is attached to the files. In accordance with federal requirements, the Division must maintain logs for the inspection or disclosure of federal tax data.

D. Security of Personally Identifiable Information

The Income Tax Division indicated that all personally identifiable records are maintained in locked cabinets within a physically secure building. Measures have been taken to prevent unauthorized altering of computerized data. The Commission was informed that computerized records are protected by an ACF-2 security system. Over the last several years, the Division has expended resources in the addition of a building security force, the development of a security manual, the development of a remote facility for securing critical files, and the

installation of a halon fire protection system to prevent accidental destruction of materials.

As a precondition to receiving federal tax information, the Comptroller of the Treasury must agree to comply with various federal security measures. First of all, federal returns must be stored in a secure area. Second, records must be restricted to only those employees whose responsibilities require access. The Comptroller must furnish a report to the Internal Revenue Service on a quarterly basis describing the measures that have been taken to ensure the confidentiality of federal information. When the Comptroller's Office has completed its use of these records, they must either be returned to IRS or made nondisclosable in a manner satisfactory to IRS. Finally, the Comptroller must permit an audit by both IRS and the General Accounting Office.

The annual federal audit is an extensive examination of both physical security measures and security of automated data processing measures. Federal investigators consider such items as perimeter security (e.g. the use of electronic alarm system, response time of guards to reach an area where tax data is stored), security in controlled areas (e.g. locks on all office spaces or rooms, personnel identification systems), container security (e.g. locks on all containers used to house federal data, the maintenance of records of all keys issued and returned), restriction of access (e.g. isolation of federal data from other information, written procedures for limiting access), security awareness (e.g. written instructions given to employees regarding the handling of federal data, procedures for detecting and preventing unauthorized or inadvertent disclosures) and procedures to be followed upon completion or use of returns (e.g. shredding methods). Documentation provided to the Commission indicated that the Internal Revenue Service has been extremely satisfied with the results of its annual review and

considers security in the Comptroller's Office to be of a high caliber.

2. Corporation Tax Returns

The Income Tax Division maintains a file consisting of Corporation Tax Returns. There are approximately 900,000 records contained in this file.

A. Collection and Maintenance of Information

In addition to the specific tax items contained on corporate returns, the following personally identifiable information is collected: names of officers of the corporation, amount of compensation, percentage of ownership, and expense account. All data is provided by the corporation filing the tax return.

As in the case of individual income tax returns, corporate tax returns are computer processed, with the original documents filed manually.

B. Access Rights of the Person in Interest

Authorized representatives of the corporation may inspect corporate returns pertaining to them. According to Income Tax Division guidelines, data may be released to: 1) any person designated by the Board of Directors of the firm; 2) any officer or employee upon written request, as long as the request is signed by any principal officer and attested to by the Secretary under the corporate seal; 3) the duly constituted attorney of the firm; 4) a Receiver or Trustee, or the attorney of the Receiver or Trustee, if the property of the Corporation has been placed in receivership; and 5) if the firm has been dissolved, by any person who might have inspected the return at the time of dissolution. Files may be copied, and the accuracy of information may be contested.

C. Disclosure of Records to Third Parties

Virtually all that was stated regarding disclosure of individual income tax returns can be applied to corporate returns. The only exception to this statement is that corporate returns are released to the Internal Revenue Service, but not to other states.

D. Security of Personally Identifiable Information

Security of corporate returns is identical to that pertaining to individual returns.

J. Estimated Tax Returns

There are approximately 1,500,000 Estimated Tax Returns maintained by the Income Tax Division.

A. Collection and Maintenance of Information

In addition to specific tax information, individuals indicate their names, addresses and social security number. All information is provided directly by individuals themselves. Estimated Tax Returns are computer processed; the original documents, however, are maintained in manual form. Tax returns are categorized by social security number or assigned control number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Estimated Tax Returns are not disclosed to other states or to the federal government. Disclosure would therefore require written consent of the subject of the record.

D. Security of Personally Identifiable Information

Security of Estimated Tax Returns is identical to that pertaining to Individual Income Tax Returns.

4. Employer Withholding Account Applications

The Employer Withholding Account Applications file is maintained to insure payment and collection of the withholding account. There are approximately 110,000 records in this system.

A. Collection and Maintenance of Information

Because Employer Withholding Account Applications data is drawn from the Combined Registration Application Form, much of the data is similar in character to that contained in the Retail Sales Tax File. Thus, account applications include such information as name of individual or corporation, address, telephone number, federal identification number, location of records, type of ownership and nature of business activity, as well as the names, titles, home addresses, and social security numbers for all owners, partners, corporation officers or trustees. In addition, applicants must indicate the date first wages were paid in Maryland, the name, home address and social security number of the individual who will be directly responsible for filing withholding reports, the number of workers employed in Maryland, and the estimated gross Maryland payroll. All of the information contained in this file is provided directly by the individual or business.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and challenge the accuracy of applications data pertaining to him.

C. Disclosure of Records to Third Parties

The Income Tax Division informed the Commission that Article 81, Section 300 is interpreted as restricting the disclosure of any information received from the taxpayer. As a consequence, therefore, all information appearing on Employer Withholding Account Applications is considered to be confidential.

D. Security of Personally Identifiable Information

Security of applications data is identical to the security identified for other Division record systems.

III. Alcohol and Tobacco Tax Division

The Alcohol and Tobacco Tax Division maintains three distinct record systems containing personally identifiable data: 1) Tax Returns; 2) License and Permit File; and 3) Credit Control File.

1. Tax Returns

Tax returns are filed with the Alcohol and Tobacco Tax Division by licensees who sell wine, beer, distilled spirits or cigarettes in Maryland. Approximately 2,000 returns are filed each year.

A. Collection and Maintenance of Information

Relatively little returns data is submitted by licensees that could

be regarded as personally identifiable. Besides the name, address and title of the owner, partner or officer of the firm, all other data pertains to the amount of sales, shipments and taxes due. Information is obtained directly from the tax returns submitted by licensees. The Division does supplement this data by making periodic audits of certain licensees. The Division indicated that individuals are aware of the type of information collected about them. Unsolicited comments are handled on a case by case basis.

Tax returns are kept in manual form and indexed by name and license/permit number.

B. Access Rights of the Person in Interest

The Division stated that information comes directly from the person in interest; presumably, therefore, there would be no need to examine this information. Copies can be provided to the person in interest.

C. Disclosure of Records to Third Parties

The Annotated Code is silent regarding disclosure of personally identifiable data appearing on Alcohol and Tobacco Tax Returns. Ordinarily, this would mean that such returns would fall under the jurisdiction of the Public Information Act. In actuality, however, these returns are considered to be confidential according to the Attorney General's Opinion dated March 3, 1959.¹

The Attorney General was asked at that time by the Chief of the Admissions Tax Division as to whether he should release information derived from admissions and amusement tax returns. The Attorney General concluded that although admissions returns were not specifically considered to be confidential by statute, public inspection of this information

should not be permitted.

The position of the Attorney General was based largely on the concept of legislative intent. The Attorney General reasoned that disclosure of admissions tax returns data would frustrate the desire of the Legislature to treat income tax and retail sales tax information as confidential: ". . .if amusement tax returns are not kept confidential, any curious member of the public or interested competitor or any person engaged in the amusement business could obtain the very information as to gross income that the Legislature has painstakingly made confidential under the income and sales tax sections of the Code."²

Immediately subsequent to this opinion, the Comptroller of the Treasury advised the Alcohol and Tobacco Tax Division that the opinion applied to tax returns of that Division as well as to the Admissions Tax Division. As a consequence, therefore, data is only released to other divisions of the Comptroller's Office in rare instances when such information is needed, to legislative auditors in the course of performing their statutory duties, and to the Federal Bureau of Alcohol, Tobacco and Firearms engaged in an investigation. If information is disclosed, the subject of the record is not informed of this fact. Data is verified as to its accuracy prior to dissemination. Although logs are not maintained, the Division keeps copies of requests on file.

D. Security of Personally Identifiable Information

The Commission was informed that there is limited access to tax data.

2. License and Permit File

A License and Permit File is maintained consisting of relevant information pertinent to corporate entities, partnerships and individuals making application for an alcohol/tobacco license/permit. There are approximately 2,500 active records and 3,500 inactive records.

A. Collection and Maintenance of Information

Various items of personally identifiable information are obtained from license and permit applicants. An individual who applies for a Manufacturer's or Wholesaler's License, for example, must indicate his name, address, age, sex, place of birth, and place and year of naturalization. Specific information must be provided if the applicant has ever been convicted of a felony, has had a license denied, has been found guilty of violating the alcoholic beverage sale laws of the United States or the Maryland gambling prevention laws, or has had a license for the sale of alcoholic beverages revoked. A permit applicant indicates his name, address, social security number, and, if relevant, name of insurance company and policy number. Permit applicants also respond to the above-mentioned questions regarding felony convictions, alcoholic beverage law violations, and so forth. The basic application and permit forms are supplemented by financial data and background investigations conducted by the Division.

Information is provided by applicants, as well as by other sources through the use of background investigations. The Commission was informed that attempts are made to verify data obtained from other sources, if it is deemed to be necessary. The Division indicated that individuals are informed of the type of data collected about them. Unsolicited comments are handled on a case by case basis.

Information for this record system is maintained in both manual and computerized form. Data is categorized by name and license or permit number.

B. Access Rights of the Person in Interest

The Commission was informed that license and permit file data is available for examination, copying, and challenge by the person in interest. The Division did indicate that the person in interest may not inspect background investigations, which are considered to be confidential.

C. Disclosure of Records to Third Parties

The Division indicated that it follows a policy of not releasing ". . .any information directly or indirectly pertaining to a tax return report when such information is directly identifiable to the individual licensee or taxpayer." However, license and permit application forms are considered to be disclosable.

D. Security of Personally Identifiable Information

The Commission was informed that there is limited access to license and permit data. The Division also indicated that the Data Processing Division had taken appropriate measures to prevent unauthorized altering of data and had performed a risk analysis.

3. Credit Control File

A Credit Control File is maintained by the Alcohol and Tobacco Tax Division to record the names of retail licensees who have not paid invoices within an established period, or the names of those who have

returned checks. There are approximately 75,000 records in this system.

A. Collection and Maintenance of Information

The Commission was informed that data in this file consists of the name and address of the retailer and wholesaler, the amounts due on the checks returned, and the dates. Information is derived from wholesaler reports. Individuals are informed indirectly of the type of data collected about them through credit lists that are issued. Unsolicited comments are handled on a case by case basis.

The Credit Control File is maintained manually and indexed by name and address.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and challenge the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

The Alcohol and Tobacco Tax Division publishes credit control lists on a periodic basis. The purpose of these lists is to inform wholesalers to whom they can extend credit. While the lists are disclosable under the Public Information Act, background details pertinent to particular retailers are considered to be confidential.

D. Security of Personally Identifiable Information

The Division restricts access to authorized personnel only.

IV. Motor Vehicle Fuel Tax Division

The Motor Vehicle Fuel Tax Division identified five program-related record

systems containing personally identifiable information: Motor Carriers File, Motor Vehicle Fuel Dealers File, Diesel Users and Diesel Sellers File, Retail Service Station Dealers and Wholesalers File, and Refund Account File.

1. Motor Carriers File

The Motor Carriers File is used by the Division for the purposes of collection of the Motor Vehicle Fuel Tax. There are 35,000 records in this file.

A. Collection and Maintenance of Information

COMAR 03.03.06.07 B(1) specifies certain basic information that must be provided by motor carriers: "All motor carriers granted permission to register under the provisions of Article 81, Section 423(a) shall submit a complete list of vehicles subject to this act setting forth the make, serial number, and the state licensed, with valid evidence of all operating authority presently held under the Federal Interstate Commerce Commission." The basic application form used by the Division for the purposes of motor carrier registration contains the following information: name and address of individual or corporation, account number, federal or social security number, Interstate Commerce Commission number, and data pertinent to the makes, serial numbers, license numbers, fleet numbers, fuel types, and vehicle types for all vehicles registered by the applicant. In addition to application data, motor carriers must file quarterly tax reports which include such information as the number of miles traveled in all states and in Maryland, the amount of motor fuel used and purchased in Maryland, and the total tax due. All data in this file is submitted directly by applicants.

The Motor Carriers File is a computerized record system and is categorized

by federal identification number or social security number.

B. Access Rights of the Person in Interest

The person in interest does have access to information pertaining to him, although he is made aware of his right of access. Data cannot be copied or challenged.

C. Disclosure of Records to Third Parties

The records of the Motor Vehicle Fuel Tax Division are not assigned a confidential status either by the Gasoline Tax Act or the Road Tax on Motor Carrier Act. The Commission was informed by the Division, however, that in conformity with the confidentiality provisions pertinent to income tax data (Article 81, Section 300), all information regarding specific accounts of the Motor Vehicle Fuel Tax Division is considered to be nondisclosable. The Division was advised recently by an Assistant Attorney General assigned to the Comptroller's Office that it must honor a Public Information Act request for a computerized list of registered motor carriers who are paying the motor vehicle fuel tax or motor carrier tax.

In the event that motor carrier data is released, the subject of the record is not notified regarding either the disclosure of personally identifiable records or the name of the recipient of such records. The accuracy of the information is verified prior to disclosure. The Division maintains logs to record the dissemination of personally identifiable data, and enters in its logs the names of recipients and the dates of disclosures.

D. Security of Personally Identifiable Information

In response to the Commission's questions regarding the general security measures enacted by the Division to ensure the confidentiality of personally identifiable records and measures taken to prevent the unauthorized altering of data by Division personnel, the Commission was informed that data is limited to authorized State employees. A risk analysis has been conducted by the Annapolis Data Center.

2. Motor Vehicle Fuel Dealers File

The Motor Vehicle Fuel Dealers File is used in conjunction with the collection of the Motor Vehicle Fuel Tax. There are 152 records in this file.

A. Collection and Maintenance of Information

All dealers of motor vehicle fuel are required by statute to obtain a license which must include the names of applicants, the names and addresses of those constituting the firms or partnerships, and, if an applicant is a corporation, the corporate name, the names and addresses of the principal officers, and the names of the resident general agent and attorney-in-fact. Motor Fuel Tax Dealers also submit monthly tax reports which indicate such items as the inventory on hand at the beginning and end of the month, stock loss, total number of taxable gallons, and total tax paid. All data in this file is obtained directly from the dealers.

Motor Vehicle Fuel Dealers data is computerized and indexed by federal identification number or social security number.

B. Access Rights of the Person in Interest

The person in interest may examine all data pertaining to him and may contest the accuracy of that data. However, the person in interest may not receive copies of records.

C. Disclosure of Records to Third Parties

As noted in the previous discussion of the Motor Carriers File, the Motor Vehicle Fuel Tax Division will not release any personally identifiable data relative to a specific amount. However, the Division presumably would respond affirmatively to a request for a list of all motor vehicle fuel dealers.

If personally identifiable data is released, the Division indicated that the person in interest is not informed of the disclosure. Information is verified as to its accuracy prior to dissemination. Disclosure logs are not maintained.

D. Security of Personally Identifiable Information

The Commission was informed that original copies of records are maintained in locked file cabinets, and that measures had been taken to prevent the unauthorized altering of computerized data by Division personnel. A risk analysis has been conducted.

3. Diesel Users and Diesel Sellers File

A file is maintained by the Division for the purposes of collecting motor vehicle fuel taxes from diesel sellers and diesel users. There are approximately 4,308 records pertinent to diesel users and 325 records regarding diesel sellers.

A. Collection and Maintenance of Information

Diesel user and seller applicants must submit the following personally identifiable data to the Division: name, address, federal identification number or social security number and name and address of the owner of the business. If the business is owned by a corporation, an applicant must indicate the names, addresses and positions of officers, the resident general agent and the attorney-in-fact. If the business is a firm or partnership, an applicant must provide the names and addresses of those constituting the firm or partnership. An applicant must also indicate various details regarding the location and information of storage in Maryland and a list of all diesel equipment.

COMAR 03.03.04.03 specifies additional data which may be required to be submitted by diesel registrants:

"All license diesel sellers shall maintain on file with the Gasoline Tax Division the name and address of the representative in their organization responsible for the diesel fuel tax report. The representative shall provide all information requested in the following areas:

- A. Stock reports;
- B. EDP Systems;
- C. Marketing;
- D. Security;
- E. Internal Audit;
- F. Motor Fuel Taxes."

The Division requires registrants to complete a detailed questionnaire containing very specific questions regarding product storage, methods of receiving diesel products, recipients of nontaxable diesel products, methods of shipping diesel products, methods of accounting for fuel use, inventory reports, methods used to prevent product losses, and documents retention. All data comes from registrants.

The Diesel Users and Diesel Sellers File is computerized and indexed by federal identification number or social security number.

B. Access Rights of the Person in Interest

The person in interest may examine data pertaining to him, but may not copy or challenge such information.

C. Disclosure of Records to Third Parties

As in the case of the previous record systems of the Division, the Commission was informed that personally identifiable data with the exception of names and addresses of users and sellers is considered to be nondisclosable as a consequence of Article 81, Section 300.

D. Security of Personally Identifiable Information

Security of this file is identical to that previously discussed for the Motor Vehicle Fuel Dealers Tax.

4. Retail Service Station Dealers and Wholesalers File

The Division maintains a Retail Service Station Dealers and Wholesalers File for the purpose of issuing certificates to conduct business in motor vehicle fuels. There are approximately 3,365 records pertinent to dealers and 153 records pertinent to wholesalers.

A. Collection and Maintenance of Information

Registration of dealers and wholesalers is required by Article 56, Section 157F. Registrants must indicate names and addresses, the types of products sold or distributed, the names and addresses of suppliers, the types of stations operated, and the total number of retail nozzles operated for each type of product sold or distributed. All information is provided directly by registrants.

Personally identifiable data is computerized and indexed by federal identification number or social security number.

P. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of data pertaining to him.

C. Disclosure of Records to Third Parties

Disclosure of dealers and wholesalers data is identical to that discussed in the previous record system.

D. Security of Personally Identifiable Information

Security of this information is identical to that discussed in the previous record system.

5. Refund Account File

A file is maintained by the Division to record refunds of motor vehicle fuel tax. There are approximately 4,679 records in this system.

A. Collection and Maintenance of Information

A claimant must provide the following data in submitting a request for refund: name, address, opening inventory date, total motor vehicle fuel purchase, total gallons available, closing inventory date, total fuel used, and net amount of refund. Invoices must also be filed by a claimant, documenting the actual date of delivery, the name and address of the purchaser, the name and address of the seller, the number of metered gallons purchased, and the name of the product and price per gallon. If

a claim is audited by a Division field representative, data will be gathered regarding the claimant's fuel usage, inventories, and nature of registration with the Division.

The Refund Account File is a computerized record system categorized by federal identification number or social security number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of data pertaining to him.

C. Disclosure of Records to Third Parties

Disclosure of refund account data is identical to that discussed in the previous record system.

D. Security of Personally Identifiable Information

Security of refund account data is identical to that discussed in the previous record system.

V. Central Payroll Bureau

The Central Payroll Bureau identified one program-related record system, the Statewide Payroll System.

1. Statewide Payroll System

The Statewide Payroll System is used in the processing of payrolls for employees paid through the Central Payroll Bureau, the withholding of taxes, and the processing of deductions. There are approximately 86,000 records in this system.

A. Collection and Maintenance of Information

The following data appears in the Statewide Payroll System: name, address, social security number, classification, tax information, deduction information, hours worked, agency employed and accounting information. The Central Payroll Bureau indicated that the information necessary to make payment to the employee for hours worked is provided by the Department of Personnel or the employing agency. Accounting information is submitted by agencies or vendors. All other data is provided by employees. Data obtained from third parties is not verified with employees, since employees are the source of most information. In most cases, data from this file appears directly on employees' earnings statements. The Bureau does attempt to resolve any questions raised by employees. No record is made of unsolicited comments.

Statewide Payroll System data is maintained in both computerized and manual forms. Information is categorized by agency code in social security number order.

B. Access Rights of the Person in Interest

The person in interest is not permitted access to computerized records as this would present security problems. Individuals may examine, copy and challenge records appearing on manual cards.

C. Disclosure of Records to Third Parties

The Central Payroll Bureau indicated that payroll system records are governed by the Public Information Act. The Bureau would therefore honor requests for such information as name, social security number, classification, dates of employment and salary. The home addresses of employees are nondisclosable under Article 76A, Section 3(c)(x). The Commission

was also informed that specific information on employees' taxes or deductions is considered to be confidential as a consequence of both Article 81, Section 300 and Federal law. The Bureau indicated that specified State tax officials may be granted access to tax data, but only on a need to know basis. In the event that information is released, the subject of the record is not informed of this fact. Data is verified as to its accuracy prior to dissemination. Disclosure logs are not maintained.

D. Security of Personally Identifiable Information

The Central Payroll Bureau indicated that the Statewide Payroll System incorporates security measures to deny unauthorized access to records. The Commission was told that unauthorized alteration of data is prevented both by the system software and controls maintained during payroll processing.

VI. General Accounting Division

The General Accounting Division maintains three program-related record systems containing identifiable data about individuals: 1) Disbursement Transmittal File; 2) Transaction History File; and 3) Vendor Indebtedness Information Subsidiary File.

1. Disbursement Transmittal File

The General Accounting Division employs a Disbursement Transmittal File to support requests for payments subsequently warranted on the State Treasury by the Comptroller of the Treasury. There are approximately 35,000 active and 70,000 inactive records in this system.

A. Collection and Maintenance of Information

Article 41, Section 197 states, in part, that all bills or vouchers for materials purchased by any State agency must be submitted to the Comptroller for his audit and review; these bills or vouchers can only be paid by the Treasury upon warrant by the Comptroller. The Commission was informed that these records might include such items as payee's name and address, income data, treatment or equipment for patients and clients and lottery winnings. All data comes from the individual or vendor through a State agency as part of its disbursement transmittal. Data is not verified routinely with individuals or vendors; in cases necessitating additional information, however, agencies would be contacted.

Disbursement Transmittal records are kept in manual form and are indexed by Comptrollers Reference Number, Agency Code, List Number, and date.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of data pertaining to him, but only after clearance has been received from the Comptroller's Public Information Officer. The Commission was informed that the General Accounting Division will honor only written requests and that it may charge the requester for the actual costs of retrieving, copying and distributing the required information.

C. Disclosure of Records to Third Parties

The General Accounting Division indicated virtually all of the materials found in this file are considered to be public documents under the Public Information Act and thus are disclosable to the public. The Division follows a general procedure of obtaining clearance first from

the Comptroller's Public Information Officer. The only exception to this rule involves individual or company tax records, which will only be disclosed in response to a court order. In the event that data is disclosed, the subject of the record is not made aware of this fact. The Division does verify the accuracy of the supporting documents in its possession. Disclosure logs are not maintained.

D. Security of Personally Identifiable Information

Prior to audit, Disbursement Transmittal Records are kept in a locked vault. After the completion of audit, data is available to the public. The Division indicated that they are secured as normal business records.

2. Transaction History File

The General Accounting Division maintains a Transaction History File which is the computerized audit trail of all transactions recorded in the Statewide Accounting and Reporting System. The file consists of approximately one and one half million active and six million inactive records.

A. Collection and Maintenance of Information

Relatively little in the way of personally identifiable information is collected through this system. Data consists basically of accounting transaction information concerning disbursement, including such elements as name of vendor, amount paid, date and agency list number. Information comes from the individual and vendor through a State agency as part of a disbursement transmittal. As in the case of the Disbursement Transmittal File, data will be verified with agencies in those occasional situations where additional information is needed.

Data is kept in computerized and microfilm form and categorized by batch identification number.

B. Access Rights of the Person in Interest

The General Accounting Division follows the same procedure for permitting access to this file as was discussed for the Disbursement Transmittal File.

C. Disclosure of Records to Third Parties

Data in this file is disclosable under the Public Information Act. The subject is not informed of disclosures. Supporting documents in the possession of the General Accounting Division are verified as to their accuracy prior to dissemination. Logs are not maintained.

D. Security of Personally Identifiable Information

Data is protected by the ACF-2 security system. Persons seeking access to this information must receive clearance from the Division's security officer.

3. Vendor Indebtedness Information Subsidiary File

A Vendor Indebtedness Information Subsidiary File is maintained consisting of approximately 200 active records.

A. Collection and Maintenance of Information

Information in this file is restricted to the name of the vendor and the amount retained in escrow pending release by the State taxing authority. Information is derived from the payment request and the State taxing authority. If additional information is needed, verification

of the data will be made with the State Taxing Authority.

Data is kept in computerized and microfilm form and categorized by subsidiary account number.

B. Access Rights of the Person in Interest

Procedures followed in permitting access to this file are identical to those found in the Disbursement Transmittal record system.

C. Disclosure of Records to Third Parties

Vendor Indebtedness Records are disclosable under the Public Information Act. The subject of the record is notified regarding the disclosure of personal data and the name of the recipient of the data. Documents in the possession of the General Accounting Office are verified prior to dissemination. Disclosure logs are not maintained.

D. Security of Personally Identifiable Information

Security is identical to that found in the Transaction History File.

VII. Miscellaneous Revenue Division

The Miscellaneous Revenue Division identified two record systems regarding persons who have recently died. These two information systems are: 1) Federal Estate Tax Information and 2) Maryland Estate Tax Information.

1. Federal Estate Tax Information

Under Section 6103(d) of the Internal Revenue Code, the Miscellaneous Revenue Division of the Comptroller's Office receives the following Federal Estate Tax Information for Maryland estates from the IRS: name of decedent,

social security number, date of death, name and address of personal representative, tentative federal estate tax, state death tax credit, and net federal estate tax.

A. Collection and Maintenance of Information

Information comes to the Miscellaneous Revenue Division from the IRS about fifteen months after the death of a subject. The information is originally obtained by the IRS from the personal representative of the decedent. Data is manually maintained.

B. Access Rights of the Person in Interest

The personal representative of the subject has access to information if he obtains permission from the IRS to see the information.

C. Disclosure of Records to Third Parties

The Division indicated that disclosure to third parties is not allowed.

D. Security of Personally Identifiable Information

This information is kept in locked file cabinets.

2. Maryland Estate Tax Returns

The Miscellaneous Revenue Division also receives the Maryland Estate Tax return from the personal representative of all Maryland decedents and non-resident decedents owning Maryland Real Property. The tax return reflects the following information: name and address of decedent, date of death, name and address of personal representative, gross estate, taxable estate, federal estate tax, credit for state death taxes, inheritance taxes paid, and Maryland estate tax due.

A. Collection and Maintenance of Information

The Miscellaneous Revenue Division receives information from the Registrars of Wills in the counties and Baltimore City. The Registrars of Wills obtains the information from the personal representative of the decedent. Information is manually maintained.

B. Access Rights of the Person in Interest

With proper identification, the personal representative of the decedent can have access to information.

C. Disclosure of Records to Third Parties

Under Article 62A, Section 4A of the Annotated Code of Maryland, disclosure to third parties is not allowed.

D. Security of Personally Identifiable Information

Information is kept in locked file cabinets.

NOTES

1. 44 Opinions of the Attorney General 350 (1959).

2. 44 Opinions of the Attorney General 352 (1959).

DEPARTMENT OF AGRICULTURE

The Maryland State Department of Agriculture maintains a variety of program-related personally identifiable records which can be divided into three major types. The first group consists of records of the Office of Animal Health and Consumer Services which includes the Animal Health Section (200 records), Grading Services and Egg Inspection Section (600 records), the Meat and Poultry Inspection Section (100 records), the State Chemist Section (2,545 records) and the Weights and Measures Section (250 records).

The second grouping contains those records of the Office of Plant Industries and Pest Management. These include Mosquito Control (2,000 records), the Pesticide Applicators Law Section (11,000 records), the Plant Protection Section (1,200 records) and the Weed Control Section (1,700 records).

A third group consists of several miscellaneous activities within the Department such as the Division of Marketing (6,600 records), the Maryland Agricultural Land Preservation Program (250 records), the State Board of Inspection of Horse Riding Stables (225 records), the State Board of Veterinary Medical Examiners (1,900 records) and the State Soil Conservation Committee (96 records).

I. Office of Animal Health and Consumer Services

A. Collection and Maintenance of Information

The majority of the records generated by the various sections of this office deal with licensing and inspection and lists of registrants. Data is generally limited to the name, address and telephone number of the applicant for licensure or business being inspected. Applicants seeking licenses from the Weights and Measures Section also provide their social security numbers. This information is obtained, for the most part, from the individual

himself. If an unsolicited comment is received which indicates that a law has been violated, an investigation may be initiated.

All of the record systems in the Office of Animal Health and Consumer Services are manual and the information is categorized alphabetically or by license number.

B. Access Rights of the Person in Interest

In all of the sections, individuals are allowed access to the files maintained on them and are allowed to copy them. Since information in the files is submitted by the individual himself, some sections expressed the feeling that there would be no need for the person in interest to contest the accuracy of the information. Similarly, two sections felt that there was no necessity for informing individuals of their access rights. One other section indicated that the individual was informed of his access rights through departmental standard operating procedures, while a second section stated that the individual is told of his access rights upon inquiry.

C. Disclosure of Records to Third Parties

Three sections, Weights and Measures, Animal Health, and Meat and Poultry, stated that information of a personal nature is not disclosed to other agencies or others outside of state government. Two other sections, Grading and Egg Inspection and the State Chemist Section, indicated that personal information is disclosed if allowed by Department regulations; in such a situation, the person in interest is not notified of the disclosure.

The Department of Agriculture has recently addressed regulations pertinent to the Public Information Act. Based on these regulations, it would appear that program-related, personally identifiable information is disclosable unless the department determines that disclosure would be contrary to the

public interest. In such a situation, the department would have to apply to the appropriate circuit court within ten days for an order permitting continued denial of disclosure.

When information is disclosed, logs are not kept and only one section stated that the accuracy of the information was verified prior to its dissemination.

D. Security of Personally Identifiable Information

Personally identifiable records are maintained in locked cabinets. None of the sections required security guarantees prior to disclosing information.

II. Office of Plant Industries and Pest Management

Records maintained by the sections of this office deal with mosquito and weed control, licensing for plant nurseries and pest control, and inspections of nurseries and pesticide applicators.

A. Collection and Maintenance of Information

Within this office, the Weed and Mosquito Control Sections and the Plant Protection Section collect names and addresses from individuals. The Plant Protection Section also collects the phone numbers of individuals. All data is maintained in a manual system. Information in the Mosquito Control Section is categorized by county and project, while the Weed Control Section indexes its data by name. The business name is used to file information in the Plant Protection Section.

In contrast to these three, the Pesticide Applicators Law Section collects more extensive personally identifiable information. Applicants for a pesticide applicator's license provide name, permanent home address, home telephone number, business address, business telephone number, date of birth, social security number, driver's license number, names and addresses of

previous employers, nature of previous positions, educational background, details pertinent to any previous pesticide sales and service licenses, and names and business addresses of three references. In order to apply for a pesticide business license, applicants must also list the names, addresses, social security numbers, driver's license numbers, and birth dates of all employees.

This information is obtained from the subject of the record and from other sources, usually by phone and written inquiry. The accuracy of such information is verified with the subject of the record. Upon request, individuals are informed of the type of information collected about them. Any written unsolicited comments are placed in the file, with unwritten comments being handled on a case by case basis. Records are both manual and computerized and data is categorized by name.

B. Access Rights of the Person in Interest

In almost all of the sections, the individual has access to information pertaining to him upon request. In some sections, a copy is sent automatically. The only exception is found in the Pesticide Applicators Law Section, in cases involving an individual who is the subject of an active investigation. The Pesticide Applicators Law Section stated that individuals are made aware of their access rights by regulation. In all sections, a copy can be obtained or is provided and the individual can contest the accuracy of the information.

C. Disclosure of Records to Third Parties

The Weed and Mosquito Control Sections stated that they do not disclose information of a personal nature to other agencies. The Weed Control Section indicated that it had never received a request for such data.

The Plant Protection Section stated that it will provide information to anyone with a pertinent question, usually of a business nature only, by phone, visit or letter. The subject of the record is not usually informed about the dissemination of personally identifiable data. Disclosure logs are kept cataloging the date, name of requester, questions, and subjects of inquiry; the person in interest has access to these logs.

The Pesticide Applicators Law Section indicated that personally identifiable information is disclosed, with the exception of examination results and information pertaining to an active investigation. The subject of the record system is not informed in the event that records are disclosed. The accuracy of information is verified prior to dissemination. Logs are not maintained to record the disclosure of personally identifiable data.

D. Security of Personally Identifiable Information

General security procedures are not utilized by the sections with the exception of the Mosquito Control Section, which limits access to personal records to the professional staff. There are no security guarantees required of other agencies prior to disclosure of information.

III. Miscellaneous Record Systems

The third grouping includes a variety of records maintained by the Division of Marketing for production and marketing statistics, and by the State Boards and Committees for licenses for riding stables and veterinarians, recommendations for district supervisor appointments, and property easement applications.

A. Collection and Maintenance of Information

The Marketing Section maintains information on the names of producers and marketers, the State Soil Conservation Committee has files containing the name and address of recommendations for district supervisors, and the Agricultural Land Preservation Program collects the names and addresses of

property owners. Information is obtained from the subject of the record, or, in the case of district supervisor appointments, from the person making the recommendation. All records are maintained in manual form and are categorized alphabetically in the Marketing sections, by Soil Conservation District in the Conservation Committee, and by name and land numerical coding system in the Land Preservation Program.

The Maryland State Board of Veterinary Medical Examiners requires an applicant for a veterinary license to submit the following data: name, home address, primary field of practice interest, and details pertinent to a license suspension or revocation in another state. In addition, notarized information is obtained from the Professional Reporting Service and the college attended by the applicant.

The Board also maintains data regarding complaints received about any licensees. The complainant is advised of the outcome, should an investigation occur.

Individuals in all of these systems are informed of the type of information collected on them. Files are manually maintained by subject and name.

As a final example of personally identifiable information collected, one may consider licensing data of the State Board of Inspection of Horse Riding Stables. The application for a license to operate a stable requests varied data elements: name, home address, telephone number, social security number, race, sex, driver's license number, date of birth, details pertinent to any convictions for cruelty to animals, the names, titles and addresses of all members or officers if the stable is owned by a corporation, partnership or association, and name of insurance company and policy number for Workmen's Compensation purposes. Files also contain complaint data regarding licensees. Upon investigation of the complaint, the licensee is given a copy of the investigating report.

B. Access Rights of the Person in Interest

Access to the person in interest is provided by all of these offices, either during normal office hours or upon written request. The person in interest may contest the accuracy of any files pertaining to him.

C. Disclosure of Records to Third Parties

The Agricultural Land Preservation Program, the Soil Conservation Committee and the Marketing sections indicated that information of a personal nature is not disclosed to other agencies. In contrast, the Board of Veterinary Examiners indicated that disclosure involved verification of licensure. The Board does not maintain logs to record the dissemination of data. The accuracy of the information is verified before it is disclosed. The Stable Licensing Board stated that personal information is disclosed only after the request is shown to counsel. The subject of the record is not notified of the disclosure and the accuracy of the information is not verified. However, a file is kept of those letters requesting information as well as a copy of the Board's reply. The person in interest is granted access to this file.

It should be noted that all of the records discussed in this section are subject to the Public Information Act.

D. Security of Personally Identifiable Information

The only security measures which are utilized are those of the Land Preservation Program and the Veterinary Board (locked files) and the Stable Licensing Board (files categorized by code number). No security guarantees are required before information is disclosed to third parties.

DEPARTMENT OF BUDGET AND FISCAL PLANNING

The Department of Budget and Fiscal Planning is responsible for budget development, budget execution supervision, revenue estimating, and coordination of state automatic data processing. Despite its range of duties, there is only one component of the Department, the Central Collection Unit (CCU), which maintains program-related, personally identifiable information. The Central Collection Unit is responsible for the collection of delinquent accounts for the State of Maryland. This excludes the collection of taxes performed by the Comptroller's Office.

Five (5) types of personally identifiable records used to expediate the collection of debts are maintained by the Unit:

1. Account Folders - Contain copies of signed notes, bills, accident reports, suit papers, correspondence and letters of transmittal. Information concerning employment and assets may also be included, particularly if legal action has begun. Any other documents pertinent to the account are also maintained in the folder. The debtor's name and account number are on the front of the jacket and the records are maintained manually.
2. Alphabetic Cross Reference - A computer listing of all accounts by name (alphabetically-last name first), cross referenced by account number. Mailing address, current balance and occasionally the source agency account number are also listed.
3. Status Code List - A computer print-out listing of accounts (by number and name) according to status (step in the collection process), outstanding balance, and an indication as to whether a judgement has been

secured (signified by a "J"). This is categorized by code.

4. Judgement Report - A computer print-out listing judgements by name and amount owed.
5. Accounts Receivable - A computer print-out listing each account by referring agency. Name, address, original debt amount, and current balance are indicated. If available, social security number, date of birth and phone number are also noted. This listing is categorized by account code.

The number of records in print-out only is approximately 122,000, while account folders total 27,000.

The Central Collection Unit indicated that these systems are all treated in a similar fashion. Therefore, this report will discuss overall policies which apply to all five types of records maintained by CCU.

A. Collection and Maintenance of Information

The collection practices of the Central Collection Unit are regulated by COMAR 17.02.01-.05. The regulation defines a delinquent account as one in which appropriate demands have been made on the debtor, the entire claim cannot or will not be paid by a third party, and the debtor himself fails to pay the entire claim. Under ordinary circumstances, an agency is required to submit three (3) written demands for payment to the debtor at thirty day intervals prior to transferral of the account as delinquent to the Central Collection Unit. A debtor is informed of the amount and reason for the indebtedness, the date payment is due, and the fact that failure to respond will result in the forwarding of the account to CCU.

Accounts are transferred prior to the ninety day period if the debtor has indicated an unwillingness to pay, has failed to respond within seventy-five days, or is expected to depart from the State or remove assets.

Records transferred to CCU include personal information such as name, address, and social security number of the debtor. In addition, the name and address of any co-signer or sponsor is also included. A referral to the Assistant Attorney General for legal proceedings may require that information on the debtor's assets, employment and earnings also be collected. This data would include items such as amount of monthly mortgage payment or rent, bank account numbers, cash value of life insurance policies, and so forth.

Information on the debtor is included with the account when it is referred to CCU. The original information, CCU stated, comes from applications for loans, registration forms, and the like. The debtor's address is checked with the Post Office, the Motor Vehicle Administration and through skip trace services provided by the U.S. Department of Education (for National Defense Student Loan accounts). Investigation of public records or interrogation of the debtor himself is done to obtain information on assets. For example, real estate holdings may be verified through the Tax and Land Records Offices.

Debtors are not routinely informed regarding the type of information that may be placed in their folder. Unsolicited comments are totally ignored.

B. Access Rights of the Person in Interest

Access is granted to the person in interest upon request. This is done in the presence of a CCU agent to insure that nothing is removed from the file. Copies will be made upon request. The person in interest may con-

test the accuracy of a record and an adjustment will be made if justified.

The debtor is not formally informed of his access rights; rather, he is made aware of these rights upon inquiry.

C. Disclosure of Records to Third Parties

The Central Collection Unit does not release information to any other State agency or to members of the general public. Although there does not exist a particular statute which assigns a confidential status to the records of the Central Collection Unit, the CCU Supervising Attorney expressed confidence that such records could be restricted from disclosure. Of particular relevance is Commercial Law Article 14-202, subsection 5, which states that in collecting a debt, an agent may not "...except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the debtor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information." In addition, records of cases referred to the Assistant Attorney General for legal proceedings would become attorney work products and would not be disclosable.

There are two circumstances when CCU retains a commercial collection agency to perform collection services for the State. A commercial agency may be employed to collect delinquent accounts ranging from \$25 to \$250 from individuals who have failed to respond to CCU notices. CCU also refers accounts in excess of \$250 to the commercial agency, if all means of locating the debtor have been exhausted. Accounts referred may include National Defense Student Loans, claims for damage to State property, Public Defender fees, fines from the State University system, and so forth. Approximately 6,000 such accounts are transferred on an annual basis. In

addition, a commercial agency is retained to collect approximately 90,000 delinquent inpatient and outpatient accounts at the University of Maryland Hospital.

Accounts that are transferred to a commercial agency are limited to name and address of debtor, type of debt, and debt amount. A copy is made of the bill or signed agreement and is provided to the commercial party. University Hospital accounts are handled in a special manner, in that much of the work of the commercial agency involves the filing of third party claims. Operating out of space provided at University Hospital, the collection agent, upon request, is given copies of the debtor's admission form, accounting form and discharge summary. The discharge summary does contain such information as the primary and final diagnosis, the name of the attending physician and the number of days in the hospital. The Commission cannot provide more specific information regarding the nature of information available to the agent; despite repeated efforts, it was unsuccessful in obtaining relevant forms from the University Hospital Accounting Department. The Commission was informed, however, that medical records information would not ordinarily be needed or provided to the agent.

The Commission was informed that CCU transmits to a commercial agency only that information which is necessary to facilitate collection. In releasing this information to an agency, CCU relies on the agency's integrity as well as its desire to continue its contract with the State. The Central Collection Unit stated that it also conducts periodic unannounced inspections to monitor the agency's use of the data forwarded. CCU furthermore sends mail inquiries to selected accounts that were returned as uncollectable by the agency, to make sure that the agency has not engaged in any unreported collections. Finally, the Commission was told that the Consumer Protection Division of the Attorney General's Office monitors the activities of the collection agency and handles any complaints.

Information furnished to the collection agency is not verified prior to disclosure. If the commercial agency is able to locate the debtor and he questions the bill's accuracy, the debt amount may be verified with the referring agency. Records of accounts that are referred in this fashion are kept in computer print-out format.

5. Security of Personally Identifiable Information

Manual records folders are housed in steel filing cabinets with limited access. Access to computerized data is restricted to authorized personnel who must sign on with a confidential code number. CCU stated that "only two employees have been trained in the submission of jobs to the computer section." In addition, the Baltimore Computer Utility has installed the ACF-II Package to prevent any form of tampering (accidental or purposeful) with computerized records.

Collection agencies submitting bids for contracts are investigated by CCU. Any collection agency under contract with the State must also post bond. Commercial collection agencies to whom information on debtors is disclosed must agree to use the information in-house only and to ensure the confidentiality of any records.

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

The Department of Economic and Community Development (DECD) is a diverse entity charged with the responsibility of expanding the economic and cultural opportunities of the State's population. DECD administers more than twenty programs which focus principally on economic development, community and housing development, and historical preservation and cultural programs. The Department consists of the following components which maintain program-related records containing personally identifiable information: Community Development Administration-Rehabilitation Programs; Community Development Administration-Single Family Programs; Community Development Administration-Development Finance Program; Maryland Industrial Development Financing Authority; Maryland Small Business Development Financing Authority; and Maryland Housing Fund.

I. Community Development Administration - Rehabilitation Programs

Two general programs are operated under the Community Development Administration-Rehabilitation Programs unit: the Maryland Housing Rehabilitation Program (MHRP) and Section 8 Existing and Moderate Rehabilitation Housing Programs. The goal of MHRP is to provide loans to low-income families generally residing in specified target areas; to sponsors of residential rental units to be rented to limited income families and to sponsors of commercial properties. Income limits may be waived for owners of historically or architecturally noteworthy structures. The Section 8 program is a federal effort to assist low-income families including the

elderly, disabled and handicapped through rent subsidization. Section 8 is subdivided into an Existing Housing Program and a Moderate Rehabilitation Program. MHRP maintains 905 active records, while there are 3,400 Section 8 Existing Housing Program active records and 40 Section 8 Moderate Rehabilitation Housing Program active records.

A. Collection and Maintenance of Information

MHRP collects a considerable amount of personally identifiable information from individuals requesting rehabilitation loans. The basic application form asks for an individual's name, social security number, age; marital status; present and previous employers' names and addresses; names, relationships and ages of dependents; present monthly income; monthly housing expenses; assets; and liabilities. An applicant also provides written authorization to enable MHRP to obtain a copy of the applicant's latest State Income Tax Return from the Comptroller's Office, verification of the status of existing mortgages on the property being rehabilitated and employment verification. Finally, each applicant must submit a personal financial statement. Program personnel also obtain credit reports about an applicant from the Credit Bureau of Baltimore.

Each tenant participating in the Section 8 Existing Housing Program submits an application form requesting name; address; social security number; telephone number; family composition; income; assets; and allowances. A tenant provides written authorization for verification of information if he is receiving payments through public assistance, Social Security or Medicare or if he is employed. Any employed applicant is asked to provide data directly concerning job title, classification, salary, and medical insurance deductions. An applicant

is finally requested to indicate age, disability and handicapped status, and medical and child care payments and expenses.

The Section 8 Moderate Rehabilitation Program collects data for each tenant identical to that gathered by the Existing Housing Program. In addition, information is obtained from property owners who are participating in the program. Property owners provide such items as purchase price, outstanding property liens and building operation expenses. Furthermore, for each unit to be subsidized, the owner is required to indicate the name of the head of the family; address; telephone number; number of persons residing in the unit; the estimated annual income of all family members; and an indication as to whether any members are elderly.

The Community Development Administration-Rehabilitation Programs office informed the Commission that all information gathered through its programs is obtained either from the individual himself or arrives via third party verification on forms with the applicant's signature authorizing release of the information. In the event of a discrepancy between the data provided by the applicant and that submitted by third party verification, the applicant is asked to respond with an explanation. The Commission was also told that individuals are informed regarding the collection of all data pertaining to them. If any unsolicited comments are received, they are handled on a case by case basis; should the comments involve program abuse or fraud, an internal investigation is begun with the individual being contacted if necessary.

All of the record systems are maintained in a manual fashion. Information is categorized by name and internal program codes.

B. Access Rights of the Person in Interest

Individuals are granted full access to all of the information pertaining to them that is contained in the files of the Community Development Administration-Rehabilitation Programs. The person in interest may either visit the office or request a photocopy of particular documents. The Commission was told that all applicants are informed initially that they may examine data relating to them. In addition, applicants may copy their files and may contest the accuracy of such files.

C. Disclosure of Records to Third Parties

The Community Development Administration-Rehabilitation Programs office indicated that personally identifiable information is not ordinarily disclosed to other agencies or to others outside of State government. The office adheres to a policy that all requests for information about specific individuals are referred for a decision to either the Assistant Director or the Deputy Assistant Director. Prior to such information being disclosed, the subject of the record system is notified regarding the disclosure itself and the name of the recipient of the record in question. The information will only be released with the consent of the subject of the record system. It is unclear from the responses received whether any logs are kept to record the dissemination of information.

The Department of Economic and Community Development asserted that personally identifiable information relating to Section 8 Housing Assistance recipients is confidential under 42 USCS 1437 f (k), which states as follows:

"The Secretary shall establish procedures which are appro-

priate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act, the Food Stamp Act of 1977, or title 38, United States Code. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section."

It is unclear from reading the above statute whether the confidentiality provision applies to all data submitted to the State by Section 8 recipients, or only to that data used by the Department of Housing and Urban Development to conduct random samples.

DECD made two further assertions regarding its program-related, personally identifiable records. The Department maintained, first of all, that the records of all DECD programs which receive federal funds and, in turn, use the funds to make grants or loans are confidential under the Federal Privacy Act of 1974.¹ The Commission was informed also by DECD that the records of those programs which are supported by the State rather than federal funds are considered to contain "sociological data" and thus are confidential under the Public Information Act.

". . . there is an exemption in the Maryland Public Information Act which probably prohibits data such as age, marital status, names and ages of dependents, to the extent that such information is personally identifiable. Article 76A, Section 3 (c)(i) provides that the custodian of state records is forbidden from disclosing 'sociological data on individual persons.' There has been no court interpretation of the term 'sociological data', but the ordinary and customary meaning of the term includes such information as age, marital status, income and employment.

Like the federal privacy related exemption, this exemption in the State statute does not forbid disclosure of sociological data in statistical form, but only data of an individual person. The exemption of this type of information is important to DECD in protecting the privacy of individuals who make applications for loans or grants from programs which operate on State funds (rather than federal), such as the Housing Finance Program and the Housing Rehabilitation Program."²

D. Security of Personally Identifiable Information

Since personally identifiable information is only released with the consent of the individual, no specific security guarantees are obtained from recipients of the data. Files containing information relating to individuals are maintained separately from other program records with access restricted to members of the staff.

II. Community Development Administration-Single Family Programs

The Community Development Administration-Single Family Programs unit administers three programs containing personally identifiable data: the Maryland Home Financing Program (MHFP), the Homeownership Development Program (HDP), and the Mortgage Purchase Program (MPP). Direct mortgage loans are dispensed under MHFP to low and moderate income residents who have been unsuccessful in obtaining conventional mortgage financing. HDP enables moderate income families to obtain long-term mortgage financing at low market interest rates for the purchasing of new homes in approved subdivisions. MPP has essentially the same goals as MHFP except that its range of eligible families is somewhat larger and it functions through private lending institutions. The Community Development Administration-Single Family Programs maintains 4,973 MHFP records and 1,042 HDP records. The actual MPP records are maintained by the participating lenders; the Single Family Programs unit keeps a loan transmittal checklist with 2,039 records.

A. Collection and Maintenance of Information

The application form used to collect information for the Maryland Home Financing Program requests the following data: name, address; social security number; age; marital status; present and previous addresses; names, ages and relationships of dependents; financial information on the house to be purchased; names, addresses and telephone numbers of employers for the previous three years; names and addresses of banks, along with account numbers, for all checking accounts, savings accounts and credit union accounts; identification of other assets such as the value of automobiles and personal property; names, addresses, account numbers, balances and monthly payments for all creditors; and information concerning contingent liabilities and recurring debts. Applicants are asked to submit copies of two typical recent pay stubs and letters of rejection from two lending institutions. Finally, applicants must authorize MHFP to obtain written verification of savings, checking and loan data and employment data and a copy of their most recent Maryland State income tax return from the Comptroller's Office. Credit bureau reports are also obtained.

The Homeowner Development Program uses an application form that asks for information identical to that requested by MHFP. As in the case of MHFP, authorized verification is obtained by HDP from banking institutions, employers and the Comptroller's Office and credit reports are also solicited. The Commission was informed that the Mortgage Purchase Program collects virtually the identical pieces of information as that garnered by MHFP and HDP, except that the forms are provided by the participating lenders.

The Community Development Administration-Single Family Programs unit stated that information received from third parties is verified with the subject of the record system if there is any discrepancy. The Commission was also told that individuals are informed of the type of information collected about them. The unit had little experience with receiving unsolicited comments and thus had not developed a general policy regarding the handling of such comments.

In the case of the first two programs discussed above, records are maintained in both manual and computerized fashion. The information for both programs is categorized by internal code, name, address, and program number. MPP data only exists in manual form and is categorized by lenders' name and internal code.

B. Access Rights of the Person in Interest

The person in interest does have access to all files pertaining to him in the MHFP and HDP record systems. The subject of the record system is made aware of his right of access "upon inquiry". The person in interest may also copy his file and contest the accuracy of the information contained in those files. Since the bulk of the MPP data is maintained by the participating lenders, the Community Development Administration-Single Family Programs unit was unable to address itself to the issue of access by the person in interest.

C. Disclosure of Records to Third Parties

The Commission was informed that any requests for personally identifiable data from other agencies or from other outside of State government are referred to the Attorney General's Office for consideration. The subject of the record system is notified regarding the disclosure of the record and the name of the recipient of the record unless the Attorney General's Office advises to the contrary. While no logs are kept detailing such disclosures, the Single Family Programs unit indicated that the file in question is "documented". It is unclear, however, exactly what type of information is documented.

D. Security of Personally Identifiable Information

The Single Family Programs unit asserted that it obtains security guarantees from recipients of personally identifiable information prior to disclosure. Manual files are kept locked while security measures for computerized records consist of "machine codes and data file location." The Commission was told that measures have been taken to prevent the unauthorized altering of computerized data by departmental personnel, but

that no security risk analysis had been performed.

III. Community Development Administration-Development Finance Program

In order to meet the demand in the rental housing market for elderly and low to moderate income housing, the Development Finance Program provides below market interest rates for construction and permanent financing as an incentive to developers. The Development Finance Program coordinates its activities with the U.S. Department of Housing and Urban Development which supplies insurance and tenant subsidies. Currently, there are 108 project folders maintained by the program.

A. Collection and Maintenance of Information

In contrast to both the Rehabilitation Programs and Single Family Programs of the Community Development Administration, the Development Finance Program collects no information from those who will ultimately reside in the housing units in question. Instead, personally identifiable data is gathered from sponsors, developers, processing agents, architects, management agents and general contractors. Though some minor variations occur, most of these groups are asked to file forms listing name, address, telephone number, position with the firm, extent of stock ownership, business experience, real estate holdings, explanations of any pending litigation and history of bankruptcy petitions, and the like. In addition to information obtained from the individual himself, other materials may be obtained from credit bureaus, accountants and attorneys.

The Commission was informed that the Development Finance Program does make an attempt to verify information gathered from other sources with the individual himself. The Development Finance Program also indicated that

individuals are informed of the type of information collected about them. Any unsolicited comments received about an individual containing information inconsistent with existing program information would result in the individual being contacted for clarification.

Development Finance Program records are maintained in a manual form. The project folders of the program are each assigned a departmental code and are so categorized.

B. Access Rights of the Person in Interest

Individuals are granted access to all information pertaining to them which is maintained by the Development Finance Program, but they are required to show cause for wanting to review the files. Individuals are informed of their right of access, can copy materials in their files and may contest the accuracy of said materials.

C. Disclosure of Records to Third Parties

The position of the Development Finance Program is to disclose data with the exception of financial information relating to individuals and firms. Financial data may not be released without the consent of the individual or firm involved. When information is disclosed, the subject of the record system is notified both regarding the disclosure of personal data and the name of the recipient of such data. A notation is also placed in the individual's file recording the name of the recipient, the purpose of the request and the date of disclosure. The subject of the record system is granted access to this notation.

D. Security of Personally Identifiable Information

The Development Finance Program does not appear to obtain any specific security guarantees from the recipients of personally identifiable data. Prior to disclosure, such data is kept in locked file cabinets.

IV. Maryland Industrial Development Financing Authority

The aim of the Maryland Industrial Development Financing Authority (MIDFA) is to assist businesses seeking to establish or expand their operations in the State. MIDFA accomplishes this goal by approving mortgage loans granted firms by private lenders, thus increasing the credit possibilities of such firms. Approximately 50 active prospective applicant files are maintained, while there are 150 inactive files. MIDFA keeps credit files containing 150 permanent loans and 25 loans pending closing.

A. Collection and Maintenance of Information

Firms seeking to participate in the MIDFA mortgage loan program are required to provide varied pieces of information. Each company applying to MIDFA must identify its seven largest stockholders, all directors or partners, and the five senior officers. For each of these individuals, MIDFA requests title or position with the firm, job description, length of service with the company, age, educational background, annual salary and other compensation, and extent of ownership of the company. If any of these individuals has ever declared bankruptcy, the company is requested to furnish appropriate details. Finally, all key operating personnel must file resumes of experience history.

MIDFA indicated to the Commission that all personally identifiable information comes either from the individual himself, the firm or the firm's

suppliers. Information gathered from third parties is verified with either the individual or representatives of the firm if appropriate. MIDFA asserted that individuals are informed of the type of information collected about them.

B. Access Rights of the Person in Interest

The policy of MIDFA is to permit the person in interest to have access to all information pertaining to him. Individuals are not specifically informed of this right, however. The person in interest is permitted to copy his files and contest the accuracy of the data found in these files.

C. Disclosure of Records to Third Parties

The standard MIDFA application for loan insurance contains the following statement: "All information submitted will be held in confidence and will be available only to members or employees of the Maryland Industrial Development Financing Authority and to those whom the Authority deems necessary in their considerations." MIDFA indicated to the Commission that personally identifiable information is not disclosed to other agencies or to others outside of State government. As a consequence, therefore, MIDFA has had no experience with such issues as notifying the individual regarding the disclosure of personal records and the name of the recipient of such records, the development of logs to detail disclosures, and so forth.

D. Security of Personally Identifiable Information

Since MIDFA does not disclose personally identifiable information, the issue of obtaining security guarantees from recipients of such data becomes a moot point. MIDFA data is stored in locked cabinets.

V. Maryland Small Business Development Financing Authority

The Maryland Small Business Development Financing Authority enables businesses owned by minorities or others who are socially or economically disadvantaged to borrow funds to fulfill government contracts. Participating firms, which are typically small and inexperienced, must demonstrate that they are unable to obtain loans from the private sector. Presently, the Authority maintains 35 active and 12 inactive loan files.

A. Collection and Maintenance of Information

A firm applying for working capital from the Maryland Small Business Development Financing Authority is asked to submit varied pieces of information concerning its principal officials. All partners and stockholders of record must indicate their addresses and percentages of ownership; each of these individuals is required to submit a financial statement. All directors and officers must be listed by name, title and annual compensation. Partners, stockholders, directors and officials must also provide a description of their educational and previous employment backgrounds. Owners are also asked whether they are members of a minority group, have identifiable physical handicaps, or are otherwise impeded from obtaining finances because of social and economic factors. (If the latter is the case, they are asked to indicate briefly the nature of these factors.) Finally, applicants are asked to indicate and detail whether they are involved in any pending lawsuits or have ever filed a petition for bankruptcy.

Though most of the information is provided directly from the firms involved, the Maryland Small Business Development Financing Authority does obtain data from third parties. This data essentially consists of letters from financial institutions, credit reports, and the like. The Commission

was informed that applicants are aware that third party verification of information will take place. Unsolicited comments may be considered by the Authority in its recommendations if the source of such comments is known and is believed to be reputable.

Records of the Maryland Small Business Development Financing Authority are maintained in manual form. Loan files are indexed alphabetically according to the name of the firm.

B. Access Rights of the Person in Interest

The person in interest is permitted to have access to that portion of the data pertaining to him which he actually submitted to the Authority. Individuals are not made aware of their right of access, but may copy their files and contest the accuracy of those files.

C. Disclosure of Records to Third Parties

The Commission was informed that there have been no disclosures of personally identifiable data to date.

D. Security of Personally Identifiable Information

Loan files are kept in a back room which is restricted to unauthorized persons. Since the Authority's office is relatively small, the Commission was told that the room can be easily monitored by personnel. The file cabinets are locked after hours.

VI. Maryland Housing Fund

The Maryland Housing Fund attempts to expand the home ownership market through mortgage insurance programs. The Fund also seeks to increase construction

— and rehabilitation of multi-family rental and cooperative housing. Two general programs are administered by the Maryland Housing Fund: a single Family Program containing in excess of 6,000 files and a Multi-Family Program consisting of approximately 50 files.

A. Collection and Maintenance of Information

Applicants for the Maryland Housing Fund Single Family Program are requested to provide various types of personally identifiable data through member lending institutions. The standard loan application form solicits information concerning the name of the borrower, present and previous addresses, home and business telephone number, age, marital status, number and ages of dependents, name and address of employer, position and title at place of employment, gross monthly income, monthly housing expenses, assets and liabilities, schedule of real estate owned, and previous credit references.

The Fund uses the information supplied by an individual applicant to compile a data sheet listing such items as name, social security number, age, marital status, sex, race, gross income, and so forth.

In addition to data submitted directly by the individual applicant, the Maryland Housing Fund has access to a considerable amount of third party information. Credit reports are received from the Credit Bureau of Baltimore and the United Credit Bureau. The Fund also receives property appraisals, verification of employment, verification of debt balances and bank account information. The latter is provided through authorization given by the individual.

The Multi-Family Program of the Maryland Housing Fund basically collects financial and audit data. The Fund obtains Dun and Bradstreet credit reports, audit and financial statements, verification of cash transactions and tax

returns.

The Maryland Housing Fund indicated that individuals are informed of the type of information collected about them. Unsolicited comments are not received by the Fund.

Both the Single Family Program and the Multi-Family Program are principally manual systems. Single Family data is categorized by name and secondarily by property address. Each application and commitment is assigned a Certificate of Insurance number. Multi-Family data is categorized by project identification number. Portions of the Single Family Data, such as Certificate of Insurance number, name, address, sex, race, social security number, income and loan amount, have been computerized.

B. Access Rights of the Person in Interest

The Maryland Housing Fund indicated that individuals do not have access to information pertaining to them in either the Single Family or Multi-Family record systems. The Fund stressed that this should be particularly the case with respect to credit reports. The Commission was informed that credit reports are restricted under the guidelines of the Equal Credit Opportunity Act. The Act would permit the person in interest to contest the accuracy of credit data, however. It is unclear to the Commission how data could be challenged without permitting access to credit reports.

C. Disclosure of Records to Third Parties

The Commission was told that personally identifiable information is ordinarily not disclosed to other agencies or to others outside of State government. Personal data will only be released under the explicit authorization of the Assistant Attorney Generals assigned to the Department of

Economic and Community Development. In cases where data is disclosed, the person in interest is not notified regarding the disclosure of personal records and the name of the recipients of such records. The Commission was unable to determine whether logs are currently used to detail such disclosures.

D. Security of Personally Identifiable Information

The Maryland Housing Fund does not receive security guarantees from recipients of personally identifiable data. The Commission was told that Single Family and Multi-Family Program records are secure, but was not provided with additional information regarding specific security measures in place. Computerized records are only available to authorized personnel. In response to the Commission's query concerning whether or not a risk analysis had been performed, the Fund responded in the following fashion: "The type of records kept on a computer in the Single Family area provide statistical information to the Maryland Housing Fund. Anyone obtaining a complete print-out of all computerized information would not detrimentally affect Maryland Housing Fund or, indeed, the people whose loans are insured."

NOTES

1. It should be noted that this contention has been rejected by the Office of Management and Budget, the administrators of the Federal Privacy Act.
2. Department of Economic and Community Development, Memorandum from Ms. Brenda C. Brisbon to Mr. Hans F. Mayer, August 18, 1981.

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

The Department of Health and Mental Hygiene has developed a highly varied range of programs pertaining to the physical, mental and social health of the State's population. As a consequence, the Department maintains numerous record systems which contain personally identifiable information of various degrees. The following components of the Department handle program-related records which identify individuals: Division of Boards and Commissions, Division of Vital Records, Juvenile Services Administration, Laboratories Administration, Preventive Medicine Administration, Mental Hygiene Administration, Mental Retardation and Developmental Disabilities Administration, Chronically Ill and Aging Administration, Medical Care Programs, Post Mortem Examiners Office, Hearings, Central Commitment, and Drug Abuse Administration.

I. Division of Boards and Commissions

The Division of Boards and Commissions is responsible for the examination, licensing and oversight of health professionals in the State. Eleven distinct record systems containing personally identifiable information were identified by the Division: 1) Licensure, Certification of Registration File (Excluding Nursing Home Administrators, Registered Nurses and Licensed Practical Nurses); 2) Board of Examiners of Nursing Home Administrators Record File; 3) Board of Examiners of Nurses Record File; 4) Licensure, Certification or Registration Renewal File (Excluding Nursing Home Administrators, Well Drillers and Morticians); 5) Applicant Transcript File; 6) Applicant Letters of Reference;

7) Complaint File (Excluding Physicians); 8) Complaint File - Commission on Medical Discipline; 9) Nursing Faculty Lists; 10) Anatomy Board File on Unclaimed Bodies and Bodies Donated to the Board For Distribution to Medical Schools; and 11) Anatomy Board File of Persons Donating their bodies to the Board.

1. Licensure, Certification or Registration File (Excluding Nursing Home Administrators, Registered Nurses and Licensed Practical Nurses)

As is indicated by the title of this record system, the Division of Boards and Commissions maintains a general licensing, certification and registration file containing information on most of the State's Health professionals. This system consists of information provided by the following Boards: Boards of Audiologists and Speech Pathologists, State Board of Chiropractic Examiners, Maryland State Board of Dental Examiners, State Board of Electrologists Examiners, State Board of Funeral Directors and Embalmers, Board of Medical Examiners of Maryland, Board of Occupational Therapy Practice, Board of Examiners in Optometry, Maryland Board of Pharmacy, State Board of Physical Therapy Examiners, Board of Podiatry Examiners, State Board of Examiners of Psychologists, Board of Sanitarian Registration, Board of Social Work Examiners, and Maryland State Board of Well Drillers. There are approximately 112,000 records in this system.

A. Collection and Maintenance of Information

The different Boards vary in the amount of personally identifiable information collected from applicants or licensees. However, the following items appear to be standard for most of the Boards: name, address, telephone number, social security number, date of birth, sex, educational background, and dates, names and addresses of former employers.

Generally, applicants are also requested to indicate whether they have ever been convicted of a crime, had their licenses suspended, or were addicted to the use of drugs or alcohol.

Information appearing on license application forms is provided directly by applicants themselves. A complaint received about a particular licensee is investigated by the appropriate Board. The Commission was informed that other comments are filed.

Licensure, certification and registration records are maintained in both manual and computerized fashions.¹ Much, though not all, of the information appearing on application forms is computerized. Such items as names and addresses of previous employers, and information pertaining to criminal convictions, license suspensions, and so forth, exist in manual form only. Nonetheless, basic directory information submitted by health professionals on the various Board application forms is computerized. Manual data is categorized by either name or license number, while computerized information is indexed by license number.

B. Access Rights of the Person in Interest

The Division of Boards and Commissions indicated that the person in interest is permitted access to information pertaining to him. Opportunities are also available for both copying and contesting the accuracy of such information. It should be recalled, however, that all information available through this record system is provided directly by applicants, with the exception of unsolicited comments, grades and charges.

C. Disclosure of Records to Third Parties

Virtually all of the information in the licensure record system is disclosable under the Public Information Act. The only exception to this general policy involves licensee examination data. Such items as test questions, scoring keys and so forth, are considered to be confidential under Article 76A, Section 3(b)(ii). The person in interest may inspect, but may not copy, examination questions and test results pertaining to him.

The policy of the Division of Boards and Commissions is to release over the telephone only that data which has been computerized. Ordinarily, however, telephone requests involve questions relating to verification of licensing. A requester could obtain other disclosable items in person or in writing. The subject of the record is not informed regarding either the disclosure of personally identifiable materials or the name of the recipient of such records. The accuracy of such information usually is not verified prior to dissemination. No logs are maintained to detail disclosures of information.

The Maryland Board of Pharmacy, the Maryland State Board of Dental Examiners, and the State Board of Physical Therapy Examiners expressed concern to the Commission about the fact that they are required, under the Public Information Act, to honor requests for lists of licensees by commercial organizations. The State Board of Physical Therapy Examiners indicated that commercial entities not only use these lists for their own mailing purposes but frequently resell the lists to other advertisers. The general position of these Boards is that current policy constitutes a violation of a licensee's right to privacy.

D. Security of Personally Identifiable Information

The Division stores manual records in file cabinets, although it should be noted that not all of these cabinets are locked. The only measure in force to protect computerized data is to restrict the operation of terminals to authorized personnel. No risk analysis has been performed, and no security guarantees are obtained from recipients. The Division informed the Commission that it will consider conducting a risk analysis and obtaining security guarantees for the confidential portions of all licensee records.

2. Board of Examiners of Nursing Home Administrators Record File

This file contains information pertaining to applications, licensures, and license renewals of Nursing Home Administrators. Approximately 500 records are maintained in this system.

A. Collection and Maintenance of Information

The Commission was informed that data is collected from Administrators regarding their names, addresses, educational and work experiences. Virtually all information contained in this file comes directly from Administrators. Information provided by applicants licensed in other states will be verified with those States. Complaints received by the Board of Examiners of Nursing Home Administrators are investigated; the Commission was told that no other types of unsolicited comments have been received. All information is maintained in manual form and categorized alphabetically by name of applicant or licensee.

B. Access Rights of the Person in Interest

The Board of Examiners of Nursing Home Administrators indicated that the person in interest is permitted access to all information which is not restricted by law. (Test questions and scoring keys are not disclosable under the Public Information Act.) Records appearing in this file may also be copied and challenged.

C. Disclosure of Records to Third Parties

Nursing Home Administrators records, like those of the general licensee file previously discussed, are governed by the Public Information Act. Thus, virtually all personally identifiable information is disclosable to third parties. An exception would be made for examination scores and transcripts, which are not released unless so authorized by the person in interest. The Commission was informed that over the past nine years, no requests have been made for personally identifiable material other than for purposes of reciprocity. In these circumstances, approval in writing from the subject of the record has been required.

D. Security of Personally Identifiable Information

Rooms and files housing Nursing Home Administrators records are locked after working hours. It is interesting to note that prior to disclosing personally identifiable information to other agencies or groups, the Board requests that recipients maintain the confidentiality of such records.

3. Board of Examiners of Nurses Record File

The Board of Examiners of Nurses maintains a record system containing applications for licensure of registered nurses and licensed practical nurses.

This system consists of approximately 65, 000 records.

A. Collection and Maintenance of Information

A number of application forms are used by the Board of Examiners of Nurses to collect personally identifiable information from individuals, depending on whether applicants are applying for registered nurse or licensed practical nurse status, whether their training took place in the United States or elsewhere, and whether registration is by endorsement or examination. Common to most of these forms is the following information: name, address, social security number, date of birth, place of birth, general education, nursing education, and experience since graduation. Information used to compile this record system comes from licensees themselves; the Board does verify data if an individual indicates previous licensure in another State. The licensee must provide written authorization before the Board obtains such verification from boards in other States.

Nursing data is maintained in both manual and computerized forms. In both cases, information is categorized by license number.

B. Access Rights of the Person in Interest

The person in interest is permitted to examine, copy, and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Unlike licensee records of other Boards, files maintained by the Board of Examiners of Nurses have a considerable degree of confidentiality. Health Occupations Article 7-503 states that any Board record considered to be confidential is exempt from disclosure provisions of the Public Information Act. At first glance, this statement appears to prevent the disclosure of

all Board data, as confidential records are defined in subsection (a)(1) to mean ". . . any record of the Board that concerns and identifies a licensee, former licensee, or license applicant." Despite the wide scope of this definition, limitations are placed rather immediately by subsection (a)(2):

"'Confidential record' does not include a record:

- (i) Of the successful completion of an examination;
- (ii) Of a license issuance or renewal;
- (iii) That indicates that an individual is not licensed or was not licensed at a particular time; or
- (iv) Of a final decision of the Board under 7-312 or 7-605 of this title."²

Records considered to be confidential are disclosable only to members or authorized employees of the Board of Examiners of Nurses, the subject of a record or his authorized representative, parties to a license denial, reprimand, suspension or revocation, for the purposes of inspection or copying, and to a court reviewing a Board decision to deny, reprimand, suspend or revoke.

In addition to the provisions of Article 7-503, the Board of Examiners of Nurses is required, by Article 7-205, to maintain separate lists of registered nurse licensees, licensed practical nurse licensees, nurse mid-wife licensees, nurse practitioner licensees, and any other nursing specialty licensees, and to permit the public inspection of such lists. While this section of the Code appears to make public only the names of licensees, the Board discloses both names and addresses.³ The Board indicated to the Commission that numerous requests for lists are filed by nursing professional organizations, health care agencies, commercial organizations and unions pursuing bargaining rights to represent nurses. Letters of complaint regarding this practice have been sent by many nurses; in addition, the Board informed the Commission that it occasionally receives batches of junk mail from irate nurses. The Board therefore favors limitations placed on the disclosure of

such information.

When names and addresses are disclosed by the Board, the subjects of the record are neither informed of such disclosure nor are they made aware of the recipient of the data. Information is not verified prior to dissemination. Logs are not maintained by the Board.

D. Security of Personally Identifiable Information

Manual records of the Board of Examiners of Nurses are maintained in locked cabinets. The only restriction placed on computerized data is the requirement that access to computer terminals is restricted to authorized personnel. No risk analysis has been performed, nor are security guarantees received from recipients of personally identifiable information.

4. Licensure, Certification or Registration Renewal File (Excluding Nursing Home Administrators, Well Drillers and Morticians).

A separate record system is used to maintain renewal applications for various health professionals. Approximately 50,000 records a year are generated through this system.

A. Collection and Maintenance of Information

Renewal information for health professionals other than nurses is supplied to the Boards through the use of application cards. On the front side of the card, the licensee is asked to indicate his name and address. The back side of the card contains a series of questions such as marital status, employment status, name and address of employer, professional speciality, setting of activity where the most number of hours are spent, and so forth. Nurses also provide renewal information through the use of a card; the types of questions appearing on the back of the card differ from those asked other licensees. Nurses must indicate sex, marital status, date of birth, county of residence,

field of employment, and major area of speciality, among other items.

All information for this system comes directly from the licensees themselves.

The renewal record system is computerized and is categorized by license number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy, and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

The Commission was informed that renewal records are governed by the Public Information Act. Presumably, therefore, records for all licensees other than nurses would be disclosable to the general public. However, the Commission was also told that only that information which appears on the front of the cards is available for public inspection. Information on the back of the cards is released only to the Department of Health and Mental Hygiene's Center for Health Statistics for statistical use only.

Actually, the Division's policy may be correct, although for reasons other than that which was indicated to the Commission. It is clear that information contained on the back of the cards is collected for the purposes of research and study, as its sole recipient is the Center for Health Statistics. Given this fact, the information would appear to be nondisclosable under Article 43, Section 1-I(a), which states the following:

"All records, reports, statements, notes and other information which have been assembled or procured by the State Board of Health and Mental Hygiene for purposes of research and study and which name or otherwise identify any person or persons are confidential records within the custody and control of the Board and its authorized agents and employees, and may be used only for the purposes of research and study for which assembled or procured."

The subject of the record is not informed when data is disclosed. Information is not verified as to its accuracy prior to dissemination. No logs are maintained.

D. Security of Personally Identifiable Information

The only security measure adopted for this record system is the requirement that terminal operation is restricted to authorized personnel. No risk analysis has been performed, nor are any security guarantees received.

5. Applicant Transcript File

The Division of Boards and Commissions maintains a file containing transcripts of all applicants. The approximate number of transcripts stored in this file is unknown.

A. Collection and Maintenance of Information

All information in this system consists of transcripts of educational performance by applicants. Transcripts are provided by the respective schools, at the request of the applicants.

Transcripts are maintained manually. Depending upon the particular Board or year, transcripts are categorized either by applicant name or by license number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy or challenge a transcript pertaining to him.

C. Disclosure of Records to Third Parties

The Division of Boards and Commissions asserted that transcripts are released only under court order, in accordance with the Family Education Rights and Privacy Act of 1974, also known as the Buckley Amendment. In the event that a court order is received, the subject of the transcript is not informed of its disclosure, the accuracy of information is not verified, and logs are not maintained.

The Commission is of the opinion that the Buckley Amendment does not pertain to transcripts maintained by the Division of Boards and Commissions, since the Division does not qualify as an educational institution under the definition of the Act. In the absence of specific language prohibiting disclosure of transcripts, the Division should presumably permit access to them under the Public Information Act. Transcripts of registered and licensed practical nurses, however, would appear to be confidential under Health Occupations Article 7-503. The Division informed the Commission that the applicability of the Buckley Amendment has not been addressed as of yet.

D. Security of Personally Identifiable Information

Licensee transcripts are maintained in locked file cabinets.

6. Applicant Letters of Reference

Letters of reference are maintained by the Division of Boards and Commissions for licensure applicants. The approximate number of these records is unknown.

A. Collection and Maintenance of Information

Letters of reference are submitted to the Division either at the request of applicants or through these applicants.

Records are kept manually and categorized either by name or license number.

B. Access Rights of the Person in Interest

The person in interest is not permitted access to letters of reference.

C. Disclosure of Records to Third Parties

No letters of reference are disclosed in accordance with Article 76A, Section 3(c)(iv).

D. Security of Personally Identifiable Information

No security measures have been taken to protect the confidentiality of letters of reference.

7. Complaint File (Excluding Physicians)

A Complaint File is maintained for any complaints directed to the Division of Boards and Commissioners concerning any licensee other than physicians. The Commission does not have information regarding the number of records contained in this system.

A. Collection and Maintenance of Information

The Division indicated that information for this file comes from both the complainant and the individual licensee. An attempt is made to verify complaints with licensees. Individuals are informed of the type of information collected about them. Any complaints that are received are investigated by the Division.

The Complaint File is stored in a manual form, indexed by name.

B. Access Rights of the Person in Interest

The Commission was told that the person in interest would be permitted to examine non-privileged information if he had been formally charged with committing a violation. In such a situation, opportunities would exist for inspection, copying, and challenging of such complaints. If the subject of the complaint has not been charged, the Division would consult with the Assistant State Attorney.

C. Disclosure of Records to Third Parties

The Division will disclose only the Final Order or Consent Order pertaining to the complaint. The subject of the complaint is not notified regarding dissemination of information, the accuracy of information is not verified prior to disclosure, and no logs are maintained.

D. Security of Personally Identifiable Information

The Division indicated that most complaints are kept in locked cabinets.

8. Complaint File - Commission on Medical Discipline

The Commission on Medical Discipline maintains a file containing complaints directed against individual physicians. There are approximately 500 records in this section.

A. Collection and Maintenance of Information

In addition to the complaint itself, this file includes various items of information pertaining to the physician under investigation: name, address, date of birth, educational background, transcripts, and details of employment. Information is garnered from the complainant, the phy-

sician, the Medical and Chirurgical Faculty, and the Peer Review Committee. The physician is informed of the type of materials collected about him.

This is a manual record system with information categorized alphabetically and cross referenced to complaints listed alphabetically.

B. Access Rights of the Person in Interest

The person in interest apparently may review files pertaining to him, but only after he has been formally charged. In the event that charges are filed, the person in interest is advised that he may inspect all materials with the exception of confidential communications. The Commission on Medical Discipline supplies copies of pertinent records to the person in interest. The accuracy of information may be contested during a formal hearing that is held.

C. Disclosure of Records to Third Parties

The disclosure of physician complaint records is governed by the Health Occupations Article, 14-602 and 14-506. Article 14-602 requires that physician complaint investigations, reports and recommendations are confidential until an order is issued by the Commission on Medical Discipline. Should the Commission determine that there are no grounds for action after charges have been filed, it must, in accordance with 14-506, dismiss the charges, exonerate the physician, expunge all records of the charges and refuse to take any further action on the charges.

These sections of the Code would appear to suggest that investigation records are available for public disclosure, should the Commission on Medical Discipline determine that the physician is guilty of the

charges filed. It appears, however, that the Commission only releases the Findings and Facts and Conclusions of Law and Order. No logs are maintained when this information is disclosed.

D. Security of Personally Identifiable Information

Complaint records are stored in locked file cabinets with limited access.

9. Nursing Faculty Lists

The Board of Examiners of Nurses maintains lists of current faculty members of nursing schools throughout the State. These lists are drawn from annual reports that the schools submit to the Board. The approximate number of records in this system is unknown.

A. Collection and Maintenance of Information

Each school must submit the following information for each of its faculty: name and Maryland registration number, title of position, courses taught, date of appointment to present position, highest degree held and major, and years of teaching experience. Information comes directly from the various schools, and no other materials are entered.

Faculty data is kept manually and categorized by school.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and challenge information pertaining to him.

C. Disclosure of Records to Third Parties

The Board of Examiners of Nurses indicated that it only releases

statistical information from this record system and cited the Health Occupations Article, 7-503, as protecting the confidentiality of personally identifiable data. This would appear to be appropriate only to the extent that a faculty member is also a licensee. Article 7-503 assigns a confidential status to records pertaining to licensees, former licensees or license applicants.

D. Security of Personally Identifiable Information

Faculty lists are stored in locked file cabinets.

10. Anatomy Board File on Unclaimed Bodies and Bodies Donated to the Board for Distribution to Medical Schools

The Anatomy Board of Maryland is charged with the responsibility of ensuring a proper distribution of bodies to medical schools and others engaged in medical research. As such, it maintains a record system of unclaimed bodies and bodies distributed to research. Approximately 450 files are added to this file each year.

A. Collection and Maintenance of Information

Various items of information pertaining to the deceased are contained in this record system: name, former address, social security number, date of birth, medical history, next of kin, and death certificate. Information is provided by attending physicians, police, Federal and State agencies, friends and relatives.

Information for this record is maintained manually and categorized chronologically.

B. Access Rights of the Person in Interest

This issue is not applicable.

C. Disclosure of Records to Third Parties

The Anatomy Board stated that information from this record system is disclosed to third parties, but that some data is privileged under the Public Information Act. It would appear that the only restriction that might be applicable under the Public Information Act would be the section which assigns a confidential status to medical records of individual persons. It is unclear to the Commission, however, whether medical records of the deceased are protected by this section, as the deceased may no longer be "persons" in the context of the Act. Birth and death certificates are governed by Article 43, Sections 25 and 27. Due to the complexity of the issues raised in these sections, discussion of the disclosure of birth and death certificates maintained by the Anatomy Board will be delayed until the Commission examines the record-keeping practices of the Division of Vital Records.

D. Security of Personally Identifiable Information

Information associated with this record system is maintained in locked file cabinets.

11. Anatomy Board File of Persons Donating Their Bodies to the Board

The Anatomy Board maintains a list of those who have agreed to donate their bodies to the Board. There are approximately 30,000 records in this system.

A. Collection and Maintenance of Information

The following information is obtained from donors: name, address, social security number, sex, and, if relevant, the name and address of the person to whom ashes should be released. All information is provided

directly by donors.

Information is maintained manually and is categorized by name.

B. Access Rights of the Person in Interest

The person in interest may examine, copy, and challenge information pertaining to him.

C. Disclosure of Records to Third Parties

It is the policy of the Anatomy Board not to disclose personally identifiable information from this system during the lifetime of a donor. While clearly this is sound public policy, the Commission wonders if there is a legal basis for preventing disclosure. This program is a consequence of the Anatomical Gifts Act, Estates and Trusts Article, 4-501 and 4-512. There is nothing in this section of the Code that would indicate that donor files are confidential. Possibly, records could be considered to be confidential under Article 43, Section 1-Ia. However, this section only affects those records that have been assembled "for purposes of research and study"; that does not appear to be the case here.

D. Security of Personally Identifiable Information

Donor records are maintained in locked file cabinets.

II. Division of Vital Records

The Division of Vital Records is responsible for the registration of all births, deaths, marriages and divorces that occur within the State. The Division has identified a general Vital Records File containing personally identifiable information.

1. Vital Records File

A Vital Records File is maintained by the Division consisting of Birth Certificates (approximately 60,000 per year), Death Certificates (35,000 per year), Fetal Deaths (5,000 per year), Marriage Certificates (45,000 per year), Divorce Certificates (16,000 to 17,000 per year), Adoptions (2,000 per year), and Adjudication of Paternity Certificates (350 per year).

A. Collection and Maintenance of Information

Various items of information are collected for the Vital Records File, depending upon the type of certificate to be issued. For the purposes of analysis, one can consider the Certificate of Live Birth and Certificate of Death, as representative of the type of information contained in this record system. The following general items are found on the Certificate of Live Birth: name, date of birth; sex; county of birth; city or town of birth; name of hospital; name, age, and birthplace of father and mother; and usual residence of the mother. In addition, respondents must address themselves to a series of questions that appear under the heading "Confidential Information For Medical and Health Use Only"; these items include the pregnancy history of the mother, the race of the mother and father, the number of years of education of the parents, the medical assistance status of the parents, and the method of delivery.

The following is typical of information appearing on the Certificate of Death: name of deceased, date of birth, sex, race, date of death, age, birthplace, citizenship, marital status, county of death, name of hospital, usual occupation, usual residence, names of parents, military service information, name and address of physician, name and address of funeral director, and name and address of cemetery or crematory.

Vital Records information is maintained in both manual and computerized forms. All records since 1973 have been computerized. Information is categorized according to month and county, by name.

B. Access Rights of the Person in Interest

The person in interest, or his authorized agent, is permitted access to information pertaining to him. No formal notice exists to make individuals aware of such a right of access. Copies of relevant certificates are provided by the Division of Vital Records. The Commission was informed that the person in interest may challenge data appearing on certificates. If a challenge is relatively minor, such as a misspelling of the last name, correction can be made by examining such items as a parent's death certificate. Changes in birthdate can be made on the basis of old hospital records or other evidence. However, if the challenge involves a major change, such as a completely different first name, the Division would require a court order.

C. Disclosure of Records to Third Parties

Disclosure of Vital Records is governed by an array of statutes and regulations. Article 43, Section 27 of the Annotated Code states the following: "To protect the integrity of vital records, to insure their proper use, and to insure the efficient and proper administration of the vital records system, it is unlawful for any person to permit inspection of, or to disclose information contained in vital records, or to copy or issue a copy of all or part of any such records except as authorized in (section) 25 or by regulation." Thus, personally identifiable Vital Records are nondisclosable unless disclosure is authorized either by Article 43, Section 25 or by a regulation of the Department of Health

and Mental Hygiene.

Unfortunately, Article 43, Section 25 is a rather ambiguous statute and subject to varying interpretations. Subsection (a) permits disclosure of certified copies of birth, death or marriage certificates to "any properly authorized person." However, this term is not defined. Subsection (b) states that certified copies of birth certificates can be issued to a court of competent jurisdiction or at the request of the person in interest, or by the person in interest's parent, guardian, or authorized representative. A certified copy would not include any of the confidential medical information discussed earlier. (Given this last statement, it is unclear whether the person in interest may have access to all birth certificate information pertaining to him, or only that information which is nonconfidential.) No birth certificate information can be released if it is to be used for commercial solicitation or private gain; it is unclear whether this prohibition applies to possible commercial uses of this information by the person in interest. It is important to reiterate that all of these qualifications apply only to birth certificates, and not to other types of vital records.

The Department of Health and Mental Hygiene may release copies of vital records or data from these records to the National Vital Statistics Division of the United States Public Health Service, or to other Federal State, or local or other public or private agencies; information cannot be used, however, for non-statistical purposes. The Department is charged with proscribing appropriate terms or conditions.

Subsection (i) permits the Department of Health and Mental Hygiene to provide photographic copies of certain "nonconfidential" terms appearing on death certificates to the Hall of Records Commission for use by researchers. The following items may be photocopied: "1) Full name of

decedent. 2) Decedent's place of residence. 3) Date and place of birth of deceased. 4) Date and place of death of deceased. 5) Full names and places of birth of decedent's parents. 6) Place of interment or cremation of decedent. 7) Occupation of decedent. 8) Name and relationship of informant. 9) Any other information determined by the Department of Health and Mental Hygiene to be nonconfidential." None of this information may be supplied for commercial purposes.

In addition to Article 43, Section 27, and Article 43, Section 25, vital records are affected by COMAR 10.01.07.34-36. COMAR 10.01.07.34 permits the Secretary of the Department to disclose vital records data ". . . when satisfied that the applicant therefore has a direct and tangible interest in the content of the record and that the information contained therein is necessary for the determination or protection of personal or property rights."⁴ This statement is rather significant in that it would appear that the person in interest, the parents of the person in interest, or their authorized representative would not only have to identify themselves but also demonstrate that data will be used ". . . for the determination or protection of personal or property rights." This language may be inconsistent with Article 43, Section 25(b), at least insofar as birth certificates are concerned.

COMAR 10.01.07.36 states the following: "For vital records purposes, no information shall be given to individuals or commercial firms where such information is to be used for the purpose of solicitation or private gain." In 1978, the Attorney General pointed out that this statement went beyond the authority granted by the General Assembly to the Secretary of the Department.⁵ As was noted earlier, Article 43, Section 25(c) only prohibits commercial solicitation of birth certificates, not vital records in general. Furthermore, the statute only limited "commercial" solici-

tation, not solicitation in general. It is interesting to note that over three years after the Attorney General observed that the Department had overextended its authority, the same unmodified regulation is in effect. The Division asserted that it will review this regulation in the light of the Commission's concerns.

It was noted previously that the Department has the authority to proscribe terms or conditions for the release of vital records data to public or private agencies for statistical purposes. No such terms or conditions appear in regulation form. The Division of Vital Records informed the Commission, however, that personally identifiable vital records data is released to the federal government "for benefit verification". It does not appear to the Commission that recruitment verification and benefit verification constitute statistical purposes; the Division of Vital Records, therefore, may be exceeding its authority in releasing information to these entities, if authorization is not issued by the person in interest. Records are released to local governments only under court order. In cases where records are released, the subject of the record is not informed, nor are any disclosure logs maintained.

D. Security of Personally Identifiable Information

The Division of Vital Records stated that manual records are restricted to authorized employees. Computer tapes are protected by the ACF 2 Security System of the Baltimore Data Center.

III. Juvenile Services Administration

The Juvenile Services Administration is responsible for juvenile investigation, probation, after-care services and coordination of juvenile diagnostic, training, and rehabilitation institutions. The Administration identified four record sys-

tems containing personally identifiable information: Maryland Automated Juvenile Information System, Juvenile Services Intake Record, Juvenile Services Admission Data, and Juvenile Services Purchase of Care Records.

1. Maryland Automated Juvenile Information System

The Maryland Automated Juvenile Information System (MAJIS) is a complete automated system on juveniles and is maintained by the Administration's Division of Research and Analysis. The function of MAJIS is to assemble the data needed by the Administration for statistical documentation, management information and analyses and evaluations of programs. 57,937 records are added to MAJIS on an annual basis, with a cumulative total of approximately 250,000 records.

A. Collection and Maintenance of Information

A variety of personally identifiable information is entered into MAJIS. The system consists, first of all, of a series of items considered to be "Personal" data. These include the juvenile's name, address, date of birth, social security number, telephone number, physical characteristics, employment status and legal custody status. A variety of items are listed under the heading "Family/Social", such as parent's names, parent's address, parent's occupation and employment status, parent's years of education, family annual gross income, primary source of income, and date of birth, sex, and race of family members. Under "Educational/Health", information is recorded regarding possible health problems of the juvenile, the name of his school, and the dates of his most recent psychiatric, psychological and medical examinations. The "Offense/Disposition" section of the form lists various juvenile court information, such as the nature of the offense, date of offense, court disposition, and the age, race, sex, and identification number of any juvenile accomplice. The "Treatment Program/Services"

category contains basic data regarding the nature of treatment service required and provided to the juvenile. The basic goals formulated for the juvenile, as well as any potential barriers to those goals, are indicated in the "Program/Case Plan" section. Finally, any referrals of the juvenile to a placement facility will be recorded under the "Placement" heading.

MAJIS information is compiled from Court Proceedings, Diagnostic and Clinic Reports, School Reports, Intake Records, Admission Data and Purchase of Care Records. Subjects of the records are not informed formally regarding the type of data collected about them.

MAJIS is a computerized information system, indexed by internal code.

B. Access Rights of the Person in Interest

The Juvenile Services Administration indicated to the Commission that it normally does not permit access to the person in interest. The Administration further stated the following: "There are no regulations or provisions in law permitting or denying access, but the procedures applicable to adults have been used as informal guidelines."

C. Disclosure of Records to Third Parties

A series of statutes assign a confidential status to juvenile records, thus requiring that MAJIS data be treated in a confidential manner. For the purposes of Juvenile Services Administration data, disclosure is regulated by Article 52A, Section 8(b): " All records, reports, statements, notes, and other information which have been assembled or procured by the Department of Juvenile Services for purposes of research and development and which name or otherwise identify any person or persons are confidential records within the custody and control of the Department and its authorized agents and employees, and may be used only for the purposes of research

and study for which assembled or procured." This general policy regarding the treatment of Juvenile Services Administration records as confidential is consistent with the handling of police records pertaining to juveniles and juvenile court records. Courts and Judicial Proceedings Article 3-828 states the following:

"a) A police record containing a child is confidential and shall be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and confidential use of the record by the Juvenile Services Administration or in the investigation, and prosecution of the child by any law enforcement agency.

b) A juvenile court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and the use of the court record in a proceeding in the court involving the child, by personnel of the court, the State's attorney, counsel for the child, or authorized personnel of the Juvenile Services Administration.

c) The court on its own motion or on petition, and for good cause shown, may order the court records of the child sealed, and, upon petition or on its own motion, shall order them sealed after the child has reached 21 years of age. If sealed, the court records of a child may not be opened, for any purpose, except by order of the court upon good cause shown."

The Juvenile Services Administration indicated that MAJIS information is not released to anyone other than case workers without a written order of the Juvenile Court. Such orders typically permit the release of personally identifiable information to the armed services, the Division of Parole and Probation, the Department of Human Resources, and the Department of Education. The subject of the record is not informed regarding the disclosure of data pertaining to him.

D. Security of Personal Information

The Juvenile Services Administration has developed an elaborate set of security measures designed to preserve the confidentiality of MAJIS data. The following steps have been taken by the Administration:

1) Though magnetic tapes containing MAJIS data are read on a computer at the Data Center of the Department of Public Safety and Correctional Services, juvenile information is stored, handled, computed and printed separately from all other Center tasks. The computer used to handle MAJIS data is not connected to the overall terminal network; therefore, central repository employees cannot access MAJIS materials. Requests received by the Data Center for access to juvenile data are referred to the Juvenile Services Administration. Thus, the Administration continues to function as the true custodian of MAJIS data.

2) Each terminal is assigned a terminal identification number that is not visible to the operator. Terminal security codes are also assigned to each terminal to restrict the number of functions that can be performed. For example, operators at one terminal may be restricted to making inquiries from the system, while another terminal may permit purging or modification of data.

3) Terminal operators must use sign-on techniques and passwords. Sign-on procedures must be performed in a designated way; failure to follow the appropriate steps will result in detection. Each authorized employee is assigned a permanent password which must be used for any terminal sign-on and inquiry verification. A password

typed by an operator does not appear on the terminal screen, thus preventing its viewing by unauthorized personnel. Passwords given to employees who leave the Juvenile Services Administration are invalidated.

4) A variety of logs are used to detect and record authorized attempts to access the system. First of all, a manual log records unauthorized phone inquiry attempts. A automated intercept log indicates the date and time of unauthorized attempts, as well as the identification number of the operator and the terminal number. An inquiry log documents the number of inquiries that have been made, the name of the inquirer, and the times of day that requests have been made. This log is then printed each day and forwarded for audit review. Finally, an update log, also used for audit purposes, lists all attempts made to change or delete existing records.

5) Measures have been taken to ensure the physical security of data. Live data base information is stored on devices that make it impossible to remove data from the computer operations room. Backup data base tapes are stored on a monthly basis in a vault; daily backups are kept in the operating room. A magnetic card device is used to restrict access to the tape library; cards are issued to authorized personnel only. Procedures are also in effect to detect any environmental hazards, such as fire, water and smoke.

6) Automatic log offs are used to prevent further terminal transactions if there has been an absence of transmission for five minutes. This prevents the use of a terminal by an unauthorized person in the event that a terminal had been signed-on and left unattended.

7) Extensive audit checks are performed, including unannounced random trips to terminals and attempts to violate established security measures.

2. Juvenile Services Intake Records

Juvenile Services Intake Records consist of information developed at the time of entry of the client into the juvenile justice system. There were 46,845 Intake Records in 1980.

A. Collection and Maintenance of Information

Intake Records contain various items of information provided by juvenile courts. Such items include the name, sex, race, and birthdate of the juvenile; case number, charge, court, judge, probation officer, investigation and disposition. This record system also houses a number of court documents, such as Probation Orders, Detention Orders and Consents for Informal Adjustment. Information is provided by either juvenile court officials or directly by clients. The Commission was informed that clients are aware of the type of data appearing in these records.

Information for this file is maintained manually and indexed by alphanumeric codes.

B. Access Rights of the Person in Interest

The Juvenile Services Administration does not permit the person in interest to examine, copy or challenge Intake Records pertaining to him.

C. Disclosure of Records to Third Parties

Intake Records are confidential according to Article 52A, Section 8(b). The Commission was informed that records are disclosed only either in response to a court order or a "need to know" basis if approved by the Director of Juvenile Services. The subject of the record system is not informed in the event of a disclosure of identifiable data. It is unknown whether any dissemination logs are employed.

D. Security of Personally Identifiable Information

No specific information was provided in response to the Commission's inquiries regarding security of personal information.

3. Juvenile Services Admission Data

Juvenile Services Admission Data consists of information pertaining to juveniles who are assigned by the courts to Administration institutions. There were 8,196 records generated during 1980.

A. Collection and Maintenance of Information

A variety of personally identifiable items are collected regarding clients and their families. Admission Data records contain, first of all, specific information about an individual's status in the juvenile justice system. Thus, for example, files would include such data as the charges levied against the client, the finding of the court, the case disposition, and the date of assignment to the custody of the Administration. In

addition to the legal status of the juvenile, basic identifying information is gathered pertaining to the juvenile. This information consists of such things as name, address, sex, race, social security number, religion, date of birth, and physical characteristics. This file also houses a considerable amount of information regarding the juvenile's parents. For example, the following data is obtained about the client's father: name, address, date of birth, educational background, name and address of employer, salary, religion, general health status, previous record of arrest, and method of discipline used. Finally, information is obtained about the client's home and economic conditions. These include a general description of the home, housekeeping standards, adequacy of furnishings, description of neighborhood, family income, and source of income.

Juvenile Services Admission Data is maintained in a manual form; it is unclear how this information is categorized.

B. Access Rights of the Person in Interest

The person in interest may not examine, copy or challenge Admission Data which pertains to him.

C. Disclosure of Records to Third Parties

Information from this record system is disclosed only under court order.

D. Security of Personally Identifiable Information

The Juvenile Services Administration informed the Commission that "security measures applicable to patient records are followed at each institution."

4. Juvenile Services Purchase of Care Records

Juvenile Services Purchase of Care Records are used in compiling statistics, preparing budgets and performing needs assessments. There are 2,896 such records.

A. Collection and Maintenance of Information

The Commission lacks specific information regarding the nature of data contained in this system; the Commission was told that records consist of "monthly reports, contracts, admissions, (and) history of placements." Information is furnished by the local Juvenile Services offices. Clients are not informed regarding the type of materials collected about them.

Purchase of Care Records are manual; no information was provided concerning the means of indexing such data.

B. Access Rights of the Person in Interest

The person in interest is not usually permitted to examine Purchase of Care Records. He may not copy such files nor can he challenge information pertaining to him.

C. Disclosure of Records to Third Parties

No information is released from this record system which is personally identifiable.

C. Security of Personally Identifiable Information

The Juvenile Services Administration did not provide any specific information regarding security measures pertinent to this record system.

V. Laboratories Administration

The Laboratories Administration is responsible for performing a variety of laboratory tests pertinent to the prevention, diagnosis and control of human diseases. The only record system of the Administration containing personally identifiable information is the Diagnostic Laboratory Services-Laboratory Test File.

1. Diagnostic Laboratory Services - Laboratory Test File

Diagnostic Laboratory Services maintains a file consisting of clinical, microbiology and virology test records. There are 1,076,560 clinical records, 1,605,505 microbiology records, and 4,923,545 virology records.

A. Collection and Maintenance of Information

The Laboratories Administration indicated that the following information appears on each test record: name of patient, address, age, type of test required, and results of test. Information is obtained from State Health Clinics and State hospitals, as well as private physicians. Patients are advised by the doctor or clinic regarding the tests to be made.

Test records are maintained in a manual form and are indexed by type of test and name of patient.

B. Access Rights of the Person in Interest.

The Laboratories Administration asserted that all information is released to the doctor or clinic submitting the samples and that information is divulged on a doctor - patient basis.

C. Disclosure of Records to Third Parties

The only information provided to the Commission regarding disclosure of laboratory test records is the following statement: "Laboratory test results can only be disclosed to a physician by telephone or mail as directed in COMAR 10-101". Actually, COMAR 10.10.01.07 D reads as follows: "The results of laboratory examinations may not be issued verbally or in writing directly to any individual except a licensed practitioner of medicine, dentistry, podiatry, or other persons authorized to engage in the practice of healing, other laboratories, a specified person authorized by one of the above, or by law, to receive the report." This regulation is notable for the fact that no restrictions appear to be placed on the right of a healing practitioner to obtain a laboratory test record. Given the broad language of the regulation, it would appear that a practitioner could examine not only the tests of his own patients but the test of any patients. The Laboratories Administration subsequently informed the Commission that while in practice test results are only provided to the submitting practitioner, the regulation may require further clarification.

D. Security of Personally Identifiable Information

The Laboratories Administration asserted that the bare test results without attendant test results or other clinical findings are not in themselves subject to any real interpretation; therefore, no security measures other than normal laboratory security are used.

V. Preventive Medicine Administration

The Preventive Medicine Administration provides various types of professional and technical assistance to other Administrations of the Department of Health

and Mental Hygiene and to local health departments throughout the State. In addition, some direct health care services are handled by the Preventive Medicine Administration. The following record systems of the Administration contain personally identifiable data: 1) Family Planning Evaluation System; 2) Child Health Services Information System; 3) Summary of Maternity Care File; 4) Surveillance of Communicable Diseases File; 5) Venereal Diseases File; 6) Immunization File; 7) Hereditary Disorders Medical Records File; and 8) Evidence Collection File for Rape and Sexual Assault.

1. Family Planning Evaluation System

The Family Planning Evaluation System is a general record of all clients receiving Family Planning services in local health agencies. Approximately 125,000 records are generated on an annual basis.

A. Collection and Maintenance of Information

Data appearing in the Family Planning Evaluation System is extracted from information that appears in Family Planning Clinic Visit Records. Thus, data for this system is both generated and gathered at the local level. Clinic Visit Records would include physical examination reports, laboratory results, physician evaluations, client consent forms, and basic medical histories. Since priority for clinic family services is given to persons with limited income, income data is also collected.

A Family Planning Record is initiated on the local level for each new eligible client. This record constitutes the basic information of the Family Planning Evaluation System. Among the items of personally identifiable information appearing in the Family Planning Record are the following: patient name, address, telephone number, date of birth, race, educational status, economic status, number of previous pregnancies, number of additional children wanted, method of contraception, type of

medical complications experienced, and the number of induced abortions. A form containing virtually the same information is used to reactivate family planning clients who previously had terminated services.

Family Planning Evaluation System information is obtained from the individual client, from laboratory reports, and, in some instances, from area health nurses. Clients are aware of the basic type of data collected about them.

Information for this system is maintained in a computerized fashion for all clients. In addition, a manual copy of the Family Planning Record is placed in the Clinic Visit Records of all medical assistance clients. Computerized records are categorized by name and Family Planning number. Manual records are indexed by name.

B. Access Rights of the Person in Interest

The Preventive Medicine Administration indicated that, generally, an individual will have access to information pertaining to her. The Commission was told, however, that procedures for permitting both access and copying may vary from county to county. The person may challenge information she believes to be inaccurate; the Administration stated that such challenges would be welcomed.

Family Planning clinics receiving support from the Preventive Medicine Administration must comply with a variety of State and federal information practices requirements that have a direct impact on the person in interest. Regulations mandate that clients give informed consent prior to receiving Family Planning Services. Clients must sign a consent form, for example, before physical examinations and laboratory testing can be performed. Clients must indicate, furthermore, that they have been informed of the advantages and dis-

advantages of various contraceptive methods. Additional consent forms must be filed before clients can be provided oral contraceptives or intrauterine devices.

Detailed federal regulations must be followed prior to the sterilization of any person in a federally assisted Family Planning Clinic.⁶ Sterilization may occur if a client is at least twenty years of age at the time consent is obtained, is mentally competent, has voluntarily given consent, and has waited at least thirty days but no more than one hundred and eighty days between the date of informed consent and the date of sterilization. The consent form must be signed by the client, an interpreter (if necessary), the counselor obtaining the consent, the physician performing the sterilization.

C. Disclosure of Records to Third Parties

Individual Family Planning records are not disclosed without written permission of the client. This permission slip would be placed in the client's Clinic Visit Record. The Preventive Medicine Administration must submit various activity reports to the federal government as a precondition to receiving funding. For example, the Administration must provide quarterly statements to the federal government regarding the date of birth, sex, race, etc. of any client on whom sterilization was performed. Such reports do not identify clients by name or social security number, however, but instead list clients by medical record number or some other unique identifier.

D. Security of Personally Identifiable Information

Clinics receiving support from the Preventive Medicine Administration are required to insure the confidentiality of client records. The Pre-

ventive Medicine Administration asserted that all computer security is in accordance with Baltimore Data Center procedures and verifications and that all manual security is by means of locked files and limited access by designated personnel.

2. Child Health Services Information System

The Child Health Services Information System (CHSIS) consists of various medical data pertaining to children examined in local State health departments. There are approximately one million records in this system.

A. Collection and Maintenance of Information

It appears that only a small portion of the actual pediatric information collected on the local level is entered into the Child Health Services Information System. The Preventive Services Administration indicated CHSIS demographic data consists of the child's name, address, sex, race, date of birth and socio-economic status. CHSIS also contains the nature of screening procedures provided to the child and the outcome of these procedures. Thus, for example, CHSIS would contain a record of the fact that the child underwent vision screening, hearing screening, dental screening and so forth, and also would have an indication of the results of these screening efforts. Detailed medical information pertinent to these procedures, however, would not be entered into CHSIS.

Demographic data is supplied either by the child or the parent. Screening procedure outcomes are furnished by the provider of medical care. The Commission was told that individuals are aware of the type of information collected about them.

CHSIS data is computerized and categorized by internal departmental code.

B. Access Rights of the Person in Interest

The person in interest does not have the right to examine CHSIS data maintained by the Preventive Medicine Administration. It is unclear whether records are available for inspection on the local level.

C. Disclosure of Records to Third Parties

The Preventive Medicine Administration indicated that it does not disclose CHSIS records to anyone other than the provider of service.

D. Security of Personally Identifiable Information

The Commission was informed that computer security is provided by the Division of Data Processing and the Baltimore Data Center.

3. Summary of Maternity Care File

A Summary of Maternity Care File is maintained by the Preventive Medicine Administration for women receiving care in local maternity clinics. This file consists of approximately 20,000 records.

A. Collection and Maintenance of Information

The following items of information are collected regarding women participating in this program: name of patient, date of birth, race, marital status, income status, number of previous pregnancies, number of induced abortions, types of pregnancy complications, method of delivery, types of delivery complications, place and date of delivery, conditions of infant at birth, and date of discharge from hospital. Information is derived from the clinic where care was provided, the hospital where the birth occurred, and from the patient herself. The Preventive Medicine Administration indicated that women are informed of the type of data

collected about them.

Information is maintained in both manual and computerized form and is indexed by control number, county of residence and patient name.

B. Access Rights of the Person in Interest

The Preventive Medicine Administration did not respond to the Commission's question regarding the right of the person in interest to examine data pertaining to her. The Administration indicated that it would not allow copying of information "unless specifically instructed." The Commission was informed that the person in interest could contest the accuracy of data.

C. Disclosure of Records to Third Parties

No disclosure of personally identifiable information occurs without a personal release form signed by the patient. In the event that information is disseminated, its accuracy is not verified prior to disclosure and no logs are maintained.

D. Security of Personally Identifiable Information

Manual records are restricted to authorized personnel only. The Preventive Medicine Administration relies on the integrity of computer personnel not to make any unauthorized alterations of data. Risk analysis has not been performed.

4. Surveillance of Communicable Disease File

A file is maintained by the Preventive Medicine Administration to assist in the control of communicable diseases. Approximately 15,000 records are added to this record system on an annual basis.

A. Collection and Maintenance of Information

Article 43, Sections 31A, 33 and 52 and COMAR 10.06.01.02 require that physicians, principals, laboratory directors, and other contact the county health officer when they have evidence that an individual has a communicable disease. The health officer must, in turn, submit a report to the Department of Health and Mental Hygiene. Laboratory reports filed with the Department must include the following information: name, address, sex and age of the individual; name and address of physician; and date, type and result of test performed.

In addition to the information mandated by Article 43, Section 31A, the following data is forwarded by individual physicians to local health officers: patient race, telephone number, occupation, workplace or school name, name of hospital, and date admitted to hospital. All information for this system is submitted to the Department by the local health officers. Individuals are not informed regarding the type of data collected about them.

The Communicable Diseases file is maintained in both manual and computerized forms and is indexed by name of patient and type of disease.

B. Access Rights of the Person in Interest

The Preventive Medicine Administration indicated that the person cannot, and should not, have access to information in this pertaining to him. This policy may be based on Section 31A (g), which states: "All laboratory reports required under this section are confidential and are not open to public inspection."

C. Disclosure of Records to Third Parties

In addition to requiring the confidentiality of laboratory reports, Article 43, Section 31A prohibits laboratories, health officers, the Department of Health and Mental Hygiene, and their agents, from compiling a list in a reproducible form, of the names of persons determined by testing to have a communicable disease. Surveillance of Communicable Disease information is released only in response to a subpoena. The subject of the record is not informed in the event of information being disclosed, nor are logs used to record the dissemination of data.

D. Security of Personally Identifiable Information

Manual records are maintained in locked files with limited access by designated personnel. The Preventive Medicine Administration indicated that access to computerized records is restricted to programmers, and that a risk analysis had been performed.

5. Venereal Diseases File

A Venereal Diseases File is regulated by the same sections of the Annotated Code that pertain to the Surveillance of Communicable Diseases File. Thus, personally identifiable information appearing in the Venereal Diseases File is similar in nature to the previously discussed system, although somewhat more detailed in character. The following data can be found in Venereal Diseases Files: name of patient, address, sex, marital status, age, race, physical characteristics, telephone number, place of employment, relevant identifying and locating information, stage of disease, and names of suspects, associates and contacts. Data for this system is provided by local health departments, private physicians and laboratories. Patients are informed of the type of records collected about them.

Information is both manual and computerized and is categorized by disease and name of patient.

B. Access Rights of the Person in Interest

The person in interest may not examine, copy or contest the accuracy of information in this file.

C. Disclosure of Records to Third Parties

Venereal Disease information pertaining to children under ten years of age is released to Protective Services. In all other cases, personally identifiable data is disclosed only in response to a subpoena. In the event of information being disclosed, the subject of the record is not informed. No logs are maintained. Information is not verified prior to dissemination.

D. Security of Personally Identifiable Information

Manual Venereal Disease records are maintained in locked files with limited access by designated personnel. The Preventive Medicine Administration indicated that access to computerized data is restricted to programmers and that a risk analysis had been performed.

6. Immunization File

The Preventive Medicine Administration keeps an Immunization File to monitor vaccine reactions and analyze outbreaks. The file consists of approximately 1,000 records.

A. Collection and Maintenance of Information

Though this record system is also regulated by Article 43, Sections

31A, 33 and 52, the nature of the information collected is less sensitive than was the case for the two previous systems. The following information is submitted to the Administration regarding any individual who has experienced an illness or reaction associated with receipt of a vaccine: name of patient, address, date of birth, sex, county of residence, name of vaccine, date and method of injection, name and address of attending physician, and brief clinical summary. A physician detecting a case of measles would provide the Administration with the name of the patient, address, age, sex, race, telephone number, and the names, addresses, telephone numbers and ages of others who came into contact with the patient during the communicable period. Information for this system is provided by local health departments and private physicians. Individuals are not informed of the type of data collected about them.

The Immunization File is a manual record system indexed by type of disease and name of patient.

B. Access Rights of the Person in Interest

The person in interest cannot examine, copy or challenge the accuracy of information contained in the Immunization File.

C. Disclosure of Records to Third Parties

Personally identifiable records are disclosed only in response to a subpoena. The subject of the record is not informed of any disclosures, the accuracy of information is not verified, and no dissemination logs are maintained.

D. Security of Personally Identifiable Information

The Commission was informed that Immunization File records are kept in

locked files and limited to designated personnel.

7. Hereditary Disorders Medical Records File

The Preventive Medicine Administration maintains medical information pertaining to children with hereditary disorders. There are approximately 100 records in this file.

A. Collection and Maintenance of Information

The Commission was informed that the following data is gathered through this system: "growth and development, dietary records, blood reports, physician reports, psychometric reports, nursing (nutrition notes, correspondence)" Information is gathered from physicians, nurses, nutritionists, psychologists, parents and the Social Services Administration. Children are informed of the type of materials collected about them when they reach an appropriate age. Unsolicited comments are placed in records notes.

Information is maintained in a manual form and is categorized by name of child.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

No information is released without written authorization of the patient or parent. In the event that information is disclosed, its accuracy is verified prior to dissemination. Though disclosure logs, as such, are not maintained, a notation is placed in the patient's chart.

D. Security of Personally Identifiable Information

Information is kept under lock and key.

8. Evidence Collection File For Rape and Sexual Assault

The Preventive Medicine Administration maintains a limited amount of data pertinent to the victims of rape and sexual assault. The purpose of this file is to enable the Department to pay for physician's fees and laboratory tests. Approximately 1,500 records are added to this system on an annual basis.

A. Collection and Maintenance of Information

The Evidence Collection File is limited to the following four data elements: name of victim, date of hospital examination, name of hospital, and service charges. All information is provided by the hospital. The victim is not informed of the type of data collected about her.

Information is kept in a manual form and is indexed by name of victim and hospital.

B. Access Rights of the Person in Interest

The person may examine, copy and challenge information pertaining to her; access is provided through the billing clerk.

C. Disclosure of Records to Third Parties

No information is disclosed beyond the billing circle.

D. Security of Personally Identifiable Information

The Preventive Medicine Administration indicated that information is restricted to the billing clerk and supervisor.

VI. Mental Hygiene Administration

The Mental Hygiene Administration has jurisdiction over various State psychiatric facilities: Clifton T. Perkins Hospital Center, Crownsville Hospital Center, Eastern Shore Hospital Center, Highland Health Psychiatric Unit, Maryland Psychiatric Research Center, Regional Institute for Children and Adolescents-Baltimore, Regional Institute for Children and Adolescents-Rockville, Springfield Hospital Center, Spring Grove Hospital Center, and Thomas B. Finan Center. The Mental Hygiene Administration identified one record system containing personally identifiable information: the Central Records Index - Central Patient Records.

1. Central Records Index - Central Patient Records

The Central Records Index - Central Patient Records contain detailed information on patients receiving inpatient and outpatient psychiatric care at State facilities. As of June 30, 1981, there were approximately 21,000 records, of which 2,851 were inpatient records.

A. Collection and Maintenance of Information

Psychiatric facilities collect an enormous amount of patient data which is personally identifiable. Due to the number of State psychiatric facilities generating patient records and the range of materials contained in these records, it is impossible to describe thoroughly in this report all of the information comprising the Central Records Index - Central Patient Records file. In lieu of such a comprehensive report, therefore, patient records data at the Eastern Shore Hospital Center will be examined here and considered to be representative of the type of information found at other State psychiatric facilities.

The following are papers that can be found in an inpatient record file at Eastern Shore Hospital; where relevant, a brief description will be made of data elements found in respective papers:

1. General Information

- A) Status Sheet (name, date left hospital, date returned, date discharged)
- B) Correspondents Sheet (name, addresses and telephone numbers of spouses, parents, and other correspondents)
- C) Residence Form
- D) Statistical Data (name, address, date admitted, date of birth, place of birth, sex, race, marital status, educational status, religious denomination, occupation, military service history, social security number, Medicare number, welfare certification number, parents names and addresses, initial diagnosis, or impression, record of previous hospitalization, date of discharge, age of discharge, type of discharge, date of death, cause of death).

2. Physician's Orders

- A) Profile of Medications (Children, adults).

3. Admission Note History

- A) Admission Note (factors justifying admission to psychiatric facility, initial mental status, initial diagnostic impression)
- B) History (Chief complaint, history of present illness, history of past illness, family history, social history, systemic review)
- C) Physical Examination
- D) Mental Status

4. Progress and Social Service Notes

- A) Progress Notes
- B) Attending Physician's Medicare Certification
- C) Attending Physician's Medicaid Certification
- D) Utilization Certification Review
- E) Social Service Notes
- F) Family Data (Children) (name of child, address, age, parents names, parents educational status, family problems (e.g. alcoholism, mental illness, marital difficulties), pregnancy history of mother, birth history, developmental history of child, medical history of child, school history)

5. Treatment Plans and Summaries

- A) Treatment Plan (inventory of patient's strengths and weaknesses, psycho-therapy needs and goals, nursing therapy needs and goals, activity therapy needs and goals, social therapy needs and goals, drug therapy needs and goals, medical/surgical treatment needs, long term plan and goals, patient review of plan)
- B) Treatment Plan (Reassessment)
- C) Nursing Care Plans
- D) Final Summary (general description of patient, chief complaint and present illness, previous psychiatric and medical history, psychosocial history, mental status, physical examination, diagnostic procedures, discharge planning)
- E) Release Summary (Admission summary, course in hospital, release plan and recommendations, final diagnosis, condition on release, prognosis, medications on release)
- F) Report on Death
- G) Report on Medico-legal Case
- H) Certificate of Death

6. Nurses Notes and Charts

- A) Nurses Notes
- B) Blood Pressure Chart
- C) Diabetic Record
- D) Intake and Output Record
- E) Medication Profile
- F) Weight Record
- G) Personal Clothing Sheet
- H) Patient Property Other Than Clothing

7. Activities-Education

- A) Rehabilitation Progress Notes
- B) Confirmation - Rehabilitation Therapies
- C) School Evaluation
- D) Vocational Rehabilitation

8. Consultations

- A) Psychological Evaluation
- B) Referral for Psychological Testing
- C) Consultation Sheets
- D) Foot Care
- E) EEG Report
- F) EEG Consultation Request
- G) EKG Report

- H) X-Ray Examination
- I) Cytology Reports
- J) Pathology Reports
- K) Laboratory Report
- L) Blood Transfusion Sheet
- M) PPD Form
- N) Immunization Record
- O) Dental Chart
- P) Operative Record
- Q) Anesthesia Record
- R) Recovery Room Record

9. Administrative - Legal

- A) Identification Sheet (date of birth, height, weight, race, physical disorders, mannerisms, medical problems)
- B) Official Signature of Patient
- C) Physicians Certificate for Mentally Disordered Alcoholics (name, address, social security number, date of birth, age, race, religion, place of birth, sex, marital status, occupation, name and address of next of kin, physical illnesses, physical injuries, physical deformities, mental history and mental status, record of most recent psychiatric in-patient care, suicidal tendencies, homicidal tendencies, medication status, physician statement recommending placement in a treatment facility)
- D) Physicians Certificate for Mentally Disordered (same as above)
- E) Voluntary Treatment Agreement for Alcoholics
- F) Voluntary Admission Agreement
- G) Agreement for Treatment of a Minor Child
- H) Notification to Patient of Admission Status and Rights
- I) Application of Admission Form
- J) Notice of Hearing
- K) Certification
- L) Waiver of Hearing
- M) Financial Record (name, social security number, birthdate, race, sex, amount of public assistance benefits, amount of V.A. benefits, amount of railroad benefits, amount of social security benefits, life insurance policy, Blue Cross and Blue Shield number, authorized power of attorney or representative, welfare certification and number.)
- N) Receipt Form-Court Order
- O) Release Form
- P) Side Effects Form
- Q) Correspondence

- R) Release - Name to Agencies
- S) Release of Information Forms
- T) Procedure Consent Form
- U) Permission for Post-Mortem Examination
- V) Autopsy Permission
- W) Consent to Electroshock Therapy
- X) Protective Restraint and Seclusion
- Y) Abstracts from Other Agencies

It is evident from the above list that patient records in State psychiatric facilities are drawn from multiple sources: the patient, physicians, nurses, therapists, relatives, etc. The Mental Hygiene Administration indicated when information is gathered from other sources, no attempt is made to verify such information from the patient himself. The Commission was told that patients are informed of the type of data collected on them, if inquiries are made.

The Central Records Index-Central Patient Records file is a manual system. Index Records are categorized alphabetically, while Patient Records are listed by numerical code.

B. Access Rights of the Person in Interest

Article 59, Section 13 requires that, upon admission to a psychiatric facility in Maryland, patients are informed of various rights pertaining to them (the right to counsel, the right to be provided with stationary, the right to have correspondence forwarded without delay, and so forth). These various rights appear on a Departmental form and are handed to patients within twelve hours of admission.

Until the passage of House Bill 1287 during the previous session, however, patients did not have the right to examine their records. This does not mean that no State psychiatric facility permitted access to the person in interest; rather, it means that facilities were not under a legal mandate to permit such access. Effective July 1, 1981,

Article 43, Section 54 M (b)(1) reads as follows: "Upon written request, at reasonable times and upon reasonable notice, a person in interest may obtain access to, review, and copy medical records maintained by a hospital or related institution, except when the records pertain to a psychiatric or psychological problem and in the opinion of the attending physician access would be medically contraindicated. Where access to psychiatric or psychological records is denied and upon written request by the person in interest, a summary of the records shall be made available to the person in interest." In the event that the person in interest is a minor, these rights accrue to the parents. A spouse or authorized legal representative receives the access rights of the person in interest should he be legally disabled.

C. Disclosure of Records to Third Parties

The Department of Health and Mental Hygiene furnished the Commission with a copy of a manual, "Guide to the Release of Information From the Medical Record in Psychiatric Facilities". The manual, issued in 1977 as a joint product of the Department and the Maryland Medical Record Association, generally contains recommendations rather than legal requirements. Nonetheless, the manual should be considered carefully, as it appears that it is used widely by records administrators in State psychiatric facilities.

A critical distinction is made in the manual between "nonconfidential" and "confidential" information appearing in medical records. Although the term "nonconfidential" data is not defined, the authors of the manual indicate that it ". . . usually consists of name, address, age, marital status, occupation, name and address of nearest relative, dates of admission and discharge."⁷ Though these elements are regarded as non-

confidential, that does not mean that hospitals are free to release them to any requester. Discretion should be used to prevent disclosure of this information to those who do not have a legitimate interest in the patient's condition. The manual is somewhat ambiguous regarding the rights of patients to restrict the flow of nonconfidential data. On the one hand, patients appear to have considerable control over such information: "In the unusual case where the patient specifically denies the hospital the right to release information of a nonconfidential nature, such information must automatically be considered as confidential to all but public agencies which have the authority to receive such information whether the patient consents or not."⁸ A subsequent sentence, however, makes the issue a bit less clear: "nonconfidential information may be released on receipt of legitimate request, from a properly identified person, without permission of the patient provided it does not deprive the patient of his right to privacy."⁹

"Confidential" information is defined initially as ". . . all information other than that specifically specified as nonconfidential."¹⁰ Confidential materials cannot be released without the written permission of the patient. Therefore, it would appear that no release of any data other than name, address, age, marital status, occupation, name and address of nearest relative, dates of admission and discharge, can be made without consent of the patient. However, the authors then go on to explain specific norms that should be used to determine what information in medical charts is confidential. Thus, for example, information which could embarrass or shame the patient, or personal information regarding detailed diagnoses, treatment, and so forth, should not be released. One is left wondering, therefore, whether State psychiatric facilities do have some discretionary authority over the type of data that can be

released from a medical record without the consent of the patient. In response to the Commission's concerns, the Mental Hygiene Administration agreed that the manual needs to be reviewed, clarified and formally adopted.

A useful feature of the manual is that hospitals are provided with guidelines regarding procedures to be followed in disclosing data to specific requesters:

A) Insurance Companies- Release of information to all insurance companies other than Blue Cross and Blue Shield requires written authorization of the patient. Information can be released without authorization to Blue Cross, since Blue Cross applicants agree to release necessary information to the company as a precondition to membership. Thus, records of a psychiatric facility can be disclosed upon presentation by the patient of a Blue Cross subscriber number.

B) The Press - Information of "legitimate news value" can be disclosed. However, dissemination of data from medical records should be handled in such a way as to protect the interests of the patient.

C) Law Enforcement Officials - Admission data or information of an identification nature should be given to law enforcement officials with proper identification. Medical Information, however, may only be released in response to a subpoena or with written authorization of the patient.

D. Attorneys - No information should be released without written authorization of the patient.

E. Research and Education - Medical records data may be disclosed as long as the identity of patients is not revealed in publications or outside of the institution's training program.

F. Relatives and Friends of the Patient- The general condition of the patient can be indicated by the staff at the hospital's information desk. Other inquiries should be referred to the attending physician. Once the patient is discharged, no information can be released without the written consent of the patient.

G. Physicians - The attending physician may see his patient's medical records and may request that an abstract be sent to another physician for referral. The attending physician may examine records pertaining to previous visits of the patient in the same hospital. Other physicians seeking access to a medical record must indicate that the request is related to patient care. Requests not associated with patient care require written authorization of the patient. Physicians not on the hospital staff need to submit a records release statement from the patient.

H. Hospitals - Information may be released to another hospital without patient consent if the situation is classified an emergency.

I. Social and Welfare Agencies-Release of medical information requires written consent of the patient.

D. Security of Personally Identifiable Information

The Mental Hygiene Administration indicated that records are restricted to authorized personnel and that this practice is monitored by the Licensing and Certification Division of the Department. No security guarantees are obtained from recipients when personally identifiable information is released.

VII. Mental Retardation and Developmental Disabilities Administration

The Mental Retardation and Developmental Disabilities Administration is responsible for planning, developing and directing State services for the mentally retarded and the developmentally disabled. The Administration operates the following centers throughout the State: Rosewood, Great Oaks, Highland Health, Henryton, Holly, Carter, Phillips, Victor Cullen, Potomac, and Western Maryland II. These centers maintain one record system containing personally identifiable information: The Clients' Central Records.

1. Central Records

The Central Records file is a compilation of all materials associated with client care and habilitation. There are approximately 3,384 such records, with a breakdown by center as follows: Rosewood, 1347; Great Oaks, 611; Highland Health, 106; Henryton, 345; Holly, 638; Carter, 11; Phillips, 56; Victor Cullen, 90; Potomac, 132; and Western Maryland II, 48.

A. Collection and Maintenance of Information

The range of such records precludes examination of data collected at each center. Therefore, Rosewood Center will be considered in this report and will be viewed as representative of the other centers of the Administration. The following are papers to be found in a typical client file at Rosewood Center:

Section I

1. Index
2. Application for Admission (Name of applicant, sex, date of birth, military service history, social security number, religion, problem and/or condition, description of any serious injuries or accidents, basic skills of applicant (ability to dress himself, feed himself, follow single instructions, etc.), arrest history, educational history, names and addresses of all health professionals that have treated applicant)
3. Preliminary Interview
4. Prior to Admission Reports
5. Previous Admissions

Section II

1. Statistical Data Sheet (name, date of birth, race, sex, civil status, religion, social security number, admission date, name and address of spouse, names and birthplaces of parents, citizenship status, addresses of other relatives and friends, date of previous admissions and discharges to hospitals)
2. Client Correspondence Sheets
3. Interdisciplinary Team Meeting Summary
4. Summary of Hospital and Infirmary Admissions
5. Mental Retardation Diagnosis
6. Doctors' Medical and Psychiatric Progress Notes
7. Social Adjustment Progress Notes and Summary
8. Medical Discharge or Transfer Summary
9. Current Medical Summary
10. Case Summary
11. Reaching Majority Summary
12. Diagnostic Staff Note Minutes
13. Neurology Note
14. Individual Therapy Reports
15. Psychological Report
16. Admission Note
17. Medical and Behavior Note

Section III

1. Consultants' Reports
2. Hospital Reports
3. Operation Reports
4. Anesthesia Records
5. Physical Examination

6. Physical Condition Sheets
7. Rosewood Lab Reports
8. Outside Lab Reports
9. X-Ray Reports
10. Outside EKG's
11. Rosewood EKG's
12. Outside EEG's
13. Rosewood EEG's
14. Eye Examinations
15. Speech, Language and Hearing Reports
16. Dental Examinations
17. Monthly Seizure Records
18. Immunization Record

Section IV

1. Doctors' Order Sheets
2. Seizure Medication Records
3. Medication Sheets
4. Fluid Balance Sheets
5. Menses Records
6. Dietary Notes
7. Medicaid Progress Notes
8. Graphic Charts
9. P.O.R.K. Records
10. Nursery and Ward Notes
11. Height and Weight Charts
12. Accident and Injury Reports
13. Disciplinary Reports

Section V

1. Memos
2. Social Work Service Notes
3. Home Evaluation Notes
4. Summaries
5. Social Service Admission History (directory data of patient, parents' educational achievements, parents' employment history, parents' physical disabilities, parents' mental illness or retardation, parents' physical disorders, parents' addictions, parents' criminal convictions, grandparents' educational achievements and employment history, mother's marital history, general description of socioeconomic level and physical facilities of parents, mother's pregnancy history, general status of patient's functional skills, general description of patient's behavioral characteristics (e.g. degree of personal responsibility, extent of sexual activity,

amount of hostility and aggressive behavior, etc.), patient's school history, patient's psychological testing, patient's work history, patient's military history)

6. Industrial Therapy Reports
7. DVR Reports
8. Occupational Therapy Reports
9. Physical Therapy Reports
10. Diagnostic-Prescriptive Therapy Summaries
11. Podiatry
12. Recertification - Medicaid
13. Court Reports
14. Activity Profile - Special Services

Section VI

1. Death Report or Discharge Summary
2. Correspondence
3. Convalescent Leave Agreement
4. Foster Care Leave Agreement
5. Missing and Return Reports
6. Blue Cross and Blue Shield
7. Miscellaneous Insurance
8. Medicaid
9. Medicare
10. Social Security Card
11. Supplementary Security Income
12. Selective Service
13. Official Documents Signed by Parents or Legal Guardians
14. Death and Funeral Arrangement Data
15. Baptismal Record
16. Birth and/or Marriage Verification
17. Bed Permit
18. Hearing
19. Commitment Documents
20. Photographs

As is evident from the above list, data is drawn from a wide range of sources: the client, patients, health professionals, etc. The Mental Retardation and Developmental Disabilities Administration indicated that clients are informed of the data collected about them when inquiries are made. Central Records are maintained manually and categorized by client name.

B. Access Rights of the Person in Interest

Article 59A, Section 17 establishes various rights of access on the part of the person in interest to Mental Retardation and Developmental Disabilities records pertaining to him. Within fourteen days of an inquiry by the person in interest, the records custodian must inform him both of any records maintained about him and the procedures to review such records. If the person in interest submits a request to review records, the custodian shall permit the person's parents, attorney or other authorized representative to examine and copy pertinent materials. If no appropriate representative exists, ". . . the facility shall afford the rights of this section to the person to the extent that the director of the facility determines that access and review would not be detrimental to the person."¹¹ Should a facility determine a need to deny access, it must apply to the circuit court of the county where the facility is located for an order permitting continuation of denial.

Section 17 (c)(4) and (5) delineate procedures to be followed should the person in interest challenge the contents of his record:

"(4) Each facility shall permit the person to contest the content, accuracy, completeness, pertinency, timeliness, relevance and dissemination of the record, and to request an amendment or supplement to the record. The facility shall acknowledge in writing receipt of the request within 14 days. Then, within an additional 14 days, the facility either promptly shall amend or supplement the record as requested and inform the person in writing of that amendment or supplement, or inform the person of its refusal to amend or supplement the record as requested, including the reason for the refusal and the procedures established by the director for the person to obtain a review of the refusal. (5) The person who disagrees with the refusal of the facility may request the director to review the refusal within 45 days from this request, the director shall complete a review and make a final determination. If the final determination involves a refusal to amend or supplement the record as requested, then the written notification shall include the reasons for the refusal, inform the person of the procedures for inserting in the record a concise statement of the reasons the person disagrees with the refusal of the agency, and apprise the person of the provisions for judicial review of the director's decision."

C. Disclosure of Records to Third Parties

Disclosure of Mental Retardation and Developmental Disabilities records are governed by Article 59A, Section 17(d). Personally identifiable data may be released if needed for routine use by the facility staff, or in furtherance of the purpose of a medical review committee, an accreditation board or commission, a licensing agency given statutory authority to examine such records, the Department of Health and Mental Hygiene's Division of Reimbursement, the auditors of the Department, legislative auditors, or if records are needed to provide medical or other care for the health and welfare of the patient. All other request may not be honored unless accompanied by the written request of the patient. Records custodians must maintain disclosure of logs for dissemination of records to anyone other than center staff personnel. These logs must include the nature of the information disclosed, the date of the disclosure, the purpose of the disclosure, and the name and address of the recipient of the data.

D. Security of Personally Identifiable Information

COMAR 10.22.04.26 L requires facilities to safeguard records against loss, defacement, tampering or use by unauthorized persons. Written policies must exist which authorize access to files by specific staff members. Files must be maintained in locked cabinets. Article 59A, Section 17(h) enables the person in interest to collect punitive damages up to \$500 plus reasonable attorney's fees against any records custodian who permits unauthorized disclosure of records.

VIII. Chronically Ill and Aging Administration

The Chronically Ill and Aging Administration is charged with three general functions: 1) to prevent the onset or occurrence of disease; 2) to detect disease at a stage to permit direct intervention; and 3) to lessen complications, disability, and premature mortality for the State's aging population. The Administration identified four record systems containing personally identifiable data: Cancer Control File; High Blood Pressure File; Tuberculosis Case Register; and Patient Central Record Index-Patient Central Record File.

1. Cancer Control File

The Cancer Control File actually consists of two separate records which are handled in the same general manner: Cervical Cancer Screening Project records and Colposcopy Clinic Records. There are 60,000 Screening Project records and 40,000 Clinic Records.

A. Collection and Maintenance of Information

The following types of data are collected from participants in the Cervical Cancer Screening Project: name, address, telephone number, date of birth, social security number, race, marital status, medical coverage, contraception method, age at first intercourse, cancer history, breast disease history, and various items of information pertaining to physical examinations, laboratory tests, and treatment. Colposcopy Clinic Records include name, address, telephone number, social security number, family planning number, date of birth, marital status, race, history of previous operations, age of first intercourse and pregnancy, contraceptive methods employed, and colposcopic findings. The Chronically Ill and Aging Administration indicated that Cancer Control information comes from patients and physicians. Patients are informed regarding the type of

data collected about them.

Cervical Cancer Screening Project Case Records are categorized by case number, while Card Records are indexed first by county and then alphabetically by name. Colposcopy Clinic Records are categorized by county and then alphabetically by name. Cancer Control records are maintained manually.

B. Access Rights of the Person in Interest

The Chronically Ill and Aging Administration indicated that the person in interest is permitted access upon request. He is not notified formally of right of access. Records may be copied and challenged.

C. Disclosure of Records to Third Parties

The Commission was told that release of records to a physician or a hospital requires written consent of the patient. No additional information was provided.

D. Security of Personally Identifiable Information

Cancer Control files have a limited access. No other information is available.

2. High Blood Pressure File

A High Blood Pressure File is maintained to assist in providing screening, referral, follow-up and monitoring services. As of December 1980, the file consisted of approximately 76,000 records.

A. Collection and Maintenance of Information

The following data is collected for the High Blood Pressure file:

name, address, date of birth, race, sex, home telephone number, cardiovascular history questions, blood pressure readings, referral activity, follow-up activity and referral outcome. Information is furnished by local health personnel, church volunteers and through work rite programs. Individuals are made aware of the type of information collected about them from the providers of the data.

High Blood Pressure records are computerized and indexed by case number.

B. Access Rights of the Person in Interest

The person in interest may have access to information if he so requests. In such a situation, he is directed back to the source of the data. Individuals are not informed formally of this right.

C. Disclosure of Records to Third Parties

The Chronically Ill and Aging Administration indicated that no information is disclosed from this file to third parties.

D. Security of Personally Identifiable Information

Information is kept in locked files with limited access. In order to gain access to computerized data, access codes must be employed; the Commission was informed that these codes are changed frequently. The Administration indicated that a risk analysis had been performed through the Baltimore Data Center and the Data Processing Division.

3. Tuberculosis Case Register

A Tuberculosis Case Register is maintained as a surveillance mechanism to ensure that tuberculosis incidents are being reported as required by statute. The Commission was told that the Register is used to

". . . determine incidence and prevalence of tuberculosis in Maryland; to assess reporting; to maintain current medical data; to maintain medical supervision; to aid program in the completeness of service to the patient; and to provide data for analyzing mortality and morbidity trends." There are approximately 45,000 total records, including 785 that represent cases under current treatment.

A. Collection and Maintenance of Information

The nature of information collected for this file is affected by Article 43, Sections 11 and 78. Section 11 requires physicians to report cases to the Department of Health and Mental Hygiene of any disease contracted through the workplace. Section 78 places a similar burden on physicians who encounter patients who are suffering from any contagious or infectious disease considered to be dangerous to the public health.

The following types of data can be found in the Case Register: name, address, date of birth, sex, race, occupation, place of employment, names of those who have come into contact with the patient, name of attending physician, diagnosis, treatment, x-ray report, laboratory test, skin test, and bacteriological information. Data is furnished by private physicians, local health departments, state institutions, laboratories and hospitals. Individuals are not informed of the type of data collected about them. Unsolicited comments pertinent to the control of tuberculosis will be treated as confidential and noted on the Case Register.

Tuberculosis Case Register records are maintained in manual form. Records are first indexed according to whether they pertain to current or noncurrent cases. Within these two general categories, records are further subdivided by county and alphabetically by patient name.

B. Access Rights of the Person in Interest

The person in interest may inspect, but may not copy, records pertaining to him. Information can be challenged through the initial reporting physician or agency.

C. Disclosure of Records to Third Parties

The Chronically Ill and Aging Administration indicated that information may be disclosed to other agencies due to the public health ramifications of the register. Agency recipients must be known to the Administration prior to disclosure. In the event that information is disclosed, the person in interest is not notified regarding either the dissemination itself or the name of the recipient of the data. The accuracy of information is verified prior to disclosure. Disclosure logs are not maintained.

D. Security of Personally Identifiable Information

Case Register records are locked after working hours. Although security measures are not obtained from recipients, the Commission was informed that in most cases recipients are aware of the confidential nature of the information.

4. Patient Central Record Index - Patient Central Record File

Patient records are maintained by the Administration's three centers: Montebello, Western Maryland and Deer's Head. There are 11,128 records at Montebello, 7,381 records at Western Maryland, and 8,569 records at Deer's Head.

Collection and Maintenance of Information

The Commission is unable to provide any information regarding the type of data found in these files. The Chronically Ill and Aging Administration indicated that information comes from clients as well as all health professionals associated with clients' cases. Data derived from other sources is not verified with clients. The Administration stated that clients are not made aware of the type of data collected about them.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him. He is not informed officially of his right of access.

C. Disclosure of Records to Third Parties

Information is not disclosed without written authorization of the patient. The only exception to this rule involved an emergency situation, when information may be released to authorized persons for treatment purposes. Disclosure logs are not maintained.

D. Security of Personally Identifiable Information

Records are restricted to authorized personnel. This policy is monitored by the Licensing and Certification Division of the Department. Security guarantees are not received from recipients of personally identifiable data.

VIII. Medical Care Programs

The function of Medical Care Programs is to provide access to health care services for categorically and medically needy residents. A part of the Medical

Programs effort is funded under Title XIX of the Social Security Act, which authorizes federal grants to states for medical assistance to low-income individuals who are age sixty-five or older, blind, disabled or members of families with dependent children. Title XIX is jointly financed by the federal government and the states; administration of the program rests with the states. The remaining portion of Medical Programs is funded entirely by the State and localities.

Medical Case Programs identified two record systems containing personally identifiable information: Eligibility Records and Paid Claim Records.

1. Eligibility Records

Eligibility Records contain basic information needed to substantiate a right of payment to claims. There are approximately 1.2 million such records generated on an annual basis.

A. Collection and Maintenance of Information

COMAR 10.09.01 delineates the procedures to be followed in determining eligibility to Medical Assistance programs. Various sectors of the population are automatically eligible for assistance: 1) current recipients of public assistance; 2) children placed in foster care by a local Social Service office; 3) those receiving Supplemental Security Income benefits or mandatory State Supplemental Payment benefits; 4) those losing benefits just mentioned due solely to a Social Security cost of living increase; and 5) certain categories of families losing Aid to Families With Dependent Children grants due to an increase in income from employment. Youth committed to the custody of the Juvenile Services Administration and placed in private institutions are automatically eligible if they meet application, residency and citizenship requirements. The same is true for individuals such as residents of long-term care

facilities who would be eligible for public assistance if they left the institution. Still other individuals may be eligible if they satisfy various income requirements.

It is evident that determination of eligibility requires the collection of a significant amount of personal data. This data is not gathered, however, by the Department of Health and Mental Hygiene but by the Department of Human Resources. The local Departments of Social Service are charged with making necessary eligibility decisions. The only information furnished by the Social Service units to the Department of Health and Mental Hygiene is the following: name of eligible individual, address, sex, race, date of birth, Social Service Claim number, Social Service Benefit and Amount and Category of Eligibility. Information may be provided, in addition, by the Social Security Admission. All data appearing in this system is information indirectly provided by clients.

Data is computerized and indexed by identification number.

B. Access Rights of the Person in Interest

Access to eligibility data on the part of the person in interest is governed by federal regulations pertinent to any state receiving medical assistance funds under Title XIX of the Social Security Act.¹² A state receiving Title XIX funds must issue a state plan which, among other things, requires that opportunities be given for a fair hearing to any person whose claim for medical assistance is denied or not acted upon promptly.

Federal regulations require that states issue and publicize their hearing procedures at the time that an individual applies for medical assistance, and at any time that an action is taken resulting in

termination, suspension or reduction of services or eligibility. Applicants or recipients must be informed in writing regarding their right to a hearing, the method of obtaining such a hearing, and their right to appear on their own behalf or be accompanied by an attorney, friend, relative, and so forth. The written statement submitted to an applicant or recipient must include an explanation of the action which the state agency intends to take, the reasons for the intended action, and the statutory or regulatory basis for the action. An applicant or recipient, or a representative of an applicant or recipient, must be given an opportunity to:

- "a) Examine at a reasonable time before the date of the hearing and during the hearing:
 - 1) The content of the applicant's or recipient's case file; and
 - 2) All documents and records to be used by the State or local agency at the hearing;
- b) Bring witnesses;
- c) Establish all pertinent facts and circumstances;
- d) Present an argument without undue interference; and
- e) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses."¹³

C. Disclosure of Records to Third Parties

States receiving medical assistance funds under Title XIX of the Social Security Act must provide appropriate safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the program.

Such purposes can include: a) establishing eligibility; b) determining the amount of medical assistance; c) providing services for recipients; and d) conducting or assisting an investigation, prosecution or civil or criminal proceeding related to the administration of the program.

States are further prohibited from publishing names of applicants and recipients.

Federal regulations stipulate that whenever possible, a state agency must obtain permission from the family or individual before responding to a request for information from an outside source. If notification is impossible in emergency situations, the agency must notify the family or individual immediately after releasing the information. This requirement applies to request received from courts, law enforcement agencies, and other government bodies, as well as inquiries received from nongovernment requesters.¹⁴ The Department of Health and Mental Hygiene informed the Commission that individuals are not notified in the event of a disclosure of personally identifiable data.

D. Security of Personally Identifiable Information

Computerized records are protected by the use of passwords, program code security and limited access.

2. Paid Claims Records

Paid Claims Records contain basic information regarding services provided and claims paid for individuals. Approximately 5.5 million records are added to this system each year, with a cumulative total of approximately 27.5 million records.

A. Collection and Maintenance of Information

The following data is available from Paid Claims Records: name, address and number of provider of care; name of client, nature of medical services rendered, number of services rendered, diagnosis, and date of services rendered. Information is garnered from claims submitted by providers. The Department of Health and Mental Hygiene verifies a sample of these claims with clients. Individuals are not notified formally

regarding the type of information collected about them.

Information is maintained in computerized hard copy and indexed according to code by name of provider and name of client.

B. Access Rights of the Person in Interest

The person in interest may examine and copy data pertaining to him.

C. Disclosure of Records to Third Parties

Information will not be disclosed to anyone other than law enforcement officials without written consent of the person in interest. Logs are not maintained.

D. Security of Personally Identifiable Information

The Commission was informed that hard copy files are kept locked, while microfilmed records are coded with limited access.

IX. Post Mortem Examiners Office

Article 22, Section 6 of the Annotated Code requires the Post Mortem Examiners Office to investigate all deaths that occur " . . . as a result of violence, or by suicide, or by casualty, or suddenly when in apparent health or when unattended by a physician, or in any suspicious or unusual manner. . .". The Office maintains three highly related, record systems: Case Logs, Case Files and Case Index Cards.

1. Case Logs

Case Logs contain records of cases as they are received by the Post Mortem Examiners Office. Records have been compiled since 1939, and consist of over 100,000 entries in Baltimore City and over 126,000 entries in the various counties throughout the State.

A. Collection and Maintenance of Information

Deaths falling into the categories mentioned above must be referred by law enforcement agencies to the Post Mortem Examiners Office; the Examiner then ". . . shall fully investigate the essential facts concerning the medical causes of death and may take the names and addresses of as many witnesses thereto as may be practicable to obtain, and, before leaving the premises shall reduce such facts, as he may deem necessary to writing and file the same in his office."¹⁵ The Commission was informed that the following types of data are placed in Case Logs: date of death, location of death, identification information, and investigative history. Records are derived from police reports and county requests.

Information is maintained manually and indexed chronologically, by case number.

B. Access Rights of the Person in Interest

This issue is not applicable.

C. Disclosure of Records to Third Parties

Article 22, Section 8 states that the Medical Examiner must submit to the appropriate State's Attorney copies of all records involving a death which the Examiner believes to require additional investigation. Medical Examiner records may be received as competent evidence in any court in the State; this does not include statements made by witnesses or other persons.

The Attorney General has determined that Post Mortem Examiners records are public documents and thus open to inspection by the general public.¹⁶ The only restriction under which the Office operates is that files not yet completed are labeled "pending" and are not disclosed. The accuracy

of information is verified prior to dissemination. Logs are not maintained.

D. Security of Personally Identifiable Information

No specific security measures were discussed by the Post Mortem Examiners Office.

2. Case Files

Case Files consist of all information pertinent to an autopsy request. The number of Case Files is identical to that of Case Logs.

A. Collection and Maintenance of Information

An autopsy may be performed by the Medical Examiner if he believes that it is necessary. In the event that an autopsy is conducted, a record must be filed containing a detailed description of the findings written during the autopsy and the conclusions drawn from these findings. The following information appears in Case Files: morgue record, investigative sheet, toxicology report, death certificate, record of identification, autopsy results and worksheets. Data is drawn from police reports, county requests for autopsy and laboratory reports.

Information is maintained manually and indexed by file number.

B. Access Rights of the Person in Interest

Whenever possible, written approval is obtained from a family member prior to the release of the autopsy reports.

C. Disclosure of Records to Third Parties

As was noted regarding Case Logs, Case Files must be submitted to the State's Attorney if the Examiner asserts that there is a need for

further investigation. Autopsy reports are considered to be public records under the Public Information Act. Pending files, however, are not released. The accuracy of the information is verified prior to disclosure. No logs are maintained.

D. Security of Personally Identifiable Information

No information was provided regarding security of Case Files.

3. Case Index Cards

An individual card is developed for each case handled by the Post Mortem Examiners Office. There are 225,000 cards containing personally identifiable data.

A. Collection and Maintenance of Information

Case Index Cards contain the following data: name, address, autopsy number, case file number, description of death, diagnosis, pathologist name. Information is drawn from Case Files and Case Logs.

This is a manual record system categorized alphabetically.

B. Access Rights of the Person in Interest

This issue is not applicable.

C. Disclosure of Records to Third Parties

Case Index Cards are considered to be public information. Data is verified as to its accuracy prior to disclosure. Logs are not maintained.

D. Security of Personally Identifiable Information

Security measures were not discussed.

X. Hearings

The Office of Hearings serves as a structure whereby persons may appeal administrative decisions made by various components of the Department of Health and Mental Hygiene. The Office maintains a confidential records system and a public records system.

1. Confidential Hearings

Confidential Hearings involve appeals regarding Medical Assistance decisions, Pharmacy Assistance decisions, Mental Health Involuntary Admissions, Mental Retardation Admissions, Women, Infants and Childrens' Program decisions, and decisions involving Professional Standards Review Organizations. There are 5,930 such records.

A. Collection and Maintenance of Information

The nature of information appearing in Confidential Hearings files will vary, depending on the type of hearing being conducted. An appeal of a Medical Assistance decision, for example, may involve the introduction of income data. Should the case involve an attempt to admit an individual involuntarily to a State psychiatric facility, medical and psychiatric records will be introduced. Irrespective of the type of confidential hearing, documents pertinent to the hearing itself will be filed. In the case of an involuntary admission to a psychiatric facility, for example, notice is sent to the individual informing him of the date of the hearing, the name and address of the person seeking his admission, and his specific legal rights. Hearings records are obtained from applicants, patients, doctors, social workers and lawyers. Data gathered from sources other than the individual in question is verified with that individual.

Confidential Hearings records are maintained manually and are categorized by name.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Materials contained in this record system, as well as the actual hearings, are confidential unless the individual waives his right of confidentiality in writing.

D. Security of Personally Identifiable Information

Data is kept in locked file cabinets.

2. Public Hearings Records

The Office of Hearings maintains public records pertinent to hearings of criminal defendants who have been found not guilty by reason of insanity, and appeals made under the Administrative Procedures Act. There are 194 public hearings records.

A. Collection and Maintenance of Information

Article 59, Section 27 specifies conditions governing the collection of information by the Department of Health and Mental Hygiene regarding a person determined to be not guilty by reason on insanity. Except under certain specified circumstances, whenever a court finds a defendant not guilty by reason of insanity, it shall order that person to be committed immediately to the Department for examination and evaluation. The

purpose of the examination and evaluation is to determine whether the person has a mental disorder, and, if so, whether he would be a danger to himself and to others if not confined in an institution. Under ordinary circumstances, the examination and evaluation must be completed within twenty days of the commitment order.

Within ten days after the completion of the evaluation, a departmental hearing officer shall conduct a hearing. Notice of the hearing must be sent to the person and his counsel, as well as the State's Attorney. The hearing officer is authorized to ". . . issue an appropriate summons for the attendance of witnesses and the production of documents and other tangible evidence, and the court may compel compliance if necessary."¹⁷ The statute furthermore specifies that formal rules do not apply in such a hearing and that "any relevant evidence" may be admitted and considered, by the hearing officer. Within ten days after the completion of the hearing a report shall be prepared by the hearing officer containing a summary of evidence presented along with a recommendation to the court.

The Administrative Procedures Act establishes a mechanism for a hearing before the Department of Health and Mental Hygiene of any "contested case", which is defined as ". . . a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."¹⁸ All parties in a contested case shall be permitted a hearing after a reasonable notice, which shall include the time, place and issues involved in the case. An agency is permitted to admit ". . . probative effect to evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs."¹⁹ and to exclude irrelevant and immaterial data.

The Department informed the Commission that data collected for both

types of public hearings is verified with the subject of the record, and that subject is informed of the type of information collected about him. Public Hearings records are maintained manually and indexed by name and number.

B. Access Rights of the Person in Interest

Both Article 57 Section 27 and the Administrative Procedure Act permit the person in interest to be present at the hearing in question, to cross-examine witnesses, to examine evidence presented by other parties, and to introduce other evidence.

C. Disclosure of Records to Third Parties

Public Hearings records are disclosable to the general public. The subject of the record is not informed of the disclosure of these records, the accuracy of data is not verified prior to disclosure, and logs are not maintained.

D. Security of Personally Identifiable Information

Records are kept in locked file cabinets.

XI. Office of Central Commitment

The Office of Central Commitment is responsible for implementing a comprehensive service delivery program for youth committed to the Department of Health and Mental Hygiene. The Office develops placement plans for youth, the Juvenile Services, Mental Hygiene, Mental Retardation, Local Health, Drug Abuse, Alcoholism Control, and Preventive Medicine Administrations. The Office identified one record system containing personally identifiable data, a Confidential Case History File.

1. Confidential Case History File is maintained on each client assigned to the Office. There are approximately 250 files received by the Office of Central Commitment on an annual basis.

A. Collection and Maintenance of Information

The Commission was informed that client files include ". . . medical abstracts, social histories and psychiatric and sociological data." The Office also receives medical and psychological evaluations of clients. Data is supplied by other social agencies as well as from the various Administrations of the Department. Information received by the Office is verified with clients. Office files are maintained in manual form and categorized by name.

B. Access Rights of the Person in Interest

The Office of Central Commitment does not permit the person in interest to examine data pertaining to him. The Commission was informed that copies of records would be given only upon presentation of a court order. Information could be challenged but only in conjunction with a court order.

C. Disclosure of Records to Third Parties

Personally identifiable data is released to other agencies only upon written authorization of the person in interest. Information is verified as to its accuracy prior to dissemination. Logs are maintained to record the disclosure of information.

D. Security of Personally Identifiable Information

The Office of Central Commitment asserted that data security is provided through the use of a permission to release information form that is signed by the person in interest.

XII. Drug Abuse Administration

The Drug Abuse Administration is charged with identifying needs and developing policies and strategies for the prevention diagnosis and treatment of drug abuse. The Administration identified one program-related, personally identifiable record system, a Drug Abuse Client File.

1. Drug Abuse Client File

The Drug Abuse Administration maintains a client file for those who have been certified to the custody of the Administration through civil commitment proceedings. There are approximately 125 records in this system.

A. Collection and Maintenance of Information

Article 43B, Sections 9 through 22 establish procedures governing the civil commitment of drug abusers to the care and custody of the Administration. A judge of the Supreme Bench of Baltimore City or of the circuit court or of the District Court with jurisdiction in a judicial district where an alleged drug abuser or drug addict may be found may certify that person to the custody of the Administration if convinced that:

- 1) The individual is a drug abuser or drug addict;
- 2) The individual is in need of care, supervision, and treatment because of his drug abuse or drug addiction;
- 3) The individual presents a danger to his own life or safety or the life and safety of others; and
- 4) There is no less restrictive form of intervention available which is consistent with the person's welfare or safety."

The court may also respond to a commitment petition from an individual who believes himself to be a drug abuser, or from a spouse, brother, sister, child, nearest relative, physician, or person residing in the same house with the alleged abuser. The following data must appear in the petition: 1) the name, title and address of the petitioner, as well as the relationship of the petitioner to the alleged abuser; 2) the alleged abuser's name, address, telephone number, birth date, birth place, age, sex, marital status, occupation and physical description; 3) evidence supporting the petitioner's assertion that the alleged abuser is in fact an abuser; and 4) a statement indicating that the alleged abuser needs care, supervision and treatment.

Prior to committing the individual to the care of the Administration, the court shall require him to be present at a hearing. If satisfied that there are reasonable grounds to believe that the individual is an abuser or addict, it shall offer him to undergo a medical examination at a facility designated by the Administration. Commitment shall occur, only if the evidence from the medical examination determines that the individual is an abuser or addict.

An abuser or addict is committed to the Administration's care for an unspecified period of time which, however, may not exceed five years. Initial inpatient care may not exceed two years. The Administration must apply to the committing court every six months if the Administration believes that the abuser or addict requires continued inpatient care.

As is suggested by the above description, Drug Abuse Client Files essentially consist of basic client identification data upon commitment, an indication as to the location of treatment, and general progress

reports issued on a six month basis. The Commission was told that the subject of the record is aware of the data collected about him.

Client Files are maintained manually and indexed by code number.

B. Access Rights of the Person in Interest

The Drug Abuse Administration asserted that the person in interest is permitted to examine and copy information pertaining to him. Questions regarding the ability of the person in interest to challenge the accuracy of information were determined by the Administration to be not applicable.

C. Disclosure of Records to Third Parties

Article 43 B, Section 22(a) specifies that any data which identifies clients of the Drug Abuse Administration shall be confidential and may only be used for purposes of research and study for which assembled or procured. A custodian who unlawfully discloses personally identifiable data is guilty of a misdemeanor and may be fined up to \$1,000. The Commission was informed by the Administration that the courts are the only recipients of such identifiable information.

D. Security of Personally Identifiable Information

The Drug Abuse Administration asserted that records are maintained in locked files.

NOTES

1. Personally identifiable information pertaining to morticians and well drillers appears only in manual form.
2. Sections 7-312 and 7-605 permit the Board to revoke the licenses of nurses and nurses midwives for various reasons.
3. The Commission was informed by the Board of Examiners of Nurses that the Counsel to the Department of Health and Mental Hygiene had instructed the Board in 1977 to honor requests for the listing of licensees. Since that time, the Board has disclosed lists containing names and addresses of licensees.
4. Emphasis added.
5. 63 Opinions of the Attorney General 659 (1978).
6. 42 CFR 50.201-209.
7. "Guide to the Release of Information From the Medical Record in Psychiatric Facilities", p.12.
8. Ibid., p.12.
9. Ibid., p.12.
10. Ibid., p.13.
11. Md. Ann. Code, Art. 59A, Sec. 17(c)(2).
12. 42 CFR 431.200-242.
13. 42 CFR 431.242.
14. 42 CFR 306.
15. Md. Ann. Code, Art. 22, Sec.6.
16. Opinions of the Attorney General 650 (1939).
17. Md. Ann. Code, Art.59, Sec. 27A (c).
18. Md. Ann. Code, Art.41, Sec. 244 (c).
19. Md. Ann. Code, Art.41, Sec. 252A.
20. Md. Ann. Code, Art.43B, Sec. 9 (a).

DEPARTMENT OF HUMAN RESOURCES

The Department of Human Resources (DHR) has as its goals that of providing financial assistance to meet the needs of families and individuals in low-income categories, maximizing economic and social independence of all employable individuals, and maximizing personal independence of those requiring assistance of some form. The Department consists of four main divisions maintaining personally identifiable information: Social Services Administration, Income Maintenance Administration, Employment Security Administration and Community Programs Administration.

I. Department-Wide Practices

Before considering the responses of each of the four divisions, it would be helpful to examine any factors which influence Departmental record-keeping practices and to see what information practices have been adopted across the board by DHR. The most important factor to consider is that a number of DHR programs receive extensive federal support and, as such, are subject to considerable federal regulations.

In general, a state government must provide an annual plan to the federal government in order to qualify for funding for various human services programs. The federal government typically requires that state plans include provisions pertaining to the handling of records generated by these programs. It should be emphasized that federal regulations ordinarily relate to the records of a particular human service program rather than to all of the records in the possession of A State Department of Human Resources. Nonetheless, there are a

number of generalizations that can be made regarding federal regulations of state human services programs:

A) Strict limitations are imposed on State human services agencies regarding the disclosure of personally identifiable data. Virtually all of the federal regulations in the area of human services that were examined by the Commission contain strong statements about the confidentiality of personal information. State agencies are ordinarily instructed that information should only be disclosed to those personnel actually involved in the administration of the specific program in question. The requirement imposed on state agencies participating in the Food Stamp program is typical in this regard: "Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, or the Food Distribution Programs as defined in Part 283 of this Subchapter, or with other Federal or federally aided, means-tested assistance programs such as Title IV-A (AFDC) XIX (Medicaid) or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in Section 273.2 (j)(2)."¹

State agencies are specifically instructed in a number of the regulations that they may not publish lists that would identify in any way the recipients of human services programs. Regulations governing records of the aid to families with dependent children program (AFDC) state that such lists cannot even be provided to government committees or legislative bodies on any level.²

B) The mailing of extraneous materials to recipients of human services programs is prohibited. States receiving federal funds under Title IV-A of the Social Security Act, which helps to support such programs as AFDC, Foster Care and Emergency Assistance to Families with Children (EAFC), must agree that they

cannot send materials to recipients which are not " . . . in the immediate interest of the health and welfare of applicants and recipients."³ States are specifically prohibited from sending materials such as ". . . 'Holiday greetings', general public announcements, voting information, alien registration notices."⁴

C) Clients have certain rights to prevent the disclosure of personally identifiable information to those not connected with Human Services programs. As noted previously, state agencies may disseminate personally identifiable information to certain officials who are involved in the administration or enforcement of human services programs. A number of programs have federal regulations which require consent of the individual before personal data is released to other agencies or to third parties. AFDC, Foster Care and EAFC records, for example, operate under the following restriction: "The family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release for information cannot be obtained, he will be notified immediately."⁵ It should be noted that the regulations do not require states to develop logs to record the dissemination of personal data.

D) State agencies must institute measures to safeguard the confidentiality of personal data. In general, agencies must adopt appropriate procedures to ensure that personal information remains confidential. The release of personal data collected under Title IV-A of the Social Security Act can only be authorized, for example, to those who operate under comparable standards of confidentiality.

E) The person in interest is granted access to some of the files pertaining to him; however, access can be limited in scope. The Commission had discovered comparatively little discussion in the appropriate federal regulations regarding the issue of access of the part of the person in interest. In many cases, the issue is simply not covered in the regulations. In other cases, as with respect to Food Stamp records, access is permitted with certain specified exceptions: "If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting on its behalf to review material and information contained in its casefile, the material and information contained in the casefile shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions."⁶

As a general rule, Maryland state statutes governing the handling of human services records mirror these various federal requirements in focusing largely on prohibitions against disclosure of records. For example, Article 76A, Section 3(c)(ii) requires "custodians to deny inspection of adoption records or welfare records on individual persons" unless otherwise provided by law. Similarly, Article 88A, Section 6(a) prevents disclosure of any information relating to applicants and recipients of social services, child welfare services, cash assistance, food stamps, or medical assistance ". . . except in accordance with a court order or to an authorized officer or employee of the State, or the United States, having a right thereto in his official capacity, and as necessary to discharge responsibilities to administer public assistance, medical assistance, or social service programs. . . ."

These points are discussed in greater detail in COMAR regulation 07.01.02, which establishes procedures for the handling of personally identifiable information identified in Article 88A, Section 6(a). The following highlights the principal provisions of this regulation:

- A. Materials sent by DHR to applicants and recipients must be directly related to department programs and cannot contain extraneous information.
- B. Records are only to be used by those employees who have a legitimate right to such information.
- C. Information can only be used for purposes directly related to the administration of the department.
- D. If DHR is convinced that an inquirer (e.g. an individual legislator) is seeking information on behalf of a client, such information may be released; however, the information must be ". . . strictly relevant to the particular service request."
- E. Individuals should be told if DHR intends to secure information pertaining to them for other agencies.
- F. Information may be disclosed to others with the written consent of the client.
- G. Materials given by the individual to DHR in order to determine eligibility may be returned to the individual.
- H. Personally identifiable information will not be released without the consent of the individual except in accordance with proper legislative or court order or to certain specified public officials.
- I. Information which identifies the name and address of an individual will not be released to a legislative body.
- J. Appropriate security measures shall be in force to protect departmental files and records; written rules to this effect shall exist in each local department.

As in the case of the various federal regulations mentioned earlier, COMAR 07.01.02 is quite restrictive in terms of information disseminated by DHR to others. The clear intent of the regulation is to limit the flow of

personal data to the greatest extent possible.

Less clear, however, are the sections of the regulation which relate directly to the individual who is the subject of the file. The regulation stipulates that DHR may return certain data (e.g. birth certificate and pay stubs) to the individual that he may have provided to the department. However, the regulation would not compel the department to release such information.

While it may be assumed that materials provided by the individual would be routinely returned to him, the more significant issue still remains regarding the access rights of the person in interest. The regulation does not indicate whether the person in interest may examine files pertaining to him. Nor can one look to the regulation to see if materials may be copied or challenged.

II. Social Services Administration

The Social Services Administration (SSA) is responsible for coordinating and directing all social service activities in the state. SSA indicated that it supervised nine separate programs containing personally identifiable data; all programs are administered locally by individual Departments of Social Services in the various counties. The following is a list of those programs operated by SSA and the number of active records for each program, as of November 1980:

	<u>NAME OF PROGRAM</u>	<u>NUMBER OF RECORDS</u>
1.	<u>Adoption</u>	
	Child	1,037
	Adoptive Home	622
2.	<u>Day Care</u>	
	Day Care Licensed Home	5,078
3.	<u>Protective Services</u>	
	Family	5,652
4.	<u>Homemaker Service</u>	
	Family	690
	Adult	3,037

5.	<u>Services to Families With Children</u>	
	Family	10,712
6.	<u>Foster Care</u>	
	Children	9,147
	Foster Homes	4,372
7.	<u>Single Parent Service</u>	
	Family	1,323
8.	<u>Services to Non Aged Adults</u> <u>(including Protective Services)</u>	
	Adults	2,570
9.	<u>Community Home Care (including</u> <u>Protective Services)</u>	
	Adults	<u>3,594</u>
	TOTAL	47,834

The Commission was informed by the Social Services Administration that standardized record-keeping practices exist for all of its program-related, personally identifiable data. Therefore, a unified presentation will be made of collection, disclosure and security practices of the Social Services Administration.

A. Collection and Maintenance of Information

The nature of programs operated and services rendered by the Social Services Administration virtually necessitates the collection of a vast amount of sensitive personal information. SSA activities range from providing emergency shelters for children who have been neglected, abused or exploited, to counseling, support and referral for single parents, to health services, housekeeping, and transportation for senior citizens.

As an example of the type of data collected by SSA, one can consider the Foster Care program. The Foster Care effort includes such varied activities as placing a child in a foster family home or a group care facility, providing necessary services to that child while he is awaiting

placement, counseling the child, natural parents, and foster parents, and so forth. Information may be collected regarding the child (name; date of birth; age; sex; race; personal habits; toilet habits; sexual development; handicaps; accidents; diseases; illnesses; hospitalizations; general disposition; educational experience; religious experience; etc.), the natural parents (names; addresses; telephone numbers; marital status; occupations; illnesses; handicaps; educational backgrounds; temperaments and social adjustments in the home, school and at work; problems, such as promiscuity, alcoholism, and delinquency; etc.), and the foster parents (names; addresses, birthdates; races; religious affiliations; occupations; family composition; weekly salaries; description of housing facilities; medical reports, etc.).

In examining the forms used by SSA to collect personal information, it appears that the most sensitive data comes not from the individual who is the subject of the record but from others, both employees of the administration and third parties. For example, workers in the Adult Services Program are asked to evaluate the ability of clients to manage their household, the physical and mental limitations of clients, and the potential for their self-support. Physicians supply SSA with a medical and emotional assessment of couples seeking to adopt a child. In order to determine whether certain categories of individuals, such as the mentally retarded, can be placed in community residential settings, hospital staff evaluate individuals' psychiatric level of functioning (e.g. hostility, phobias, suicidal tendencies), medical condition, social behavior(e.g. sexual activity, tendency to steal or hoard), and other related points.

SSA indicated to the Commission that all program case records are maintained in manual files at the respective local social services department office. In addition to the manual system, local departments have

computerized some types of data. SSA noted, for example, that computerized records of the Foster Care Review Board contain a list of all foster children by name, case number, worker's number, age, sex and race. The Commission was also informed that in the future, federal regulations will require over twenty data items for each foster child. Finally, some local departments have computerized their financial operations to improve the efficiency of the issuance of checks to such groups as foster parents. SSA indicated that subjective data is not computerized at the present time.

B. Access Rights of the Person in Interest

As noted previously, departmental regulation COMAR 07.01.02 provides little clarification regarding the access rights of clients to data pertaining to them. The regulation is confined almost exclusively to setting policies for disclosure of records to third parties. It is also not possible to look to the Public Information Act for any help in this regard. As a general rule, the Public Information Act does not grant the person in interest any additional rights of access to public records beyond those rights available to any requester. The few exceptions to this rule (e.g. law enforcement investigatory records, personnel records, etc.) are clearly delineated; social service records do not fall in that category. Be that as it may, the Social Services Administration asserted that the access rights of the person in interest are governed by the previously cited COMAR regulation and by the Public Information Act.

The Social Services Administration permits the person in interest to examine most, though not all, materials pertaining to him. The one exception involves a client assessment that has been submitted to SSA by a

professional not employed by the Department of Human Resources. Such an assessment may only be examined by the client if permission is received from the professional. The Commission was informed that the person in interest is informed of his right of access to other materials only upon inquiry. Data which is available for inspection by the person in interest may also be copied and contested by him.

C. Disclosure of Records to Third Parties

Since SSA records are governed by COMAR Regulation 07.01.02, dissemination of materials is somewhat limited. Nonetheless, SSA indicated that records can be disclosed without the consent of the individual if the recipient of the records is an official of the local department of social service, a representative of either SSA or the Income Maintenance Administration or a federal employee directly charged with administrative supervision, review or audit of the specific program. One should note that these exceptions are authorized by the COMAR Regulation. SSA informed the Commission that information is ordinarily disclosed in a summary written fashion; however, if a subpoena is received, the entire record could be disseminated. The Commission was told that the accuracy of the information is not ordinarily verified with the subject of the record before disclosure occurs.

D. Security of Personally Identifiable Information

In response to a Commission question requesting an explanation of security measures that have been enacted by SSA to protect the confidentiality of personal records, SSA responded in the following fashion: "Workers are required to keep records in file drawers. These files, however, are not locked and therefore records cannot be said to be secure." With regard to the security of computerized personal records, SSA stated: "Current

security procedures in use to protect computerized records would only relate to the dissemination of the access code to the computer program. There is no state regulation on this area." SSA indicated that no security guarantees are required from the recipients of personal information that is disclosed, and that no security risk analysis has been conducted.

II. Income Maintenance Administration

The Income Maintenance Administration (IMA) supervises the major financial and service programs of the Department that are designed to assist low income households. IMA divided its records into two main categories: Financial and Service Program records and Office of Support Enforcement records.

1. Financial and Service Program Records

IMA consists of seven major support programs; the following is a listing of these programs with an approximate number of records for each program:

<u>NAME OF PROGRAM</u>	<u>NUMBER OF RECORDS</u>
1. <u>Aid to Families With Dependent Children</u>	233,000
2. <u>Emergency Assistance to Families with Children</u>	12,000
3. <u>General Public Assistance</u>	88,000
4. <u>General Public Assistance to Employables</u>	40,000
5. <u>Medical Assistance</u>	202,000
6. <u>Food Stamps</u>	135,000
7. <u>Public Assistance to Adults</u>	<u>1,000</u>
TOTAL	711,000

A. Collection and Maintenance of Information

The position was expressed earlier in this report that the most detailed, sensitive data collected by the Social Services Administration appears to come not from clients themselves but from others. This does not appear to be the case with respect to the Income Maintenance Administration. An examination of IMA forms used to collect information suggests that the principal data comes from applicants and recipients, while information from third parties is used primarily for purposes of verification.

While there are significant variations regarding the eligibility requirements for the seven programs of IMA, the type of information collected from applicants tends to be reasonably standard. For the most part, applications consist of a series of detailed questions pertaining to the individual's financial status. The following are representative of the data elements appearing on the Application for Public Assistance: name; address; race; date of birth; marital status; social security number; Veteran's Administration number; railroad retirement number; military serial number; details regarding income derived from social security pensions, supplemental security income, other public assistance, Workmen's Compensation, unemployment insurance, the sale of property, payment from boarders, and so forth; value of checking account, savings account, stocks, bonds, property, insurance policies, etc; and a detailed explanation of the financial needs of the applicant.

IMA's Division of Quality Control is responsible for verifying data supplied by applicants. Every applicant signs a release of information form which grants the Division of Quality Control authorization to obtain "any facts" that may relate to the eligibility of individuals for assistance:

"I, _____, hereby authorize the State of Maryland Quality Control Reviewers to verify my income, checking accounts, savings accounts, shelter expenses, medical expenses, insurance disability or retirement benefits (Social Security, Supplemental Security Income, Veterans Administration, etc.), medical history and any other facts about my eligibility for public assistance.

I also authorize any person, partnership, corporation, association or governmental agency possessing information on such matters to release such information to the Reviewers.

I also authorize schools and colleges to give full information regarding children in attendance and information on federal or other scholarships or grants given to me or my children."

Although the Division of Quality Control is granted the authority to obtain data from third parties, not all third parties are given a copy of the applicant's release of information form before they, in turn, provide data to the Division. At least three variations in practices have been identified by the Commission. First of all, certain third parties, such as insurance companies, are provided with a signed authorization from the applicant. In contrast, other groups, such as landlords, usually provide personally identifiable data to the Division of Quality Control without being shown an authorization form. Finally, the Baltimore Gas and Electric Company and the Division have a designated liaison; inquiries from the Division, which channeled through this liaison are answered without the company being furnished the signed statement from the applicant.

IMA indicated to the Commission that there are certain specific circumstances in which third parties would be contacted without the individual's knowledge or permission. This would be confined, however, to cases where the IMA suspected an individual of welfare fraud. In such a situation, the individual in question would not be informed of the fact that IMA was conducting an investigation. An investigative report would include basic directory information regarding the individual (name, address, home and business telephone number, social security number, date of birth, sex and race); a narrative

discussion of the investigation itself, including the details of the incident, a list of exhibits, actions taken, and any statements or confessions received; names of witnesses; and an indication as to whether the matter has been referred to the State's Attorney or to another law enforcement unit.

All IMA public assistance records are maintained in manual form in the various local offices. These records are also computerized in Carroll, Cecil, Harford, Howard and Frederick counties under the Automated Income Maintenance System (AIMS). The eventual intent of AIMS is to computerize IMA records in all of the counties of the state. In addition to those counties which are already full participants in the AIMS network, three other jurisdictions have computerized some of their IMA data. Baltimore City has automated a limited amount of public assistance and Food Stamp data, while Anne Arundel and Prince George's counties have done the same for some of the Food Stamp data. In all of these cases, the principal purpose is to increase the efficiency of check issuance. Computerized data can be accessed by social security number, or the name and birthdate of the recipient.

B. Access Rights of the Person in Interest

IMA grants the person in interest a limited degree of access to his files. In response to the Commission's question regarding the access rights of the individual, IMA stated the following general policy: " An individual may have access to data in his record dealing with a specific issue or aspect of his case, but is not given the entire case folder for his perusal. Upon a client's request to a local agency, portions of the case record applicable to his request will be photocopied and given to him." IMA has expanded on this position regarding the records of the Aid to Families with Dependent Children

Program: "Client may have access to his record when there is good reason, as for example, when preparing for fair hearing or agency conference, when discussing information contained on a previous 490, etc. There is no established procedure which permits access on demand. At no time will any part of the agency's record be returned to client indefinitely."

It would appear that there are three principal provisions governing IMA access to the person in interest. First of all, the client must demonstrate a legitimate purpose behind the request for access. If IMA had recommended, for example, that benefits to the client be reduced or terminated, specified records would be released to the client upon his request. If however, the client was merely curious, such records would not be released. Second, the entire file would not be given to the client, but only those portions that related specifically to his request. Third, there are certain types of records that simply will not be released to the client. IMA indicated to the Commission that medical data concerning a client would not be released without the consent of the physician.

C. Disclosure of Records to Third Parties

As in the case of SSA records, IMA records are governed by COMAR Regulation 07.01.02, which places considerable limitations on the dissemination of information to third parties. If information is disclosed to those groups specified in the regulation, the client is ordinarily not informed of the disclosure. Release of data to other groups would necessitate the consent of the individual. IMA indicated that the accuracy of the information contained in its files is ordinarily checked at the time that it is collected. No verification of data occurs at the time of dissemination to others.

D. Security of Personally Identifiable Information

IMA indicated that since program information is maintained on the local level, it would be the responsibility of local officials to develop adequate security measures. The Income Maintenance Administration asserted that a survey which it conducted regarding security practices in the local departments revealed the following facts:

- "1. All local agencies have their case record files in areas where clerks or Income Maintenance workers are located. This means that at not time does the public have access to these files during working hours.
2. All agencies are carefully locked at closing time and unlocked only at the beginning of the next working day.
3. All records are kept in metal cabinets, some of which are located by the worker's desk, and some in "record rooms."
4. In general, all records are returned to the files at night with the exception of those that the worker has in progress.
5. The only staff having access to these records are those engaged in administration of the public assistance programs."

The Commission was also told that the Data Processing section conducts an annual survey of security of all computer terminals. The Data Processing section completed responses for the following four questions:

- "1. Have you identified your agency's critical data processing files?
2. Have your arranged for the storing of back-up copies of critical data processing files at a location which is off-site from the data center?
3. Are copies of the critical data processing files sent to the off-site location routinely by the data center?
4. Do you have an agreed upon schedule for the data center to send copies of critical data processing files to the off-site location?"

The individual who is in charge at a particular computer terminal location provides responses to the following questions:

- "1. Do you control access to the computer terminals area?
2. Are visitors always escorted?
3. Is access of custodial personnel controlled?
4. Do security guards make routine rounds?
5. Are employees required to display official identification?
6. Are supervisors advised of possible disgruntled employees?
7. Are dismissed employees restricted from access to computer terminals area?"

Each operator in the AIMS system is assigned his own access code. That code is assigned on a permanent basis to the operator; should he leave the agency, his successor receives a different code.

2. Office of Support Enforcement Records

The Office of Support Enforcement (OSE) is charged by statute with a variety of responsibilities: 1) acceptance of assignments of rights, titles and interests in support from AFDC recipients; 2) location of those parents who have deserted their children; 3) maintenance of a central registry containing records pertinent to these parents; 4) determination of the ability of absent parents to contribute toward child support; 5) prosecution of such parents to establish their legal obligation for child support; 6) collection of support payments; and 7) utilization of legal measures to enforce the support orders of the court. OSE maintains records at both the state and local levels. Approximately 122,000 records exist on the state level, while approximately 240,000 records can be

found on the local level.

A. Collection and Maintenance of Information

Various items of personally identifiable data can be found in the files of the Office of Support Enforcement. A considerable amount of information, for example, is collected about the absent parent: name, last known address, social security number, driver's license number, date of birth, place of birth, sex, race, physical characteristics, marital status, employment history, names and addresses of organizations joined, names and addresses of close relatives or friends, account numbers for any checking and savings accounts and policy number for insurance policies, details regarding military service, arrest record, description of real estate property or motor vehicle owned by the absent parent, and the name and address of the parent's physician. In cases involving assignment of support rights, OSE files contain the name, address, telephone number, and social security number of the client, the names and dates of birth of the children, and the name, date of birth, telephone number, social security number, last known address and last known place of employment of the absent parent.

As noted previously, one of the responsibilities of the Office of Support Enforcement is the maintenance of a central registry containing data on absent parents. Data for the registry may be obtained from a variety of agencies, in conformity with Article 88A, Section 5A:

"To effectuate the purposes of this section, the State Administration may request and shall receive from departments, boards, bureaus, commissions, and other agencies of the State or any of its political subdivisions and the same are authorized to provide, the information, assistance and data that will enable the State Administration or the State's attorney of the jurisdiction involved to locate deserting or absent parents and to enforce their liability for the support of their children. Any records established pursuant to this section shall be available only to authorized representatives of the State and local departments and other persons having a right to the records in their official capacities."

The Commission was told that whenever possible, data obtained from other sources is verified at the local level. Unsolicited information that impacts upon the program is verified with the client. The absent parent/obligor is not informed of data collected concerning him/her.

The record system is maintained in both a manual and computerized fashion. All State records are computerized, as are fiscal records in some local units. Case files at the local level are maintained in a manual system and are accessed by name or case number. Computerized information is also listed by name and case number.

B. Access Rights of the Person in Interest

OSE indicated that access to files is provided to the person in interest when he appears in person and appropriately identifies himself. Records maintained by OSE are of interest to two parties. First, the client, is allowed unrestricted access to the file. The second, the absent parent, is permitted access to fiscal records. The absent parent must go to the courts in order to obtain access to the other documents in the file. The client is allowed to contest the accuracy of the file; however, the majority of such information is submitted directly by the client.

C. Disclosure of Records to Third Parties

Information is disclosed by OSE to the courts, both federal and state. The Office of Support Enforcement indicated that it operates under restrictions imposed by the Internal Revenue Service and those imposed by COMAR 07.01.02. The person in interest is not informed of disclosures and the information is not verified prior to dissemination.

D. Security of Personally Identifiable Information

OSE indicated that each office had been issued materials regarding the confidentiality of personally identifiable records. The regional supervisor conducts periodic reviews, examining local offices' standard operating procedures in relation to confidentiality.

The Office of Support Enforcement indicated that it limits the use of access codes, keys and terminal units to a minimal number of personnel. Procedures to protect computerized data are supervised by the unit head or his designee. The Office stated that a security risk analysis was conducted from August through October, 1976. The Commission was informed that the results of the analysis indicated that maximum security was required to protect OSE records. The Office of Support Enforcement also requires security guarantees from any agency prior to entering into information-sharing agreements.

IV. Employment Security Administration

The Employment Security Administration (ESA) has as its principal goals the referral and job placement of employable individuals and the providing of monetary assistance to those who are involuntarily unemployed. ESA is divided into three main program elements: Unemployment Insurance Program, the Employment Service Program and the Work Incentive Program. In contrast to the situation found in the Social Services Administration and the Income Maintenance Administration, ESA programs are supervised and administered centrally. The following are the approximate number of both active and inactive records of the three ESA programs:

<u>NAME OF PROGRAM</u>	<u>NUMBER OF RECORDS</u>
<u>Unemployment Insurance</u>	
Claimant	454,000
Employer	76,000

<u>NAME OF PROGRAM</u>	<u>NUMBER OF RECORDS</u>
<u>Employment Service</u>	
Applicant	284,000
Employer	40,000
<u>Work Incentive Program</u>	<u>31,000</u>
TOTAL	885,000

The overall purpose of the Unemployment program is to provide adequate benefits to all eligible, involuntarily unemployed persons. The Employment Service seeks to place in appropriate jobs the maximum number of person seeking employment. The Work Incentive Program provides work training and job placement services for all AFDC recipients who are considered to be employable. Despite the varied character of these programs, the Employment Security Administration indicated that it adheres to the same record-keeping practices for all of its program-related, personally identifiable data; therefore, the following discussion pertains to the records of ESA taken as a whole.

A. Collection and Maintenance of Information

Various items of personally identifiable information are submitted in conjunction with a claim for unemployment insurance. The basic registration form contains the following types of data: name of claimant, address, social security number, date of birth, name and address of last employer; salary, and reason for separation. The Eligibility Review form of the claimant would indicate his employment history, proposed work search, nature of disability, if pertinent, and amount of retirement, disability or pension pay received, if pertinent. If the claimant cannot work because of illness or pregnancy, a physician's statement must be submitted. Data provided by the claimant is verified with the employer, who may challenge the validity

of the claimant's information. Data is also obtained from the Veteran's Administration in connection with a claim for unemployment compensation for ex-servicemen under federal law.

The following data is standard for Employment Service applicants: name, address, telephone number, sex, date of birth, social security number, citizenship status, details pertinent to military service, employment background, amount of family income, educational background, and an addition as to whether welfare benefits or food stamps are received. If the applicant is receiving counseling from the Division of Vocational Rehabilitation, the counselor would provide information regarding the nature of the applicant's physical or psychiatric disability. If an applicant indicates to an Employment Service counselor that he has a medical or psychiatric problem which would interfere with his performance with certain jobs, details would be obtained from the applicant's physician.

A Work Incentive Program registrant must indicate her name, address, social security number, date of birth, sex, educational and employment background, various details regarding her children, and any physical impairments or serious illnesses. Any medical problems which would have an adverse impact on the registrant's suitability for employment would require documentation by a physician. Program personnel also file an Employability and Certification record, indicating the registrant's employment needs, training services needs, and social services needs, and assessing the registrant's employability and personal situation.

ESA information collection practices are affected to a large extent by the federal government, since the federal financial participation in ESA programs is considerable. For example, the Employment Service Program is completely federally funded, while 90 per cent of the Work Incentive Program

operating costs come from the federal government. ESA indicated to the Commission that the U.S. Department of Labor establishes minimum collection requirements. ESA may collect additional information but in most cases chooses not to do so, since the plate for ESA standardized forms is provided by the Department of Labor.

ESA is in the process of computerizing the bulk of their operations. The Employment Service Program and the Work Incentive Program have automated the applicant data records and job referral information. The Commission was told that the following Unemployment Insurance Program records have been automated: benefit claim records, Eligibility Review workload scheduling, employer status determination, employer experience rating information, employee separation information, claimant overpayment and repayment agreements, wage records, wage certification, and benefit history records. Computerized data can be retrieved by social security number (inactive records of Unemployment Insurance and Employment Service), name (Employment Service, Work Incentive and Unemployment Insurance), departmental code (employer records), or by Dictionary or Occupational Title Code (active records of Employment Service).

B. Access Rights of the Person in Interest

The person in interest is permitted access to ESA data pertaining to him, with one exception. Information submitted by a physician or psychiatrist would not be released to the person in interest without the consent of the physician or psychiatrist. All other information, including that which contains assessments about a client, would be available for inspection by the subject of the record. For example, if an ESA investigation of a particular claimant produced evidence of fraudulent activity, the claimant would be permitted to examine records in order to defend himself.

C. Disclosure of Records to Third Parties

The Commission was informed that disclosure policies of ESA are governed by strict federal and state policies. ESA indicated to the Commission that personal information is not released to other government agencies without the individual's consent unless the information is critical and essential to the operations of the agencies. State regulations governing Employment Service applicant information, for example, can only be released in cases involving job referral or by authorization of the Executive Director.⁹ Similarly, any information obtained by the Unemployment Insurance program from employers cannot be revealed in identifiable form, except that such records will be made available to a claimant at a hearing.¹⁰

D. Security of Personally Identifiable Information

The Commission was informed by the Department's Division of Data Processing that data available through the terminal network is protected by a password security procedure. In order to access a data file, the terminal operator must "sign-on" using his assigned password. The Division also employs the ACF-2 security system which would permit sharing of data only on an explicit action by the data owner or security officer. Statements submitted by physicians or psychiatrists are placed in a locked file; should any review or audit of counseling records occur, these statements are removed prior to the review and are maintained in the exclusive possession of the counselor.

V. Community Program Administration

The Community Programs Administration is responsible for administering employment and training services, providing technical assistance to community based organizations, delivering energy assistance through fuel and weatherization

grants, assuring departmental compliance with equal opportunity requirements and providing technical support to various boards and programs of the department. The Community Programs Administration identified three record systems containing personally identifiable data: 1) Training and Employment Office Records; 2) Weatherization Program Records; and 3) Maryland Energy Assistance Program Records.

1. Training and Employment Office Records

The Training and Employment Office is responsible for administering the Comprehensive Employment and Training Act (CETA) program for the State. This Act provides money to fund employment and training programs directed at unemployed, underemployed, and economically disadvantaged sections of the workforce. The Training and Employment Office maintains approximately 15,000 records in its central records unit.

A. Collection and Maintenance of Information

Various items of personally identifiable data are collected from CETA program clients: name, address, home telephone number, race, sex, date of birth, educational status, public assistance status, estimated annual family income, economic status, family size and status, handicapped status, citizenship status, offender status, and work history. The Training and Employment Office also maintains follow-up data on program participants; details may be gathered either regarding a participant's placement in a job, or indicating reasons for termination in the program.

The Training and Employment Office asserted that information collected from applicants is regulated by the Privacy Act of 1974. All information is provided by the individual client who signs the completed CETA Client Intake form, asserting that the data provided is complete and accurate.

If unsolicited information concerning a client is received, each case is handled on an individual basis. An attempt is made to verify the information through an outside source or with the client if it may affect CETA eligibility.

All records are maintained in manual form and can be accessed by name.

B. Access Rights of the Person in Interest

The Training and Employment Office asserted that examination and copying of data by the person in interest is available through the Privacy Officer. Access requires the submission of appropriate photo identification. Requests received through the mail must contain the notarized signature of the person in interest. The Commission was told that an established complaints procedure is in place to permit challenges to the accuracy of data by the person in interest.

C. Disclosure of Records to Third Parties

The Commission was told that program-related, personally identifiable data is available only to officers and employees of the Training and Employment Service, the Department of Labor and CETA subgrantees. Clients are made aware of these disclosures when they sign the CETA Client Intake form. Except for these disclosures, data is released only in a statistical form.

D. Security of Personally Identifiable Information

Records are maintained in a central records unit and are not removed from this location. The Training and Employment Office indicated that it adheres to the security provisions of the Privacy Act.

2. Weatherization Program Records

The Weatherization Program provides energy assistance through weatherization grants to needy individuals.

A. Collection and Maintenance of Information

Relatively little in the way of personally identifiable data is collected via this program. The applicant supplies his name and address, and indicates the number of members of his household; all other data pertains to the structure to be weatherized.

All records are maintained in a manual file.

B. Access Rights of the Person in Interest

Weatherization Program Officials stated that individuals have access to information pertaining to them and have the right to copy their file. There is no established procedure as the right to review is granted upon request. The individual is allowed to contest the accuracy of any information. Access rights are not publicized formally to the individual.

C. Disclosure of Records to Third Parties

The Commission was told that the Weatherization Program operates under the restrictions imposed by the Federal Privacy Act. Information of a personal nature is not disclosed to other state agencies or organizations outside of state government. Information may be disclosed when a subpoena is received. Disclosable information can include name, number in household and income.

D. Security of Personally Identifiable Information

The response of Weatherization Program Officials indicated that no security measures are in effect to protect files containing personally identifiable information.

3. Maryland Energy Assistance Program Records

The Maryland Energy Assistance Program (MEAP) provides energy assistance to low-income residents through fuel grants. There are approximately 65,000 records maintained by MEAP.

A. Collection and Maintenance of Information

Among the personally identifiable data in MEAP files are client file folders containing the application, documentation to support income, home energy bills, the applicant attestation form, any complaint letters and memos of phone calls, and the denied applicant file, which includes denial letters, letters relating to requests to review denials and final decision letters.

Information is obtained from the individual himself at the time that he requests energy assistance. Verifying information is collected from other state and federal agencies. Generally, there is no attempt made to verify information collected from other sources. If MEAP receives unsolicited comments containing allegations of fraud, a formal investigation is undertaken. General unsolicited information is placed in the applicant's file.

Data is maintained in both a manual and computerized fashion. Computerized records can be accessed by applicant name, social security number, or document number. Subjective data is not computerized.

B. Access Rights of the Person in Interest

MEAP indicated that the person in interest has access to information upon request. The individual may call in or access his records on a walk-in basis. In addition, the person in interest may obtain a copy of his record and contest the accuracy of any information contained in the file. If he has been found ineligible for energy assistance, he is sent a letter to that effect and is requested to submit any additional information which may be needed to correct

or amend what is currently on file. There is no formal publication which informs the applicant of his access rights; rather, he is informed upon request.

C. Disclosure of Records to Third Parties

MEAP stated that the dissemination of personally identifiable information is prohibited by federal regulation. In accordance with federal reporting requirements, personal information is only disclosed to the federal government in an aggregate form. Because only aggregate data is disclosed, the person in interest is not informed, nor are disclosure logs maintained.

D. Security of Personally Identifiable Information

Access to files maintained by MEAP is limited to designated individuals. Locked file cabinets are used at local administering agencies to store non-computerized personal records. Security procedures developed to protect computerized records include the use of passwords and the training of designated personnel to use the terminal. No security guarantees are received when information is disseminated to the federal government, since it is in an aggregate form.

NOTES

1. 7 CFR 272.1(c).
2. 45 CFR 205.50 (c).
3. 45 CFR 205.50 (4)(ii).
4. 45 CFR 205.50 (4).
5. 45 CFR 205.50 (d)(iii).
6. 7 CFR 272.1 (c)(2).
7. 45 CFR 205.10.
8. 45 CFR 205.50 (3).
9. COMAR, 07.05.02.04 G.
10. Md. Ann. Code., Art. 95A, Sec. 12g.

DEPARTMENT OF LICENSING AND REGULATION

The Department of Licensing and Regulation is responsible for the regulation of business activities of various kinds throughout the State. The Department identified seven divisions as containing program-related personally identifiable information: 1) Division of Savings and Loan Associations; 2) Division of Labor and Industry; 3) Maryland Racing Commission; 4) Insurance Division; 5) Division of Occupational and Professional Licensing; 6) Maryland State Athletic Commission; and 7) State Bank Commissioner.

I. Division of Savings and Loan Associations

The Division of Savings and Loan Associations is responsible for the supervision and regulation of State-chartered savings and loan associations. The Division maintains files on each savings and loan association as shown below.

1. Savings and Loan Associations File

The files of the Division on each savings and loan association contains information pertinent to the 122 savings and loan associations that are supervised by the Division. Of this total, 13 are insured by the Federal Savings and Loan Insurance Corporation while 109 are insured by the Maryland Savings-Share Insurance Corporation.

A. Collection and Maintenance of Information

Data appearing in these files is oriented primarily to the savings and loan associations rather than the individuals who are employees or depositors of the associations. Files consist of seven distinct types

of information: 1) Monthly operations reports; 2) Annual reports of conditions; 3) Reports of examinations of associations; 4) Annual reports of stockholders; 5) Complaint files; 6) Division orders; and 7) Correspondence files. Of the above list, it appears that the annual reports of conditions, the reports of examinations of associations, and the annual reports of stockholders are the only materials containing data relative to individuals.

The Division indicated that each association at the end of the fiscal or accounting year submits an annual report of condition. This report is a description of the financial condition of the association, containing such information as the year end assets, liabilities, income and expenses. Reports also include information concerning the amount of savings deposits and level of indebtedness to the association by the officers and directors of the association. More comprehensive association data is collected for the report of examination. This examination is a general investigation to ensure both the safe operation of the association and the protection of depositors' funds. An important dimension of this examination is an assessment regarding any conflicts of interest on the part of officers and directors of the association. In addition to consideration of deposits and loans made to officers and directors, the Division examines loans made to any member of the immediate family of officers and directors. The annual report of stockholders is a listing of all stockholders in a stock-chartered association. The report indicates the name, address and number of shares owned by each stockholders.

The Division indicated that all information is collected from the associations records. If necessary, the officers or directors may also be contacted. Records are maintained manually and are filed

by association name.

B. Access Rights of the Person in Interest

Individuals are allowed to access the files maintained on their association. They also receive copies of all materials with the exception of the examination files.

C. Disclosure of Records to Third Parties

Certain records of the Division of Savings and Loan Associations are confidential by statute. Financial Institutions Article 9-324 (c) assigns a confidential status to the annual report of stockholders. The monthly operations report and the report of examination are confidential according to Article 9-504 (a), Subsection (c), however, grants certain discretionary authority to the Division regarding the release of information:

"If the Division Director considers it to be in the public interest, with the approval of the Board of Commissioners, the results of an examination of a report by a savings and loan association may be published in a newspaper of general circulation in any political subdivision where the association is located or doing business."

Subsection (d) of Article 9-504 permits the proper sharing of information between the Division and other state or federal agencies responsible for regulating or insuring savings and loan associations. The Division indicated that records may be disclosed to other State agencies if data is considered to be pertinent to an investigation. The only recipients of confidential data outside of State government are the Federal Home Loan Bank, which has dual control with the Division of Savings and Loan Associations over State-chartered, federally-insured

institutions, and the Maryland Savings Share Insurance Corporation, which insures the savings accounts of those State-chartered associations that are not federally funded.

D. Security of Personally Identifiable Information

Division records are kept in locked file cabinets under the direct supervision of specified Division employees.

II. Division of Labor and Industry

The Division of Labor and Industry is responsible for the enforcement of laws and regulations pertaining to workers and employers. The Division also mediates and arbitrates labor disputes and holds consent collection bargaining elections. For the purposes of this report, the Division can be considered to have the following types of program-related personally identifiable record systems: 1) Apprenticeship and Training Council Unit Files; 2) Fee-Charging Employment Agency Files; 3) Employment Standards Inspection and Investigation Files; 4) Prevailing Wage Investigations File; 5) Railroad Safety Files; 6) Safety Inspection Files; and 7) Maryland Occupational Safety and Health Files.

1. Apprenticeship and Training Council Unit Files

The Apprenticeship and Training Council Unit maintains records to document apprenticeship and on-the-job training participation, to assure appropriate female and minority utilization, and to document successful completion of programs. The Unit maintains 601 Active Registered Apprenticeship Programs, approximately 700 On-The-Job Training Programs, approximately 11,000 Active and Non-Active Apprenticeship Program File Cards, and approximately 23,000 Active and Non-Active Registered Apprentices Cards.

A. Collection and Maintenance of Information

The Commission was informed that program files generally consist of information such as the name of the program, the types of products and crafts, wage rates paid, program registration information and apprentice agreements. Apprentice files contain the following types of personal data: name, date of birth, social security number, occupational title, educational level, sex, race, veteran status, and program information. Data is supplied by field personnel, employers and apprentices. Individuals are aware of the type of data collected about them.

Apprenticeship and Training Council Unit records are kept manually and concurrently on a computer provided by the Department of Education.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of data pertaining to him.

C. Disclosure of Records to Third Parties

Apprenticeship and Training Council Unit records are disclosable under the Public Information Act. The Unit honors written requests and personal visits, and discloses data over the telephone if the caller is known. In addition to data requested by the public, information is disclosed to the Federal Bureau of Apprenticeship and Training, the Veteran's Administration, and the State Department of Education. The Commission was informed that these entities assist the Council staff in training apprentices. The Unit maintains disclosure logs for any release of data over the telephone.

D. Security of Personally Identifiable Information

The Unit requires that any requester who generally does not interact with the Unit must first submit a written statement detailing the use to which the information will be put. Access to computer terminals is limited to two employees of the Unit.

2. Fee-Charging Employment Agency Unit Files

The Fee-Charging Employment Agency Unit licenses and regulates the activities of employment agencies and employment counselors. The Unit maintains 700 employment agency licensing records and 5,000 employment counselor licensing records.

A. Collection and Maintenance of Information

The Fee-Charging Employment Agency Unit collects the following types of information regarding employment agencies: name of agency, agency address, agency telephone number, name of manager, home address of manager, names and home addresses of all owners or partners, year of prior license, list of other business interests, details pertinent to any arrests or convictions of any partners, and workmen's compensation insurance status. Employment counselors submit the following information: name, address, social security number, date of birth, name and address of agency where employed, and listing of all prior employers.

In the event that complaints are received from clients of employment agencies or counselors, or from others, complainants are sent a form which requests the following data: name of complainant, address, social security number, name of employment agency or counselor, company name, address, salary, time worked, and complaint investigation. Complaints

are investigated, with agencies and counselors being informed both of the nature of specific complaints and the results of the investigation.

Records are maintained manually and categorized by agency name or counselor name.

B. Access Rights of the Person in Interest

The person in interest may examine and copy data pertaining to him. It is unclear whether he has an opportunity to contest the accuracy of file contents.

C. Disclosure of Records to Third Parties

Unit files are disclosed in accordance with the Public Information Act.

D. Security of Personally Identifiable Information

Unit files are maintained in locked files in a locked room.

3. Employment Standards Inspection and Investigation Files

The Employment Standards Service is responsible for ensuring compliance with a variety of existing labor laws. For the purposes of analysis, records can be grouped into three major categories: 1) Wage and Hour and Wage Collection Records; 2) Employment of Minors Records; and 3) Lie Detection Files.

1. Wage and Hour, and Wage Collection Records

Administration of the Wage and Hour Law and the Wage Payment and Collection Law is handled by the Employment Standards Service. The function of the Wage and Hour Law is to ensure payment of the minimum wage

rate as required by State and Federal law and time-and-a-half for hours worked beyond 40 in one work week with certain exceptions. The Wage Payment and Collection Law established a mechanism whereby employees who worked but were not paid may seek relief. Though distinct systems, the records generated as a consequence of these laws can be examined together in this report, due to their inter-related nature. The Employment Standards Service generates approximately 3,000 Wage and Hour records and 2,200 Wage Collection records on an annual basis.

A. Collection and Maintenance of Information

Both Wage and Hour and Wage Collection records are investigative in character and are initiated in response to a claim or in the course of target industry investigations. In the case of an alleged violation of the Wage and Hour Law, a wage-hour investigator visits the site and both examines records and interviews individuals. If the Service determines that the allegations are correct, the employer has a specified period of time to make restitution. Investigators also visit employers who may be guilty of violations of the Wage Payment and Collection Law.

In the case of both record systems, the following data is collected: employer name, address, name of owner, type of business, nature of product, number of employees, gross dollar value of business, and job title and salary claimant. Data is gathered from the employer, claimant, individuals interviewed and may also reflect the observation of the investigator. Information is generally verified with the persons involved in the course of an investigation. Both record systems are manual, with information categorized by name of employer.

B. Access Rights of the Person in Interest

All of the data in these record systems can be examined by the person in interest after an appointment has been made. Requests for copies will also be honored. The Commission is uncertain as to whether or not any challenges can be made regarding the accuracy of data.

C. Disclosure of Records to Third Parties

Despite the fact that the information appearing in these two systems is virtually identical, it is curious to note that personally identifiable Wage and Hour data is confidential while Wage Collection materials are not. Article 100, Section 84 (2) states that any records or statements obtained by the Division of Labor and Industry as a consequence of a Wage and Hour investigation are considered to be confidential and may only be released to the Division Commissioner, an advisory committee responsible for holding hearings and developing regulations, and the courts.

Disclosure of Wage Collection data is governed by the Public Information Act. Since the information does not fall under any of the excepted provisions of the Act, data is therefore disclosable to the public. Information is not available to third parties during the actual investigation period. Members of the public may inspect finalized Wage Collection cases after making an appointment. Prior to obtaining copies of any disclosable investigators records, the Division requires the requester to submit a letter explaining the reason why copies are desired and the relationship of the requester to the case. This letter, along with a notation of the information provided, becomes a part of the file. Disclosure logs are not

maintained and the subject of the record is not informed of the disclosures of personally identifiable data. The Commission was also informed that division investigative or inspection records may be exchanged with other federal, state and local agencies (such as the Department of Labor, Employment Standard Section and the Baltimore City Wage Commission) that may be conducting investigations or inspections of the same company or individual.

D. Security of Personally Identifiable Information

The Commission was informed that all Division inspection and investigation records are kept in offices that generally are staffed during the day and locked during evenings. Any data which is classified as confidential is kept in locked cabinets, the location of which are not general knowledge.

2. Employment of Minor Records

The Employment of Minors Law specifies various conditions for the employment of those aged fourteen to seventeen, the types of employment and the hours of employment. The Employment Standards Service issues approximately 90,000 Employment of Minors work permits on an annual basis.

A. Collection and Maintenance of Information

Before a minor is permitted to work, he must present his employer with a validated and verified work permit issued by the Employment Standards Service. The following data is collected via these permits: name of minor, address, name of employer, address of employer and description of duties.

Employment of Minors records are maintained manually and are categorized by employee name and date of birth.

B. Access Rights of the Person in Interest

Policies regarding access to these records are identical to those pertaining to Wage and Hour, and Wage Collection records.

C. Disclosure of Records to Third Parties

Employment of Minors records are disclosable under the Public Information Act. Procedures followed mirror those described under the Wage Collection section of this report.

D. Security of Personally Identifiable Information

Security is the same as that found in the Wage Collection Section.

3. Lie Detector Files

The Employment Standards Service is charged with the responsibility of enforcing Article 100, Section 95 of the Annotated Code, which prohibits employers other than law enforcement agencies from requiring applicants or employees to submit to a lie detector or similar test as a condition of employment or continued employment. During 1980, the Service investigated 13 cases of alleged violations of this Statute.

A. Collection and Maintenance of Information

During the course of Wage and Hour and Wage Payment and Collection investigations, employment applications are examined to insure that the language of Article 100, Section 95 is contained in the application.

Where there is a violation, the employer is directed to alter the application and a return visit is made by the investigator to insure compliance.

Lie Detector complaint investigations are initiated in response to a written complaint. Once a complaint investigation begins, records are generated which list the nature of the allegation, the name and address of the employer, and the name of the investigator. Should it be determined that a violation has occurred, records contain the name of the person interviewed, the instructions given, and the signature of the employer.

Lie Detector Files are maintained manually and are indexed by employer name.

B. Access Rights of the Person in Interest

Access is the same as that pertaining to Wage and Hour and Wage Collection records.

C. Disclosure of Records to Third Parties

Lie Detector Files are disclosable under the Public Information Act. Procedures followed are identical to those discussed under the Wage Collection section of the report.

D. Security of Personally Identifiable Information

Security of Lie Detector files is identical to that found in the Wage Collection section.

4. Prevailing Wage Files

The Prevailing Wage Unit is responsible for administering those sections

of the Annotated Code that pertain to hours of labor, rates of pay, conditions of employment and so forth, for public works contracts and subcontracts. To facilitate this task, the Unit collects approximately 30,000 payroll records on an annual basis, a cumulative total of 736 investigative files, and approximately 17 restitution and fringe benefits plans per year.

A. Collection and Maintenance of Information

In order to determine compliance with assigned pay scales, the Unit requires contractors and subcontractors for public works to submit payroll records which list the names of all employees, social security numbers, wage rates, job classifications and hours worked. In addition to payroll data, the Prevailing Wage Unit generates investigative information in response to an employee complaint. Investigative records include data on the nature of the complaint, the name of the employee, investigative findings and violation letters. If the Unit determines that an employee was not paid properly by the contractor or subcontractor, the Unit requires that appropriate restitution or fringe benefits plans be submitted listing the name of the employee and the wages or benefits given the employee.

Prevailing Wage Unit records are maintained manually and categorized by name of contractor or subcontractor.

B. Access Rights of the Person in Interest

Access to the person in interest is identical to that described under the Wage and Hour, and Wage Collection section of this report.

C. Disclosure of Records to Third Parties

Prevailing Wage Unit records are confidential under Article 21,

Section 8-506(c): " the records required to be kept shall be open to inspection by any authorized representative of the contracting public body or the Commissioner at any reasonable time and as often as necessary." In accordance with Article 21, Section 8-507(a), any employee complaints investigated by the Prevailing Wage Unit must be treated as confidential and may not be disclosed without the consent of the employee in question.

D. Security of Personally Identifiable Information

Security of Prevailing Wage Unit records is handled in the same manner as Wage and Hour records.

5. Railroad Safety Files

The Division of Labor and Industry is in charge of that part of railroad safety which is handled by the State of Maryland. National responsibility for railroad safety rests with the Federal Railroad Administration as a consequence of the Federal Railroad Safety Act of 1970. Presently, states participate in this effort through local inspection of equipment and track. The Division of Labor and Industry maintains on an annual basis approximately 30 investigative reports which contain personally identifiable data.

A. Collection and Maintenance of Information

The Commission was informed that investigative reports are maintained in the event of an accident, incident, or complaint. Data contained in these reports includes the names of the railroad, the name of the person injured, information pertaining to the accident, and police reports.

Data is kept manually and indexed by name of railroad.

B. Access Rights of the Person in Interest

Access is available according to the procedures described under the Wage and Hour, and Wage Collection section of the report.

C. Disclosure of Records to Third Parties

Railroad safety files are disclosable under the Public Information Act. The Commission was informed that data contained in these files may also be released to the Federal Railroad Administration. Procedures mirror those considered for Wage Collection records.

D. Security of Personally Identifiable Information

Security is the same as that previously found under the Wage Collection section of this report.

6. Safety Inspection Files

The Division of Labor and Industry is responsible for the inspection of: 1) boilers and pressure vessels used in commercial establishments, public gathering areas and apartment buildings with at least six units; 2) all elevators, dumbwaiters, escalators and moving walks; and 3) amusement rides and attractions erected at carnivals, fairs, and amusement parks. The Division currently inspects, on an annual basis, 28,000 boilers and pressure vessels, 20,000 elevators, and 2,100 amusement rides. In addition, the Division maintains investigative reports of any accidents involving boilers and pressure vessels, elevators, and amusement rides. Annually, there are approximately 250 investigations of elevators, 8 investigations of amusement rides, and an unknown number of boilers and pressure vessels investigations.

A. Collection and Maintenance of Information

The following data is collected in inspections of boilers and pressure vessels: name of owner and user, street and plant location of boiler, type, pressure, year built and name of manufacturer, insurance company name, certificate number, use, condition of boiler and general compliance with statutory requirements. Elevator inspections records contain the following: name of owner, address, telephone number, name of manufacturer, speed, use, date of installation and registration number. Amusement rides records consist of the name of the owner, leasee or operator address, telephone number, type of ride, names of people interviewed, insurance information, and date of inspection.

Investigative records consist of data pertinent to any accident involving boilers and pressure vessels, elevators or amusement rides. The following data appears in investigative files: name of injured person, age, sex, nature of injury, names of witnesses and narrative of the investigation. In addition to inspections and investigative reports, the Division also maintains records from complaints detailing any hazards or violations of boilers or pressure vessels, elevators or amusement rides. Records contain the name and address of a complainant; upon request, however, his identity will not be revealed.

All data which is personally identifiable is maintained manually. Any data which has been computerized only contains statistical summary information. Boilers and pressure vessels inspection are categorized by boiler number. Elevator inspections are indexed by elevator number. Amusement rides inspections are filed by amusement ride number. All investigative files are listed by name of owner.

B. Access Rights of the Person in Interest

The person in interest is permitted access in accordance with that which was stated in the Wage and Hour, and Wage Collection part of this report.

C. Disclosure of Records to Third Parties

Safety Inspection Files are public records and disclosable under the Public Information Act.

D. Security of Personally Identifiable Information

Security is identical to that found in the Wages Collection section.

7. Maryland Occupational Safety and Health Files

The Maryland Occupational Safety and Health Act (MOSHA), Article 89, Sections 28-49A, is a consequence of the Williams-Steiger Occupational Safety and Health Act of 1970. The Williams-Steiger Act, whose basic purpose was to create a safe and healthful work place, contained a provision that permitted states to assume responsibility for development and enforcement of state occupational safety and health programs.

The Maryland Act has the following goals: 1) encouragement of employers and employees to make a conscious effort to reduce work-related safety and health hazards; 2) development of new programs and occupational safety and health standards to produce a hazard-free working environment; 3) development of an effective compliance and enforcement unit to investigate any violations of safety and health statutes; and 4) formation of training and research units.

Article 89, Section 33 requires employers to keep various types of records and to make these records available for inspection by the Commissioner of Labor and Industry or his representative. Accurate records must be maintained

nd periodic reports submitted for any work-related deaths, injuries or illnesses other than for injuries not requiring medical treatment. Records must also be developed for any employee exposed to potentially toxic materials or harmful agents.

Any documents filed with the Workmen's Compensation Commission or the State Accident Fund, pertaining to worker injury or illness must also be forwarded to the Division of Labor and Industry. Therefore, employers are required to submit the First Report of Injury form to the Division of Labor and Industry. The following data elements appear on the First Report of Injury form: name of employer, address, type of business, date of injury, place of injury, name of injured person, address, marital status, age, occupation, length of employment, wages, hours of work, type of injury, manner of injury, and names and addresses of physician and hospital.

The Assistant Commissioner for MOSH is in charge of providing overall direction and administration of the Maryland Act. The Division of Labor and Industry indicated that three branches of the MOSH program maintain records that are personally identifiable: 1) Compliance Unit; 2) Research and Statistics; and 3) Health Effects Unit.

1. Compliance Unit Files

The MOSH Compliance Unit is responsible for conducting inspections to ensure that employers are in conformity with the MOSH law, as well as regulations and standards adopted as a consequence of that Act. The Unit generates on an annual basis approximately 4,400 inspection records and 500 investigative records.

A. Collection and Maintenance of Information

The Compliance Unit maintains a prioritized scheduling system for occupational safety and health inspections with the highest priority being

placed on accident investigations, notifications of imminent danger situations, employee complaints, professional referrals, target industry inspections and follow ups. In these types of inspectional records, information pertaining to name, address, type of business, number of employees, inspection results, violations, as well as the names of union and management persons interviewed is contained. Investigational records contain the above information plus accident information, witness reports, and First Reports of Injury pertaining to the accident. Complaint Investigations will contain a copy of the complaint as filed by employees or their representatives. The Division of Labor and Industry thus generates inspection and investigation records.

According to COMAR 09.12.31.03 H), any employee or employee representative may file a written request for a workplace inspection. A copy of the complaint is given to the employer by the Division; if, however, an employee so requests, his name will not appear on the copy of the inspection form provided to the employer. If in the course of investigations or inspections, the Division determines that a violation has occurred, the employer is served a citation which must be posted near the place where the violation occurred. The citation must remain posted for at least three days; if the violation has not been addressed by that time, the citation must remain until the problem has been corrected.

All personally identifiable Compliance Unit records are maintained manually and are indexed by inspection number or investigation number.

B. Access Rights of the Person in Interest

Access to Compliance Unit records is the same as that previously discussed for Wage and Hour, and Wage Collection records.

C. Disclosure of Records to Third Parties

The Commission is uncertain as to whether Compliance Unit records are confidential or disclosable. The Commission did identify Article 89, Section 42(a), which states that any records collected as a consequence of MOSHA and which contain or might reveal a trade are considered to be confidential. Subsection (b) defines the term "trade secret" in the following manner: ". . .any confidential formula, pattern, device, or compilation of information which is used in the employer's business and which gives him an opportunity to obtain an advantage over competitors who do not know it or use it. It is known only to the employer and those employees to whom it is necessary to confide it."

The Division indicated that records may be released to the Occupational Safety and Health Administration, the Natural Institute for Occupational Safety and Health, the Department of Health and Mental Hygiene, the Medical Examiner's Office, or police departments, if these agencies are involved in similar activities.

D. Security of Personally Identifiable Information

Security is identical to that previously discussed for Wage and Hour records.

2. Research and Statistics Unit Files

The Commissioner of Labor and Industry is responsible for developing and maintaining a program of collection, analysis, utilization and dissemination of occupational injuries and illnesses statistics. There are two major components of this program: 1) the Annual Occupational Injuries and Illnesses Survey; and 2) the Supplementary Data System. The Annual Occupational Injuries and Illnesses Survey is designed to produce estimates as to the total number

of cases involving injuries and illnesses, as well as the number of cases involving lost and non-lost workdays, the total number of workdays lost, and the overall injury and illness rate for workers in the State. The Supplementary Data System program utilizes information concerning work related injuries and illnesses obtained from Employer First Reports of Injury and Illnesses filed with the State Workmen's Compensation Commission and the Division of Labor and Industry and provides basic data by such variables as nature of injury, part of the body affected, source of injury, and type of accident as well as demographic characteristics of the injured persons. Approximately 3,500 records are generated on an annual basis.

A. Collection and Maintenance of Information

Data developed by the Research and Statistics Unit is drawn from the First Report of Injury forms submitted by employers to the Workmen's Compensation Commission and the State Accident Fund.

Personally identifiable data is maintained in manual form and indexed by company name.

B. Access Rights of the Person in Interest

Access is identical to that previously discussed under the Wage and Hour, and Wage Collection section of this report.

C. Disclosure of Records to Third Parties

The Commission has requested further clarification regarding the confidential status of Research and Statistics records.

D. Security of Personally Identifiable Information

Security measures associated with these records are identical to that

discussed under the Wage and Hour, and Wage Collections section of this report.

3. Health Effects Unit

The Health Effects Unit provides medical-related support and information to MOSH administrative, consultative and enforcement personnel. In the course of providing support for on-going investigations and inspections, the Health Effects Unit receives copies of company records containing medical records for various employees. At present, there are approximately 100 company records on file.

A. Collection and Maintenance of Information

Company records contain various types of data that are personally identifiable. Medical records may contain physician reports concerning the health of the individual in question, laboratory test results, completed questionnaires as to possible health problems, and the findings of Health Effects personnel.

Explicit regulations are in effect to regulate access to medical records by the Health Effects Unit. These regulations are based on Article 89, Section 30(a) of MOSHA, which grants the Commissioner of Labor and Industry the power and authority to administer the provisions of the Act and to prescribe such rules and regulations deemed necessary to carry out his responsibilities. In accordance with COMAR 09.12.31.09, adopted May 19, 1981, any MOSH representative desiring to examine or copy personally identifiable medical records data must present an employer with a written access order signed by the Commissioner. Prior to issuing such an order, the Commissioner must determine that: "a) the medical information to be examined or copied is relevant to a statutory purpose and there is a need

to gain access to this personally identifiable information; b) the personally identifiable medical information to be examined is limited to only that information needed to accomplish the purpose for access; and c) the personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications."¹

Every written access order must indicate the statutory purposes for which access is desired, an explanation as to why there is a need to receive personally identifiable data, the type of data which will be taken off the premises, the names, addresses and telephone numbers of all authorized personnel expected to review and analyze the medical data, and the anticipated period of time during which the data will be retained.

A copy of the written access order which does not identify individual employees must be presented to each collective bargaining agent representing employees whose medical records are subject to access. Objections to disclosure may be submitted to the MOSH medical records office who must respond to each objection and who has the power to revoke a written access order.

Health Effects Unit records are kept in manual form and listed by company name.

B. Access Rights of the Person in Interest

The Commission was informed that the person in interest may examine records pertaining to them upon request. The person in interest is also sent a copy of any laboratory tests, along with an explanation of the significance of the results. If an individual requests copies of any physician records, he is directed to the generating physician.

C. Disclosure of Records to Third Parties

Disclosure of medical records obtained by the Health Effects Unit is regulated by COMAR 09.12.31.09 H and M. The principal investigator, the medical records officer, the Commissioner or any authorized person listed on a written access order may permit inspection of data by MOSH personnel and contractors, as long as they have a need for access and appropriate qualifications for the purpose for which they are using the information. Data may also be released to a MOSH Assistant Attorney General or a MOSH contractual physician on a need to know basis. Upon approval of the Commissioner, personally identifiable data may be transferred to the National Institute for Occupational Safety and Health, and to the Maryland Attorney General or to any State's Attorney if needed for specific action under the Occupational Safety and Health Act. Beyond release of information to these groups, the Commissioner may only permit an inter-agency transfer of personally identifiable employee medical data if the request is submitted by a public health agency which: "a) needs the requested information in a personally identifiable form for a substantial public health purpose; b) will not use the requested information to make individual determinations covering affected employees which could be to their detriment; c) has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this regulation; and d) satisfies an exemption to the Maryland Public Information Act to the extent that the Maryland Public Information Act applies to the requested information".²

D. Security of Personally Identifiable Information

The Division of Labor and Industry is required by COMAR 09.12.31.09 I to keep medical data segregated from other MOSH files and secured in a locked cabinet or vault when not in active use. Logs must also be kept by the medical records officer and the principal investigator to record the uses and transfers of any medical data. Copying of documents must be kept to a minimum. Finally, any inter-agency transfers of data cannot be accomplished through inter-office mailing channels, but must be done through a more secure means.

III. Maryland Racing Commission

The Maryland Racing Commission is responsible for the regulation of Thoroughbred Racing and Harness Racing throughout the State. The Commission maintains one program-related record system containing personally identifiable data, that being a record of all licenses issued to race track personnel.

1. Maryland Racing Commission - License Record System

The Maryland Racing Commission maintains approximately 10,000 licenses for race track personnel.

A. Collection and Maintenance of Information

Various items of personally identifiable data are collected from race track personnel, depending on whether one is applying for a license as a trainer, harness trainer driver, thoroughbred owner, harness owner, farrier, vendor, track employee, maintenance employee, pari-mutual employee, stable employee, authorized agent, apprentice jockey, or jockey agent. Vendor applicants, for example, indicate name, present and permanent address, date of birth, age, citizenship status, social security number, height, weight,

color or hair and eyes, nature of business, and details pertinent to any license denials, arrests or prior involvement in bookmaking operations.

Perhaps the most extensive amount of information is obtained from thoroughbred owner applicants. An applicant is asked to provide name, address, date of birth, social security number, sex, race, height, weight, color of hair and eyes, name and address of firm or employer, nature of business, title of position, name of bank, and bank account number, names of trainers and partners, names and addresses of three personal references, details regarding any arrests, involvement in bookmaking operations, and racing suspensions, and insurance company and policy number for Workmen's Compensation purposes. If an applicant is a married woman, she must provide the following items pertinent to her husband: name, address, date of birth, social security number, name and address of employer, type of business, and position.

In addition to that data submitted directly by applicants, license files may also contain background investigations of race track personnel as performed by the Thoroughbred Racing Protective Bureau and the United States Trotting Association. Data obtained from sources other than applicants themselves will be verified with applicants, if the need arises. The Maryland Racing Commission indicated that individuals are aware of the type of data collected about them. The Commission has no experience in dealing with unsolicited comments.

License data is kept in a manual form and is categorized according to name, address, social security number and occupation.

B. Access Rights of the Person in Interest

The person in interest may examine and copy all information pertaining to him, with the exception of information provided by the Thoroughbred

Racing Protective Bureau.

C. Disclosure of Records to Third Parties

All licensee data may be inspected by the general public in accordance with the Public Information Act. Information will be released either in response to a telephone call or a letter.

D. Security of Personally Identifiable Information

Licensee records are kept in file cabinets.

IV. Insurance Division

The Insurance Division is responsible for administering the laws of the State governing insurance companies or relating to the business of insurance. The Division consists of a number of sections: Examination and Auditing; Life and Health Actuarial Evaluation; Property and Casualty Rate and Form Regulation; Qualifications and Licensing; Complaint and Investigation; and Hearing. Although there are a vast number of records compiled by these various sections, much of the data is not personally identifiable. For example, the Examination and Auditing Section collects detailed financial reports pertinent to foreign and domestic insurers, quarterly financial statements of insurance companies, and registration statements of companies. Similar types of corporate data can be found in the files of the Life and Health Actuarial Evaluation and Property and Casualty Rate and Form Registration Sections. Given this fact, the Insurance Division identified one general record system encompassing all data which is personally identifiable.

1. Insurance Division - Personally Identifiable Records

Program-related, personally identifiable data of the Insurance Division is found in the files of the Qualifications and Licensing, Complaints and In-

vestigation, and Hearing sections, as well as in files of investigators assigned to the General Administration section. During 1979, the Qualifications and Licensing section issued approximately 127,000 licenses, the Complaint and Investigation section received approximately 17,000 written complaints, while 680 cases resulted in formal hearings.

A. Collection and Maintenance of Information

Various items of personally identifiable data are collected from license applicants, depending on whether one is applying for a license as a resident agent or broker, non-resident agent or broker, insurance adviser, Motor Club representative, and so forth. Though license applications forms vary in the type of data gathered, the following items can be found in the files of the Qualifications and Licensing section: name of applicant, address, social security number, marital status, place of birth, details pertinent to educational background, details pertinent to employment background, details pertinent to any previous serious financial difficulties, arrests, convictions, license suspensions and cancellations, and name of insurance company and policy number for Workmen's Compensation purposes.

As noted earlier, the Complaint and Investigation section handles thousands of written complaints from the public each year. Records of this section include the name, address, telephone number of the complainant and the insured, the name of the company, policy number, claim number, type of complaint and the nature of the complaint. In the course of verifying the accuracy of such complaints, or while pursuing independent injuries, investigators collect a considerable amount of sensitive, personally identifiable information. Files may include medical and psychological data, materials regarding the financial condition of individuals, data regarding a family situation, criminal information, licensing information, and information regarding the amount of liability insurance coverage of a

particular policy.

In the event tht investigators believe that a violation of the insurance law may have occurred and they are unable to achieve a resolution of the problem, records are turned over to the Hearing section for formal proceedings. Hearing case files may therefore include investigative reports, documents introduced as exhibits, protest forms, supplemental letters, additional information developed at the hearing itself, and the order on Hearing; the section also maintains, for a limited time, tapes of statements made during hearings.

Licensure data is supplied directly by applicants. Information submitted by applicants may be verified by investigators in the course of conducting routine background examinations. Data appearing in investigative files in response to a citizen complaint may include the statement of the complainant as well as police, bank and medical records. Unsolicited comments received by the Division are investigated. The subject of the record is made aware of data gathered from other sources during the hearing stage.

Division records containing personally identifiable data are maintained in manual form. Qualifications and Licensing section data is in the process of being computerized; however, marital status, place of birth and educational data are not retained on computer. Agent licenses are filed by company order and individual name. The licenses of brokers, advisers, and adjusters are indexed by license numbers. Complaint data is categorized according to assigned number.

B. Access Rights of the Person in Interest

The person in interest may examine and copy data pertaining to him. The accuracy of information may be challenged during a formal hearing.

C. Disclosure of Records to Third Parties

Virtually all licensure data is disclosable under the Public Information Act. The only exception to this rule is that a notice of termination of an agent's appointment by a particular insurer is considered to be privileged communication under Article 48A, Section 170(C). This notice of termination includes the name and license number of the agent, date of termination, and full details if the agent did not comply with the State's insurance laws and regulations, did not fully account and settle for premiums collected, or was terminated with criticism of insurance activities. In addition to denials based on privileged communication, the Qualifications and Licensing section does not honor request from insurance companies seeking to check long lists of licensees other than their own agents. The section will provide such information if companies want to check two or three names.

Open investigative files are not disclosable. The public may examine investigative files which have been closed and hearings data, as long as materials do not contain medical and psychological information and trade secrets.

In the event that personally identifiable records are disclosed, the Division indicated that the subject of the record is informed of the disclosure itself and is also told the names of the recipient of the data. The subject is not informed, however, regarding the disclosure of hearing section data. Information is verified prior to disclosure.

D. Security of Personally Identifiable Information

Each section of the Division is responsible for establishing its own level of security. As a general rule, the Division indicated that records are placed in locked cabinets in areas restricted to authorized personnel.

V. Division of Occupational and Professional Licensing

The Division of Occupational and Professional Licensing is responsible for the licensing of individuals engaged in various business activities. Among those regulated by this Division are cosmetologists, contractors, real estate agents, public accountants, barbers, and plumbers. The Division maintains the following record systems containing personally identifiable data: 1) Maryland Home Improvement Commission-License Record System; 2) Maryland Real Estate Commission-License Record System; 3) Occupational and Professional Licensing Boards-License Record System; 4) State Boards of Cosmetologists and Barber Examiners-License Record System; and 5) State Boards of Cosmetologists and Barber Examiners-Inspection Records.

1. Maryland Home Improvement Commission - License Record System

The Maryland Home Improvement Commission is charged with the responsibility for licensing and regulating contractors and salesmen in the home improvement industry. The Commission also investigates complaints from citizens against contractors and takes appropriate action if a violation of the law has occurred. The Commission maintains one general license record system.

Data in this record system is submitted by individuals requesting to be administered the necessary examination to obtain a salesman, contractor, or sub-contractor license. Approximately 8,500 licensure applications are on file, with approximately 3,000 examination applicants on an annual basis.

A. Collection and Maintenance of Information

The following data is compiled through this record system: name of applicant, address, date of birth, place of birth, social security number, height, weight, record of previous experience, details pertinent to any felony convictions, record of previous license, references and photo-

graph. The file may also contain facts relative to any complaints received by the Commission. Virtually all information is provided directly by the applicants. If information is gathered from any other sources, it is verified with the applicant. Unsolicited comments are handled in a confidential manner until verification can be obtained.

Examination applications are maintained in manual form. Licensee files are in the process of being computerized. Examination applications are categorized alphabetically while licensure applications are indexed by pre-assigned registration number.

B. Access Rights of the Person in Interest

With the exception of complaints under investigation, the person in interest may examine, copy and contest the accuracy of data pertaining to him.

C. Disclosure of Records to Third Parties

Commission records are subject to the Public Information Act and thus disclosable. Data will not be released over the telephone. The Commission indicated that in the majority of cases, the subject of the record is notified regarding the disclosure of personally identifiable data and the name of the recipient of the data. Information is not verified as to its accuracy prior to dissemination. Logs are maintained to record the disclosure of information.

D. Security of Personally Identifiable Information

The Commission did not provide sufficient information to assess the security measures in effect for its manual and computerized records. The Commission did indicate, however, that measures have been taken to

prevent the unauthorized altering of data by Commission personnel. A formal risk analysis has not been conducted.

2. Maryland Real Estate Commission - License Record System

The Real Estate Commission is responsible for licensing all Real Estate brokers and salesmen who do business in the State of Maryland. The Commission may also revoke or suspend the real estate license of an individual who violates the real estate laws or is guilty of unethical conduct. The Commission maintains one general license record system.

A general record system is kept containing various data pertinent to applicants and licensees. The Commission at present has records on approximately 44,500 licensees.

A. Collection and Maintenance of Information

Various items of personally identifiable data are collected depending on whether the individual is applying for a license as a Resident Real Estate Broker, Resident Associate Broker, Non-Resident Broker, Non-Resident Associate Broker, Resident Salesman, or Non-Resident Salesman. However, the following data is common to all application forms: name, principal business address, age, sex, social security number, telephone number, details pertinent to any felony convictions, and an indication as to whether any real estate license has ever been denied, suspended or revoked in any state. In addition to the above data, Resident Broker, Associate Resident Broker and Resident Salesman applicants must submit credit reports, certificates of completion of specified courses, and examination scores provided by the Educational Testing Service. Non-Resident Broker and Associate Broker applicants submit course certificates and credit reports.

The most extensive amount of information is obtained from those

applying for a Resident Broker's license. Individuals must provide a resume of real estate activity for the last three years, including such items as the approximate number of listings obtained, the approximate number of sales completed, the approximate number of rental accounts handled, approximate number of appraisals conducted, the estimated total volume of cumulative business during the past three years, and the names and addresses of brokers over the previous three years.

Applicants supply some of this information. Other data is obtained from credit reporting agencies, the Educational Testing Service, and Orders of the Real Estate Commission. Data collected from other sources is not verified with the person in interest. If unsolicited comments are received, they are handled on a case by case basis.

Records are maintained in a manual system by name and are in the process of being converted to a computerized form.

B. Access Rights of the Person in Interest

The Real Estate Commission stated that, on a general basis, the person in interest is not allowed access to information in records because most of it is confidential. Individuals are not permitted to copy their files. They may, however, obtain copies of current application for licensure or their license history. The Commission does allow the person in interest to contest the accuracy of any record.

C. Disclosure of Records to Third Parties

Information of a personal nature is usually not disclosed to third parties. The response of the Real Estate Commission indicated that the Public Information Act governs their disclosure practices. Information may be disclosed to State and Federal agencies upon request. Prior to

disclosure, the Commission will try to determine the reason for the request and require that proper identification be presented. Normally, the individual is not notified of disclosures that are made by personal visit or letter. The accuracy of the information is verified before it is disclosed.

Any disclosures made by personal visit are logged. The date, name, address and organization of the requester, and the time in and time out are logged. The person in interest is allowed access to logs.

D. Security of Personally Identifiable Information

Information is disclosed to other agencies with the agreement that the information will be kept confidential. Manual records are kept in locked files. The Real Estate Commission indicated that it will take appropriate steps to prevent the unauthorized altering of computerized data and that it will conduct a risk analysis.

3. Occupational and Professional Licensing Boards - License Record System

The Occupational and Professional Licensing Boards of the Division of Occupational and Professional Licensing consist of the following boards: Architectural Registration, Electrical Examiners, Registration For Foresters, Hearing Aid Dealers, Landscape Architects, Motion Picture Machine Operators, Pilot Examiners, Practical Plumbing, Professional Engineers, Professional Land Surveyors, and Public Accountancy. The Occupational and Professional Licensing Boards maintain approximately 38,000 licensee records at the present time.

A. Collection and Maintenance of Information

The individuals Boards vary in terms of the type of personally

identifiable data collected. However, the following types of information can be found in the files of one or more of the various Boards: name, home address, business and residence telephone number, social security number, race, sex, driver's license number, date of birth, place of birth, citizenship status, names and addresses of previous employers and period of time at each job, height, weight, name of insurance company and policy number for Workmen's Compensation purposes, name of college or university and dates of attendance, names of professional associations or technical organizations to which the licensee belongs, licensee photograph, details pertinent to an arrest or conviction of any crime, details pertinent to any hospitalization for mental illness or disorders, letter of reference, and academic transcripts.

The Commission was informed that individuals are aware of the type of data collected about them, since it is their responsibility to contact the outside source and request that the data be forwarded to the Boards. Unsolicited comments are placed in the licensee's files, if required, appropriate action is taken by the relevant Board.

Licensee records are currently maintained in a manual form and are categorized by assigned code number. The Boards are in the process of converting to a computerized system.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him. The person in interest is informed of his right of access upon inquiry. Any challenges to the accuracy of a file become a permanent part of that file.

C. Disclosure of Records to Third Parties

Licensee data is available for public inspection in accordance with the Public Information Act. No logs are maintained to record dissemination of personally identifiable data.

D. Security of Personally Identifiable Information

All manual records are maintained in locked rooms. Those records that have been computerized are restricted to authorized personnel. The Commission was informed that appropriate levels of authorization have been developed to assure the security of this data.

4. State Boards of Cosmetologists and Barber Examiners - License Record System

The State Boards of Cosmetologists and Barber Examiners maintain a record system containing approximately 53,000 license records. In addition, the Boards maintain a permanent index-card record system for all persons licensed since the creation of the Boards. There are approximately 140,000 records in this system. These systems will be considered together in this report as there are standardized procedures in both systems regarding access rights of the person in interest, disclosure of records to third parties, and security of data.

A. Collection and Maintenance of Information

The following type of data appears in license record system files: name of licensee, home address, home telephone number, social security number, age, previous training/licensure information, place of employment or school of training, details pertinent to any criminal convictions, and Workmen's Compensation information. The Commission was informed that data is obtained from licensees, creditors, complainants, Zoning Boards, local health departments, Board inspectors, and Orders of the Board. The Boards

indicated that licensees are informed of the type of information collected about them. The Boards investigate unsolicited comments that involve violations of the law; if necessary, a formal hearing will be conducted. Other unsolicited comments may be forwarded to the licensee.

Licensee records are in the process of being converted to a computerized system. These records are categorized by a permanent registration number assigned to each licensee. The index card system is manual and is indexed alphabetically by name.

B. Access Rights of the Person in Interest

The person in interest may examine Board records pertaining to him. Access is not permitted to any interoffice memoranda which concern a formal hearing process and which are not considered to be public records. Individuals are informed of their right of access upon inquiry. Copies of particular documents requested by the person in interest are provided free of charge. The person in interest may also contest the accuracy of his records.

C. Disclosure of Records to Third Parties

License records are made available for public inspection in accordance with the Public Information Act. The Boards require individuals to submit a letter requesting copies of documents of an appointment to appear at the Boards' offices. Requesters who appear at the Boards without an appointment must provide appropriate identification and must sign a statement indicating their purpose in requesting the information. The statement is then placed in the file of the licensees whose records were inspected. This statement may be examined by the subjects of the records. The accuracy of data is verified prior to disclosure.

D. Security of Personally Identifiable Information

The Boards indicated that measures have been taken to prevent the unauthorized alteration of computerized data. The Boards were unaware of any risk analysis that had been performed.

5. State Boards of Cosmetologists and Barber Examiners - Inspection Records

The Boards of Cosmetologists and Barber Examiners operate a combined inspection program of schools, barbershops and beauty salons. There are approximately 15,000 records that are maintained on an annual basis.

A. Collection and Maintenance of Information

Inspection data is oriented primarily to business rather than to individuals. However, some information is personally identifiable. Data in this file includes: name of shop owner, name of manager, name and address of shop, number of licensed employees, description of shop conditions, and comments or remarks of inspector. Records in this file are submitted by the inspector rather than the subjects of the records; however, subjects are aware of the records contents as they must sign the inspector's report. Unsolicited comments are investigated if they involve violations of the law; the alleged violators are made aware of the fact that complaints have been filed.

Inspection records are maintained in manual form.

B. Access Rights of the Person in Interest

Access to these records is governed by the same procedures previously discussed in the Boards' license record system.

C. Disclosure of Records to Third Parties

Boards' procedures in disclosing inspection data are identical to those discussed in the license record system.

D. Security of Personally Identifiable Information

The Commission lacks information regarding the measures taken to protect manual inspection records.

VI. Maryland State Athletic Commission

The Maryland State Athletic Commission regulates boxing and wrestling matches held in the State, as well as closed circuit telecasts scheduled and held in the State. The Commission maintains one general system containing program-related personally identifiable data.

1. Maryland State Athletic Commission Record System

The Commission maintains approximately 700 to 1,000 records pertinent to boxers, managers, matchmakers, referees, seconds, and wrestlers.

A. Collection and Maintenance of Information

Commission files contain various items of personally identifiable data. First of all, files consist of license applications for boxers, wrestlers, referees, and so forth. The following information is collected from applicants: name, address, social security number, place of birth, date of birth, age, sex, marital status, weight, and details pertinent to any license suspensions or revocations, convictions, and financial interests in the promotion of boxing and wrestling. An applicant for license as manager must provide all of the above information as well as the names and addresses of those with a financial interest in his earnings, the names and addresses of all boxers and wrestlers under his control, and the name of his insurance

company and policy number for Workmen's Compensation purposes. A wrestling or boxing promoter must indicate his name and address or the name and address of the corporation or association, the names and addresses and titles of all officers, the names, addresses and businesses of all stockholders, as well as details regarding licenses denials and revocations and personal or financial interests in a boxer or wrestler on the part of an officer or stockholder.

In addition to license applications, Commission files also contain copies of contractual agreements between managers and fighters, physical examination forms for boxers, and official physicians' reports. The Maryland State Athletic Commission indicated that it does attempt to verify with individuals any data gathered from other sources. The Commission also stated that individuals are informed of the type of data collected about them. Unsolicited comments pertaining to unsanctioned events are investigated.

Maryland State Athletic Commission records are maintained in a manual form and are indexed by name.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of data pertaining to him.

C. Disclosure of Records to Third Parties

The Maryland State Athletic Commission permits public inspection of the data described in this section. In the event that data is disclosed, the subject of the record is informed both of the disclosure itself and the name of the recipient of the record. The accuracy of information is verified prior to dissemination. The Commission also indicated that logs are kept to record disclosure of information.

D. Security of Personally Identifiable Information

In response to the Information Practices Commission's question regarding the general security measures that had been adopted to protect personal data, the Maryland State Athletic Commission replied that any matter which is under investigation is referred to its Assistant Attorney General.

II. State Bank Commissioner

The Bank Commissioner's Office supervises all banks within the State other than national banks. All new banks must organize under the Commissioner's supervision and obtain a certificate to open for business.

The Commissioner's Office identified two major record systems maintaining personally identifiable information: A Financial Institutions and Licensees File and a Consumer Response File.

1. Financial Institutions and Licensees File

This file contains documents related to the approval or disapproval of charters or applications for a license. There are approximately 2,441 records in this file.

A. Collection and Maintenance of Information

Information is collected in accordance with the Financial Institutions Article. Data consists of applications, supporting documents, examination reports, and financial institutions and licensees control cards. Information is obtained from the individual and the applications. Any data collected from other sources may be clarified with the person in interest. Records are maintained in a manual system and are categorized by name and chronological order.

B. Access Rights of the Person in Interest

The individual is allowed access to information in files pertaining to him. Files can be obtained from the Chief Examiner or the Deputy Bank Commissioner. The individual can copy and contest the accuracy of information in his file.

C. Disclosure of Records to Third Parties

The Bank Commissioner indicated that information is disclosed to appropriate state or federal agencies. Section 5-209 of the Financial Institutions Article governs disclosure. The person in interest is not notified of disclosures and logs are not kept.

D. Security of Personally Identifiable Information

The State Bank Commissioner's Office indicated that security measures were in compliance with Section 5-209 of the Financial Institutions Article.

2. Consumer Response File

A Consumer Response File is used to answer consumer complaints. Approximately 600 records are contained in this file.

A. Collection and Maintenance of Information

The Bank Commissioner indicated that this file is composed of complaint correspondence. Files are maintained manually and are indexed by name.

B. Access Rights of the Person in Interest

The person in interest is allowed to access, copy and contest information in this file.

C. Disclosure of Records to Third Parties

Information is disclosed to appropriate State or Federal agencies in accordance with the Citizens Response Plan of the Department. This occurs usually in response to a personal visit. No disclosure logs are maintained.

D. Security of Personally Identifiable Information

As in the case of the previously discussed record system, the Commission has insufficient information with which to evaluate security of these records.

NOTES

1. Maryland Register, 8, 2, January 23, 1981, p.125.

2. Ibid, p. 126.

DEPARTMENT OF NATURAL RESOURCES

The Department of Natural Resources is a multi-faceted agency dedicated to the appropriate management of the State's environment. There are a number of components of the Department that maintain program-related records containing personally identifiable information. In many cases, such information is limited to name, address and telephone number. There are, however, other files such as the investigatory records of the Department's Police Force, that contain more detailed pieces of information. The following units have been identified by the Department as maintaining programmatic materials in which personal identifiers are used: Licensing and Consumer Services; Natural Resources Police; Capital Programs Administration; Forest and Park Services; Water Resources Administration-Resource Protection Programs; Water Resources Administration-Watershed Management Programs; and Wildlife Administration.

I. Licensing and Consumer Services

The Licensing and Consumer Services unit of the Department handles a variety of licensing programs mandated by the General Assembly. For each of these programs, the unit maintains various items of information relating to specific individuals. Licensing and Consumer Services currently handles approximately 50,000 commercial fishing licenses, 1,500 wildlife permits, 600 boat dealers licenses, 300 oyster and clam dealer's tax records, 250,000 active boat certificate and security interest records, 250 hunting and angler license distributor records, 580,000 hunting and angler licenses, and 1,000 off road vehicle licenses. Also included in the files of Licensing and Consumer Services

is a listing of the names and addresses of fifty individuals who either provided the unit with a check without sufficient funds or who owe taxes and fees. Finally, the unit is in the process of developing a license program for approximately 5,000 owners of yachts.

A. Collection and Maintenance of Information

In all of the license programs listed above, applicants are required to submit their names and addresses. Beyond such obvious pieces of information, however, there are variations across programs regarding the nature of directory information that is collected. These variations are in accordance with specific requirements contained in the Annotated Code. Hunting and angling licensees indicated social security number, date of birth, height, weight, and hair and eye color. Commercial fishermen state telephone number, social security number, date of birth, sex, and length of residence in Maryland. Boat dealers must indicate social security number, names and addresses of any partners of officers and gross business sales of the previous year. Wildlife permit applicants itemize date of birth, telephone number and social security number. Off road vehicle licensees are required to submit telephone number. Boat owners are asked to provide telephone number, nationality, and specific information about any liens held. Boat owners and yacht owners must also respond to a series of questions pertaining to their particular vessels.

The Licensing and Consumer Services unit informed the Commission that virtually all items of information contained in its licensee files come from the applicants themselves. Indeed, the only circumstances in which licensee files would consist of any data other than that supplied at the time of the application would be in cases where a license has been suspended or cancelled, or when a boat is stolen or transferred out of the state.

Commercial fishing licenses, wildlife permits, boat dealers licenses, oyster and clam tax files, boat certificate and security interest files and hunting and angler license distributor files are all maintained in computerized fashion on disk files. All other unit information is stored manually. Licensee data is indexed both according to alphabetical order and numerical file number.

B. Access Rights of the Person in Interest

The person in interest has access to all information pertaining to him in the Licensing and Consumer Services unit. Although it appears that individuals are not specifically informed of this fact in any formal sense, it is important to remember that virtually all data comes from applicants themselves. Individuals can copy their files and contest the accuracy of the information contained in those files.

C. Disclosure of Records to Third Parties

Licensing data is considered to be public information under Article 76A and is thus disclosable to anyone who might request it. Licensees are not notified regarding either the disclosure of personally identifiable data or the name of the recipient of such data. The Licensing and Consumer Services unit indicated that the accuracy of information collected is verified prior to entry into the computer files. While no logs are kept to record disclosures, the Commission was informed that correspondence files are maintained and that licensees may have access to such files. Correspondence files contain information regarding the specific request, the reply of the department, the date that information is disclosed, and the amount paid by the requester.

It should be evident that the specialized character of the Department's

licensee files, and in particular its computerized files, represent a wealth of information to potential advertisers. Businesses seeking to tap the commercial fishing market, for example, can compile an accurate mailing list by reproducing the appropriate file of Licensing and Consumer Services. Indeed, it appears that advertisers are the principal users of various licensee files. Advertisers seeking computerized records are charged for computer time, paper, tapes and storage as well as a one cent per record fee to cover administrative and maintenance costs.

As in the case of vehicle registration lists sold by the Motor Vehicle Administration (MVA), purchasers of Licensing and Consumer Services computer lists are required to sign a contractual agreement with the State. There are, however, noticeable differentiations between the MVA contract and the Licensing and Consumer Services contract. These differentiations are a consequence of the fact that by statute, MVA may only sell lists "... if the Administration approves of the purpose for which the information is requested."1 In contrast, Licensing and Consumer Services data is governed entirely by the Public Information Act. Disclosure of this data could only be prohibited if the custodian determined that dissemination would be contrary to the public interest; in order for such a determination to be permanent, however, the custodian would have to apply in the circuit court in which the data is located.

As a consequence of these statutory differences, the following conditions contained in the MVA contract do not appear in the Licensing and Consumer Services contract: 1) the purchaser must indicate the intended uses of the information; 2) restrictions are placed on the reselling of information to other advertisers; 3) no mailings may be used promoting the sale of real estate or insurance or involving sweepstakes or give-away programs; 4) no objectionable mailings may be made; 5) MVA

shall be supplied a copy of each mailing; and 6) individuals may have their names and addresses deleted from mailing lists.

The Administrator of the Licensing and Consumer Services unit informed the Commission that complaints have been received from licensees inundated with various mailings. She also expressed the view that, since, by law, individuals are entitled to the various licenses of the Department, it would be more appropriate if personally identifiable information was not disseminated to advertisers.

D. Security of Personally Identifiable Information

In response to the Commission's question regarding the nature of general security measures enacted to ensure the confidentiality of records, the Licensing and Consumer Services unit responded, "The security of our records is only as secure as the building." No security guarantees are obtained from recipients of data prior to information being disclosed. (Given the fact that anyone may examine the unit's records, the value of such guarantees would be rather questionable). The Commission was told that measures have been taken to prevent the unauthorized altering of data by departmental personnel. The Administrator was unaware of any security risk analysis that had been performed.

II. Natural Resources Police

The Natural Resources Police Force is charged with the responsibility of enforcing State laws and regulations pertaining to such areas as sport and commercial fishing, waterways pollution, boating, and wildlife conservation. In addition to their enforcement duties, the Police provide emergency assistance, conduct educational programs, investigate hunting and boating accidents, and perform various other duties. The principal program-related record system

maintained by the Force involving personally identifiable data is its investigatory file. The Force also identified a miscellaneous record system containing various items identifying specific individuals. In addition to these program-related materials, the Police maintain a personnel file for the officers of the Force. The contents of that file will be considered in this report due to the range of data collected. The Natural Resources Police Force currently maintains in excess of 100,000 investigatory records, over 200,000 miscellaneous records, and 236 active and 114 inactive personnel files.

A. Collection and Maintenance of Information

Given the fact that the Natural Resources Police is charged with investigatory responsibilities, it necessarily collects sensitive, personally identifiable data. Investigative report and supplement report forms provide space for the name of the complainant, victim or arrestee and a narrative discussion of the nature of the investigation. Also included in investigatory files are accident reports, incident reports, receipts for seizure of property, reports of death, and so forth.

The Police Force's miscellaneous record system contains various files which generally contain an individual's name and address. For example, the system contains information regarding individuals who have laid claim for abandoned vessels. Files also consist of the names, addresses, sexes, ages, and vehicle licenses of those involved in non-hunting deer kills. Information is also maintained concerning the names and addresses of those who have contacted the Police Force for assistance, and the types of assistance provided.

The personnel file of the Natural Resources Police Force was notable, until recently, for the vast amount of personally identifiable information collected from applicants and employees. An individual seeking employment with the Police submitted a personal history statement in which he responded to a series of extremely detailed questions. For example, a male, married applicant

not only indicated his marital status but stated when and where the marriage occurred, who officiated at the marriage, and his wife's maiden name. An applicant who was separated, divorced, or whose marriage was annulled had to indicate the fact and also the date of the order or decree, the offending party as decreed by law, and the reason. An applicant was also required to delineate his financial status, including the names and addresses of any creditors and the amounts owed; the approximate amount of money maintained in personal savings and checking accounts; and the amount of mortgage and amount and frequency of payments.

The personal history statement contained a series of questions regarding the legal and medical experiences of the applicant. An applicant had to provide full details concerning juvenile arrests. Details also had to be submitted for any parking violations ever received by the applicant or spouse in any state. Any illnesses during the last five years requiring medical treatment also required discussion in depth. If any member of the applicant's family had ever had, or been tested for, a nervous or mental disorder, complete information was required.

An applicant was also asked a series of questions regarding contact with subversive organizations, including membership in such organizations, attendance at meetings or social activities, distribution of literature, and so forth. The following question was particularly noteworthy as an indicator of the scope of the investigation: "Are you now associating with, or have you associated with any individuals, including relatives, who you know or have reason to believe are or have been members of any of the organizations identified above?" An applicant also had to account for any foreign travel taken, with the exception of trips of thirty days or less to Canada or Mexico or travel as a direct result of United States military duties.

The Commission expressed concern regarding a number of questions contained in the personal history statement. The Department of Natural Resources has assured

the Commission that the statement has been withdrawn from the system for revision and that a revised questionnaire is being developed for police applicants. This new questionnaire will exclude all information that is not employment-related.

The Natural Resources Police indicated that while, in most instances, information maintained in its miscellaneous record system is obtained directly from the subject of the file, such is not the case with either the investigatory or personnel data. Investigatory information is compiled from the person under investigation, confidential informants, witnesses to violations and other law enforcement agencies. The Commission was told that information obtained from third parties is verified whenever possible with the subject of the record. Ordinarily, however, an individual under investigation is not notified of the type of information collected about him until criminal action is taken. Unsolicited comments may be investigated by the Police if the source is considered to be credible.

In addition to information supplied by applicants or employees, personnel data of the Police Force is obtained from former employers, neighbors, other law enforcement agencies and educational institutions. Information often is verified both through investigations and by use of the polygraph. The Commission was informed that the subject of the record is ordinarily notified of the type of information collected about him; in some instances, however, action may be taken without notification. If complaints are received about an employee, an investigation is conducted; unsolicited letters of commendation are inserted into the employee's file with appropriate recognition.

All of the record systems of the Force are maintained in a manual form. Personnel records are categorized by name and social security number, investigative records are indexed according to name, birth date, address, and case number. Miscellaneous records may be indexed by name, address, or case number, depending on the type of report.

B. Access Rights of the Person in Interest

The person in interest is granted access to the information pertaining to him in both the miscellaneous and personnel record systems. On the basis of the responses received, it is impossible to determine whether the person in interest is made aware of this right, whether files may be copied, and whether the subject of the record may contest the accuracy of the data in the files.

The Force's investigatory records are governed by Article 76A, Section 3(b)(i) which states that the access rights of the person in interest to investigatory data may only be denied if access would "...A) interfere with valid and proper law-enforcement proceedings, B) deprive another person of a right to a fair trial or an impartial adjudication, C) constitute an unwarranted invasion of personal privacy, D) disclose the identity of a confidential source, E) disclose investigative techniques and procedures, F) prejudice any investigation, or G) endanger the life or physical safety of any person." The Commission does not have adequate information to determine whether the Police Force ordinarily permits or denies access as a consequence of this statute.

C. Disclosure of Records to Third Parties

Information from the Force's miscellaneous record system is disclosable under the Public Information Act. As such, the information is routinely disseminated to other agencies and to others outside of State government. When information is disclosed, the subject of the record is not notified regarding either the disclosure itself or the name of the recipient of the record. The Commission was informed that the accuracy of the information is not verified in all cases before it is disseminated. The Natural Resources Police informed the Commission that logs will be maintained to

record the dissemination of personally identifiable information, and that disclosures will be reviewed by the legal section.

The Public Information Act states that the custodian of investigatory records may deny access to such records to third parties if disclosure would be contrary to the public interest. Although investigatory information is disclosed on occasions by the Natural Resources Police, the Commission is unable to determine the frequency that this occurs or the usual types of recipients. In most instances, the subject of the record is not informed of the record's disclosure. The accuracy of the information is normally verified before it is disseminated. Logs will be kept to record the dissemination of such data.

Information contained in the personnel records system is not disclosed to third parties except with the consent of the specific employee involved. This also includes any personnel investigations that may have been conducted. Since no disclosure of personally identifiable data occurs without the specific consent of the employee, he is aware of the name of the recipient of the information. The accuracy of the information is verified prior to disclosure. Logs will be kept to record the dissemination of information.

D. Security of Personally Identifiable Information

The Commission was told that information in the miscellaneous record system is usually kept in unlocked filing cabinets. Personnel records are kept under lock and key, while investigatory records are locked with access restricted to certain personnel. Recipients of investigatory records are also required to treat the source of the information as confidential.

III. Capital Programs Administration

There are two programs within the Capital Programs Administration that

maintain personally identifiable data. The Land and Property Management Program handles records regarding land owned by the Department, including such items as leases, easements, rights of way and licenses. The Shore Erosion Control Program enables property owners and communities to obtain technical assistance to combat erosion problems. Land and Property Management maintains 250 to 300 records regarding house, structure, grazing and agricultural leases; 400 to 500 easements, rights of way and license agreements; and 700 to 800 closed, active and pending acquisition files. There are approximately 2,500 Shore Erosion Control project files and preliminary inquiry/technical assistance files.

A. Collection and Maintenance of Information

The Land and Property Management Program indicated that a minimum of name and address is collected for the records identified above. Since standardized forms used to collect personally identifiable information were not submitted to the Commission, however, it is impossible to determine whether any additional information is obtained. An individual requesting assistance from the Shore Erosion Control Program is asked to indicate his name, address and home and office telephone number; the names and addresses of adjoining property owners facing the water; and the name of the previous owner.

The Commission was told that information for the Land and Property Management Program is obtained directly from the subject of the record and/or from other individuals who might contact other agencies. If information is gathered from other sources, no attempt is made to verify such information with the subject of the record. All Shore Erosion Control Program information comes directly from the individuals requesting assistance.

The records of both programs are maintained in a manual form. Land and Property Management Program records are usually categorized by name and cross-indexed by an internal numerical code; Shore Erosion files are

indexed by property owner's name, work on project number, and property location.

B. Access Rights of the Person in Interest

Both the Land and Property Management and Shore Erosion Control Programs permit the person in interest to have access to information pertaining to him, to make copies of pertinent files, and to contest the accuracy of the data in such files. The Shore Erosion Control Program indicated that the person in interest is not informed of his right to access; it should be noted, however, that all information is obtained directly from the subject of the record. The respondent for the Land and Property Management Program stated that the person in interest is made aware of his access privileges and noted, "it is my opinion that just about every citizen in the U.S. is somewhat aware, correctly or incorrectly, of their rights under the Federal Freedom of Information Act."

C. Disclosure of Records to Third Parties

The records of the Land and Property Management Program and the Shore Erosion Control Program are considered to be disclosable under the Public Information Act and, in fact, are disclosed to other agencies and to others outside of State government. The Commission was informed that the type of personally identifiable information contained in the Shore Erosion Control Program record system is readily available in other public documents.

The Land and Property Management Program indicated that when information is disclosed, the subject of the record is not informed either of the disclosure itself or the name of the recipient of the disclosure. The accuracy of the information is not verified before it is disseminated. Logs, however, are maintained to record the disclosure of information; the program catalogs the name, address and affiliation of the recipient. A notation is placed in

the file recording the information supplied. The person in interest does have access to these disclosure logs.

The Shore Erosion Control Program stated that the subject of the record system is informed of disclosure and recipients of data; the accuracy of the data is also verified before disclosure. No logs are maintained to record the dissemination of data.

D. Security of Personally Identifiable Information

The Commission was informed that only Shore Erosion Control Program staff have unrestricted access to program files. The Shore Erosion Control Program has enacted no specific security measures to protect the confidentiality of personally identifiable records. Files of the Land and Property Management Program are restricted to authorized personnel only. Neither program obtains any security guarantees from recipients of disclosed information.

IV. Forest and Park Services

The Forest and Park Services are charged with the responsibility of managing effectively the State's forests and trees while at the same time providing for adequate recreational opportunities for the State's residents. The Services maintain three program-related record systems containing personally identifiable information. First of all, a file is kept of tree experts who are licensed by the Forest Service. A second record system consists of materials kept of all management plans prepared on private woodland areas. Finally, the Services also keep licensee records for Forest Products Operators. Presently, there are 425 Tree Expert License Records, 20,000 Management Plan Records, and 850 Forest Products Operator and License Records.

A. Collection and Maintenance of Information

It appears, based on the responses of the Forest and Park Services, that relatively little in the way of personally identifiable information is collected. The Tree Expert License Record system contains name, address, tree expert test score, and record of insurance coverage. Management Plan Records consist of the names and addresses of private woodland owners who have requested forest management assistance. Forest Operator Licensees provide name and address.

Such information is obtained directly from the subject of the record. The only exception to this rule would pertain to unsolicited complaints that may be received regarding tree experts and forest products operators. If the Forest Service determines that these complaints are valid, the individuals in question are notified.

All of the records mentioned above are maintained manually and categorized in alphabetical fashion.

B. Access Rights of the Person In Interest

The person in interest has complete access to Tree Expert License Management Plan, and Forest Products Operator's License Records. He also is permitted to copy and contest the accuracy of such information.

C. Disclosure of Records to Third Parties

Information contained in the three record systems of the Forest and Park Services is generally disclosable to third parties. An exception is made for the test scores of tree experts, which are considered to be confidential. The Commission was also told that under most circumstances, permission is obtained from woodland owners before Management Plan Records are released.

Tree Expert and Forest Product Operators licensees are not notified

regarding either the disclosure of personally identifiable information or the name of the recipient of such records. The Commission was informed that the accuracy of the information contained in all three record systems is verified at the time of collection. No logs are maintained to record the dissemination of information.

D. Security of Personally Identifiable Information

Management Plan Records are maintained in project offices which are locked after hours. Tree Expert and Forest Products License Records are maintained at the Annapolis Headquarters of the Forest Service in files which are locked after hours.

V. Water Resources Administration - Resource Management Programs

There are three components of the Water Resources Administration - Resource Management Programs that maintain information identifying specific individuals. The Surface Mining Division collects information from those applying for a license and/or permit to surface mine. Water appropriation permit holders supply data on groundwater consumption to the Water Supply Division. Finally, the Wetlands Division obtains information from applicants for a wetlands license and/or permit. There are approximately 600 records in the Surface Mining Division, 9,000 Water Supply Division records, and 4,400 Wetlands Division records.

A. Collection and Maintenance of Information

Applications for a license to surface mine may be submitted from an individual, partnership or corporation. If an applicant is an individual, he is requested to indicate his own name and address as well as the names and addresses of all interested individuals. Partnerships must provide the names and addresses of all full or limited partners. Corporations must state the names and addresses of the registered agent, all principal officers

and directors. Surface mine permit applications also generally include the name and business address of the owner, as well as the names and addresses of surface land owners and mineral owners. Similar information also appears on annual and final operation and reclamation reports submitted to the Surface Mining Division by operators.

The only items collected from water appropriation permit holders that are personally identifiable in character are the names, addresses and telephone numbers of owners. Wetlands licensees and permittees provide names, addresses and telephone numbers.

Virtually all personally identifiable information in the Resource-Management Program's record systems thus comes directly from the subject of the record in question. The only exception to this rule appears to be the Water Supply Division, which will include unsolicited comments in the file if such comments are submitted in writing.

Surface Mining Division records are both manual and computerized and are categorized by a numbering system and by name. Approximately 90 per cent of the water appropriation permit holders files are computerized; data is indexed by permit number. Wetlands Division information is maintained manually and logged by departmental case number and name of applicant.

B. Access Rights of the Person in Interest

The Commission was informed that the person in interest may examine, copy, and contest the accuracy of data maintained by the Surface Mining, Water Supply and Wetlands Division, as part of the permit process.

C. Disclosure of Records to Third Parties

The Surface Mining Division indicated that non-confidential information is disclosed to other State agencies. As noted earlier, surface mining

operators are required to submit an annual operation and reclamation report. Although the Division requires operators to provide tonnage and value figures, permittees are informed that such data is confidential and will not be released without written authorization. The Commission was informed that the subject of the record is notified regarding the disclosure of personally identifiable data and the name of the recipient of such data. The accuracy of the information is verified before it is disseminated. While it appears that logs are not maintained to record the dissemination of data, appropriate notations are included in the individual's file.

Water Supply Division records are disclosed to other agencies or to others outside of State government via the Public Information Act. The subject of the record is not informed of such disclosures. The accuracy of information is verified during permit review but is not necessarily verified before it is disclosed. No logs are kept to record dissemination of data.

The records of the Wetlands Division are also disclosable to third parties via the Public Information Act. The Commission was told that the person in interest is informed at the time of the public hearing as to the open access to the public record, and that while the information provided for the record is subject to disclosure, its accuracy is not necessarily verified by the Division. As in the case of the Surface Mining Division, notations are placed in case files when personally identifiable information is released.

D. Security of Personally Identifiable Information

Records of the Surface Mining Division are stored in locked filing cabinets. The Division respondent did not know whether any measures have been taken to prevent the unauthorized altering of computerized data, or whether any risk analysis had been conducted. The Wetlands Division and

Water Supply Division indicated that they have no specific security measures to ensure confidentiality, since the type of information maintained constitutes data disclosable under the Public Information Act.

VI. Water Resources Administration-Resource Protection Program

There are three major units within the Water Resources Administration-Resource Protection Program that maintain information files identifying specific individuals. The Enforcement Division handles and tracks permit records developed by other Water Resources Administration units, problem activity files which are generated internally in response to alleged violations, and reports of oil spill incidents. The Oil Permits Division collects personally identifiable information concerning the issuance of oil operations permits, oil terminal licenses, and oil truck driver certification. The Laboratory Services Division maintains records of samples submitted and the results of those sample analyses.

The Enforcement Division of the Water Resources Administration-Resource Protection Program maintains three record systems containing personal identifiers. First of all, the Division keeps a problem/activity file, consisting of environmental damage complaints submitted by individual citizens or other government agencies. Oil spill reports are also maintained by the Division. Finally, the Enforcement Division issues site complaints and Administrative Orders for violations of the law. If the site complaint or administrative order issued is for a violation of a previously issued permit, license, or other approval, the record of violation becomes a part of the original permit file. Similarly, final resolution of the violation becomes a part of the original file. For violations involving a failure to obtain the required license or permit, a new violation file is

developed as there is no corresponding license or permit file to supplement at the time of the violation.

The Commission was informed that there are approximately 5,500 oil spill report records. The Enforcement Division provided annual, rather than cumulative, figures for the number of problem/activity and site complaint records; approximately 500 problem/activity records and 500 site complaint records are generated each year. The Division indicated that this annual figure is a more realistic representation of the number of active files than a cumulative total, since files of this type are closed out once the violation is resolved. The Oil Control Division has issued 2,861 oil operations permits and 11,978 oil vehicle operations certificates.

A. Collection and Maintenance of Information

Problem/activity reports contain the name, address and telephone number of the complainant, the specific location and nature of the problem or activity, and the action taken. Oil spill reports include the name and address of the person responsible for the spill, the name and address of the person making the report; the location, source and cause of the spill; and information relating to clean-up procedures. Site complaints and Administrative complaints and orders, consist of the name, address and telephone number of the principal, or the agent or contractor; the type of violation incurred; the nature of the specific charges filed; and the order issued by the Enforcement Division.

Given the investigatory character of the Enforcement Division, it is evident that information is obtained from a variety of sources in addition to the subject of the record. The Division indicated, however, that verification of third party data will occur before any action is taken and that alleged violators are contacted.

The Oil Control Division requires applicants for oil vehicle operators certificates to indicate name and operator's license number. Firms also must submit a plan for notification, containment and clean-up of oil spills which includes the names, titles and work and home telephone numbers of company personnel to be notified on an emergency basis.

B. Access Rights of the Person in Interest

In response to the Commission's questions regarding the access rights of the person in interest, the Enforcement Division makes records available to the public in accordance with the provisions of the Public Information Act. Certain cases involving legal actions may only be reviewed by approval of the Attorney General's Office. Similarly, the records of the Oil Division pertaining to applications for licenses, permits, and driver certifications are available for public inspection and photo-copying in accordance with the Public Information Act. The Laboratory Services Division does not release any sample data or any other laboratory reports to the public. The information developed by that Division is returned directly to the requesting unit and may in turn be released in accordance with the procedures in effect within that unit.

C. Disclosure of Records to Third Parties

The records of the Enforcement Division and the Oil Division are disclosable to third parties via the Public Information Act. The accuracy of the data contained in the files of the Oil Division is verified prior to the issuance of a permit or license. The accuracy of any information concerning alleged violations is verified by the Enforcement Division prior to the issuance of any administrative directives for corrective action or referral to the Attorney General's Office for litigation. Information pertaining to on-going investigations for the Attorney General's Office is only released upon approval by the Attorney General's Office. An effort is made to make

notations in all files concerning any third party requests for information.

D. Security of Personally Identifiable Information

Records of the Resource Protection Program, with the exception of those referred to the Attorney General's Office, are accessible to the general public. The Commission was informed, however, that these records are located within the work area of the regional inspectors and directly in view of the secretary to the Program Director and, the Division Chiefs, and of course, the regional inspectors. Anyone outside the unit with an interest in reviewing a file is required to fill out a file card. Any non-employees observed in the area of the files are questioned concerning their specific interest in a file.

The Division indicated that alteration of files by Division personnel is unlikely since a higher level supervisor must sign-off on all inspection reports, draft administrative orders, etc. A detailed risk analysis has not been performed for either Division.

VII. Water Resources Administration-Watershed Management Program

There are two components of the Watershed Management Program of the Water Resources Administration that maintain personally identifiable information: the Dam Safety Division and the Watershed Permits Division. The Dam Safety Division maintains an inventory of dams throughout the State and currently has approximately 200 records in the system. Approximately 900 applications are received annually by the Watershed Permits Division for permission to construct in floodplains.

A. Collection and Maintenance of Information

The Divisions of the Watershed Management Program appear to collect only basic items of identifiable data and to obtain these items directly from individuals themselves. Dam Safety Division records contain the names, addresses and telephone numbers of dam owners and operators, and the names

and telephone numbers of the local Civil Defense Directors. Watershed Permit Division applications include the names, addresses and telephone numbers of applicants and persons responsible for the design of a project.

Watershed Management Program records containing personal identifiers are maintained in a computerized fashion. Dam Safety records are categorized by dam name and Watershed Permits are indexed by applicant name.

B. Access Rights of the Person in Interest

Responses for the two divisions of the Watershed Management Program indicated that the person in interest has a right of access to all data pertaining to him, that he is made aware of this right, that he may copy pertinent files, and that he has an opportunity to contest the accuracy of such files.

C. Disclosure of Records to Third Parties

Watershed Management Program records are disclosable under the Public Information Act. It appears that the subject of the record is ordinarily not notified regarding either the disclosure of personally identifiable information or the name of the recipient of such records. Verification of information does not occur prior to disclosure. Logs are not kept to record the dissemination of data.

D. Security of Personally Identifiable Information

The Dam Safety Division indicated to the Commission that access to its computer system is restricted and that measures have been taken to prevent the unauthorized altering of data by division personnel. In the case of the Watershed Permits, no general security measures appear to have been developed, nor are any procedures in effect to prevent alteration of computerized records by employees. None of the units of the Watershed Management Program had conducted a risk analysis to determine the appropriate level of security needed.

NOTES

1. Annotated Code of Maryland, TR 12-112 (a).

DEPARTMENT OF PERSONNEL

The Department of Personnel (DOP) is charged primarily with developing and maintaining a personnel system for the recruitment, training and retention of State employees. This report examining the record-keeping practices of the Department of Personnel will focus on the policies of the four divisions identified by DOP as maintaining personally identifiable information: 1) Administrative Services Division; 2) Data Processing Division; 3) State Retirement Systems; and 4) State Accident Fund. While this report is thus geared to an analysis of the policies of the Department of Personnel, it should be understood that DOP is not the sole custodian of State employee records. Most Executive Branch departments have an identifiable personnel section maintaining materials similar in nature to DOP's Administrative Services Division. Indeed, it is quite common for division chiefs within departments to have their own personnel files covering the employees of that division. Departments are responsible for developing their own procedures governing the maintenance of such records. Given this somewhat decentralized system, then, comparative references will occasionally be made throughout this DOP report to the various personal files not under the jurisdiction of DOP.

I. Department-Wide Practices

A. Statutory Requirements

The Public Information Act contains a number of references to data typically contained in employee records. Article 76A, Section 1 (b)

specifically includes the salaries of all public employees under the definition of public records. Since salary information is not listed among the discretionary or mandatory exceptions to disclosure, a custodian would presumably be required to furnish salary data upon request. Article 76A, Section 3(c) does, however, assign a confidential status to certain other types of information relating to public employees. A custodian may not disclose the following items:

1. "Personnel files except that such files shall be available to the person in interest, and the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise the work."

2. "Letter of reference."

3. "The home address or telephone number of any employee of the State or any agency, instrumentality, or political subdivision of this State, whether in the classified or nonclassified service, except with the permission of the employee, unless the governmental entity which employs the person has determined that disclosure of the address or number is necessary to protect the public interest."

Since the Public Information Act prohibits the disclosure of certain medical and psychological data unless otherwise provided by law, such items as employee medical reports would also be confidential. Finally, if a public employee takes a written promotional examination, he has a right to inspect both the examination itself and his own results; copying,

however, is prohibited.

The Department has recently promulgated a regulation (COMAR 06.01.04) which seeks to explain the mandates of the Public Information Act for the Department of Personnel. There is nothing contained in this regulation which deviates from the points which have just been covered and therefore it sheds little additional light on DOP record-keeping practices. It is interesting to note, however, that while the regulations only affect those records that are actually in the possession of DOP, a number of personnel divisions in various departments have been operating under the assumption that their records are governed by COMAR 06.01.04. When the Commission requested departmental personnel officers for information regarding the legal basis for their collection and disclosure requirements, the Commission was constantly told that authority came from COMAR 06.01.04.

B. Equal Employment Opportunity Commission Guidelines

The Department of Personnel subscribes to guidelines that have been developed by the Equal Employment Opportunity Commission (EEOC) for the handling of pre-employment inquiries. These guidelines have been forwarded to the Fair Practices Officers throughout the State bureaucracy with the strong recommendation that they be implemented. The guidelines are quite relevant to the work of the Information Practices Commission in that their basic thrust is to limit the type and amount of personal information that can be collected from applicants for State employment. In order to prevent discrimination in hiring, EEOC has concluded that data should not be collected from individuals unless there is a bona fide occupational purpose to the information. Therefore, in most instances, such items as age, marital status, height, weight, sex, race,

citizenship status, spouse's name and occupation, and so forth, should not be requested from applicants.

The Standard Application for State Employment Form was designed to eliminate the collection of extraneous information. Applicants are asked to provide information regarding birth date, sex, handicapped status and ethnic origin. However, this information is collected solely for statistical purposes and is in fact detached from the application form before the initiation of the employment screening process. Of some concern is the fact that all applicants are asked whether or not they have a Maryland driver's license and if so, they are requested to list the license number. Obviously, a hiring officer with a copy of an applicant's driving record would be confronted with some of the very same data that EEOC has urged employers to avoid: height, weight, race, sex, and date of birth. However, the Commission has been assured that driving records are not obtained routinely by the Department of Personnel during the application process. In order to prevent any circumvention of EEOC guidelines, it might be preferable to ask for driver's license number only from those applicants seeking employment in positions where driving ability is a consideration.

It should be noted that while DOP itself strictly adheres to EEOC guidelines, this may not necessarily be the case regarding departmental personnel offices. The decentralized character of the State personnel process could mean that certain pieces of applicant information not available to DOP might be found in the individual departments. Indeed, the Commission examined agency application forms where this was the case. For example, the application used by the Maryland Food Center Authority asks for information concerning height, weight, physical defects, and names of any relatives employed by the Authority, all of which

should not be collected under the standards developed by EEOC unless they are relevant to an occupational purpose.

II. Administrative Services Division

The Administrative Services Division is charged with a number of duties, among which are the development, dissemination and interpretation of personnel rules; compliance review of personnel transactions; and administration of the State Employees' Health Care Program. The Division identified eleven distinct record systems containing personally identifiable data. The following is a list of the names and the approximate number of records in each system:

<u>NAME OF SYSTEM</u>	<u>NUMBER OF RECORDS</u>
1. Employee Personnel Folders	60,000 (active) 30,000 (inactive)
2. Health Care Files	6,000
3. DOP Personnel Leave Cards	2,000
4. Employee History Ledgers	200,000
5. Unsatisfactory Work Records	41,000
6. Physical Examination Reports	42,000
7. Special Medical Problems Files	2,400
8. Payroll Transmittals	150,000
9. Official Roster	60,000
10. Time Cards (DOP Personnel)	52,000
11. Health Care Correspondence	7,500

The Commission was informed that the Administrative Services Division follows standardized procedures for all of its systems in permitting access to the person in interest, disclosing data to third parties and maintaining security. Therefore, the following presentation applies to all records of the Division.

A. Collection and Maintenance of Information

The Administrative Services Division provided the Commission with the following description of the basic contents of each record system. Employee

Personnel Folders typically contain job-related documents concerning the hiring, maintenance and termination of employees. Common to most folders, according to the Division, are employment application forms, employment transaction forms, employment history ledgers, efficiency and disciplinary forms, and incentive awards. The Division maintains Health Care Files for State employees covered by Blue Cross/Blue Shield and other health insurance programs. Applications for leave of absence for Blue Cross/Blue Shield are included in this series of files. The third system identified by the Administrative Services Division DOP Personnel Leave Cards, contains data on employees of the Department of Personnel indicating used and unused leave. Employee History Ledgers contain the names, titles, and rates of pay of all employees under the jurisdiction of the Department of Personnel. Unsatisfactory Work Records consist of index cards containing information stating why candidates are ineligible for State employment. The Division maintains Physical Examination Reports of all permanent classified State employees. The Special Medical Problems Files contain reports from the State Medical Unit, outside medical reports, recommendations from the State Medical Director, and general correspondence concerning State employees with special medical problems. Payroll Transmittals consist of copies of all authorizations submitted to Central Payroll, and all other payroll centers, indicating the new salary of an employee and any other pertinent data required for the payroll centers to react upon an action. The Official Roster of State employees contains information drawn from the Department of Personnel Transaction Form, which is legally required or which the Secretary of Personnel considers desirable to record formally. Time Cards (DOP Personnel) serve as a record of employee work time calculated on a two-week pay period. Finally, Health Care Correspondence consists of general correspondence relating to the State Health Insurance Program. Information contained in letters is

personal in nature relating to health problems.

It is evident that the information contained in these systems comes from a number of sources. Many pieces of information are provided directly by employees themselves (e.g. employment application forms, applications for leave of absence for Blue Cross/Blue Shield, etc.). Other data, such as unsatisfactory work records, is supplied by supervisors or departmental personnel officers. Still other types of data may come from various specialists such as doctors. If the Administrative Services Division receives unsolicited comments about a state employee, these comments are not included in the Division's records systems but instead are forwarded to the employee's departmental personnel office.

Eight of the Division's systems (Employee Personnel Folders, Health Care Files, DOP Personnel Leave Cards, Physical Examination Reports, Special Medical Problems Files, Payroll Transmittals, Time Cards and Health Care Correspondence) are maintained manually. Employee History Ledgers and Unsatisfactory Work Records contain both manual and computerized data. The Official Roster is entirely automated. Health Care Correspondence is indexed by name alone, while all other systems are indexed by name and social security number.

B. Access Rights of the Person in Interest

As previously noted, the Public Information Act permits the person in interest to examine his own personnel files. COMAR 06.01.04, which governs the records of the Administrative Services Division, indicates that this right of access includes any medical data relating to the individual but does not include letters of reference. The Division indicated that an appointment to examine a record is made when the subject of that record contacts the Division. Upon arriving at the Division, the individual must show valid identification

and is then permitted to examine the record in question. The custodian of the record remains with the individual during the entire examination period. Copies are provided of specified records for a fee of twenty-five cents per page. The Division asserted that individual employees are aware of their right of access. Though no formal policies existed in this area, the Division stated that employees would be permitted to contest the accuracy of records and to seek corrections of those records.

C. Disclosure of Records to Third Parties

The Administrative Services Division will disclose materials in its files, with the exception of letters of reference, to third parties if it receives a written authorization to do so from the person in interest. Given the public character of salary information, a certified copy containing a statement of the salary of any employee will be provided. In all other instances, however, records are only disclosed to those with a specified statutory authority. Thus, for example, a record involving an employee of the Department of Human Resources could be disseminated to the Secretary of that Department or his representative, or to the personnel office of Human Resources. This same record could be forwarded to the Governor but not to a member of the legislature.

The Division will only accept a telephone request for records if the request comes from a department personnel officer who is known by staff members of the Division. Otherwise, the Division only honors written requests which specify the legal basis for the disclosure. The person in interest is not ordinarily notified regarding the disclosure of records and the name of the recipient of such records. The accuracy of the information is not verified before it is disseminated, the assumption being that the data is correct. A log is kept by the Administrative Services Division to record

all recipients of records and the dates of disclosure. The Division is currently considering including this information in the file of the individual employee so that he may be aware of the recipients of information.

D. Security of Personally Identifiable Information

Access to the records room of the Administrative Services Division is limited to authorized personnel. As previously noted, records are examined only in the presence of Division staff members. The room is unlocked only in those cases where Division personnel are actually in the room. In accordance with COMAR 06.01.04, the Division requires that recipients of information must agree in writing that they will not redisclose any materials without the express written consent of the record custodian.

Regarding the Division's computerized record system, the Commission was informed that measures have been instituted to prevent the unauthorized altering of data. However, the Division indicated that no risk analysis had been conducted to determine the appropriate level of security to be assigned to the system.

E. Comparisons with Other Departmental Personnel Practices

By and large, the practices adopted by the various departmental personnel offices surveyed by the Commission appear to be consistent with those of the Administrative Services Division. Every office contacted by the Commission indicated that employees are granted access to personnel files. In addition, the Commission was informed that employees are aware of their access rights and would have an opportunity to contest the accuracy of information and seek amendments of specified records. Furthermore, it appears that personnel offices disseminate relatively little in the way of personally identifiable data without the consent of the affected employees. While logs are generally not kept

to record any disclosure, notes are frequently made in the employee's personnel file. Finally, the Commission was told that files are adequately secured.

One area where the Commission did encounter noticeable variations concerned the handling of employee salary information by departmental personnel offices. The most common practice seems to be verification of a particular salary by the personnel office if the office is contacted by a bank, credit institution, department store, etc. Thus, the office will not volunteer an employee's salary to a requester but will confirm or deny a figure provided by the requester. This is the general policy in effect at such departments as Budget and Fiscal Planning, Agriculture, and Economic and Community Development. A second practice, typified by the Office of Aging, is to refuse to disseminate salary information without the authorization of the employee. Finally, a much less common practice, adopted by the Maryland Food Center Authority, is to disseminate salary information when requested to do so.

If it is possible to generalize about department practices governing the release of salary information, it would appear that personnel officers usually do not release salary information unless it is in the best interests of the employee to do so. For example, salary data may be released without the employee's authorization by some departments if it is clear that the employee has initiated the request by applying for credit. If it is evident, however, that the requester is acting on his own and is not performing a service function for the employee (such as providing credit), the request will ordinarily be denied. This policy has been stated in its clearest fashion by the Regional Planning: "Employee salary information will normally only be disclosed when related to proof of employment or credit checks made by other employers, banks, lending institutions, and/or retail establishments.

Any other types of requests for employee salary information will be denied unless the employee approves its disclosure.

While it is obvious that personnel officers have developed this policy to protect public employees from potentially harmful uses of salary data, it would appear that this policy is inconsistent with the mandate of the Public Information Act. The fact remains that a records custodian does not have any discretionary authority under the Public Information Act to deny requests for salary data, unless the custodian determines that disclosure would cause substantial injury to the public interest. In such a situation, however, the custodian would have to apply to the circuit court of the county where the record is located for a permanent order restricting disclosure.

II. Data Processing Division

The Data Processing Division is responsible for developing, implementing and maintaining automated departmental systems and computer programs. The Division maintains one program-related personally identifiable record system, a Personnel Status File, which contains approximately 60,000 records. The purpose of the file is to indicate the current status of each employee and any position vacancy.

A. Collection and Maintenance of Information

All of the information used to develop this system is taken directly from the MS-310 Personnel Transaction Form. Although the data is either ultimately provided by the individual employee or is information of which he is familiar, the data is provided to the Data Processing Division by the personnel officers of the various departments.

In examining the File Distribution Layout for the Personnel Status File, it is clear that the bulk of the data elements either relate to salary infor-

mation or concern various budgetary matters. There are, however, a number of other elements that are identifiable to specific individuals, such as birth date, sex, race, unemployment compensation code and retirement system code.

The system is entirely automated. The information contained in the system is categorized by social security number but can be retrieved either by name or position identification number.

B. Access Rights of the Person in Interest

The Data Processing Division informed the Commission that individual employees do have access to the information relating to them. Individuals may contest the accuracy of information and may seek a correction of inaccurate data. The Commission did not receive sufficient information to determine either the manner by which access is granted or whether individuals are made aware of their access rights. It could be, however, that the Division receives relatively few requests from employees for information relating to them, since they would presumably be quite familiar with the information already.

C. Disclosure of Records to Third Parties

The Data Processing Division adheres to COMAR 06.01.04 in releasing information about specific employees to any elected or appointed official or employee who supervises that employee. All recipients of data must sign a form specifying the purpose of the request and the names of all persons to whom information will be released. The Commission did not receive sufficient information to determine whether the person in interest is notified regarding the disclosure of records and the name of the recipient of such records, whether any verification of data occurs prior to dissemination, and whether the person in interest may have access to the list of recipients that is kept by the Data Processing Division.

In contrast to the position adopted by the Administrative Services Division, Data Processing will release information about executive branch employees to members of the Legislature. The position adopted by the Data Processing Division is that legislators are included in the definition of ". . . duly elected and appointed officials who supervise the work of the person in interest."

The issue of the authority of legislators to executive branch personnel files has not been addressed specifically by the Attorney General's Office. In a case involving access to personnel files by legislative auditors in 1975, the Attorney General concluded, " If the requesting agency has statutory duties which demonstrably cannot be effectively executed without access to personnel files, the inspection of records which you would otherwise have an obligation to deny, is authorized within the meaning and intent of Article 76A, Section 3(c)."¹ More recently, however, the Attorney General has suggested a somewhat more narrow construction requiring ". . . some concrete nexus of real or potential 'supervision'. . ." between the official and the employee.² It is not entirely clear, however, whether the members of a legislative committee charged with oversight responsibility for a particular executive department could be regarded as "potential supervisors."

D. Security of Personally Identifiable Information

The Data Processing Division indicated that a security software program has been developed to prevent the unauthorized altering of data by departmental personnel. While no risk analysis had been conducted, the Commission was informed that internal procedures are being utilized to maintain an appropriate level of security for the record system. As noted previously, recipients of data must sign a statement specifying the name of individuals who will have access to released information. Recipients must agree that no other indi-

viduals will be permitted to examine the data in question.

IV. State Retirement Systems

The office of the State Retirement Systems maintains retirement files on all members and retirees of the following retirement and pension programs:

- a) Teachers' Retirement System
- b) Pension System for Teachers of the State of Maryland
- c) Employees' Retirement System
- d) Pension System for Employees of the State of Maryland
- e) State Police Retirement System
- f) State Police Pension Fund
- g) Legislative Plan
- h) Judicial Plan

The office maintains a cumulative total of 190,000 individual records.

A. Collection and Maintenance of Information

The bulk of the data collected by the State Retirement Systems office comes from the individual member or retiree himself. The employing agency is asked to provide data regarding the individual's salary, hours worked, and retirement contribution totals. This information is forwarded on an annual basis to the specific member or employee who is encouraged to review it and report any inaccuracies to the Retirement Systems office. Any unsolicited comments received by the office are discarded.

The individual himself therefore either directly provides or is aware of all of the personally identifiable data of the Retirement Systems office. Irregardless of the source of the information, however, it is quite clear that the office handles a considerable amount of sensitive data. The basic application for membership form, for example, asks individuals to provide

information concerning any physical limitations or disabilities and whether any type of disability payments have ever been received. Members are also requested to provide the names, address, dates of birth and relationships to the members of all primary and contingent beneficiaries. In addition, office files will typically contain birth and death certificates, medical information relating to individuals who have applied for disability retirement payments, a determination as to which of several retirement packages was chosen by the member, the total contributions by the member to the retirement system, the total amount of retirement allowance being received by each individual, and a retirement allowance estimate provided by the office to a requesting member considering retirement.

The State Retirement Systems office indicated to the Commission that records contain both manual and computerized elements. Information is categorized by means of the social security numbers of the members; the office also maintains an alphabetical cross-index.

B. Access Rights of the Person in Interest

The Commission was informed that the person in interest has access to most, but not all, of the data pertaining to him. Access to specified records can be obtained by the person in interest by contacting a retirement counselor and scheduling an appointment. Members and retirees may both copy their own records and contest the accuracy of those records. Systems participants are educated regarding their access rights through a semi-annual newsletter.

Any physician medical reports obtained by the Retirement Systems office are nondisclosable to the person in interest unless access is authorized by the individual physician. Such reports would be collected typically in situations where an individual has applied for disability retirement. The individual would be required to file a statement of Disability delineating the

reasons for his inability to continue employment. A claimant would also be required to obtain a medical examination from a physician and to have that physician submit a report to the Retirement Systems' Medical Board. The claimant would then be notified of the Medical Board's decision and would be permitted to submit any additional supporting documents.

There is no specific reference in the Annotated Code regarding the handling of medical records by the Retirement Systems. The basic position of the Retirement Systems is that these records belong neither to the person in interest nor to the Retirement Systems but rather are the property of the individual physician. As a consequence, therefore, the physician is the only one who is permitted to make decisions regarding records access. It should be noted that the passage of HB 1287 by the 1981 General Assembly does not affect the medical records practices of the Retirement Systems, as HB 1287 only permits patient access to medical records if the records are maintained by a hospital or related institution.

C. Disclosure of Records to Third Parties

The Annotated Code is silent concerning the disclosure of records to third parties by the Retirement Systems office. As a consequence, therefore, most of the data collected by the Retirement Systems is considered to be disclosable under Article 76A, the Public Information Act. Given the broad definition of "public records" found in Article 76A, Section 1(b), all of the records of the Retirement Systems would probably be affected by this statute. Basically, unless a particular record falls within the specified exceptions in Article 76A, or is confidential by a different state statute or regulation, a federal statute or regulation, or a court order, the record would be disclosable to the general public. In practical terms, this means that the State Retirement Systems office must disclose all of its program-related

records with the exception of medical data (Article 76A, Section 3(c)(i)). The counsel to the State Retirement Systems informed the Commission that even birth and death certificates are disclosable. Though birth and death certificates are confidential under Article 43, Section 27, the Commission was informed that this section of the Annotated Code only applies to vital records in the possession of the Department of Health and Mental Hygiene and not to the records of third parties, such as the State Retirement Systems.

The disclosure requirements of the Public Information Act are a matter of considerable concern to the Boards of Trustees of the Employees, Teachers' and State Police Retirement Systems. In the opinion of the Boards, the most serious matter involves the public character of the names of the designated beneficiaries. The Boards indicated to the Commission that revelation of beneficiary information to the general public is quite distressing to many members and retirees. The State Police Board expressed the fear that disclosure of its retirement data could result in the public identification of certain categories of employees, such as undercover police agents. As noted previously, the State Retirement Systems office will provide a retirement allowance estimate for any member considering retirement. The Commission was informed that many members do not want anyone to know that they are considering retirement and therefore would be quite upset to learn about the public character of the allowance estimate. The Boards also expressed a concern that both the total accumulated members contribution and the total retirement allowance amount are disclosable. The position of the Boards is that this information should be confidential in that both amounts are affected in part by the voluntary contributions of the members.

D. Security of Personally Identifiable Information

The State Retirement Systems office indicated that manual records are kept in locked file cabinets. Computerized data is protected through requirements of access codes prior to inquiry. The office asserted that numerous edit and logic checks are used to prevent the unauthorized altering of data by departmental personnel. The Commission was told that no formal risk analysis had been conducted. Finally, since nearly all of the office records are disclosable under the Public Information Act, the office does not require any security guarantees from recipients of information.

V. State Accident Fund

The State Accident Fund informed the Commission that it operates as the largest writer of Workmen's Compensation Insurance in Maryland. Both public and private employers in the State may purchase insurance through the Fund so as to permit payments for employee accident and injury claims. The Fund maintains an underwriting record system containing approximately 15,000 active records, and a claims system containing approximately 20,000 records.

A. Collection and Maintenance of Information

The State Accident Fund files contain employer applications for Workmen's Compensation Insurance to the Fund which include the name of the employer, the addresses and titles of corporation officers, the name and address of the employer's bank, and the employer's regular and special bank account numbers. The application also contains the number of employees of the firm and the total estimated payroll of employees in each class for the year.

Information is also obtained from claimants at the time that Workmen's Compensation reports are filed. An Employee's claim contains the following information: name of employee, address, telephone number, social security

number, sex, race, marital status, place of birth, ability to speak English, gross wages or earnings at the time of accident, name and address of employer, name of foreman, description of accident, and nature of injury. Also filed with the Fund is the Employer's First Report of Injury, which contains data similar in character to the Employee's claim. Attending physicians are asked to submit tri-weekly progress reports regarding the status of individual claimants. The claimant's file may also contain investigative reports, including Police Department reports. Additionally, the Fund may also obtain payroll information via audits of quarterly Maryland Unemployment Insurance reporting forms and other payroll records kept by employers.

The Commission was informed that underwriting information is maintained in both a manual and computerized fashion. While the manual systems are under the direct control of the State Accident Fund, the computerized files are managed by the Data Processing Division of the Department of Personnel. Underwriting data in both manual and computerized files are categorized by assigned policy numbers which are consecutively numbered. The manual claims system data is indexed alphabetically, while the computerized claims data is categorized according to social security number.

B. Access Rights of the Person in Interest

The Commission was informed that, upon request, the person in interest is granted access to files pertaining to him. Individuals also have the right to copy the materials in these files and to contest the accuracy of file contents. However, there does not appear to have been any direct attempt made by the State Accident Fund to inform individuals of their right of access.

C. Disclosure of Records to Third Parties

The general policy of the State Accident Fund is to prohibit dissemination of personally identifiable data to third parties. The position of the Fund is quite clear in this regard: "Because the information accumulated is not considered a matter of public record, individuals requesting access to specified documents are immediately advised that they may not have access to information accumulated in the Fund."³ The State Accident Fund maintained that the only exception to this blanket statement involved the forwarding of delinquent accounts to the Central Collection Unit. In those rare cases where data is released, the Fund indicated that the accuracy of the information is verified before disclosure. No logs are maintained to record the dissemination of personal data.

It is the Fund's position that information accumulated by the Fund is confidential, and that public disclosure of same would constitute an unwarranted invasion of the personal privacy of its policyholders and their employees. The Fund further asserted that disclosure of such information would be a breach of the Fund's fiduciary responsibility to its policyholders and their employees. (The State Accident Fund is a trust fund.) Public disclosure of the information accumulated by the Fund could lead, in the view of the Fund, to the cancellation of some accounts if those companies did not want this information divulged. The State Accident Fund operates similar to the private insurance carriers and hence has adopted the policy of the private carriers regarding the disclosure of information.

There is no existing statute which specifically allows the State Accident Fund to treat its information as confidential. The Fund informed the Commission that it bases its position on the general exceptions allowed by Article 76A, Section 3, and asserted that it looks to the intent of the Public Information Act and its definition of public records, which is in the "modern trend to

require financial disclosures and end invidious shadows of secrecy". In the Fund's view, its nondisclosable policy preserves the privacy of its clients.

In addition, the Fund stated that its position is based on Article 101, Section 4, which pertains to sessions of the Workmen's Compensation Commission; these sessions are open to the public, and involve all insurers in Maryland. The Commission's formal record of proceedings is also open to the public. Therefore, the Fund takes the position that the Commission is the proper vehicle for the disclosure of information regarding employers and employees (claimants). Consequently, the Fund is on a par with the private carriers regarding the disclosure of information.

It should be noted that the Supervising Assistant Attorney General assigned to the State Accident Fund has verbally informed the Information Practices Commission that, in his opinion, the Fund's position is without legal basis and that all of its records are subject to the disclosure provisions of the Public Information Act, and that the records custodian could only place restrictions on medical data.

D. Security of Personally Identifiable Information

The State Accident Fund indicated that underwriting manual records are maintained in a fireproof file room. The files are mechanized and are locked after the close of business each day. Access is prohibited. Keys are required both to unlock the door and the system itself. During business hours, files are unlocked; however, access is restricted to authorized personnel. Claims records apparently are not locked but are maintained in filing cabinets in a central area of the claims department. Again, access is restricted to authorized personnel. The Fund indicated that the building has an extensive fire and smoke alarm system and is monitored continually by a private company. Since the Fund's computerized records are maintained by the Data Processing Division of the Department of Personnel, the Fund suggested that Data Processing would be in a better position to respond to questions regarding security of computerized data.

NOTES

1. 60 Opinions of the Attorney General 558 (1975).
2. Opinions of the Attorney General No. 80-073 (June 20, 1980), p.4.
3. Correspondence to the Information Practices Commission from the State Accident Fund, April 27, 1981.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

The Department of Public Safety and Correctional Services consists of four principal divisions which maintain program-related personally identifiable information: the Maryland State Police, the Division of Correction, the Maryland Parole Commission, and the Division of Parole and Probation. It should be noted that there are other, smaller units of the Department, such as the Criminal Injuries Compensation Board and the Inmate Grievance Commission, which presumably would also have data pertaining to specific individuals. The Information Practices Commission lacks data regarding these smaller units and therefore will concentrate its attention on the record-keeping practices of the main divisions of the department.

I. Departmental-Wide Practices

Before considering the individual divisions, it is useful to examine those sections of the Maryland Annotated Code which affect the information practices of the criminal justice system statewide. Two sections are particularly noteworthy: the expungement of specified records and the establishment of the Criminal Justice Information System (CJIS).

A. Expungement of Records

Current Maryland statutes provide for the expungement of police and court records under various sets of conditions. Article 27, Section 736 permits an individual who has been released from police custody without

being charged with the commission of a crime to request any law enforcement agency to expunge records relating to his arrest, detention or confinement. Upon receipt of the request, the law enforcement agency in question shall promptly investigate the situation. If the facts provided by the individual are verified, the agency shall expunge the relevant police records within sixty days and notify any other law enforcement agency believed to have records relating to the arrest, detention or confinement. Agencies so notified must expunge appropriate records within thirty days. An individual whose request for expungement was denied by a law enforcement agency may apply for a hearing in District Court. If the court determines that the individual was entitled to expungement, it shall issue an order directing the agency to comply.

Expungement is also permitted in cases where charges are filed not resulting in a conviction. The following situations are covered by the expungement provision found in Article 27, Section 737: 1) the defendant is acquitted; 2) charges are dismissed or quashed; 3) a judgement of probation without finding a verdict is entered; 4) a nolle prosequi is entered; 5) the proceeding is placed on the stet docket. In any of these situations, the individual may file a petition in the court where the proceeding occurred and request expungement. A copy of the petition is served on the State's attorney; unless he files an objection, the court shall order the expungement of police and court records. If an objection is filed by the State's attorney, a hearing will be held. Should the court determine the individual to be entitled to expungement, the court shall enter an order to that effect. If a conviction did not result for any reason other than acquittal or dismissal of charges, expungement is prohibited if the individual has been previously convicted of any crime or other than violations of the State vehicle laws or laws not carrying a possible prison sentence, or if the individual

is a defendant in a pending criminal proceeding. Should the court order expungement, records custodians must comply within thirty days.

In contrast to the above statutes, which refer to police and court records in general, Article 27, Section 292 is more particularized, permitting expungement of records of individuals charged with violating the State's controlled dangerous substances provisions. If an individual not previously convicted in any state with violating dangerous substances laws is found not guilty of such laws in Maryland, the court shall expunge relevant records ". . .if satisfied that the best interest of the person and the welfare of the people of this State would be served thereby . . .". If a defendant not previously convicted is found guilty, the court may defer further proceedings and place the individual on probation. If the terms and conditions of the probation are fulfilled, the proceeding shall be dismissed with all criminal records being expunged.

There are three points worthy of note regarding the expungement statutes just discussed. First of all, a record need not be physically destroyed in order to be regarded as expunged. The expungement requirement may be satisfied by removing the record to a secure area with limited access permitted. Second, expungement is not an automatic process but occurs either as a consequence of a petition filed by the subject of the record or in the discretion of the court. This is the case even in situations where an individual is released without being charged with the commission of a crime. Finally, there is nothing in the Annotated Code that would compel a law enforcement agency or a court to inform an individual that he may be eligible for expungement of his record. The Commission lacks data to determine whether or not eligible individuals are aware of their opportunity for expungement.

B. Criminal Justice Information System

The Criminal Justice Information System (CJIS) (Article 27, Sections 742-755), was developed as a consequence of provisions contained in the Omnibus Crime Control and Safe Streets Act of 1973. The Act authorized the expenditure of federal funds to states for the development of systems containing criminal history record information. In order to qualify for federal funds, however, states had to meet certain minimum standards:

"All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent possible, disposition as well as arrest data included therein. The collection, storage and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Administration shall assume that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction."¹

CJIS was enacted in 1976 in response to federal regulations developed by the U.S. Department of Justice, Law Enforcement Assistance Administration. The Act, and the subsequent regulations issued by the Department of Public Safety and Correctional Services, contain four notable features pertinent to record-keeping practices: 1) the development of a central repository for criminal history record information; 2) measures designed to permit the person in interest to inspect and challenge his criminal history record; 3) procedures governing the dissemination of criminal history record information; and 4) regulations regarding security of criminal history record information.

1. Central Repository

Article 27, Section 747 creates a criminal justice information system central repository to be operated by the Maryland State Police under the administrative control of the Secretary of Public Safety and Correctional Services, with the advice of the Criminal Justice Information Advisory Board. The Act requires that all criminal justice agencies must report criminal history record information, whether collected manually or by means of an automated system, to the central repository.

In order to understand what data is and is not located in the central repository, it is critical to understand the meaning of both "criminal justice agency" and "criminal history record information." The Act defines a criminal justice agency as ". . . any government agency or subunit of any such agency which is authorized by law to exercise the power of arrest, detention, prosecution, adjudication, correctional supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime and which allocates a substantial portion of its annual budget to any of these functions."² While the term does not include either the Juvenile Services Administration or the juvenile courts, it does include police and sheriff departments on all levels; correctional facilities, jails and detention centers; the offices of the Attorney General, the State's attorneys, and any others authorized to prosecute criminal offenses; and the courts on all levels.

Each of these agencies, then, must submit "criminal history record information" to the central repository. Criminal history record information is defined as ". . . data initiated or collected by a criminal justice agency on a person pertaining to a reportable event."³

The Act specifically excludes the following types of data: investigatory or intelligence files; juvenile proceedings; wanted posters; police blotter entries, court records of public judicial proceedings or published court opinions; Motor Vehicle Administration point system information; violations of the traffic laws, local ordinances, State or local regulations, or the Natural Resources Article unless the individual is arrested on a bench warrant or is incarcerated; pre-sentence investigation and other reports prepared by a probation department for use by a court or by the Governor; and contemporaneous or current case-in-progress records.

Nineteen distinct events are considered by the Act to be "reportable events" that must be submitted by the criminal justice agency to the central repository:

- "1) Issuance or withdrawal of an arrest warrant;
- 2) An arrest;
- 3) Release of a person after arrest without the filing of a charge;
- 4) Presentment of an indictment, filing of criminal information, or filing of a statement of charges after arrest;
- 5) A release pending trial or appeal;
- 6) Commitment to a place of pretrial detention;
- 7) Dismissal or quashing of an indictment or criminal information;
- 8) A nolle prosequi;
- 9) Placement of a charge on the stet docket;
- 10) An acquittal, conviction, or other disposition at or following trial, including a finding of probation before judgement;
- 11) Imposition of a sentence;
- 12) Commitment to a correctional facility, whether State or locally operated;
- 13) Release from detention or confinement;
- 14) An escape from confinement;
- 15) A pardon, reprieve, commutation of sentence, or other change in a sentence, including a change ordered by a court;
- 16) Entry of an appeal to an appellate court;
- 17) Judgement of an appellate court;
- 18) Order of a court in a collateral proceeding that affects a person's conviction, sentence, or confinement;

- 19) Any other event arising out of or occurring during the course of criminal justice proceedings declared to be reportable by rule or regulation of the Secretary or the Court of Appeals."⁴

Any criminal justice agency initiating or collecting data pertaining to reportable events must submit such information to the central repository. Arrest and arrest warrant data must be transmitted within seventy-two hours of either the arrest or arrest warrant, whichever came first. Information relating to the release, without filing of a charge, of individuals arrested must be reported within thirty days. Criminal justice agencies have sixty days to inform the central repository of any other reportable event.

Following the above definitions, it is clear that the central repository contains a vast amount of criminal history record data. Essentially, the central repository should have an up-to-date record of the movement of every adult through the criminal justice system, from arrest to conviction to incarceration to probation. As an example of the data contained in the repository, one may consider the Criminal Arrest Report form used by the Maryland State Police. The following types of data elements are contained on this form: name, race, sex, height, weight, color of hair and eyes, date of birth, age, known alias, address, home telephone number, occupation, place of employment, date and time of arrest, place of arrest, place of crime, immediate disposition, charge, name of victim, date and time of crime, and names of associates.

The repository currently houses approximately 2,000,000 records categorized by name, case number, and /or fingerprint classification. While this is a sizable data base, it should not be assumed that the central repository houses all, or even most, of the programmatic records

of the Department of Public Safety and Correctional Services. As has already been noted, various record systems, such as investigatory files, are specifically excluded. More significantly, however, the central repository only maintains data on reportable events relating to the individual's movement through the criminal justice system. To give an example, the central repository would have information as to the date of transfer to another correctional institution, the date of an inmate's confinement in a correctional institution, the date of release from confinement, and so forth. The repository would not contain, however, information relating to the day-to-day confinement of the inmate. Such items as medical information, visitor records, educational records, work assignment material, family questionnaires, etc., are not reportable events and hence are not included in the central repository. An escape from confinement, however, is a reportable event and thus, the central repository would have a record of the date and place of escape.

2. Access Rights of the Person in Interest

Article 27, Sections 751-752 and subsequent departmental regulations (COMAR 12.01.08.05 - 12.06.08.08) permit the person in interest to inspect and challenge criminal history record information pertaining to him, unless such information is relevant to a pending criminal proceeding. Although the CJIS Act presumes that the bulk of the inspections will concern data maintained by the central repository, provision is made for inspection of any criminal history record information not yet forwarded to the repository by a criminal justice agency. It should be emphasized that since criminal history record information only pertains to data relating to a reportable event, the person in interest cannot use these sections of the Code to demand access to all departmental information

identifying him. Thus, an inmate could not gain access to Division of Corrections medical data via the CJIS statute.

In order to inspect criminal history record information, the person in interest may visit the central repository at the Maryland State Police Headquarters or may visit the State Police barracks in the county in which he resides. Inmates may examine such information at their location of confinement. Unless the person in interest files a statement of indigency, a five dollar fee is charged for each request for inspection.⁵ After the individual's identity is verified, examination of the record must be permitted within thirty days. Although the repository is not prohibited from providing a copy of the record to the person in interest, the Act does not compel the repository to make copies available if requested.⁶

The person in interest is permitted under CJIS to challenge the completeness, contents, accuracy or dissemination of criminal history record information. As in the case of inspection, each challenge requires payment of a five dollar fee, unless the person in interest files a statement of indigency. Once a challenge is filed, the central repository must conduct an examination of the information in question and advise the person in interest of the results of its findings within ninety days. Should the position of the person in interest be upheld, the central repository must not only correct its own records but notify any other agency that maintains the inaccurate information. Each agency holding such records shall correct them and notify the central repository of the correction. If inaccurate information had been previously disseminated to others, these recipients must be notified and must correct their information.

3. Dissemination of Criminal History Record Information

The CJIS Act itself only contains a fairly general statement regarding the disclosure of criminal history record information to third parties: "A criminal justice agency and the central repository may not disseminate criminal history record information except in accordance with the applicable federal law and regulation."⁷ Departmental COMAR regulations, however, are quite specific in character and clearly distinguish between authorized and unauthorized recipients of criminal history record information. The COMAR regulations are most notable for the fact that they are more restrictive than the federal regulations issued by the Law Enforcement Assistance Administration. Federal regulations imposed restrictions on the dissemination of nonconviction criminal history record information but permitted the dissemination of conviction data without limitation.⁸ In contrast, Maryland State regulations place limitations on the dissemination on both nonconviction and conviction data.

COMAR 12.06.08.10 specifies various conditions for the dissemination of criminal history record information, depending on whether the requester is a criminal justice agency, a noncriminal justice government agency or a private nongovernmental employer. Criminal justice agencies may receive conviction and nonconviction data only if such data is necessary to perform their criminal justice functions or for employment purposes. Noncriminal justice agencies may receive conviction data if such data is expressly required in order to issue licenses, hire employees and so forth. Nonconviction data may only be provided to these agencies if governing rules, ordinances, regulations, etc., specify access to nonconviction criminal history record information. Conviction data may be forwarded to private employers if they demonstrate to the satisfaction

of the Department that such information is needed to protect the safety and best interests of the public or the well-being of the firm. Nonconviction data is not disseminated to private employers unless access is expressly authorized by statute, ordinance, rule, etc. The regulation establishes special conditions for the release of criminal history record information to government departments of personnel, public defenders, bail bondsmen, the Juvenile Services Administration, the Governor's Commission on Law Enforcement and the Administration of Justice, authorized research organizations, attorney and judicial commissions, and those under contract with a criminal justice agency.

The Act assigns a prominent role to the central repository in the dissemination of criminal history record information. Such information cannot be disseminated from one criminal justice agency to another until the central repository verifies both the identity of the requester and the accuracy of the information to be disclosed. This requirement may only be waived in cases where delay would adversely affect the rights of a particular person. The central repository is the only entity authorized to disseminate criminal history record information to noncriminal justice agencies.

Logs must be maintained by the central repository to record the dissemination of criminal history record information. If the recipient is a criminal justice agency, a record must be kept of the date of the request, the information disseminated, the name of the recipient, and the date of the dissemination. Disclosures to noncriminal justice agencies must involve the establishment of logs recording the date of the request, the purpose of the request, the information disclosed, the name of the recipient, and the date of the disclosure. In both cases, recipients are barred from redisclosure of information without specific

authorization.

4. Security Measures

The CJIS Act requires the Secretary of Public Safety and Correctional Services to develop rules and regulations " . . . necessary to insure the security of the criminal justice information system and all criminal history record information reported and collected from it."⁹ In developing its regulations, the Department adopted verbatim the security regulations issued by the Law Enforcement Assistance Administration. These regulations include the following requirements: 1) prohibitions against any unauthorized access to computerized information; 2) prohibitions against any unauthorized access to computer facilities; 3) limitations on the dissemination of computer programs to specified criminal justice agency employees; 4) the adoption of measures to prevent the accessing, modifying and destroying of criminal history record information by noncriminal justice agency terminals; 5) the institution of programs designed to detect any unauthorized attempts at access; and 6) provisions for the protection of the central repository from natural or manmade disasters.

II. Maryland State Police

In addition to criminal records maintained by the central repository, the Maryland State Police keep a variety of personally identifiable files. First of all, the Police retain personnel records for sworn and civilian employees as well as application forms. Other record systems included those of the Internal Affairs Unit, the Licensing Division, the Special Services Division, the Central Accidents Records Division, the Truck Enforcement Division, and the Automotive Safety Enforcement Division.

1. Personnel Management Division Files

The Maryland State Police currently maintain approximately 18,000 personnel records and application files.

A. Collection and Maintenance of Information

Application information is derived from a wide variety of sources, the most basic being data supplied by the individual himself. All Trooper or Cadet applicants are required to submit a Personal History Statement. Though not as detailed as the statement used by the Natural Resources Police Force, the Maryland State Police application form does differ substantially from the standard employment application form used by the Department of Personnel. Therefore, close examination will be made of the history statement in this report.

The Maryland State Police requests an applicant to provide a wide range of family and marital data. The individual must indicate the names, addresses and birth dates of his mother, father, sisters, brothers, spouse, children and other dependents. If married, the applicant lists the date and location of the marriage, as well as number of the certificate. A married applicant whose spouse is employed must identify the spouse's occupation and employer. If divorced, the application form should so indicate that fact and provide details regarding the name and address of the former spouse and the date and location of the divorce. Details must also be furnished regarding any child support payment.

A series of questions are aimed at determining the applicant's level of indebtedness. The applicant must provide information regarding the names and addresses of all creditors, account numbers, the highest credit or amount owed to each creditor, and the monthly payments. An explanation must be given if the applicant was ever refused credit. An applicant

should indicate if State or federal funds were used for educational expenses.

A Trooper or Cadet applicant is required to respond to a series of "General Information" questions; an affirmative response to any question necessitates a detailed explanation. Among the questions appearing in this section of the personal history statement are the following: Have you ever used alcoholic beverages? Have you ever seen a psychiatrist or psychologist regarding your mental health? Have you ever been rejected as an applicant for insurance? Have you ever been arrested, taken into custody, held for investigation or charged by any law enforcement agency? (Omit parking violations). Have you at anytime appeared in Civil Court as either a defendant or plaintiff?

Information supplied by an applicant is verified through an extensive investigative process. An applicant must agree to authorize police investigators to conduct a comprehensive background check. The Authorization for Release of Information form used by the Maryland State Police is notable for the fact that it gives investigators access to virtually all records pertaining to the individual:

"I authorize the full and complete disclosure of the records of educational institutions; financial or credit institutions, and the records of commercial or retail mercantile establishments and retail credit agencies; medical and psychiatric consultation and/or treatment, including those of hospitals, clinics, private practitioners, the U.S. Veteran's Administration, and all military and psychiatric facilities; public utility companies, employment and pre-employment records including background investigation reports, the results of polygraph examinations, efficiency ratings, complaints or grievances filed by or against me; records of complaints of a civil nature made by or against me, and including, but not limited to the records and recollections of attorneys at law, or of other counsel represent or have represented myself or another person in any case in which I presently have, or have had an interest."

As noted previously, the investigative report is a comprehensive examination of the applicant in question. The investigator is charged with the responsibility of verifying all information that appears on the personal history statement. Of particular interest are the Neighborhood-Character Reference Interviews. The applicant's neighbors are asked whether the applicant maintains his property well or poorly, whether he is or is not active in community affairs, whether he is considered to be a normal or abnormal person, whether he usually presents a neat or unkempt appearance, whether he has a stable or unstable relationship with his family, and so forth. It should be noted also that some of the information provided by the applicant will be verified through the use of a polygraph examination. The Commission was informed that personnel records are in a hard copy form but maintained in electro-mechanical file machines. Information is categorized in alphabetical order and cross indexed by social security number and identification number for sworn personnel.

B. Access Rights of the Person in Interest

The person in interest is granted access to his personnel files in conformity with Article 76A, Section 3(c)(iii). The only exception to this rule would be letters of reference.

C. Disclosure of Records to Third Parties

No disclosure of personnel records to third parties occurs without the consent of the employee in question. In cases where the employee provides written consent for disclosure, a notation is placed in the personnel file itself. No logs are maintained to record the dissemination of personally identifiable data.

D. Security of Personally Identifiable Information

The Commission was informed that all of the Maryland State Police manual record systems to be discussed in this report are maintained in locked areas that are not accessible to the general public.

2. Internal Affairs Unit File

The Internal Affairs Unit maintains records concerning the results of investigation of complaints against personnel. There are approximately 1,000 records maintained in this system.

A. Collection and Maintenance of Information

The record-keeping practices of the Internal Affairs Unit are influenced to a large extent by the Law Enforcement Officers' Bill of Rights, Article 27, Sections 727 through 734D of the Annotated Code. This section of the Code lays out various procedural safeguards for an officer under investigation.

The Law Enforcement Officers' Bill of Rights states that a charge of police brutality will not be investigated unless the complainant, a member of his family, a witness, or a parent or guardian in the case of a minor, files a sworn statement. The statute also requires that prior to any interrogation, the officer shall be informed in writing of the thrust of the investigation. At least ten days prior to any hearing, the officer must be provided the name of any witness. If the officer is interrogated, he has the right to be provided with a copy of the complete record. No adverse materials concerning the investigation may be inserted into the officer's personnel file " . . . unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material, unless the officer waives these rights."¹⁰ Personal financial information of the officer may not

be requested, unless investigators are examining a conflict of interest or unless disclosure is required by State or federal law. If the investigators recommend punitive action against the officer, he is entitled to a hearing by a hearing board. During such a hearing, the officer has the right to cross-examine and rebut witnesses. If the hearing board determines that the officer is guilty as charged, the final determination is made by the law enforcement chief. All action is terminated if the board concludes that the officer is not guilty; after a period of three years has passed, the officer may request expungement of the original complaint.

The Internal Affairs Unit adheres to the regulations laid down in the Law Enforcement Officers' Bill of Rights. For example, an accused officer is provided a written notification of any complaints issued against him, including the details of the complaint, the name of the complainant, and the name of the investigator. The officer is also given a written notification of the convening of a hearing board, including the names of the board members, the witnesses to be called, the reports and documents to be offered as evidence, and so forth. In those cases where the officer is found to be not guilty, all records and exhibits are stored in the Internal Affairs Unit. If the final disposition is "guilty", then a notice to this effect is also placed in the officer's personnel file.

Internal Affairs records are maintained in a manual fashion. These records are indexed by alphabetical order and cross indexed by case number.

B. Access Rights of the Person in Interest

As indicated in the previous section, the accused officer has access to virtually all of the Internal Affairs Records pertaining to him as a consequence of the Law Enforcement Officers' Bill of Rights.

C. Disclosure of Records to Third Parties

The Commission was informed that Internal Affairs Records are not released to third parties without the consent of the officer in question.

3. Licensing Division

The Licensing Division of the Maryland State Police maintains application forms and investigative reports for any individuals seeking private detective agency licenses, firearm dealers licenses, special police commissions, handgun permits, and outdoor musical festival permits. There are approximately 1,060,000 records maintained by the Licensing Division.

A. Collection and Maintenance of Information

Various items of personally identifiable information are collected by the Licensing Division, depending on whether one is voluntarily registering a firearm, applying to purchase a pistol or revolver, applying for a permit to carry a handgun or requesting a private detective, firearm dealer's or police commission license.

The Licensing Division probably maintains the smallest amount of information on those who register firearms. An individual is asked to indicate his name, address, social security number, place and date of birth, race, sex, height, weight, color of hair and eyes, complexion,

and other distinguishing characteristics such as any scars or marks. Specific information is obtained regarding the nature of the firearm to be registered, including the name, address, race, sex, date of birth, and social security number of the dealer who sold the firearm. In accordance with Article 27, Sections 441 through 448, an individual registering a pistol or revolver certifies that he has never been convicted of a crime of violence, is not a fugitive from justice, is at least twenty-one years of age, is not a habitual drunkard, is not addicted to drugs of various kinds, and has not spent over thirty days in a medical institution for treatment of mental disorder, unless the registration form is accompanied by a physician's statement asserting that the individual is capable of possessing a pistol or revolver. Fingerprints and a photograph are also taken of the individual.

The application form used by those who seek to purchase a pistol or revolver is quite similar to the firearms registration form. Virtually the only difference between the two forms is that the purchase application form contains questions regarding the applicant's home and business telephone number, driver's license number, occupation, and employer's address.

Those applying for a permit to carry a handgun provide most of the same information as that obtained in either the registration form or the purchase application form, but a few notable additional questions are asked. Full details must be provided if the applicant has been adjudged a juvenile delinquent, suffers from any physical defect or sickness, and has " . . . ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an in-patient or out-patient basis for any mental or psychiatric condition." The applicant also lists all residences for the past five years. In addition to this information, the Licensing Division issues a Handgun Permit

Investigation Report which includes confirmation of employment and occupation and comments of individuals who have been interviewed.

The most extensive information is collected by the Division for those who have applied for private detective licenses, firearm dealer's licenses, and special police commissions. The form that is used to collect such information is in fact, a combined application-investigation form. The applicant provides basic data, with the bulk of the information being supplied by a Licensing Division investigator. The investigator verifies the applicant's employment status, motor vehicle record and criminal record. He evaluates the applicant's credit history, educational background, marital situation (including a determination of the general reputation of the applicant's spouse) and use of intoxicants and narcotics. The applicant's general reputation is evaluated, as is the reputation of his associates. Finally, the investigation indicates whether the applicant has ever been a member of the Communist party or any other subversive organization.

Licensing Division records are maintained in a manual system. Personally identifiable information is categorized by name and case number and cross indexed by license or permit number.

B. Access Rights of the Person in Interest

The person in interest is granted access to application forms and permit forms pertaining to him. Since the Licensing Division is a law enforcement agency, it does not necessarily have to permit the person in interest to have access to investigative records. Under the Public Information Act, a custodian may deny access to law enforcement investigative records to the person in interest " . . . only to the extent that the production of them would a) interfere with a valid and proper

law enforcement proceedings, b) deprive another person of a right to a fair trial or an impartial adjudication, c) constitute an unwarranted invasion of personal privacy, d) disclose the identity of a confidential source, e) disclose investigative techniques and procedures, f) prejudice any investigation, or g) endanger the life or physical safety of any person."¹¹ The Commission does not have adequate information to determine whether this section of the Act ordinarily results in the Licensing Division granting or denying access to the person in interest.

The Commission was provided a copy of that section of the Maryland State Police manual that pertains to the Public Information Act. Of some interest is the language that appears in Chapter 6, Section XII, Subsection 5-2 of that manual:

"Persons-in-interest may be denied access to records for any of the reasons enumerated in this subsection. If a reason for denial exists, a determination must be made as to how much of the document need be denied. The reasons for denying access are that inspection would:

- a) Interfere with valid and proper law enforcement proceedings.
- b) Deprive a person of a right to a fair trial or an impartial adjudication.
- c) Constitute an unwarranted invasion of personal privacy.
- d) Disclose the identity of a confidential source.
- e) Disclose an investigative technique or procedure.
- f) Prejudice an investigation.
- g) Endanger the life or physical safety of any person."¹²

It is important to recognize that the seven bases for denial that are referred to in the Maryland State Police manual apply to law enforcement investigative records and not to all records of the police. The State Police may deny a request from the person-in-interest to examine non-investigative records pertaining to him; in such a situation, however, the records custodian would have to follow the conditions stipulated in Article 76A, Section 3(e):

"If, in the opinion of the official custodian of any public record which is otherwise required to be disclosed under this article, disclosure of the contents of said record would do substantial injury to the public interest, the official custodian may temporarily deny disclosure pending a court determination of whether disclosure would do substantial injury to the public interest provided, that, within ten working days of the denial the official custodian applies to the circuit court of the county where the record is located or where he maintains his principal office for an order permitting him to continue to deny or restrict such disclosure. The failure of the official custodian to apply for a court determination following a temporary denial of inspection will result in his becoming subject to the sanctions provided in this article for failure to disclose authorized public records required to be disclosed. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the application sent to the circuit court, served upon him in the manner provided for service of process by the Maryland Rules of Procedure and shall have the right to appear and be heard."

The Maryland State Police informed the Commission that the manual would be reviewed to reflect Article 76A, Section 3(e). It is the opinion of the Commission that the above language is inconsistent with the Public Information Act. Article 76A, Section 3 does not give discretionary authority to custodians regarding all law enforcement records, but only those law enforcement records that are investigative in character.

C. Disclosure of Records to Third Parties

The Maryland State Police indicated that Licensing Division records are governed by the Public Information Act. Therefore, any application and registration data other than medical data, which is not considered to be investigatory in nature would appear to be subject to disclosure to third parties. Investigative records of the Licensing Division may be treated in a restricted manner, if the custodian determines that disclosure

would be contrary to the public interest. No logs are maintained to record the dissemination of personally identifiable data.

Subsection 5-3 of the Public Information Act of the Maryland State Police manual contains the following statement:

"By statute, the Agency may deny requests from applicants who are not persons-in-interest to review any records or files compiled for any law enforcement purpose. Access may be denied on the grounds that such disclosure would be contrary to the public interest."

While it is true that requests by third parties for public records can be denied if the custodian determines that access would be contrary to the public interest, the statement in the manual needs to be qualified. If the record is a law enforcement investigatory record, the custodian may simply deny the request in accordance with subsection 5-3 discussed above. If, however, the record is not investigatory, the custodian must follow the procedures laid out in Article 76A, Section 3 (e). The Maryland State Police informed the Commission that the manual will be adjusted to reflect this qualification.

4. Special Services Division Records

The Special Services Division maintains investigative records of various kinds. There are approximately 10,000 records that are personally identifiable in nature.

A. Collection and Maintenance of Information

The Commission was informed that the Special Services Division collects investigative materials regarding narcotics, gambling, and organized crime information. Files also contain information provided by confidential informants. The Commission is unable to provide any additional data as to

the type of personal information held by the Special Services Division.

Special Services Division records are maintained in a manual fashion. Investigative records are categorized alphabetically and cross indexed by case number. An internal departmental code is used to index the confidential informant file.

B. Access Rights of the Person in Interest

Given the fact that all Special Services Division records qualify as investigative in character, access to these records is governed by the same rules that pertain to investigative records of the Licensing Division.

C. Disclosure of Records to Third Parties

Special Services Division records may be treated in a confidential manner if the custodian determines that disclosure would be contrary to the public interest.

5. Central Accident Records Division

The Central Accident Records Division maintains motor vehicle accident reports and traffic citations. The Division retains approximately 500,000 records.

A. Collection and Maintenance of Information

The following information is collected concerning a driver who has been served with a traffic citation: name, address, height, weight, race, sex, and birthdate. The driver also provides the name, address and telephone number of his employer. The citation finally includes information regarding

the vehicle involved and the specific charge.

Accident reports contain various items of directory information. A report lists the driver's name, address, telephone number, date of birth, sex, and driver license number. The name, address, age, and sex is also recorded for any occupant in the vehicle. A record is also made of the name, address, date of birth, and sex of any pedestrian or cyclist involved in the accident. If any witnesses are present, name, address and telephone number are recorded. The remainder of the report pertains to specific information about the accident itself.

The Maryland State Police indicated that the records of the Central Accident Division are both manual and computerized. They are categorized alphabetically and are cross indexed by accident report or citation number.

B. Access Rights of the Person in Interest

The person in interest is granted access to the records of the Central Accident Division.

C. Disclosure of Records to Third Parties

Central Accident Division records are disclosable under the Public Information Act. Apparently, the Division receives the bulk of its requests for accident data and thus has designed a policy to meet these requests. In order to receive an accident report, a fee of two dollars must be forwarded to the Division. No requests are honored until at least fifteen days after the date of the accident. Requesters must provide the following information to the Central Accident Division: name of driver, name of deceased, name of pedestrian or cyclist, date of accident, route, and county. The reason for the request must also be indicated.

6. Truck Enforcement Division

The Truck Enforcement Division maintains a record system containing information on overweight truck violations. There are approximately 36,000 records in this system.

A. Collection and Maintenance of Information

Very little in the way of personally identifiable information is collected via this record system. The name and address of the owner of the truck are recorded, as is the fine assessed, and various information regarding the amount of excess weight.

Information is maintained manually and filed in alphabetical order, with data cross indexed by the name of the trucking company in some instances.

B. Access Rights of the Person in Interest

The person in interest is permitted access to the information contained in his record system.

C. Disclosure of Records to Third Parties

Truck Enforcement Division information is disclosable under the Public Information Act. As a practical matter, however, the Commission was informed that requests for information have never been received.

7. Automotive Safety Enforcement Division

The Commission was informed that the Automotive Safety Enforcement Division keeps records concerning inspection station owners, operators, supervisors, and mechanics. The precise nature of such records is unclear, however. Safety

equipment repair orders are maintained, which include the name and address of the owner, the vehicle license and serial numbers, and the specific defect requiring adjustment. The file also contains a list of drivers who have been suspended as well as a list of persons who have made noise level complaints.

The file is manual and records are categorized by registration number.

B. Access Rights of the Person in Interest

Automotive Safety Enforcement Division information is available to the person in interest.

C. Disclosure of Records to Third Parties

Data from this file is disclosable under the Public Information Act; however, no requests have ever been received.

III. Division of Correction

The Division of Correction maintains a number of distinct record systems containing personally identifiable information about inmates. The following are the various systems identified by the Division: 1) Inmate Base File; 2) Commitment File; 3) Inmate Medical Records File; 4) Inmate Psychological Records File; 5) Offender Based State Correctional Information System; 6) Community Correction Information System; 7) Identification/Fingerprint File; 8) Inmate MAP File; 9) MAP Reservation/Alert File; 10) Inmate Employment Record File; 11) Inmate Account File; 12) Time Credit File; and 13) Employee Personnel Files.

1. Inmate Base File

The Inmate Base File contains a general compilation of materials pertaining to the movement of offenders through the correctional system. The file consists

of approximately 8,000 records.

A. Collection and Maintenance of Information

Article 27, Section 69(a) stipulates that once an offender is sentenced to the jurisdiction of the Division of Correction, the Division shall " . . . assemble the necessary information and prepare an adequate case record of each inmate which shall include a description of the offender, photograph or photographs, his family history, previous record, a summary of the facts of the case for which he is serving sentence and the results of his physical, mental and educational examination, which shall be conducted as soon after sentencing to the jurisdiction of the Division as feasible." Correctional officials are further charged to maintain records detailing the "conduct, effort and progress" of inmates during confinement.

The Inmate Base File is the first and most comprehensive offender record system compiled by the Division of Correction. The Base File is initiated upon the processing of a male inmate at the Maryland Reception, Diagnostic and Classification Center or a female inmate to the Maryland Correctional Institution for Women. The Reception Center begins the processing of inmates by assigning numbers, photographing and fingerprinting. Ten photographs are prepared, with distribution as follows: four for the receiving institution; two for the Division of Parole and Probation; one for the Maryland State Police; one for the Inmate Base File; one for the Hospital record; and one for the Transportation Office. Four sets of fingerprint cards are taken, with distribution according to the following procedure: one to the FBI; one to the Maryland State Police; and two sets are placed on the Division's Identification and Alert Information form with copies sent to the Identification Section and the Base File.

The Reception Center prepares seven copies of the Inmate Interview Sheet; the original remains in the Identification/Fingerprint File, with copies forwarded to the Superintendent, the Base File, the Hospital Record, the Data Processing Division, the Warden and the Traffic Office. The Inmate Interview Sheet contains varied pieces of information about the offender's legal status, such as the nature of the crime committed, the name of the judge, the sentence issued, the date of the sentence, and the date the offender arrives at the Reception Center. Basic directory information regarding the inmate is also obtained, such as birthplace, date of birth, residence, marital status, race, sex, age, height, weight, and hair and eye color. An inmate is also requested to provide the names and addresses of his nearest relative and last employer. Finally, information is solicited regarding the inmate's use of alcohol and narcotics.

Another basic form prepared by Reception Center officials is the Admission Summary, of which thirteen copies are made and distributed as follows: five to the Base File; one to the Parole Commission; one to the Division of Parole and Probation; one to the Central Office; one to the Reception Center File; one to the Public Defender; and three to the Staffing Group. The information contained in the Admission Summary is similar in character to that found in the Inmate Interview Sheet except that it is more comprehensive. For example, the offender is asked to provide specific information about his military, employment, and educational history. The sheet also lists the results of spelling, arithmetic and reading tests given to the inmate. A full juvenile and adult criminal record is also indicated, listing the place, date, offense and disposition. Finally, the interviewer indicates the inmate's traits and personality impression.

Information provided by the inmate through the Inmate Interview

Sheet and Admission Summary is supplemented by a series of questionnaires sent by the Reception Center to relatives, spouses, former employers, former teachers, former corrections supervisors, acquaintances, and the military. In none of the cases are the respondents provided with a signed authorization for release of information by the inmate. The questionnaires, which are placed in the base file, are notable for the subjective character of many of the items asked. For example, respondents to the Citizen Questionnaire are asked to describe the inmate's previous difficulties; his outstanding characteristics, habits and reputation; his home background; and the habits and standing in the community of the inmate's family. School officials are considered to be good sources of information as " . . . observant teachers have undoubtedly noted social tendencies and behavior patterns which may have contributed to delinquency."¹³ In addition to family background information, educators are requested to provide copies of any medical or psychological reports. While educators are told that this information will be treated in a confidential manner, they are not provided with any authorization form from the inmate. Medical and psychological information is also requested from the armed services.

The questionnaire distributed to relatives is the most subjective in character of the various questionnaires and thus deserves special examination. Relatives are asked to indicate if the inmate ever picked fights, lied, acted nervous, avoided company, swore a lot, used dope, bothered other boys, bit his fingernails, was hard to get along with, and so forth. If the inmate ever showed signs of any of these traits, relatives are requested to indicate the length of time that it occurred. Relatives are also asked to explain what the inmate generally did with the income earned in previous jobs. Information is also requested about any other members of the inmate's family who were ever in trouble, the mental health

of the inmate's parents, and how the inmate got along with his wife.

It should be emphasized that while the Inmate Base File is initiated at the Reception Center, it actually represents a compilation of material relating to the offender during his period of confinement. Thus, information is placed continually in the Base File by various corrections officials. The Base File would contain a list, for example, of the names and addresses of any visitors and their relationships with the inmate. Corrections officials are required to note any participation by the inmate in institutional educational programs. An inmate being considered for parole would have a Pre-Parole Evaluation, a record of which would be placed in the Base File.

It is quite clear from what has been said that much of the Base File information is provided by sources other than the subject of the record. The Commission was informed that there is no attempt to verify such information with the inmate himself. The inmate is not informed of the type of information collected about him. Unsolicited written comments are placed in the Base File for future reference.

All Base File data is maintained in a manual fashion and categorized in alphabetical order by inmate name.

B. Access Rights of the Person in Interest

Given the fact that the Division of Corrections has issued regulations on a wide range of information practices issues, it is somewhat surprising that regulations do not exist regarding the access rights of inmates to Base File data. The Commission was informed that Division of Corrections personnel are currently working on a public information manual which will set specific guidelines regarding access to information.

While no regulations are in effect, the Commission was told that inmates may be granted access to information through either the classification counselors or through legal counsel. It would be the responsibility of the classification counselors to inform inmates of their right of access. The Commission was also told that access would be granted to the various questionnaires collected by the Reception Center, even though a number of respondents are told that their comments will remain confidential. The Division of Corrections indicated that statements regarding the confidential character of questionnaires should be interpreted to mean that the information will not be available to anyone other than authorized personnel and the person in interest.

C. Disclosure of Records to Third Parties

Article 27, Section 695 accords a general confidential status to Division of Correction records pertaining to inmates. Records may only be disclosed to an officer of the court upon an order from the judge of that court. Sections 696 and 697 permit the release of case record information to corrections officials in other states and to local police departments. Finally, Section 697 requires the Division of Corrections to present either copies or summaries of case records to parole officials when requested to do so.

The Division of Correction has issued a regulation (DCR 200-1), dated April 15, 1981, which attempts to provide greater specificity to the disclosure restrictions found in Article 27. The regulation also seeks to respond to the requirements of the Public Information Act, particularly that section of the Act that pertains to medical, psychological or sociological data. It is unclear to the Commission, however, why the disclosure of inmates records would be affected by the Public Information Act. Since Article 27, Sections 691-697 deal specifically with disclosure of inmate records, those sections of the

Code would appear to take precedence over the provisions of Article 76A.

Though extensive, the regulation is quite confusing regarding what information may be disclosed to third parties. DCR 200-1 establishes varying standards for disclosure, depending on whether the requester is an inmate's attorney, any employee of the Department of Public Safety and Correctional Services or related department, any other government or private agency representative, a member of the news media, or a researcher. (It should be noted that the Division informed the Commission that DCR 200-1 will be rewritten to conform with the Division's soon-to-be-released Public Information Manual).

In order for an inmate's attorney to gain access to Base File records, the attorney must file a Request to Review Inmate Record form and provide the institution with at least a twenty-four hour notice. A requester using this form must indicate the name and number of the inmate, the specific items to be examined, and the reason for the request. The attorney is informed that a specific reason for the request must be indicated on the form; it would be insufficient to state merely that the request is being made for legal purposes. In addition to submitting the Request to Review Inmate Record form, an attorney must also provide a signed authorization from the inmate consenting to the release of case record information. The consent form does not grant the attorney a blanket authorization to examine all information. Instead, the inmate only consents to releasing specified pieces of information for specified purposes, and he may in fact establish conditions under which the consent expires.

Base File information may also be made available to employees of the Division of Correction, a member of the Attorney General's staff, the Inmate Grievance Commission, the Division of Parole and Probation, the Maryland State Police, the Parole Commission, the Department of Education-

Division of Vocational Rehabilitation, or any other authorized individual with responsibility for preparing a classification action, parole or evaluation of an inmate. Information will be released, provided that the request " . . . is on a need-to-know basis and is made in furtherance of their lawful duties."¹⁴ No authorization is required from the person in interest when disclosure is made under the above criteria.

Requests received from any other government agency or private agency or company should be accompanied by a signed authorization from the inmate; the agency or company must also state the purpose behind the request. Requests that are received without authorization are forwarded to the Assistant Attorney General of the Division of Correction for his decision.

The media may be provided the following information, at the discretion of the Managing Officer of the Correctional Facility where the inmate is located: the name of an inmate, age, court of conviction, length of sentence, and place of confinement. If the inmate escapes, the Managing Officer may release photographs and description of the escapee.

Base File information cannot be released for statistical or research projects without the consent of the Commissioner of the Division of Correction. Written guarantees must be provided by researchers that information will be used only for research purposes, and that any reports issued will not be done in such a way as to permit the identification of individual inmates.

As stated earlier, DCR 200-1 leaves a number of questions unanswered regarding disclosure of Base File records. First of all, the regulation does not state division policy concerning requests from private individuals. Policies are established to handle requests from a "private agency or company" but not from an individual. While one may presume that requests from the general public, whether they be agencies or individuals, are handled in the same manner, the regulation does not specifically say that.

More substantive problems can be found regarding the disclosure of "medical or sociological records", and "information which, if disclosed, might result in physical, mental or emotional harm to the inmate or other persons." The regulation appears to place such information in a special category, stating that these records should not be released to anyone other than authorized employees of the Division of Correction or the Parole Commission ". . . except in accordance with the procedures outlined in this DCR. . .".¹⁵ However, an earlier section of the same regulation stated that such entities as the Inmate Grievance Commission, the Attorney General's Office and the Division of Parole and Probation could gain access to Base File records if the request was necessary to perform a lawful duty. That section of the regulation implied that all Base File records would be made available, as long as the request was legally necessary. Indeed, given the fact that the regulation gives discretionary authority to the Managing Officer to release information, can he also release such things as medical or sociological records?

The regulation makes a partial, though inadequate, attempt at explaining the meaning of sociological data. Actually, DCR 200-1 does not define the term "sociological record" at all, but instead explains what records are not considered sociological in nature: "Adjustment and classification reports and proceedings; Detainers and Commitment Records; Records of prior convictions; Parole revocation and parole reports; Inmate Grievance Commission Orders; Court Orders; (and) Institution reports and records."¹⁶ It is unclear whether one is to assume that all other items which may appear in Base File records are sociological in character.

The Commission was told that the person in interest is notified "sometimes" regarding the disclosure of personal records and the name of the recipient of such records. The same policy holds regarding verification

of the accuracy of data prior to disclosure. DCR 200-1 requires that logs be kept to record any Base File disclosures. The log must contain the date of the disclosure, the name and number of the inmate, the name of the recipient, the reason for the request, and the signature of the Managing Officer. The inmate does not have access rights to the logs themselves. However, copies of the original letter requesting disclosure and the institution's response are placed in the Base File.

D. Security of Personally Identifiable Information

The Division of Correction informed the Commission that only classification personnel have access to Inmate Base File records during working hours. Records are kept in locked file cabinets at other times. It would appear that the only security guarantees received by the Division of Correction come from researchers who promise not to identify specific inmates in their reports.

2. Commitment File

The Commitment File contains information on inmates' court commitments, sentence changes, detainers and other official court documents. There are approximately 8,000 records in the Commitment File.

A. Collection and Maintenance of Information

The Commitment File consists of various legal documents submitted by the courts to the Division of Correction. There is no attempt made to verify the content of such documents with inmates themselves. Inmates are not informed of the type of information collected in this file. No unsolicited comments are received that relate to the Commitment File, as all documents arrive from the courts.

All Commitment File records are maintained in a manual form and are categorized by numerical fashion according to Division of Correction inmate number.

B. Access Rights of the Person in Interest

The Division of Correction indicated that the person in interest may have access to information pertaining to him that is found in the Commitment File. It is unclear whether individuals are made aware of this right of access. Copies of documents are provided upon request. The Commission was informed that the accuracy of Commitment File documents can be contested through the court system.

C. Disclosure of Records to Third Parties

The Commission was told that the disclosure of Commitment File records is regulated by DCR 200-1. The Division of Correction further indicated that the Commitment File operates under the same general practices regarding verification of the accuracy of information, notification of the person in interest, and so forth, as the Base File. It is unclear to the Commission why the Commitment File would be affected by DCR 200-1. It is specifically indicated on the cover of the regulation that DCR 200-1 pertains to disclosure of inmate Base File records and inmate Medical Records. (The term "medical" is used in the regulation to include psychological and psychiatric data). It would not appear that DCR 200-1 could be used to make decisions regarding the handling of all personally identifiable information pertaining to inmates.

D. Security of Personally Identifiable Information

The Commission was informed that Commitment Files are maintained in a specific office and are available during working hours. Both the file cabinet and office are locked at other times.

3. Inmate Medical Records Files

The Division of Correction maintains a Medical Records file consisting of medical information on each inmate. There are approximately 8,000 records in this file.

A. Collection and Maintenance of Information

Data which appears in the Medical Records file is provided in the majority of cases by the medical staff and other health care personnel. The information pertains to the contact of inmates with the medical staff, prescriptions written, and other medical care correspondence. Information may also come from other agencies, personnel in other sections of the correctional facility, attorneys, as well as from inmates themselves.

The Division of Correction indicated that there is no attempt made to verify information obtained from third parties with the inmate himself. However, the inmate is present when information is documented by the medical staff and health personnel, so he is aware of the type of information collected about him. Unsolicited comments may be placed in the inmate's medical record if they are considered to be valuable to patient care; the determination in this regard is made by medical and health care personnel. In such a situation, a mandatory followup would take place to determine the need for additional action by the medical personnel.

Records are maintained in a manual form and are categorized in alphabetical order by inmate name.

B. Access Rights of the Person in Interest

The Commission was informed that access to medical records on the part of the person in interest is permissible under the Public Information Act. The Division indicated, however, that no attempt has been made to inform inmates of their right of access. Inmates do have the right to obtain copies of their files; the Commission lacks information to determine whether or not the person in interest may contest the accuracy of materials contained in his files.

The passage of House Bill 1287 by the 1981 General Assembly affects medical records maintained by the Division of Correction to the extent that they are housed in hospitals or related institutions. The person in interest is now permitted to examine, copy and contest the accuracy of medical records. In cases where the hospital refuses to make the requested correction, the individual may insert a statement of disagreement into the record; this statement must accompany any subsequent dissemination of the file.

In the Commission's examination of the record-keeping practices of public and private hospitals, responses were received from two components of the Division of Correction, the Maryland Correctional Institution at Hagerstown and the Maryland House of Correction. It is important to note that responses were received prior to the passage of House Bill 1287 and thus, procedures previously followed presumably have been modified. Both institutions indicated that the person in interest was not allowed access to his medical records. Inmates at the Hagerstown facility were permitted both access and copying privileges with a physician's consent. The person in interest could also permit his attorney or a State official to examine the record on his behalf. Inmates at the Maryland House of Correction could not examine or receive copies of their medical files, even if authorization was received by a physician. An attorney or outside physician

could be designated, however, to examine the file on behalf of an inmate.

C. Disclosure of Records to Third Parties

No disclosure of Division of Correction medical records may occur without written authorization of the inmates in question. Information is verified as to its accuracy prior to dissemination. The Commission was told that logs are not maintained to record the dissemination of information; this practice would appear to be inconsistent with DCR 200-1, which governs Inmate Base materials, medical records and psychological records. However, a notation is placed in the record to indicate that a disclosure has occurred.

D. Security of Personally Identifiable Information

Medical records files are available to members of the health care staff during working hours. Files are locked during other periods with access permitted only by a correctional officer or health personnel.

4. Inmate Psychological Records File

The Division of Correction maintains a Psychological Records file containing approximately 8,000 records.

A. Collection and Maintenance of Information

The Commission does not have information as to the precise contents of this file; the Division of Correction indicated that it consists of "psychological/psychiatric evaluation." Information is obtained from inmates, outside agencies and prior psychiatric reports. In cases where information is obtained from other sources, the Commission was told that an attempt is made to verify such information with the inmate himself. The Division of Correction also asserted that individuals are informed of the

type of information collected about them. Unsolicited comments are placed in the file of the inmate in question.

Psychiatric information is maintained in a manual form. Data is categorized numerically by inmate Division of Correction number.

B. Access Rights of the Person in Interest

The Division of Correction stated that inmate access to material contained in the Psychiatric Records file is governed by DCR 200-1. As noted previously, however, DCR 200-1 affects the disclosure of certain records to third parties, but is silent regarding the access to records on the part of the person in interest. The Commission was informed, however, that inmates may not receive copies of their psychiatric files or contest the accuracy of these files. House Bill 1287 does not grant access to psychiatric records to the person in interest if the attending physician believes that access would be "medically contraindicated." In such a situation, however, a summary of the records must be made available to the person in interest.

C. Disclosure of Records to Third Parties

Inmate psychiatric records are disclosed to third parties only upon receipt of a court order. If a court order is received, the person in interest is not notified regarding either the disclosure of records or the name of the recipient of such records. The accuracy of the contents of the record is verified prior to dissemination. As in the case of medical records, disclosure logs are not maintained despite the apparent requirement in DCR 200-1 to do so.

D. Security of Personally Identifiable Information

The Commission was informed that all psychiatric records are kept in

a specific office, with records locked in file cabinets after working hours.

5. Offender Based State Correctional Information System

The Offender Based State Correctional Information System (OBSCIS) gathers basic information regarding inmates, thus permitting the Division of Correction to issue operational and statistical reports. OBSCIS consists of approximately 14,000 records.

A. Collection and Maintenance of Information

OBSCIS information is similar in character to that found in the Inmate Base File though not as detailed. For each offender, programmers enter identification data (inmate number, social security number, race, height, weight, hair and eye color, place of birth, etc.), address information, educational data (last grade completed, math and reading scores), and employment history (job title, employer, salary, and starting and ending dates). Various pieces of "social data" are entered, such as marital status, previous occupation, use of alcohol and narcotics, vocational rehabilitation needs, and religious affiliation. Basic legal data is also compiled, including indictment number, sentence data, nature of offense, length of sentence, type of sentence, name of judge and court, and good conduct time balance. OBSCIS also includes information pertaining to inmate participation in various Division of Correction programs, and a list of any infraction committed while in Division custody.

As in the case of Base File information, OBSCIS data is compiled from a wide range of sources. The Division of Correction indicated that information derived from FBI reports, pre-sentence investigations and so forth, are discussed with the inmate upon his arrival at the Reception Center. At the same time, however, the Commission was told that inmates are not informed of

the type of data collected via the OBSCIS system.

OBSCIS is a computerized record system with information categorized by Division of Correction inmate number.

B. Access Rights of the Person in Interest

The Commission lacks information as to whether or not inmates have access to all OBSCIS data pertaining to them.

C. Disclosure of Records to Third Parties

OBSCIS data is disclosed to third parties, although the Commission is unclear as to precisely what statutes govern the dissemination of such information. The Division of Correction cited the Public Information Act and Article 27 as the pertinent statutes. When information is disclosed, the subject of the record is not notified regarding either the disclosure of the record or the name of the recipient. The accuracy of the information is verified prior to disclosure. The Commission was informed that logs are kept to record the disclosure of OBSCIS data; the number and location of the offender and the nature of the information disclosed is recorded by the Division of Correction. The person in interest is not granted access to these logs.

D. Security of Personally Identifiable Information

Individual passwords are used to restrict access to computerized information. The Division of Correction also indicated that measures have been taken to prevent the unauthorized altering of data by Division personnel. Prior to disclosing personally identifiable information to others, security guarantees are obtained from recipients. No risk analysis has been conducted to determine the appropriate level of security.

6. Community Correction Information System

The Community Correction Information System contains information ". . . used to evaluate the operational process which governs minimum security inmates within the Division of Correction or within jurisdictional and private correctional programs subsidized by the State of Maryland." There are approximately 4,000 records in this system.

A. Collection and Maintenance of Information

Various types of basic data are collected from the inmate at the time that he is admitted to a Community Correction Center. The Center records the inmate's name, Division of Correction number, date of birth, sex, race, religion, marital status, and date of admission. During the inmate's stay at the Center, counselors record weekly summaries of the inmate's progress, indicating such things as skill training, guidance counseling, medical problems, family contact, and so forth. Upon leaving the Center, a discharge form is completed for the inmate, indicating the date of discharge, total amount of days in the Center, the reason for the discharge, the inmate's educational participation during his stay at the Center, grade level, and participation in vocational training.

The Commission was told that all information recorded in the Community Correction Information System comes from the center counselors. The Division of Correction indicated that individuals are informed of the type of information collected about them. No unsolicited comments are entered into the system.

Community Correction Information System data is maintained in a computerized fashion. Information is categorized in numerical sequence by Division of Correction number.

B. Access Rights of the Person in Interest

The person in interest is not granted access to information pertaining to him. The Division of Correction indicated that inmates should not be granted access to information that is used to monitor their progress.

C. Disclosure of Records to Third Parties

Community Correction Information System data is not disclosed to other agencies or to others outside of State government. Since information is never disclosed, there are, of course, no policies regarding disclosure logs, verification of the accuracy of information, and the like.

D. Security of Personally Identifiable Information

The Commission was told that files are kept locked, and that data files are kept under Article 27, Sections 742 and 755. Measures have been taken, therefore, both to ensure the confidentiality of personal records and to prevent the unauthorized altering of data by departmental personnel. Security guarantees from recipients are unnecessary as the Division only releases statistical information that cannot be used to identify particular inmates. No risk analysis has been conducted.

7. Identification/Fingerprint File

The Identification/Fingerprint File contains fingerprint cards, identification badges and photographs for each inmate. There are approximately 50,000 records in this system.

A. Collection and Maintenance of Information

It is unclear to the Commission precisely what type of information is collected via the Identification/Fingerprint File. Besides the obvious items such as fingerprints, date of commitment, and physical characteristics of

inmates, the Division of Correction indicated that it collects "basic social data." Information is provided by the Classification Department and the inmate himself.

The Identification/Fingerprint File is a manual system and is categorized alphabetically by inmate name.

B. Access Rights of the Person in Interest

The person in interest does not have access to any information contained in the Identification/Fingerprint File.

C. Disclosure of Records to Third Parties

The Division of Correction indicated that information from this file is disclosed only to law enforcement agencies. In such a situation, the subject of the record is not notified regarding either the disclosure itself or the name of the recipient of the record. Logs are not kept to detail such disclosures.

D. Security of Personally Identifiable Information

Identification/Fingerprint Files are locked in file cabinets after working hours.

8. Inmate MAP File

Mutual Agreement Programming (MAP) is described by the Division of Correction as an alternative to the existing parole process. Under the MAP process, the Parole Commission, the Division of Correction, and the inmate get together to design a program months or even years before the inmate is eligible for a parole hearing. The inmate and his classification counselor may identify various needs, such as vocational training, psychological treatment, etc. If all three parties

agree on terms, a legal, binding document is drawn up in which each party agrees to comply with the contract's requirements. The inmate agrees to follow the terms of the contract, the Division of Correction promises to provide the necessary resources, and the Parole Commission agrees to parole by a specified date if all conditions are met.

The Inmate MAP File thus contains information on the eligibility, negotiation positions and progress of inmates participating in the MAP process. There are approximately 6,000 records in the Inmate MAP File.

A. Collection and Maintenance of Information

There are various documents and contracts that are found in a typical Inmate MAP File. An inmate initiates the MAP process by signing a form indicating his eligibility for the process and requesting an orientation to MAP through his Classification Counselor. After the inmate attends the orientation meeting, he and the MAP coordinator sign a statement attesting to that fact. The inmate furthermore agrees to develop a MAP proposal with his Classification Counselor if he wishes to participate in the program.

The MAP Pre-Negotiation Summary form contains various items of background information about the inmate. The counselor lists the inmate's name, number, institution, date of birth, age, race, marital status, previous address, educational status, previous occupation, social security number, offense, length of sentence, drug and alcohol problems, previous adult convictions, previous employment, previous parole hearings and disciplinary record within the institution. The MAP Agreement Classification Sheet delineates the educational, skill training and treatment programs that will be made available to the inmate. Upon completion of the MAP process, the Classification Counselor and the MAP Coordinator sign a document certifying the accomplishments made by the inmate.

The Division of Correction indicated that MAP data is drawn from a variety of sources: commitment records, Inmate Base File, classification personnel, Parole Commissioners and Parole Commission files. No attempt is made to verify such information with the inmate himself. However, the Commission was informed that an inmate is aware of the type of information collected about him. Any unsolicited comments may be placed in an Inmate's MAP File.

Inmate MAP File records are maintained manually and categorized alphabetically by inmate name.

B. Access Rights of the Person in Interest

Copies of contracts and any other documents that could affect the MAP contract are provided to the inmate. It does not appear, however, that the inmate has a general right of access to all MAP information pertaining to him. The person in interest does not have an opportunity to copy his file or contest the accuracy of the file.

C. Disclosure of Records to Third Parties

The Division of Correction indicated that personally identifiable MAP information is disclosed to third parties and stated that DCR 200-1 governs dissemination of Inmate MAP Files. It is unclear to the Commission why this would be the case, since DCR 200-1 only pertains to Base File and Medical Records. The Commission does not know whether the person in interest is notified regarding the disclosure of records or the name of the recipient of such records. Information is verified prior to dissemination, but no logs are kept to record the disclosure of information. (DCR 200-1 requires the implementation of disclosure logs).

D. Security of Personally Identifiable Information

All Inmate MAP records are locked in file cabinets after working hours.

9. MAP Reservation/Alert File

The MAP Reservation/Alert File contains information regarding dates of events that will occur during the inmate's contract as well as alerts on violations and amendments that have taken place. Approximately 6,000 records are contained in this system.

A. Collection and Maintenance of Information

If an inmate violates some aspect of his MAP contract, a notation is placed in the Reservation/Alert File. The classification counselor records the inmate's name, number, date of violation, nature of violation, the facts surrounding the violation, the steps taken by both the inmate and the staff to avoid violations in the future, the inmate's proposal for renegotiation of the agreement, and the counselor's recommendations. If the original contract is amended, this fact is recorded along with the rationale for the proposed change.

Information for this system is furnished by classification and Parole Commission personnel. The information is not verified with inmates themselves, but the Commission was told that inmates are aware of the type of information collected about them.

MAP Reservation/Alert Files are manual records and are categorized alphabetically by inmate name.

B. Access Rights of the Person in Interest

The Commission lacks information to determine whether or not the person

in interest is granted access to Reservation/Alert data.

C. Disclosure of Records to Third Parties

Personally identifiable information from the MAP Reservation/Alert File is disclosed to third parties. As in the case of the Inmate MAP File, the Commission was informed that DCR 200-1 governs disclosure of Reservation/Alert material. The accuracy of information is verified prior to disclosure, but no logs are kept to record the dissemination of data.

D. Security of Personally Identifiable Information

MAP Reservation/Alert Files are locked in file cabinets after working hours.

10. Inmate Employment Record File

An Inmate Employment Record File is maintained to record the employment of offenders during incarceration. There are approximately 8,000 records in this system.

A. Collection and Maintenance of Information

The Inmate Employment Record File contains a minimal amount of personally identifiable information: inmate name, Division of Correction number, work assignment, and date of work assignment. Information is provided by correctional employees.

The file is maintained manually and is categorized alphabetically by inmate name.

B. Access Rights of the Person in Interest

The Commission is unable to determine the access rights of the person

in interest to Employment Record data.

C. Disclosure of Records to Third Parties

No information is available to determine the disclosure practices pertaining to Employment Record information.

D. Security of Personally Identifiable Information

Inmate Employment Records are maintained in an office which is locked after working hours.

11. Inmate Account File

The Division of Correction maintains a file which records all inmate money held by the correctional system. This file consists of approximately 8,000 accounts.

A. Collection and Maintenance of Information

Upon arrival at the Reception Center, an inmate surrenders all money in his possession. At that time, the Reception Center establishes an Institutional Account for the inmate. This account is transferred whenever the inmate himself is transferred. The account includes a record of money surrendered at the Reception Center, money received from outside the correctional system, money earned inside the institution, and any expenditures or withdrawals from the account. The Commission was informed that all information comes from the inmate.

The Inmate Account File is a manual record system. Information is categorized alphabetically by inmate name; accounts also contain Division of Correction numbers.

B. Access Rights of the Person in Interest

In order to gain access to the Inmate Account File, the inmate must submit a request to his classification counselor. The counselor may then either record or copy the request information. The inmate may contest the accuracy of his own material. The Commission does not know whether or not the person in interest is informed of his right of access.

C. Disclosure of Records to Third Parties

Inmate Account information is not disclosed to third parties.

D. Security of Personally Identifiable Information

The Inmate Account File is locked in a safe after working hours. Access is granted to classification counselors and to correctional officers.

12. Time Credit File

The Division of Correction stated that it maintains a Time Credit File to ". . . Provide an accurate account of projected discharge dates by the regular computation of industrial credits or the loss of good conduct time." There are approximately 8,000 records in this file.

A. Collection and Maintenance of Information

The Commission was informed that the Time Credit File consists of the following information: inmate name, Division of Correction number, commitment date, and release date. The Division of Correction obtains this information via a court commitment. Inmates are informed of the type of data collected about them.

This information is maintained manually and categorized alphabetically by inmate name.

B. Access Rights of the Person in Interest

The person in interest is granted access to information contained in the Time Credit File. The inmate is informed of his right of access at the time of orientation in the Reception Center. The person in interest may contest the accuracy of his files, but may not copy them.

C. Disclosure of Records to Third Parties

Information from the Time Credit File is disclosed to third parties. The Division of Correction indicated that DCR 200-1 is used to regulate the disclosure of such records. In the event that information is disclosed, the subject of the record is not notified regarding either the disclosure of personal records or the name of the recipient. Information is verified as to its accuracy prior to dissemination. No logs are kept to record disclosure of material.

D. Security of Personally Identifiable Information

Time Credit File Records are restricted to a specific office, with both the office and file cabinets locked after working hours.

13. Employee Personnel Files

The Division of Correction maintains an employee personnel file, which is included in this report for comparative purposes. There are approximately 3,000 personnel records.

A. Collection and Maintenance of Information

All applicants seeking employment with the Division of Correction must file an Information Sheet which is similar in character to the Department of Personnel MS-100 form, although slightly more detailed. An applicant

is asked if he has any physical, emotional, mental or nervous disabilities or ailments which could prevent him from performing required duties. An affirmative response would require a more detailed explanation. A similar question is asked regarding addiction to narcotics or drugs. Details must be provided if an applicant has ever had his driver's license revoked, or been fined, placed on probation or committed to a jail or prison. Finally, an applicant is asked to provide information if any of his relatives is employed by the Division of Correction. Once an individual has been hired, he must consent to fingerprinting, photographing, and a check for criminal records.

Although personnel information typically is obtained from a wide range of sources (e.g. The Department of Personnel, State Accident Fund, Workmen's Compensation Commission, etc.), DCR 50-14 requires that no material critical or derogatory to an employee can be placed in his file without his signature. A copy of the document is given to the employee.

Employee personnel files are maintained manually and are categorized alphabetically by employee name.

B. Access Rights of the Person in Interest

The person in interest is granted access to his personnel files in accordance with the Public Information Act. If, however, a document is marked "confidential" or "for official use only", access will not be permitted. This includes such items as police investigations and FBI reports. To ensure that employees are aware of their right of access, they are given a copy of DCR 50-14. The person in interest may designate an authorized representative to inspect his personnel files, may copy records pertaining to him, and can take steps to request correction or removal of a specific item contained in his file.

C. Disclosure of Records to Third Parties

Material from a personnel file is not released unless it is subpoenaed or unless the employee provides written authorization. In all other situation, personnel officials only will confirm employment and current salary. In cases where disclosure occurs, the accuracy of information is verified prior to dissemination. Logs are not maintained, although a notation is placed in the personnel file itself.

D. Security of Personally Identifiable Information

All files are kept under lock and key and are always locked after working hours.

IV. Maryland Parole Commission

Program-related personally identifiable records are maintained by three units of the Maryland Parole Commission: Parole Services, Institutional Parole Services and the Secretarial Unit. Each of these units maintains various record systems. For the purposes of this report, however, each unit will be examined as a whole, since the Parole Commission indicated there are standardized practices governing collection, access to the person in interest, disclosure to third parties, and security of personally identifiable information.

1. Parole Services Unit

The Parole Services Unit identified two basic record systems, a Census Card File and a Parole File. The Unit also has access to an OBSCIC terminal; this system was examined previously in the Commission's consideration of the Division of Correction. There are approximately 9,000 records in the Parole Services Unit's two record systems.

A. Collection and Maintenance of Information

The Parole File contains the basic information that is used by the Parole Commission and its hearing examiners to evaluate an inmate's suitability for parole. The file thus consists both of data pertaining to the original crime committed, as well as reports on the inmate's experience during incarceration. The Parole Services Unit stated that files typically contain FBI reports, Commitment records, record checks, admission summaries, post-sentence investigations, split-sentence material, medical records and psychological evaluations. The Commission was not provided with a more precise breakdown of information.

Information is furnished to the Parole Services Unit by the Divisions of Correction and Parole and Probation, as well as by other criminal justice agencies. The Commission was told that an effort is made to verify such information with the inmate himself, this being particularly the case with respect to post-sentence investigations. Unsolicited comments are placed in the file.

Census Card and Parole File records are maintained manually and are indexed by inmate name, Division of Correction number and institutional location. Census Card data is categorized additionally by date of birth.

B. Access Rights of the Person in Interest

Article 41, Section 111 of the Annotated Code requires that various items of information be provided to an inmate prior to a parole hearing. First of all, the inmate must be informed of the date, time and place of the hearing. Second, he should be told what factors will be taken into consideration by the Parole Commission in making its determination. Finally, he has a right to inspect any non-privileged record that will be used by the Commission in its deliberation.

Of particular interest are the procedures that have been developed by the Parole Commission to grant inmate access to Parole File records. An inmate must be notified by a casework associate at least fifteen days prior to his parole hearing that he has a right to examine file contents. At that time, the inmate signs an intent form indicating one of three things: 1) a desire to waive right of access; 2) a desire to inspect records; and 3) a desire to permit an authorized representative to inspect records. Classification counselors, attorneys, paralegals, and Parole and Probation officials may serve as authorized representatives. Inspection must take place at least ten days prior to the hearing. If this is not feasible, access is granted on the day of the hearing.

As noted earlier, an inmate is not granted access to all records, but only to those materials that are not privileged in character. The casework associate is charged with the responsibility of screening the file for privileged documents, which would include such things as psychological reports, classification comments, judges comments, and prior recommendations for early releases. An oral summary must be provided to the inmate regarding any privileged materials that were removed from the file.

The person in interest is permitted to contest the accuracy of information contained in his file. In order to initiate this step, an inmate signs a statement indicating which items in his file are incorrect and what corrections need to be made. This statement is included in the Parole File for the review of the Parole Commission. The Commission may decide to obtain additional evidence prior to the hearing, discuss the matter with the inmate during the hearing itself, accept the version of the facts provided by the inmate, or hold a fact-finding hearing at which the inmate would be permitted to appear.

C. Disclosure of Records to Third Parties

It is unclear to the Commission exactly what information, if any, is disclosed to third parties by the Parole Services Unit. The Commission was informed that Parole Services Unit data is disclosed to third parties, but at the same time was told that inmate records are confidential. Although the Commission is not certain of this fact, it appears, based on the response received from the Parole Services Unit, that the inmate's name, sentence, and parole status is disclosed under the Public Information Act. The inmate is not notified of this disclosure, and logs are not kept to record the dissemination of such information. The accuracy of the information is verified prior to disclosure.

D. Security of Personally Identifiable Information

Parole Services Unit records are kept locked in a file room.

2. Institutional Parole Services Unit

The Institutional Parole Services Unit maintains a variety of records pertaining to the monthly parole hearings. These are largely administrative files that are used to verify the fact that inmates were informed of their rights regarding their parole hearing. The Unit maintains Parole interview records, Disclosure records, Appeal records and Parole approval and release records. The Institutional Parole Services Unit indicated that each month it generates approximately 420 Parole interview records, 360 Disclosure records, 40 Appeal records and 200 Parole approval and release records.

A. Collection and Maintenance of Information

The function of Parole interview records are to verify the fact that an inmate was both notified of his hearing and given a right to

request examination of the contents of the file. Disclosure records indicate that the inmate was given the right to review and dispute file material. Appeal records demonstrate that the inmate filed an exception to the decision of the Parole Commission. Finally, Parole approval and release records indicate that the Unit has received all necessary information concerning the inmate's parole plan and that the inmate was released in a prompt manner. The Commission was told that files contain the name and number of the inmate as well as names, addresses and telephone numbers of relatives and future employers. The Commission does not know if other types of information are collected.

The Institutional Parole Services Unit indicated that information relative to an inmate's parole plan is obtained principally from Division of Correction classification counselors or from Parole Coordinators. In some instances, information is provided by the inmate himself. Classification counselors inform inmates of the type of materials collected about them. Unsolicited comments are forwarded to the administrative staff of the Parole Commission for its review.

Records of the Institutional Parole Services Unit are manual and are categorized by inmate name and Division of Correction number.

B. Access Rights of the Person in Interest

Inmates are granted the same right of access to Institutional Parole Services Unit records as they have regarding Parole Services Unit files.

C. Disclosure of Records to Third Parties

Institutional Parole Services Unit records are disclosed only to the Division of Correction and the Division of Parole and Probation. If a request is received by either the inmate or his representative, the

inmate will be informed both of the release of any information and the purpose behind the disclosure. Information is verified prior to disclosure. The Unit maintains logs which indicate the nature of the information disclosed, the name and number of the inmate, the date of disclosure and the name of the recipient. An inmate may inspect these logs upon request.

D. Security of Personally Identifiable Information

Records of the Institutional Parole Services Unit are locked at all times. All employees with access to privileged materials must have a security clearance.

3. Secretarial Unit

The Secretarial Unit maintains records for any inmate case files which have been placed in a "hold" status, files under appellate consideration, and files of individuals who have applied for a pardon from the Governor. The Unit has approximately 200 holds records, 100 appeals records and 50 pardons records.

A. Collection and Maintenance of Information

A parole application is placed in a hold category when either Parole Commissioners or hearings examiners request additional information regarding an inmate's history or adjustment prior to making a decision. An appeal may be generated by the inmate or by the Parole Commission itself, should it decide not to adopt the recommendation of a Hearing Officer. A pardon procedure is indicated by the petitioner.

The Commission lacks information regarding what types of data are contained in the files of the Secretarial Unit. All appeals materials come directly from the individual. The Division of Correction and Parole and Probation, the judiciary and the State's Attorney provide information for the holds records file. The pardons file contains information furnished by the petitioner, as well as investigative reports submitted by the Division of Parole and Probation. The Commission was told that individuals are aware of the type of information collected about them. Unsolicited comments are not received.

All Secretarial Unit files are maintained manually and indexed by inmate name.

B. Access Rights of the Person in Interest

The person in interest is granted access to holds records in exactly the same manner as Parole Files. Thus, holds records are subject to review to the extent that they do not contain information which is privileged in nature. Appeals records do not contain any information which is not submitted by the person in interest, thus making access unnecessary. The Commission was informed that no formalized procedures exist for access to executive clemency (pardons) records while they are under the control of the Parole Commission. These files are transitional in that materials are generated by the Division of Parole and Probation and forwarded on to the Governor. The Parole Commission speculated that access may be available through the Division of Parole and Probation.

C. Disclosure of Records to Third Parties

The Commission was informed that disclosure of both holds and appeals records are restricted by statute, but that pardon records may in fact be

disclosable under the Public Information Act. It is unclear whether the subject of the record is informed either of the disclosure of records or the name of the recipient. It appears that logs are not maintained.

D. Security of Personally Identifiable Information

Secretarial Unit records are controlled and separated from the public access areas of the agency.

V. Division of Parole and Probation

The Division of Parole and Probation identified six program-related record systems maintaining personally identifiable information: 1) Probation/Parole Master Name File; 2) Probation/Parole/Mandatory Release Case File; 3) Fines, Costs, Restitution Records; 4) Live-In/Work-Out Pay Records; 5) Investigations Files; and 6) Investigation Reports.

1. Division-Wide Policy - Public Information Act

The Division of Parole and Probation has developed a guideline for the implementation of the Public Information Act. This guideline is worth examining here in some detail because the Public Information Act is the governing statute for most of the record systems of the Division.

Parole and Probation follows a three-step test to determine whether a particular record should be disclosed. A records custodian should ask, first of all, if the information is confidential. According to Parole and Probation policy, confidential information cannot be disclosed without the consent of the subject of the record. If the record does not fall within a confidential category, a determination should be made as to whether or not it is investigatory in nature. Investigatory records may be treated in a confidential manner if various conditions are met. If both tests one and two permit disclosure,

the custodian should decide if disclosure would cause substantial injury to the public interest. Information which would cause such injury should not be disclosed. A local office records custodian may release information if disclosure is not prohibited by any of the three tests just discussed. All decisions to deny disclosure based on tests one and two must be reviewed by the regional custodian. A denial based on test three is examined by the headquarters custodian.

Both tests one and two contain aspects which may in fact be inconsistent with the Public Information Act. Test one is noteworthy in that the Division of Parole and Probation has attempted to define the meaning of sociological data. According to Article 76A, Section 3(c), a custodian may not release, unless otherwise provided by law, medical, psychological or sociological data which is personally identifiable. Since the term "sociological data" is not defined in the Act itself and is subject to various interpretations, there appears to be a general tendency on the part of records custodians throughout the state to ignore the expression and only limit medical and psychological records.

The Division of Parole and Probation not only has defined the expression "sociological data", but has determined that some types of sociological data are confidential, while others are not. This latter determination would appear to be in conflict with the Public Information Act, which does not allow for the possibility of non-confidential sociological records. The Division informed the Commission that this determination had received the approval of the Department's Legal Office. In any event, the following types of sociological materials are considered to be privileged by Parole and Probation: "individual's personal relationships, beliefs, values, etc; identity of dependents and relatives; description and adequacy of housing facilities; monthly rent or mortgage payments; earnings; address and occupation

and school status of family members; information concerning the support and custody of children; religious preference and attendance; name of the church attended; names of close associates; evaluations by the agent of adjustment problems and attitudes."¹⁷ In contrast, "client's current address, previous address; telephone number; age; present occupation, past employment; marital status; and education" are regarded as sociological, but non-confidential.¹⁸

This first test is interesting in that it appears that confidential records held by Parole and Probation will be released if a written authorization is signed by the person in interest. While there may be merit to this policy, current statutes do not require, or even permit, the disclosure of all confidential records to the person in interest. If the person in interest does not have access to adoption records or letters of reference, it would appear that he could not authorize their release to a third party.

In accordance with Parole and Probation policy, a record which is disclosable under test one should then be examined to see if it also passes test two. Under test two, investigatory records should be treated as confidential if disclosure would "interfere with valid and proper law enforcement proceedings, deprive another person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity of a confidential source, disclose investigative techniques and procedures, prejudice any investigation, or endanger the life or physical safety of any person."¹⁹ In point of fact, the Public Information Act only requires this test to be performed if the person in interest files a request for an investigatory record. A request from a third party can be denied if disclosure would be contrary to the public interest.

1. Probation/Parole Master Name File

The Division of Parole and Probation maintains a Probation/Parole Master Name File that has been used since 1969 to identify open and closed cases supervised by agents within a particular office. The system also includes Live-In/Work-Out cases, Mandatory Release cases and closed Domestic Collection cases before January 1979. There are 281,194 records in this system.

A. Collection and Maintenance of Information

The Commission was informed that information for this system is derived from the Data Systems copy of the Case Record Input-Intake Form. The Case Record Input-Intake Form is an important one for the Division of Parole and Probation in that it is used as the basis of information for a number of Division record systems. The Data Systems copy is an abbreviated version of the data collected via the Case Record Input-Intake Form. The following information appears on the Data Systems copy: name, date of birth, sex, race, marital status, employment status, educational level, date of sentence, date sentence began, date of expiration, name of judge, name of agent, offense code, and type of supervision. The Division asserted that information is obtained from the client, Parole and Probation agents, and the Parole Commission. A client is sometimes told of the type of information collected about him.

Information gathered through the Case Record Input-Intake form is placed on microfilm and is categorized both by name and case number. The Division of Parole and Probation indicated that OBSCIS II, an on-line information system, will replace this system in the near future. OBSCIS II will consist initially of thirty terminals; by fiscal year 1983, a terminal will be placed in each of the Division's forty-five offices.

B. Access Rights of the Person in Interest

The person in interest is granted access to information pertaining to him. The Commission was told that no specific procedures exist to permit access other than the previously discussed Public Information Act guideline. This guideline does not specify the access rights of the person in interest, but does imply that he may inspect his own record. Persons in interest are not made aware of their right of access. However, they may copy files as well as contest the accuracy of such files.

C. Disclosure of Records to Third Parties

Probation/Parole Master Name File records are governed by the Public Information Act. Since none of the information cited above is considered by the Division to be "non-confidential sociological data", it would appear that all information in this file would be disclosable to any requester. Data could be restricted if the custodian determined that disclosure was contrary to the public interest; such a determination, however, would necessitate a subsequent filing to that effect in the appropriate circuit court.

The Commission was told that the subject of the record is notified in the event of any disclosures. The accuracy of information is not verified prior to dissemination. If disclosure of information occurs in person or via the telephone, a notation is placed on the Division's monthly contact log. If disclosure follows a written request for information, the original letter of request is retained.

D. Security of Personally Identifiable Information

In response to the Commission's inquiries regarding security of information, the Division asserted that data on microfilm is only

accessible to field officers through a microfiche reader.

Division policy requires that access to computer terminals under OBSCIS II in regional offices be restricted to those personnel who have been designated as terminal operators by the Regional Administrator. Headquarters terminals are limited to terminal operators specified by the Chief of the Data Analysis Unit. Terminal facilities must be removed from public view and secured by a locked door. Access to terminals requires a password; logs are also maintained of all computer activity. Additional terminal limitations are placed on the modification or deletion of data. No risk analysis has been performed for this system.

2. Probation/Parole/Mandatory Release Case File

Probation/Parole/Mandatory Release Case File records contain individual files maintained on cases under supervision. There are over 50,000 open and closed records in this system.

A. Collection and Maintenance of Information

Basic data is obtained from the previously discussed Data Systems copy of the Case Record Input-Intake Form. Additional information is developed during the life of a case, information which could pertain to the subject's parents, spouse, children, relatives, employment situation and educational status. The Commission does not have a more precise breakdown of the nature of information contained in this system. Information is usually obtained from relatives, employers, schools and neighbors, although data may also be provided by the individual himself. The Division of Parole and Probation sometimes verifies information with the subject of the record and notifies him of the type of materials collected. Efforts are made to verify any unsolicited comments received.

This is a manual record system and is categorized by name and case number.

B. Access Rights of the Person in Interest

The Division of Parole and Probation indicated that the person in interest is permitted to examine, copy and challenge any information in this system which is considered to be public information. The Commission is unable to provide clarification of this statement.

C. Disclosure of Records to Third Parties

According to the Parole and Probation Public Information Act guideline, the Attorney General has determined that case files are investigatory records. Thus, disclosure of information is prohibited if so indicated after the application of the previously discussed test two. (If these are investigatory records, disclosure to third parties can be restricted under the Public Information Act if this would be contrary to the public interest). The subject of the record is not informed if there occurs any disclosure of information. Accuracy of information is verified sometimes prior to dissemination. No logs are maintained to record the disclosure of personally identifiable information.

D. Security of Personally Identifiable Information

Records are kept in file cabinets, although not all cabinets can be locked. Prior to the release of information, recipients agree that they will use such information only for specified purposes.

3. Fines, Costs, Restitution Records

A Fines, Costs, Restitution Records file is maintained to enable the Division of Parole and Probation to monitor court-ordered payments to victims by parolees. There are approximately 27,000 records in this system.

A. Collection and Maintenance of Information

All information for this system is collected through the original copy of the Case Report Input-Intake Form. The original copy of this form contains significantly more data elements than those found on the Data Systems copy. The following information is collected for the Fines, Costs, Restitution Records file: name, address, date of birth, sex, race, height, weight, social security number, telephone number, driver's license number, identifying marks, name and address of nearest relative, name and address of employer, occupation, earnings, marital status, employment status, educational level, nature of offense, name of judge, name of agent, date of sentence, expiration date, sentence received, description of offense, details pertinent to previous criminal record, details pertinent to the amount and frequency of the payment plan, and the name and address of the victim. Information for this system comes from Parole and Probation agents and from courts.

Fines records are maintained manually in Prince George's, Anne Arundel, Carroll, Howard, Charles, Calvert, St. Mary's, and the Eastern Shore Counties. A computerized system exists for Baltimore City, as well as for Baltimore, Montgomery, Alleghany, Garrett, Frederick, and Washington Counties. Information is categorized by case number, account number and name. (The Division stated that these records will be incorporated with supervision data under OBSCIS II).

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information in this system. Access is obtained through the individual Parole and Probation agents. The person in interest is made aware occasionally of his right of access.

C. Disclosure of Records to Third Parties

Most of the data contained in this file would appear to be disclosable under the Public Information Act. It should be observed, however, that certain items, such as the name and address of nearest relative and the current earnings of the client, are considered to be confidential sociological data and thus nondisclosable. It is interesting to note that some of the data elements appearing on the Case Record Input-Intake Form such as race, height, weight, social security number, name and address of victim, etc., have not been included in either the confidential sociological category or the non-confidential one.

D. Security of Personally Identifiable Information

Records are maintained in locked file cabinets in locked offices.

4. Live-In/Work-Out Pay Records

This system provides a record of payments to meet a court order. There are 90 Live-In/Work-Out Pay Records.

A. Collection and Maintenance of Information

All information for this system comes directly from Data Systems copy of Record Input-Intake Form. Information is obtained from Parole and Probation agents, courts, and occasionally the client himself. The

Division indicated that data derived from sources other than the client is verified with the client.

This is a manual system and is categorized by name and case number.

B. Access Rights of the Person in Interest

The person in interest may examine and contest the accuracy of information in this system; copies, however, can not be made. The person in interest may be made aware of his right of access by the agent during the initial or subsequent interviews.

C. Disclosure of Records to Third Parties

Live-In/Work-Out Pay Records would appear to be disclosable under the Public Information Act. The subject of the record is not informed of any disclosures, and logs are not maintained. The accuracy and current nature of the information is verified prior to dissemination.

D. Security of Personally Identifiable Information

Information is kept in locked desks and locked offices.

5. Investigations File

A file is maintained to keep a record of those cases on which investigations have been completed. There are 190,689 records in this system.

A. Collection and Maintenance of Information

The following data is collected for this file through the Division's Investigation Record Form: the name, birthdate, sex and race of the subject of the investigation, the court docket or arrest number, the court location,

type of court, type of investigation conducted, name of the judge requesting the investigation, name of investigator, and date of investigation. Information comes from the subject of the record, courts, agents and the Parole Commission. The individual is sometimes told of the type of information collected about him.

The record system is computerized on microfilm and will not be on terminal until approximately January 1982, when OBSCIS II is on line. Data is categorized by client name.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of this information. He is not made aware of his right of access.

C. Disclosure of Records to Third Parties

Information would appear to be disclosable to third parties. The subject of the record is not informed of any disclosures, nor are logs maintained. Accuracy of information is verified occasionally prior to dissemination.

D. Security of Personally Identifiable Information

Investigations Files are governed by the same Division security policies as were discussed under the section dealing with Probation/Parole Master Name File records.

6. Investigation Reports

Investigation Reports are maintained for all investigations conducted by the Division of Parole and Probation. Information may be used by judges as an aid in making sentencing decisions. If the individual is incarcerated, such information is used in the classification process. The information is also used

by the Parole Commission in making parole decisions and by the supervising agents if the individual is placed on probation. There are over 100,000 records in this system.

A. Collection and Maintenance of Information

The Division indicated that pre-sentence investigation reports contain the following types of data: "descriptive information pertaining to the individual, offense and court disposition; offense version, record of convictions; family history to include defendant, parents and siblings; marital history; home and neighborhood; education; health; interests and activities; employment; military service; financial condition; and recommendations to the court." Information comes from the subject of the record, other criminal justice agencies, neighbors, schools, employers, and so forth. The Division of Parole and Probation indicated that an attempt is made to verify information with the individual, and an individual is aware of the type of information collected about him. Unsolicited comments are verified as to their accuracy and appropriateness.

Investigative Reports are manual records and are categorized by name.

B. Access Rights of the Person in Interest

The person in interest is permitted access to investigative reports only if authorization is received from the court that ordered the investigation.

C. Disclosure of Records to Third Parties

Pre-sentence investigation reports are restricted by Article 41, Section 124 to the court that ordered the investigation, the defendant's attorney, the State's Attorney's office, and the Division of Correction. (An attorney

may discuss the contents of the report with the defendant). Disclosure to others will take place only if an order is issued by the court that ordered the investigation. Other types of investigations, such as pre-parole investigations, post-sentence investigations, and so forth, are subject to the three tests in the Division's Public Information Act manual which was discussed earlier in this report. Logs are not maintained and information is sometimes verified as to its accuracy prior to dissemination.

D. Security of Personally Identifiable Information

Investigation Reports are kept in file cabinets, although not all cabinets are locked.

NOTES

1. Crime Control Act of 1973, Section 525(b), as quoted in U.S. Department of Justice Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, Privacy and Security of Criminal History Information-Summary of State Plans, p.1.
2. Md. Ann. Code, Art. 27, Sec. 743 (f).
3. Md. Ann. Code, Art. 27, Sec. 743 (e).
4. Md. Ann. Code, Art. 27, Sec. 747 (a).
5. COMAR 12,06.08.05. According to a representative of the Maryland State Police, "This fee was established to offset the time expenditure of State personnel involved in this procedure. In order to verify the person's identity and identify the record as the record of the person in interest, that person must be fingerprinted. The fee, therefore, helps to defray the cost of the time spent by the fingerprint technicians as well as the records technician." It should be noted that this position is consistent with the Law Enforcement Assistance Administration, which suggested that states charge fees in the five to ten dollar range. See U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice, Information and Statistics Service Privacy and Security Planning Instructions - Criminal Justice Information Systems-April 1976, p.50.
6. This is consistent with the Crime Control Act of 1973, which states that the person in interest should ordinarily only be provided a copy when it is needed to challenge the accuracy of the record.
7. Md. Ann. Code, Art. 27, Sec. 749.
8. U.S. Department of Justice, Law Enforcement Assistance Administration, "Criminal History Records - Collection, Storage and Dissemination of Information", Federal Register 41, no.55, 19 March 1976, p.11714.
9. Md. Ann. Code, Art. 27, Sec. 746 (b)(2).
10. Md. Ann. Code, Art. 27, Sect. 728 (b)(12).
11. Md. Ann. Code, Art. 76A, Sec. 3 (b)(1).
12. Maryland State Police Manual, Chapter 6, Section XII, Subsection 5-2. (Emphasis added).
13. Division of Correction, DCR 100-6, January 2, 1974, Appendix 5.
14. Division of Correction, DCR 200-1, April 15, 1980, p.1.
15. Ibid., p.3.
16. Ibid., pp.2-3.

17. Division of Parole and Probation, Guidelines and Resource Materials for the Administration of the Maryland Public Information Act, Division Personnel Administrative Guideline No. 35, Sept. 22, 1980, p.3.
18. Ibid., p.3.
19. Ibid., p.4.

DEPARTMENT OF STATE PLANNING (REGIONAL PLANNING COUNCIL)

The Department of State Planning is responsible for planning for State government itself as well as for overall State growth and development, conservation and preservation of resources, and coordination of economic, environmental, and social policies and programs. Despite its range of functions, there is only one component of the Department, the Regional Planning Council, which maintains program-related, personally identifiable information.

Though assigned by Executive Order to the Department of State Planning for certain administrative matters, basic responsibility for policy, direction and operations of the Regional Planning Council remains with the membership of the Council. The Council serves as a local government advisory body for Anne Arundel, Baltimore, Carroll, Harford and Howard Counties and Baltimore City, and provides an opportunity for the governments of the Baltimore metropolitan area to work together in conjunction with the State in the solution to problems in the areas of criminal justice, housing, transportation, environmental issues, and so forth.

The Regional Planning Council identified one program-related record-keeping system containing personally identifiable data: records of the Section 8 Existing Housing Program. At the present time, the Council maintains records involving over 300 program participants.

A. Collection and Maintenance of Information

The Section 8 Existing Housing Program is a federal effort to place low-income families in existing private structures through the use of rental subsidies. A qualified family will pay up to 25 per cent of its income to the

landlord as rent; any difference between this amount and the fair market area rent is supplied by the federal government.

According to the Regional Planning Council, Section 8 applications originate and are maintained in the county of residence of applicants. As a coordinating agency for the counties and city mentioned above, the Regional Planning Council monitors and maintains the program's personal and financial records. The involvement of the Council in the Section 8 program is a relatively recent occurrence, having only encompassed the last two years.

Families are asked to provide various types of information in order to determine their qualification status for the program. Applicants must provide such items as address, social security number, telephone number, family composition, income, other assets and medical allowances. All data collected through the program is obtained on a form supplied by the Department of Housing and Urban Development (HUD); thus, HUD essentially sets the collection requirements of the program. According to the Regional Planning Council, all of the personal data relating to applicants is obtained directly from the applicants themselves. Applicants are required to sign a statement indicating that the personally identifiable information provided is corrected.

While the bulk of the Council's Section 8 records are computerized, a manual backup system exists duplicating the computerized data. Records are categorized by a departmental number assigned to each participant.

B. Access Rights of the Person in Interest

The Regional Planning Council informed the Commission that since it does not maintain the original copies of Section 8 records, it does not grant access to the person in interest but instead sends him back to the county where the application was filed. It would then be up to the county to determine whether access would be granted.

C. Disclosure of Records to Third Parties

The Regional Planning Council will provide statistical summary reports to HUD on a periodic basis. If requests are received from the five counties or Baltimore City, lists can be generated regarding the names and addresses of landlords and such items as groups of individuals and sizes of apartments. The Regional Planning Council has not received requests from other groups for its data and therefore has not developed any policies to handle such requests. If such a request was received, the Regional Planning Council indicated to the Commission that it would coordinate the request with state and county officials and with HUD. It also indicated that procedures will be developed regarding the issue of disclosure of information to third parties and that the Regional Planning Council will consider such issues as the development of logs to record the dissemination of personal information, policies regarding the notification of the person in interest that the disclosure has occurred, and so forth.

D. Security of Personally Identifiable Information

The Regional Planning Council indicated that it has not yet developed any procedures regarding security guarantees to be received from recipients of personal data. Computerized information is maintained, according to the Council, on secure disk volumes with access limited to authorized personnel. Magnetic tapes used as backup contain standard labels designed to prevent unauthorized access. Offices containing manual program records are locked each evening. No risk analysis has been conducted to determine the appropriate level of security for the record system.

DEPARTMENT OF TRANSPORTATION

The Department of Transportation consists of seven primary transportation administrations: State Aviation Administration, Maryland Port Administration, Mass Transportation Administration, Motor Vehicle Administration, State Highway Administration, Toll Facilities Administration and State Railroad Administration. Despite the scope of the Department, the Motor Vehicle Administration and the Toll Facilities Administration were the only sectors identifying program-related, personally identifiable information.

I. Motor Vehicle Administration

The Motor Vehicle Administration indicated that it maintained six systems containing personally identifiable data: 1) Driver Records; 2) Vehicle Registration Records; 3) Systems Planning and Implementation Records; 4) Medical Advisory Board Records; 5) Consumer Services Records; and 6) Financial Responsibility Records.

1. Driver Records

Driver Records are maintained by the Administration for the licensing and regulation of drivers. There are approximately 2.8 million files.

A. Collection and Maintenance of Information

An individual applying for a learner permit or driver license is required to provide the following data: name, address; height; weight; race; sex; date of birth; name and address of employer; details regarding previous revocations, suspensions, cancellations or refusals

of driving privileges in any state; and a physician's certificate if the applicant has any physical or mental disability, other than vision, which might affect his driving. In addition to that information submitted by an applicant, license examiners provide information regarding the results of eye, law and road tests. Finally, Driver Records files contain data pertinent to traffic citations received by a licensee, as well as any administrative actions taken against that licensee.

Information is maintained in both manual and computerized forms and is categorized by name, soundex number and case number.

B. Access Rights of the Person in Interest

The Commission was informed that the person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Transportation Article Section 12-111 specifies that, except as otherwise provided by law, Motor Vehicle Administration records are open to public inspection. The Administrator is granted the discretionary authority to classify as confidential any record over five years of age, or any record pertaining to an event occurring over five years earlier. However, records of any age must be made available to federal, State or local government requesters. Finally, the statute permits the Administrator, except as otherwise provided by law, to destroy any record which is at least three years of age and which is regarded as obsolete and unnecessary to the work of the Motor Vehicle Administration.

In accordance with the above statute, the Administration permits members of the public to examine driving records and to purchase certified copies of these records. Copies contain the following directory information: name; address; height; weight; race; sex; date of birth; and an indication of any restrictions pertaining to the licensee. In addition, copies would also contain a listing of the dates, descriptions and summaries of traffic violations committed by the licensee over the past three years, as well as actions taken against him by the Administration during the same period of time. It should be recalled that Transportation Article Section 12-111 requires the Administration to provide complete copies of records to government requesters. Therefore, certified copies received by government agencies would not be restricted to the three year version obtained by other requesters.

The Motor Vehicle Administration indicated that the subjects of driving records are not informed regarding either the disclosure of such records or the names of recipients. The Commission was told that the accuracy of data is verified prior to dissemination. The Administration also maintains logs to record the names of individuals who have viewed or received a certified copy of a particular driving record. In order to examine a record, a requester is asked to indicate his name and license identification number on a standardized form provided by the Administration. The form also includes a space for the clerk to indicate that he has verified the identity of the requester. If a requester wishes to receive a certified copy, he must indicate his name and address. The Motor Vehicle Administration indicated that these logs may be examined by records subjects.

D. Security of Personally Identifiable Information

The Commission was informed that manual driving records are maintained in a secure area which is restricted to authorized personnel. The Administration indicated that access to computerized data is regulated by password codes, and that measures have been taken to prevent unauthorized altering of this data by Administration personnel. A formal risk analysis has not been performed.

2. Vehicle Registration Records

Approximately 2.9 million records are maintained by the Motor Vehicle Administration for the purposes of vehicle licensing and regulation.

A. Collection and Maintenance of Information

As an example of the type of data contained in this file, one may consider the standardized application form for title certification. An applicant is required to indicate his name, address, date of birth and driver license number. The applicant must also provide various details pertaining to a description of the vehicle being registered. If the vehicle is subject to any liens or encumbrances, the applicant must indicate the name and address of the secured party, as well as the amount and kind of lien. If the vehicle has been purchased from a Maryland dealer, that dealer must attest to the purchase price. Should an application be made for new registration plates or transfer of registration plates, the applicant must identify the name of his insurance company and agent, and the policy or binder number.

Vehicle Registration data is maintained in manual and computerized forms and is indexed by name, tag number, title number and serial number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Procedures governing the disclosure of Vehicle Registration information are identical to those affecting Driving Records.

D. Security of Personally Identifiable Information

Security measures are identical to those used to protect Driving Records.

3. Systems Planning and Implementation Records

Systems Planning and Implementation Records consist of computer listings of driver licenses and vehicle owners. The Motor Vehicle Administration indicated that data in this system is used for a variety of purposes. First of all, computer listings are used by automobile manufacturers to contact owners of vehicles being recalled. Listings are also employed by advertisers for the purposes of retail promotion. The Federal government relies on such listings as the basis of a number of statistical studies. Finally, listings are used for parking and flagging. At the present time, the Motor Vehicle Administration has entered into fifty contracts with purchasers of computer listings.

A. Collection and Maintenance of Information

Computer listings are drawn from the Driver Records and Vehicle Registration Records systems. Information appearing on these listings therefore represents an abbreviated version of the data appearing in

those systems.

Data is indexed by tax number, title number, serial number, name and soundex number.

B. Access Rights of the Person in Interest

As noted previously, Driver Records and Vehicle Registration Records may be examined, copied and challenged by the person in interest.

C. Disclosure of Records to Third Parties

Disclosure of Vehicle Administration computer listings is governed by Transportation Article Section 12-111(a): "Unless the information is classified as confidential under section 12-111 of this subtitle or otherwise provided by law, the Administration must furnish listings of vehicle registration and other public information in its records to those persons who request them, but only if the Administration approves of the purpose for which the information is requested." Subsection (c) of Section 12-112 stipulates further that recipients of listings may not distribute or use the information for purposes other than that for which it was requested and furnished.

In implementing the provisions of Section 12-112, the Administration has developed a purchase of information agreement which must be filed by recipients of computer listings. First of all, recipients must indicate the purposes for which the information is intended to be used. Second, recipients must state that they will not resell or otherwise disclose such information to other persons for mailing purposes. Third, recipients must agree not to use information for mailings promoting the sale of real estate or insurance, as well as for mailings involving

sweepstakes or give-away programs. Fourth, recipients are prohibited from using the information for mailings which violate the public morals or welfare of the population or which the Administrator determines to be objectionable. As a fifth condition of the agreement, recipients must provide, upon request from the Administrator, a certified statement delineating the uses to be made of the information. Finally, recipients must delete the names and addresses of all persons who request such deletion from information used for mailing purposes.

D. Security of Personally Identifiable Information

The Motor Vehicle Administration indicated that security of computer listings is identical to that in effect for Driving Records.

4. Medical Advisory Board Records

The Medical Advisory Board of the Motor Vehicle Administration maintains individual case files to determine the medical fitness of licensees. At the present time, there are over 38,000 such files.

A. Collection and Maintenance of Information

Transportation Article Section 16-103 imposes certain restrictions on the Administrator's ability to issue driver licenses. Among the categories of individuals who may not receive a license are: 1) habitual drunkards and users of narcotic drugs, or habitual users of any other drugs which make such individuals incapable of driving safely; 2) those previously determined to be suffering from any mental disability or mental disease and who, at the time of application, have not been judged to be competent; and 3) those "whose driving of a motor vehicle on the highways the Administrator has good cause to believe would be

inimical to public safety or welfare." In making such determinations, the Administrator is assisted by a Medical Advisory Board of physicians and optometrists.

Cases can be referred to the Medical Advisory Board either by individual physicians or by the Administrator. First of all, Transportation Article Section 16-119 stipulates that any physician or other person who is authorized to diagnose, detect or treat disorders characterized by consciousness lapses or certain specified visual impairments may contact the Medical Advisory Board and report the names of each individual 15 years of age or older who has such disorders of impairment. However, the physician may not report information derived from a diagnosis or treatment where a confidential or privileged relationship has been conferred by law, unless the patient has granted written authorization.

Actions of the Medical Advisory Board may also be initiated in response to a request from the Administrator. According to COMAR 11.17.03.02, the Administrator may require applicants for a license or license renewal to indicate if they have been treated for any of a variety of disorders, among which are epilepsy, heart condition, diabetes, alcoholism, drug addiction and psychiatric disorders. If an applicant indicates that he has been treated for any such condition, the Administrator may require further that he obtain a certificate of diagnosis and prognosis from the attending physician and that he forward that certificate to the Medical Advisory Board.

In all such referrals, the Medical Advisory Board determines whether the individual's physical or mental condition impairs his driving ability. If ability is impaired, the licensee or applicant may be scheduled to appear before a panel of the Board's doctors. Prior to his appearance, the licensee or applicant

must receive written notification of the condition being evaluated by the Board, as well as the names of panel members and their medical specialties. The licensee or applicant may present the panel with additional medical information, and must respond to all questions posed by the Board.

Files of the Medical Advisory Board are maintained manually and are indexed by name, soundex number and case number.

B. Access Rights of the Person in Interest

The person in interest has a limited right of access to Medical Advisory Board information pertaining to him. Motor Vehicle Administration procedures stipulate that the person in interest may examine only those papers which are classified as "general" in nature. "Confidential" papers may be examined by the legal representative of the person in interest, but only with the understanding that the contents of such papers will not be revealed to the client.¹ In practical terms, this means that medical information submitted to the Board by a physician cannot be examined by the person in interest unless the Board receives the consent of the physician.

C. Disclosure of Records to Third Parties

Transportation Article Section 16-118 stipulates that records of the Medical Advisory Board are confidential, may be released only upon issuance of a court order, and may be used only to evaluate an individual's driving ability.

D. Security of Personally Identifiable Information

Security procedures pertinent to Medical Advisory Board data are identical to those discussed under the Driver Records section of this report.

5. Consumer Services Records

The Motor Vehicle Administration maintains a record system for the purposes of licensing and regulation of auto dealers and salesmen, driving school instructors, and auto dismantlers and recyclers. At present, files are kept on approximately 1400 dealers, 4432 salesmen, 45 driving schools, 230 dismantlers and 14 recyclers.

A. Collection and Maintenance of Information

Though the Commission lacks information regarding the specific data elements contained in this system, the Motor Vehicle Administration indicated files consist of a general history of licensees. The Administration stated furthermore that all data is obtained directly from licensees.

Consumer Services Records are maintained in manual form and are indexed by name, number, and tag number of licensees, and by case number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Disclosure procedures follow those discussed in the Driver Records

section of this report.

6. Financial Responsibility Records

Financial Responsibility Records consist of three distinct types of files. First of all, records consist of approximately 75,000 Motor Vehicle accident reports. In addition, approximately 441,000 files are generated on an annual basis pertaining to reports of insurance cancellations. Finally, over 13,000 judgement cases have been filed with the Administration.

A. Collection and Maintenance of Information

Transportation Article Section 20-107 establishes certain conditions under which drivers must submit accident reports to the Motor Vehicle Administration. Within fifteen days after being involved in an accident resulting in bodily injury or death to any person, a driver must provide the Administration with a written report of the accident and must also file evidence of satisfactory liability insurance or other security. The report must contain the name and address of the driver's insurance carrier or security provider, the insurance or security policy number, and the name and address of the driver's local insurance agent. The driver may also be required to submit additional information if so requested by the Administration. Should the driver of the vehicle be physically unable, or unwilling, to submit the report, the Motor Vehicle Administration may require a report of the vehicle owner. The driver or owner need not submit a report if the accident has been investigated by a police officer and a report has been filed with the Maryland State Police.

Whenever an individual driver's vehicle liability insurance policy terminates or lapses, the insurer must notify the Administration of that fact. Transportation Article Section 17-106 then stipulates that the Admin-

istration must make a reasonable effort to contact the driver and must inform him that his vehicle registration is suspended. Within 48 hours of receiving notification from the Administration, the driver must surrender his registration.

Data is also collected regarding final judgements resulting either from a cause of action or agreement of settlement for damages arising out of the ownership, maintenance or use of a motor vehicle. According to Transportation Article Section 17-202, a judgement creditor or his representative who has not been satisfied within thirty days of the issuance of the judgement may file a certified copy of the judgement with the Administration accompanied by a statement of facts. Unless the judgement debtor falls into one of the excepted categories of individual as stipulated in the statute, the Motor Vehicle Administration must suspend his license and vehicle registration.

Financial Responsibility Records are maintained manually and are indexed by name, soundex number and case number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of information pertaining to him.

C. Disclosure of Records to Third Parties

Insurance cancellation reports and judgement files are open to public inspection; disclosure procedures therefore mirror those discussed under the Driver Records section of this report. Accident reports are also disclosable public documents with the exception of reports pertinent to drivers of emergency vehicles involved in accidents while responding to an emergency call, pursuing a violator or suspected violator of the law,

or responding to a fire alarm. Transportation Article Section 16-117 (b) (4) stipulates that such reports are available only to the Motor Vehicle Administration.

D. Security of Personally Identifiable Information

Security measures employed to protect Financial Responsibility records are identical to those discussed in the Driver Records section of this report.

II. Toll Facilities Administration

The Toll Facilities Administration identified four personally identifiable record systems: 1) Commuter Card Files; 2) Toll Facilities Police Background Investigation Information; 3) Toll Facilities Police Polygraph Records; and 4) Toll Facilities Police Disciplinary Records.

1. Commuter Card Files

The Toll Facilities Administration maintains card files of commuters at its various facilities. These files assist the Administration in identifying the number of commuters using each facility, isolating the geographical location of commuters, notifying commuters if commutation ticket books are found, and so forth. There are approximately 73,600 commuter cards at the Baltimore Harbor Tunnel, and an undetermined number at other facilities.

A. Collection and Maintenance of Information

Personally identifiable data for this file is restricted to name and address of commuter, name of registered owner of vehicle, and year

and make of vehicle. All data is obtained directly from the record subjects.

Card Files are maintained manually and categorized by name and commuter sticker number.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of all such data.

C. Disclosure of Records to Third Parties

The Toll Facilities Administration informed the Commission that information is released only to police departments.

D. Security of Personally Identifiable Information

The Commission was informed that recipients of data (i.e. police officers) must have proper identification and that information is released only in response to a personal visit. Recipients must also stipulate the uses that will be made of the data.

2. Toll Facilities Police Background Investigation Information

The Toll Facilities Police maintain several hundred records pertaining to background investigations of police applicants.

A. Collection and Maintenance of Information

A great deal of personally identifiable data is collected concerning applicants for the Toll Facilities Police Force. The most basic document submitted by applicants is the personnel booklet. An applicant must provide first of all, various items of directory information: name,

address, height, weight, sex, race, date of birth, citizenship status, and location of residences since birth. A series of medical and psychological questions is then directed to the applicant; an affirmative response to any question necessitates the submission of additional information. Among other things, the applicant is asked if he has ever seen a psychiatrist or psychologist regarding his mental health, if he has ever drunk alcoholic beverages, and if he has any physical defect, handicaps, chronic disease or other disability. The applicant must also document his military, educational and occupational background. The applicant must respond to a series of questions regarding his record as a motor vehicle operator. Full details must be provided regarding any non-parking traffic citations and any written warning tickets. Finally, the applicant must answer a number of questions which seek to identify any connection with groups advocating the overthrow of the government by unconstitutional or violent means.

Information appearing in the personnel booklet is verified and supplemented through a variety of means. Of particular significance are reports submitted by Toll Facilities Police investigators. An investigator checks with the Maryland State Police as well as various police departments in the Baltimore region to determine if the applicant has a criminal record. Motor Vehicle records pertinent to the applicant are also examined. The applicant's credit history is determined through contact of firms and credit bureaus. Neighbors of the applicant are also interviewed, and are asked among other things, if the applicant has a cooperative or hostile attitude towards other people, if he maintains his property well, if he appears to be a mature individual, and if he usually presents a neat appearance.

The Toll Facilities Police informed the Commission that applicants

are made aware of the type of data collected about them. Indeed, applicants must sign an authorization for release of information form allowing investigators to contact financial and credit institutions, physicians, psychiatrists, employers, public utilities, the military, and many other groups. The Commission was informed that data obtained from other sources which differed from that submitted by the applicant would be verified with the applicant.

Background investigation information is maintained manually and categorized by name of applicant.

B. Access Rights of the Person in Interest

The Toll Facilities Police indicated that it does not permit the person in interest to examine or copy Background Investigation Records.

C. Disclosure of Records to Third Parties

The Commission was informed that no personally identifiable information is released unless written authorization is received from the subject of the record. Although logs as such are not kept, the Toll Facilities Police retains a copy of the record subject's authorization form.

D. Security of Personally Identifiable Information

Background Investigation Records are kept in locked cabinets and are restricted to authorized personnel only.

2. Toll Facilities Police Polygraph Records

Approximately 350 Polygraph Records are maintained pertinent to applicants for the Toll Facilities Police.

A. Collection and Maintenance of Information

As part of the overall screening process, a Toll Facilities Police applicant responds to a series of questions contained in a polygraph booklet. The applicant must respond to questions regarding his physical and mental condition, permanency intentions, accident and traffic violations record, amount of indebtedness, participation in subversive activities, use of illegal drugs, use of alcoholic beverages, participation in gambling, and arrests and undetected crimes. A number of the responses provided by the applicant are then verified through the use of a polygraph. In addition to the written responses of the applicant and the polygraph results, the file also contains the written opinions of the polygraph operator.

Polygraph records are maintained manually and are indexed by internal departmental code.

B. Access Rights of the Person in Interest

The Toll Facilities Police informed the Commission that all of the information received during the polygraph examination is given to the person in interest.

C. Disclosure of Records to Third Parties

Personally identifiable data is not disclosed without the consent of the record subject.

D. Security of Personally Identifiable Information

Polygraph Records are kept in locked file cabinets and are restricted to authorized personnel only.

3. Toll Facilities Police Disciplinary Records

Disciplinary Records consist of investigations, on-sight violations and adjudicated cases pertaining to members of the Toll Facilities Police. Files contain approximately 30 investigatory records, 148 on-sight violations, and 80 adjudicated cases.

A. Collection and Maintenance of Information

Investigatory materials are generated in response to complaints against members of the Toll Facilities Police. It is unclear exactly what information is gathered as a consequence of on-sight violations. Adjudicated cases pertaining to members of the force must be handled in accordance with the provisions of the Law Enforcement Officers' Bill of rights (Article 27, Sections 727 through 734D of the Annotated Code). The provisions of this Bill of Rights was discussed in some detail in the section of this report dealing with the Maryland State Police.

Disciplinary records are maintained manually and indexed by internal departmental code or by name.

B. Access Rights of the Person in Interest

The Toll Facilities Police stated that the person in interest has access to all materials relating to him, with the exception of the investigatory report and interrogatories received from other persons.

C. Disclosure of Records to Third Parties

Personally identifiable data is not disclosable without the consent of the record subject.

D. Security of Personally Identifiable Information

Disciplinary records are kept in locked file cabinets and are restricted to authorized personnel only.

NOTES

1. Maryland Department of Transportation, Motor Vehicle Administration, Procedures For Certified Copy of Driver Control Documents, February 4, 1981, p.3.

MARYLAND AUTOMOBILE INSURANCE FUND

The Maryland Automobile Insurance Fund (MAIF) was created "...to provide automobile insurance to those eligible persons who are unable to obtain it in the private market."¹ In order to qualify for the program, an individual must be a Maryland resident and have either a valid registration or license issued by the Motor Vehicle Administration. In addition, he either must be rejected for insurance by two private companies or have his current policy cancelled or nonrenewed; rejection, cancellation or nonrenewal due to nonpayment of premiums invalidates possible participation in MAIF.

Since MAIF functions as an automobile insurance company, many of its record-keeping practices conform to those generally found in the insurance industry. For example, claims information is disseminated routinely through various industry-wide Central Informational and Statistical Bureaus, such as the Automobile Theft Bureau and the Bodily Injury Central Index Bureau. In addition, claims information is released on a reciprocal basis to other insurance companies representing individuals involved in specific accidents.

Nonetheless, it is important to note that, despite certain unique features, MAIF operates as a State agency and, as such, is regulated by the provisions of the Annotated Code. This point was made abundantly clear in an Attorney General's opinion dated August 18, 1976; it is worth quoting from this opinion at length in order to clarify the status of MAIF from the onset.

"The twin criteria which sharply distinguish a State agency or instrumentality from a private entity are: first, that the State has control over all aspects of its operations and indeed over its continued existence and second, that its chief function and *raison d'etre* is to serve

a public purpose or need. MAIF, despite some novel attributes which make it dissimilar from other State agencies and instrumentalities in several respects, satisfies these controlling tests. It is a creation of the General Assembly of Maryland, borne of legislative determination that the previous scheme of assuring the provision of automobile liability insurance to Maryland motorists under the Assigned Risks Plan, Article 48A, Section 243 Annotated Code of Maryland 1957 (1972 Repl. Vol.) had proven inadequate. It is dependent for its continued existence upon the legislative will; unlike a private corporation, MAIF has no life independent of its statutory origin. Corporations and Associations Article Section 2-103(1) Annotated Code of Maryland. During its existence, the Legislature retains the power to regulate, by statute, every aspect of MAIF's operation, and if it chooses, to restructure, alter or abolish it."2

MAIF identified two major record systems in which personally identifiable information is maintained: the Claims Record System and the Underwriting Record System.

I. Claims Record System

Claims System data is used to make liability and damage value decisions. This system contains information on both policyholders and claimants for all claims reported to MAIF. Approximately 5,600 active cases and 100,000 closed cases are maintained.

A. Collection and Maintenance of Information

Various items of personally identifiable information are contained in claims system files. The Report of Accident and Claim form contains the following data: names and addresses of owners of vehicles involved in the accident; name and address of driver; name, addresses, and telephone numbers of all witnesses; names, addresses and ages of passengers; name of insurance company and policy number, and full details pertinent to the accident. A claimant filing a Loss Information

and Processing Report indicates his name, address, telephone number and policy number; names, addresses, and telephone numbers of witnesses; accident details; and coverage information.

Claims system data is collected not only from claimants but from medical facilities, doctors, employers, police departments and claim index bureaus. In the event that an agreement cannot be reached on a claim settlement amount and an attorney is involved in the process, information gathered from other sources is verified through interrogatories, depositions and subpoenas. Individuals are not always informed of the type of data collected about them. Any unsolicited comments would be verified through extensive investigation.

The Commission was informed that personally identifiable claims system information is maintained in manual form. Summary claim information which is not personally identifiable is available on computer for the purposes of establishing reserves and controlling payments. Claims records are categorized by name, insured's policy number, and claim number.

B. Access Rights of the Person in Interest

Access to claims system information by the person in interest will vary, depending on the status of the claim. Access to open claims data is restricted to a large extent, since such claims represent potential litigation situations. Requests for access to open claims records are referred to MAIF's Assistant Attorney General. Information may be copied after the file is closed. The person in interest is not specifically made aware of his right of access.

C. Disclosure of Records to Third Parties

Claims system records are disclosed through Central Index Bureaus, as well as insurance companies representing an individual involved in an accident. MAIF indicated that its disclosure practices are governed by restrictions relating to litigation situations. In the event that information is disclosed, the subject of the record is not informed of the disclosure of personally identifiable information or the name of the recipient of the record. Information is verified as to its accuracy prior to dissemination. Logs are maintained to record the disclosure of personally identifiable information; logs contain the name and address of the person making the request and the purpose of the request.

D. Security of Personally Identifiable Information

The Commission was informed that claim files are not available for review by adjusters from other branches unless permission is received from the Branch Manager. Files which leave the office must be cleared with the supervisor. MAIF employs security passwords to prevent unauthorized interrogation or changing of claims files information. MAIF also stated that a risk analysis has been conducted to determine the appropriate level of security for this information.

II. Underwriting Record System

The Underwriting Record System contains data on all individuals who have applied for insurance through MAIF. Information is used to determine the policy rating classification. Approximately 70,000 active files and 320,000 expired or cancelled policies are maintained in the system.

A. Collection and Maintenance of Information

The following types of data are collected from applicants for passenger

vehicle insurance: name, address, date of birth, and home and business telephone number of applicant; name and address of the applicant's employer; name, sex, marital status and date of birth of any person over age fourteen (14) who is residing with the applicant; frequency of use of vehicle by the applicant; an indication as to whether the applicant has installed a Citizens Band Radio or tape deck in his vehicle; details pertinent to any accidents or moving violations during the past thirty-six (36) months; details regarding any policy cancellations by private insurance companies; and coverage information. Similar data is also collected from those applying for commercial vehicle insurance.

In addition to that information which is obtained directly from the applicant, data is also provided by the Motor Vehicle Administration and from MAIF accident records. Occasionally, additional information regarding commercial vehicle insurance applicants is obtained from prior insurers. Applicants are made aware of information collected from other sources. Verification of such data occurs either with the individual or with his agent. MAIF verifies any unsolicited comments which can be documented from public records.

Underwriting records are maintained primarily in computerized form, with the manual files only accessed on an exception basis. Data is categorized both by the names of all drivers on a policy as well as by policy number.

B. Access Rights of the Person in Interest

MAIF stated that underwriting records are available to the policyholder and his agent. The person in interest is not informed formally of his access rights. He may copy his files and contest the accuracy of the information.

C. Disclosure of Records to Third Parties

The great majority of the data appearing in underwriting records is disclosable under the Public Information Act. The only data which is considered

to be nondisclosable is that pertaining to an individual's coverage information. The accuracy of information is not verified immediately prior to dissemination, since the subject of the record has already reviewed the rating information. Disclosure logs are maintained only if the dissemination was based on a formal complaint. In such a situation, MAIF records the name of the complainant, the date of the complaint, the nature of the complaint, and the resolution of the problem.

D. Security of Personally Identifiable Information

MAIF informed the Commission that underwriting records are periodically reviewed by Internal Auditing. As a further security measure computer operations personnel are to take two week vacations sometime during the calendar year. The Commission was informed that a risk analysis had been conducted to determine the appropriate level of security for this record system.

NOTES

1. Md. Ann. Code, Art. 48A, Sec. 243B.
2. 61 Opinions of the Attorney General, 572, August 18, 1976.

OFFICE OF THE PUBLIC DEFENDER

The Public Defender's Office functions to provide legal services to indigent defendants involved in any criminal or juvenile proceedings where incarceration may result. The Office maintains approximately 100,000 active records which consist of personnel, administrative, and case records. This report examines the Office's record-keeping practices regarding client case files.

A. Collection and Maintenance of Information

Client case files contain a great deal of sensitive, personally identifiable data. As a first step, applicants file a Defendant's Application For Appointed Counsel form. This form contains the following types of data elements: name; address; home and work telephone number; date of birth; level of education; social security number; name of employer; wage or salary; amount of unemployment pay, disability pension, and retirement pay; names of children and spouse; balance in checking and savings accounts; amount of indebtedness; and amount of money in the custody of the police. All information gathered from applicants during the initial interview and subsequent to the interview is maintained in a client folder. Various data elements are entered directly on the inside of the folder: sex, race, height, weight, date of arrest, an indication as to whether the client suffers from drug or alcohol abuses, amount of bail, prior arrest record, amount of indebtedness, medical or psychiatric treatment location, and details regarding the client's spouse and dependent children.

In addition to applications for service and client folders, the Office of the Public Defender maintains investigative data pertinent to case files. An investigator files a Public Defender Investigation Report form in which the following types of information are obtained from the client: previous arrest record, whether for a juvenile arrest, adult arrest or serious traffic arrest; parole or probation record; dates of psychiatric care, evaluation, treatment or commitment; use of narcotics or excessive use of alcohol; names and addresses of witnesses; details regarding any statements made by the client at the time of arrest; and a description of the client's attitude and general appearance. A separate Investigation Report form is also used to collect information. This data is gathered during a field investigation interview with a third party, who may be a witness, victim, relative of the defendant, and so forth. Besides the basic results of the investigation, the following directory data is recorded regarding the individual who is interviewed: name, address, home and work telephone number, race, age, date of birth, and details pertinent to a police record.

Much of the information contained in a case file is obtained directly from the defendant himself. However, certain items (e.g. psychiatric, medical and criminal records) are submitted by other sources. The Public Defender's Office stated that the defendant is aware of the type of information that is maintained in his case file. Any conflict between information provided by the client and that produced by another source is reconciled if possible. Unsolicited comments may be received, especially in cases which are given a high degree of publicity from the media. Information on a defendant that is supplied in this manner is recorded in his file. If the unsolicited information appears to be potentially useful in the defendant's defense, the Public Defender may pursue it.

Case file records of the Office of the Public Defender are maintained in a manual fashion. Case files consist of numerically arranged folders which contain the information that the Public Defender uses in his defense role. The Records Retention and Disposal Schedule indicates that an alphabetical name card index to the numerical case files is also available. Separate case files exist in each district for matters arising in the circuit courts (Supreme Bench in Baltimore City), the district courts, and juvenile matters.

B. Access Rights of the Person in Interest

The Office of the Public Defender stated that clients are informed if any information is collected concerning their case. Routinely, they are given copies of all filings, petitions and police reports. Clients have access to all records in their case files with the exception of psychiatric records. The Commission was informed that redisclosure of psychiatric records was prohibited by the facility which supplied the records. Clients are informed if their files contain psychiatric information. The policy of the Public Defender's Office is to provide access and copies of all other materials upon request. The Office expressed the view that, because of the type of service provided by them, it is essential that clients be aware of the information pertaining to their cases.

C. Disclosure of Records to Third Parties

The Public Defender's Office stated that disclosure of any personal information without the authorization of the client is prohibited due to the nature of the attorney-client relationship. However, statistical information may be released to related criminal justice agencies or other individuals.

D. Security of Personally Identifiable Information

The Office of the Public Defender indicated that case file data is placed in locked filing cabinets in a self-contained file room which is also locked.

OFFICE ON AGING

The Office on Aging is an independent agency responsible for planning, coordinating, funding and operating programs and services designed to serve the elderly population of Maryland. The Office administers a wide range of programs for the aged such as nutritional services, legal assistance, transportation assistance, training efforts, volunteer services to residents of nursing homes, and so forth. Despite the range of services, there are only five program-related record systems involving personal information of individuals maintained by the Office on Aging: Senior Aides Program records, Family Support Demonstration Project records, Public Guardianship Program records, Nursing Home Ombudsman Program records, and Sheltered Housing Program records.

I. Senior Aides Program (Senior Community Service Employment Program Title V of the Older Americans Act)

The Senior Aides Program is an effort at providing part-time employment to individuals who are at least fifty-five years of age and with an income at or below the federal poverty level. The program is funded primarily by the U.S. Department of Labor (DOL) directly, or through a contractor of DOL, the National Council of Senior Citizens. The Commission was informed that the Department of Labor has issued regulations and the National Council has issued program guidelines that govern the operation of the Senior Aides Program. The actual administration of the program is the responsibility of the Office on Aging.

A. Collection and Maintenance of Information

The standardized forms used by the Office on Aging to collect information from Senior Aides applicants reflect the dual needs of identifying applicants' skills and determining their eligibility. Individuals are asked, first of all, to respond to a series of questions regarding level of education, special training experience, nature of previous work, typing ability, and so on. Applicants are also requested to indicate the type of work they would like to perform if accepted into the Senior Aides program. These questions would enable Office on Aging program officials to make appropriate placement of applicants.

Since the program has an income eligibility test, applicants are asked a series of questions regarding financial status. Applicants must identify the total monthly income of all family members living with them (including social security but excluding unemployment compensation), the number of family members living with them, and an indication as to whether or not cash welfare payments are currently being received.

After an individual has been selected as a Senior Aide, he is requested to provide a statement from a physician attesting to his medical capabilities to perform assigned tasks. Physicians are also requested to indicate whether the Aide has any medical problem that would require further examination or treatment.

In addition to the above described information, time, leave and pay records of Senior Aides are maintained by the Office on Aging.

The Commission was informed that for the most part, Senior Aides Program personally identifiable information is supplied by the applicants and aides themselves. The one exception to this rule would appear to be the previously noted physician statement. The Office on Aging indicated that it would be very unusual for any information to be added to an

applicant or Aide's folder without his knowledge.

Senior Aides' records are maintained in a manual fashion, and categorized by the name of the Senior Aide.

B. Access Rights of the Person in Interest

The person in interest is permitted access to all information pertaining to him in the record system of the Senior Aides program. This right apparently extends to the statements supplied by physicians, who are informed that all data furnished will be kept confidential. Physicians are being told implicitly, therefore, that any information provided will be nondisclosable except to the person in interest. Individuals also have a right to copy any portions of their files. The person in interest is not informed specifically of his right to access.

C. Disclosure of Records to Third Parties

The Office on Aging indicated that Senior Aides Program information is not disclosed without the consent of the subject of the record. The Commission was told that this would be the case even where the request involves verification of employment or amount of salary received. Ordinarily, requests for information directed to the Office on Aging are limited to verification of employment or amount of salary. While no logs are maintained to record the dissemination of data, the Office on Aging did note that it retains copies of both the original letter requesting information and the consent statement of the subject of the record. Senior Aides are considered to be state employees; therefore, their records are nondisclosable under Article 76A, Section 3 (c) (iii).

D. Security of Personally Identifiable Information

Senior Aides Program information is maintained in locked file cabinets.

II. Family Support Demonstration Project

The Office on Aging also administers a Family Support Demonstration Project to enable elderly individuals receiving financial assistance to remain in their homes without institutionalization. This program is State-funded.

A. Collection and Maintenance of Information

The Commission was provided with copies of the two basic forms used to collect personally identifiable information from participants in the Demonstration Support Project. Preliminary data regarding the living situation of the elderly person in question is collected through the Telephone Intake Form. Respondents are asked to indicate briefly the physical health, approximate income and needs of the elderly person.

Once contact has been initiated, more substantive information is obtained by the Office on Aging. A family member is asked to indicate the annual income of the elderly relative, delineating amount of wages, public assistance grants, social security benefits, supplemental security income, pensions, gifts, business profits, and so forth. The family member is also requested to provide data on the value of the elderly person's bank accounts, stocks, bonds, security, and real estate. The form furthermore asks a series of questions regarding the functional disability of the elderly person, such as the person's ability to eat, walk and dress unassisted, and any physical limitations.

The Office on Aging indicated that personally identifiable information is obtained from both the elderly participants and family members. It is unclear as to whether there are any situations in which information is obtained from other sources.

Demonstration Project records are maintained manually and categorized by name of program participant.

B. Access Rights of the Person in Interest

The Commission was informed that the Demonstration Project follows the same procedures in granting access to the person in interest as was mentioned under the Senior Aides Program.

C. Disclosure of Records to Third Parties

The Office on Aging indicated that it is unusual to receive any requests from third parties for Demonstration Project data. In those rare instances where a request for personally identifiable data is submitted, the policy of the Office on Aging is to refuse to honor such a request without the written permission of the program participant.

The position of the Office on Aging is that Family Support Demonstration Project records are confidential per Article 88A, Section (1)(a) and Article 76A, Section 3 (c)(i). Article 88A is that section of the Code pertinent to the Social Services Administration. Article 88A, Section 6 (1)(a) reads as follows:

"Except in accordance with a court order or except for purposes directly connected with the administration of public assistance, medical assistance, or social services programs, it shall be unlawful for any person or persons to divulge or make known in any manner any information concerning any applicant for or recipient of social services, child welfare services, cash assistance, food stamps or medical assistance, directly or indirectly derived from the records, papers, files, investigations or communications of the state, county or city or subdivisions or agencies thereof, or acquired in the course of the performance of official duties."

Article 76A, Section 3 (c)(i), prohibits the disclosure, unless otherwise provided by law, of "medical, psychological and sociological data on individual persons . . .". The Office on Aging asserted that much of the personally identifiable data it collects is sociological in character.

D. Security of Personally Identifiable Information

Demonstration Project record files are maintained in locked file cabinets.

III. Public Guardianship Program

Records are maintained regarding individuals for whom the Office on Aging serves as Public Guardian. The Public Guardianship Program is funded from State sources and thus its record-keeping practices are not governed by federal regulations.

A. Collection and Maintenance of Information

Public Guardianship personally identifiable information is collected via a Data Summary Sheet. The following information is gathered for each individual whose guardian is the Office on Aging: name of individual, date of birth, social security number, telephone number, permanent address, nature of medical problems and treatment, amount of social security received, Medicare number, Medicaid number, name of health insurance company and policy number, source and amount of other income, approximate amount of money in checking and savings account, bank account numbers, name of life insurance company and account number, will and burial arrangements, religious affiliation, and nature of property ownership. This information is usually supplied by the individual or by a friend, relative or attorney on the individual's behalf, or by the local Department of Social Services which has made the initial investigation of the case.

Public Guardianship records are categorized by the name of the person for whom the Office on Aging is guardian.

B. Access Rights of the Person in Interest

As in the case of both Senior Aides records and Demonstration Project material, the person in interest has full access rights to information pertaining to him in the Public Guardianship record system. The person in interest may also receive copies of specific materials. The Office on Aging indicated the individual is not informed of his right to examine his own file.

C. Disclosure of Records to Third Parties

Information maintained by the Public Guardianship Program may be shared with a court responsible for appointing a guardian or with a local Department of Social Services responsible for administering the law jointly with the Office on Aging. The Office on Aging identified its disclosure practices for the program as follows:

"In the cases in which the Director of the Office on Aging is the court-appointed Public Guardian of the person of an individual, he acts for the individual in giving consent to disclosure on behalf of the individual. He and the small staff in the office assigned to this program exercise this authority with very careful discretion re confidentiality. Disclosure of information is required periodically by law to a Disabled Persons Review Board in each county which reviews the progress of the guardianship. If the individual has a guardian of his/her estate, disclosure of certain information may have to be made to this guardian. Some information may also have to be disclosed to public agencies in applying for benefits on behalf of the individual - e.g. SSI, Food Stamps, Medicaid."

The Office on Aging asserted that Public Guardianship Program records are confidential under Article 88A, Section 6 (1)(a) and Article 76A, Section 3 (c) (i).

D. Security of Personally Identifiable Information

Public Guardianship material is maintained in locked file cabinets.

IV. Nursing Home Ombudsman Program

The Office on Aging receives federal funding under the Older Americans Act to administer a Nursing Home Ombudsman Program. The Program receives and investigates complaints regarding the treatment or service provided to elderly residents in nursing homes.

A. Collection and Maintenance of Information

Program staff collect the following information from complainants: name of complainant, address, telephone number, relationship with nursing home resident, name of resident, age and sex of resident, Medicaid and Medicare status of patient, name of nursing home, and nature of complaint.

B. Access Rights of the Person in Interest

The Nursing Home Ombudsman Program follows the same procedures regarding the access rights of the person in interest as was previously identified for other programs of the Office on Aging.

C. Disclosure of Records to Third Parties

All personally identifiable data pertaining to this program is confidential by the Older Americans Act, a section of which requires states to ". . . establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without the written

consent of such complainant or resident, or upon court order."1 While logs are not maintained, program administrators maintain copies both of letters requesting information and the complainant's written permission to disclose.

D. Security of Personally Identifiable Information

The Commission was informed that information is maintained in a locked file under very strict confidentiality.

V. Sheltered Housing Program

The Sheltered Housing Program is a State funded and administered effort to provide both residential housing and housekeeping services to low-income older persons at reduced costs.

A. Collection and Maintenance of Information

The Office on Aging receives quarterly reports of subsidies earned from the owner of the housing facility or project where the beneficiary resides. Included in these reports are the names and addresses of owners, the names of eligible occupants, annual net income, months of occupancy, monthly subsidy, and amount earned.

B. Access Rights of the Person in Interest

The person in interest may examine and copy information pertaining to him.

C. Disclosure of Records to Third Parties

As in the case of Family Support Demonstration Project records and Public Guardianship Program records, the Office on Aging asserted that

these records are confidential under Article 88A, Section 6 (1) (a) and Article 76A, Section 3 (c) (i).

D. Security of Personally Identifiable Information

Data is maintained in locked file cabinets.

NOTES

1. 42 USCS 3027 (a) 12 (B).

STATE ADMINISTRATIVE BOARD OF ELECTION LAWS
AND
COUNTY BOARDS OF SUPERVISORS OF ELECTIONS

The administration and supervision of Maryland's election laws are shared responsibilities of county and state agencies. Article 33, Section 2-9 (b) of the Annotated Code authorizes county elections boards to make necessary rules and regulations pertinent to the registration of voters and the conduct of elections. Article 33, Section 1-A-1 (e) establishes the State Administrative Board of Election Laws and grants this board a number of powers, among which are the exercise of supervision over the conduct of elections in the State, the adoption of rules and regulations designed to assist the local boards, and the review approval, certification and decertification of methods for casting and tabulating votes.

The individual boards maintain the following approximate numbers of voter registration records:

1. Allegany County	40,261	13. Harford County	67,549
2. Anne Arundel County	160,000	14. Howard County	65,385
3. Baltimore City	400,000	15. Kent County	8,126
4. Baltimore County	361,000	16. Montgomery County	344,637
5. Calvert County	13,835	17. Prince George's County	239,140
6. Caroline County	8,756	18. Queen Anne's County	11,513
7. Carroll County	36,953	19. St. Mary's County	21,854
8. Cecil County	25,482	20. Somerset County	9,223
9. Charles County	28,000	21. Talbot County	13,097
10. Dorchester County	14,058	22. Washington County	49,807
11. Frederick County	48,650	23. Wicomico County	28,000
12. Garrett County	11,452	24. Worcester County	12,305

A. Collection and Maintenance of Information

In order to register to vote in the State of Maryland, an applicant must satisfy the following qualifications set forth in Article 33, Section 3-4: 1) be a United States citizen; 2) be at least eighteen years of age by the next succeeding general or special election; 3) be a resident of the State for at least thirty days preceding general elections; 4) be a resident of the County at the time for closing of registration; 5) not be under guardianship for mental disability; and 6) not be convicted of theft or other "infamous crimes", unless pardoned, or if conviction has occurred for the first time only. As a means of verifying compliance with the statutory requirement, each board requires an applicant to furnish the following information: name, address and date of birth or age, and a signature to a statement affirming that he is a citizen of the United States and of the particular county in which he is registering, that he has not been convicted of a disqualifying crime or is under guardianship for mental disability, and that all information provided regarding place of residence, name, place of birth, criminal offenses, qualifications as a voter and right to register and vote is true.

In addition to collecting necessary information for the purposes of Article 33, Section 3-4, each board requires an applicant to indicate place of birth and sex. Applicants are also asked if they wish to specify party affiliation for the purposes of primary voting. Besides that data which is collected by every board, one can also identify items of information which are found in the voter registration records of some boards and not others. All boards with the exception of those in Calvert and St. Mary's counties request an applicant to indicate his telephone number, in the event that there is a need for clarifying information. An applicant in Harford county is asked to provide the name of his spouse. Harford, Washington and Talbot counties ask applicants to indicate length of residence in Maryland. The

boards in Anne Arundel, Allegany, Caroline, Charles, Kent, Prince George's, Queen Anne's, St. Mary's and Garrett counties request applicants to provide social security numbers; Anne Arundel, Allegany and Garrett counties inform applicants, however, that the furnishing of social security numbers is not mandatory. The Prince George's County board asks an applicant to indicate whether he is civilian or military.

Depending upon the particular county board, voter registration records may be maintained manually or in computerized form or both. The records of the Carroll County board are kept in manual form. The Montgomery and Prince George's county boards have computerized voter registration records. The boards of Baltimore, Charles, Frederick, Harfork, Howard, Wicomico, and Anne Arundel counties and Baltimore City maintain records in both forms. The thirteen remaining county boards (Allegany, Calvert, Caroline, Cecil, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, and Worcester) submit batch copies of manual records to the State Administrative Board of Election Laws for data entry at the Annapolis Data Center. Reports of entered data are returned to the local boards. Backup tapes are stored on a monthly basis at the State Board offices. Records in the various boards are indexed in a variety of ways: name, address, precinct and district or ward, voter identification number, and random sequence.

B. Access Rights of the Person in Interest

Voter registration records are available for inspection and copying by the person in interest. It should be noted, however, that all information is provided directly by the person in interest.

C. Disclosure of Records to Third Parties

The sale of voter registration lists is governed by Article 33, Section

3-22 (a):

"The board shall furnish to any person registered to vote in Maryland making written application thereof, within 10 days after the application has been received, a certified copy under their hands, of the names, addresses and party affiliations of all persons registered in any precinct. The boards shall also furnish supplements to these lists upon written application as provided below. The State Administrative Board of Election Laws shall furnish the lists and supplements at the request of a local board. The method and cost of reproduction of these registration lists and supplements shall be determined jointly by the State Administrative Board of Election Laws and the boards. Any application for a registration list shall be filed at least 45 days prior to a primary election and at least 30 days prior to a general election and shall be accompanied by cash or certified check to cover the cost or estimated cost of the list and, if applied for, the supplement. If an applicant applies for a supplement, that application shall be made at the same time that the applicant applies for a registration list. These supplements shall include the names, addresses, and party affiliations of all registrants in any precinct who have registered from such date as the board deems proper through the deadline for registration for the applicable election. The board shall furnish these supplements within a timely period after the applicable deadline for voter registration. Registration lists and supplements shall be certified by the board or the State Administrative Board of Election Laws as correct. Each application for a registration list or a supplement shall be accompanied by a statement, under oath, by the individual filing the application, that the list or supplement is not intended to be used for purposes of commercial solicitation or other business purposes. Any person who, knowingly, allows a registration list or supplement under his or her control to be used for commercial solicitation or other business purposes is guilty of a misdemeanor and shall be punished under the provisions of (section) 24-27 of this article."

An Attorney General's Opinion dated August 17, 1977 suggested 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 only specific prohibition involves those who would seek to use lists for ". . . commercial solicitation or other business purposes". Given the language of the statute then, the Attorney General concluded that 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.¹ Indeed, although the Opinion does not address this issue specifically, it would appear that any type of organization is entitled to the list provided that the representative of the organization signs the non-commercial statement. In any event, voter registration lists are used for a variety of purposes beyond those which are overtly political, such as soliciting charitable contributions, recruiting members for non-profit organizations and identifying candidates for jury duty.

In providing lists and supplements in accordance with Article 33, Section 3-22(a), the data disseminated by the boards ". . . shall include the names, addresses and party affiliations of all registrants in any precinct who have registered from such date as the board deems proper through the deadline for registration for the applicable election." One should note that though this statute specifies the type of information that must be disseminated, local boards are free to disclose personally identifiable information in addition to name, address and party affiliation.

As noted previously, thirteen of the twenty-four local election boards computerize their records through the Annapolis Data Center, and are assisted in this effort by the State Administrative Board of Election Laws. In disseminating computerized lists on behalf of the local boards, the State Board limits disclosable information to name, address and party affiliation. The Commission contacted the Election Administrators for the eleven remaining boards and inquired as to their disclosure practices. The following is a list, by local board, of those data elements disseminated in addition to name, address and party affiliation:

LOCAL BOARD

NATURE OF INFORMATION DISCLOSED

1. Anne Arundel County	Sex, age and five year voter history.
2. Baltimore County	Sex, age, place of birth, telephone number, term of residence in Maryland, state of birth and date of last election in which registrant voted.
3. Baltimore City	No additional data.
4. Carroll County	No additional data.
5. Charles County	No additional data.
6. Frederick County	Sex. Upon request, birth date, date of registration, age at registration, and five year voter history.
7. Harford County	Sex and date of registration.
8. Howard County	Sex
9. Montgomery County	Birth date and ten year voter history.
10. Prince George's County	Upon request, age and elections in which registrant voted.
11. Wicomico County	Age at registration, date of registration, sex, state of birth, and the last year in which registrant voted.

Article 33, Section 3-11(a) governs the inspection of voter registration records, as opposed to purchasing a list: "The registration records shall be open to public inspection under reasonable regulations at all times when the office of the board is open for the registration of voters except upon the special order of the board." It should be noted, first of all, that while only registered voters in Maryland can purchase lists, anyone can inspect registration records. Second, since registration records are considered to be public records as defined by the Public Information Act, the Attorney General has ruled that the right of inspection also includes the right of copying such documents.

It is also important to note that unless the local board issues a special order, an organization that was denied the opportunity to purchase a list

because it wanted to use it for commercial purposes is quite free to inspect and copy registration records. This differentiation between Article 33, Section 3-22(a) and Article 33, Section 3-11(a) potentially can create a most unusual situation: since every county (with the exception of Baltimore County) refuses to disseminate in voter registration lists all of the information originally collected from registrants, commercial enterprises denied lists under 33, 3-22 (a) can obtain more information under 3-11(a).

All boards with the exception of the Wicomico County board maintain logs to record the disclosure of voter registration data. As a general rule, boards record the date of the disclosure as well as the name and address of the recipient. Other data recorded by individual boards includes the telephone number of the recipient, the organization to which the recipient pertains, and the purpose behind the request.

D. Security of Personally Identifiable Information

Article 33, Section 3-11 (c) specifies certain security provisions which must be met by the individual boards:

"All electronically reproduced precinct registers and all binders or filing cases containing precinct registers shall be securely sealed or locked and the keys safely kept by the board. The cabinets containing the duplicate forms shall be securely locked and neither the binders nor the cabinets may be unsealed or unlocked except by a clerk or other employee of the board upon its authorization."

Those local boards maintaining manual files informed the Commission that records were kept in locked cabinets or vaults with access limited to authorized personnel. All boards with the exception of the Wicomico County board indicated that measures have been taken to prevent the unauthorized altering of computerized data by agency personnel. The Baltimore and Harford county boards asserted that risk analysis had been conducted to determine the appropriate level of security to be assigned voter registration records; the

Baltimore City board informed the Commission that a risk analysis is presently underway. The ACF-2 security system is employed at the Annapolis Data Center, and thus protects the records of those boards serviced by the Annapolis Data Center.

NOTES

1. 62 Opinions of the Attorney General 396 (1977).

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

The State Department of Assessments and Taxation is charged with the responsibility of administering and enforcing the property assessment and property tax laws of Maryland and each county and city. The Department maintains two record systems containing program-related, personally identifiable information: Homeowners' Property Tax Credit Program Records and Assessment Records.

I. Homeowners' Property Tax Credit Program Records

Through the Homeowners' Property Tax Credit Program, an individual may qualify for a credit on his property tax bill of up to \$900, based upon gross family income.

A. Collection and Maintenance of Information

Because eligibility for this program is based on level of income, the State Department of Assessments and Taxation must collect a considerable amount of personally identifiable data. The Homeowners' Property Tax Credit Application form contains the following information: name, address, telephone number, and date of birth of applicant; a list of all properties in the State of Maryland owned by the applicant; marital status of applicant, as well as the dates of separation, divorce or widowhood; name, social security number, and date of birth of the applicant's spouse; and gross total income for the previous calendar year, including wages, salary, tips, bonuses, commissions, fees, interest, dividends, unemployment insurance, Workmen's Compensation,

alimony, public assistance grants, social security, railroad retirement benefits, veterans benefits, pensions, and gifts over \$300.

In addition to the information collected through the program application form, an applicant must submit a photocopy of his federal income tax return for the previous year, as well as any accompanying schedules. The Commission was informed that tax data is checked on a case by case basis with the income tax records maintained by the Comptroller's Office. Should the Department discover any discrepancies between the data provided by the applicant and the information appearing in the Comptroller's records, the applicant is contacted and asked to explain the situation. The Department indicated that applicants are aware of the type of information collected about them. Any unsolicited comments received by the Department are recorded and independently verified.

B. Access Rights of the Person in Interest

The person in interest may examine, copy and contest the accuracy of data pertaining to him. Individuals are informed of their access rights when a question arises.

C. Disclosure of Records to Third Parties

The State Department of Assessments and Taxation restricts access to the data appearing in Homeowners' Property Tax Credit Program files to authorized office personnel and program participants. The only exception to this rule is that county government finance offices are notified if a particular property has a homeowners' tax credit for that taxable year. The accuracy of such information is verified prior to dissemination. In the event that any information is disclosed, a separate notation is placed on the released file.

The confidential status of Homeowners' Property Tax Credit Program records is somewhat uncertain at the present time. This uncertainty is a consequence of the actions of the General Assembly during the 1979 session. In the opinion of one of the Department's legal officers, the General Assembly "...validly adopted and then unintentionally deleted a provision in Article 81, Section 12F-1 concerning confidentiality of personal income tax and income information gathered in the administration of the Homeowners' Tax Credit Program."

During the 1979 session of the General Assembly, an emergency bill was introduced by Delegate Athey to assign a confidential status to Homeowners' Property Tax Credit Program data. The bill, House Bill 668, sought to amend Article 81, Section 12F-1 to read as follows:

"(m)(1) Notwithstanding any provision of section 300 of this article, the Comptroller shall supply to the Department the information to aid verification of income as stated in the application.

(2) Except in accordance with proper judicial or legislative order and except to an officer of the State having a right thereto in his official capacity, any officer or employee or former officer or employee of the State or any political subdivision may not divulge or make know in any manner:

- (i) The amount of income or any particulars set forth or disclosed in any provision of Maryland Law; or
- (ii) Any federal return, federal return information required pursuant to any provision of Maryland Law to be attached to or included in any application or State return.

(3) Any person who violates the provisions of this section is guilty of a misdemeanor and shall be punishable by a fine not exceeding \$1,000 or imprisonment for not more than 6 months, or both."

House Bill 668 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.

Article 81, Section 12F-1 to read as follows:

"(m) 1. Beginning with the Income Tax forms for the 1979 taxable year and for each year after, the Comptroller shall include in the package of income tax forms and instructions the application forms for property tax credits, the necessary instructions for completing the application, and a return envelope.

2. The Comptroller shall cooperate with the Department in the establishment of a procedure for auditing the application forms for the purposes of income verification, and the Comptroller shall assist the Department by performing the audit upon receipt of the applications. Also, despite any provisions of Section 300 of this article, the Comptroller shall supply to the Department additional information to aid verification of income as stated in the applications.

3. Upon completion of the audit and no later than June 1 of each year, the Comptroller shall forward the applications to the Department for processing."

This bill was also passed by the General Assembly and signed into law by the Governor, becoming effective July 1, 1979.

As best as can be determined, it appears that the General Assembly inadvertently wiped away the confidentiality measures appearing in House Bill 668 when it passed Senate Bill 366. 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 remains that the language that now appears in the Annotated Code is the language that can be found in Senate Bill 366. The Commission was informed that the Department intends to seek correction of this problem during the 1982 session.

D. Security of Personally Identifiable Information

The Department indicated that manual records are maintained in locked file cabinets while access to data entry reports is restricted to authorized personnel. Measures have been taken to prevent the unauthorized altering

of data by program personnel. Access to data requires the use of entry codes.

II. Assessment Records

The Department maintains records pertinent to the assessment of real and personal property.

A. Collection and Maintenance of Information

Various items of personally identifiable information are collected by the Department in the course of conducting assessments. For example, an owner of an office building is required to submit an annual questionnaire indicating his name and address, rent schedule, type of tenancy and details regarding income and expenses. Similar itemization would be provided by those filing personal property schedules for the purposes of personal property taxation. Files may also contain correspondence between taxpayers and assessors.

Article 81, Section 45 requires the Department to compile lists of assessments of real and personal property. Real property assessments lists must indicate "...the name and address of the owner and a brief description to show the specific property assessed, the specific location of the property, the general location of the property (including deed or will reference and tax map references, if any), the assessed value of improvements, and the total valuation of land and improvements." Personal property assessments records "...shall be arranged in alphabetical order according to owner by county, election district, taxing district, or assessment area, and the nature of the property shall be briefly stated, and the taxable value shall be shown."

All assessment records are compiled from data submitted either by the taxpayer or by the assessor. No unsolicited comments are received.

B. Access Rights of the Person in Interest

The person in interest may examine and copy real and personal property assessment data pertaining to him. If a property owner disputes the completeness or accuracy of any data used in determining his real property assessment, or if he has additional information which he considers to be relevant, the property owner may, in accordance with Article 81, Section 45 (a)(2), submit a brief statement of explanation. This statement must be maintained as part of the record of assessments.

C. Disclosure of Records to Third Parties

Real property assessment lists may be inspected by the general public. In contrast, personal property assessment lists may only be disclosed to the person in interest or to relevant officers of the state, county or city governments.

Real property assessment data, other than that found on the assessment lists, is placed in a special category. Article 81, Section 45 (d) states the following:

"Assessment work sheets or cards or correspondence containing private appraisal information, building costs, rental data or business volume, which may have been assembled for consideration by assessors in estimating property values, shall not be open to public inspection, except by the taxpayer concerned, or officers of the State and/or city or county affected thereby. However, assessment work sheets or cards for other comparable residential property shall be furnished to a taxpayer if:

- 1) The taxpayer has filed a timely protest to his assessment and the protest is pending;
- 2) The taxpayer specifically identifies, by address, the property for which he is requesting the assessment work sheets or cards; and
- 3) The taxpayer pays a reasonable fee, to be set by the Department of Assessments and Taxation, for copies of the assessment work sheets or cards."

D. Security of Personally Identifiable Information

Access to all data other than lists considered disclosable are restricted to that official responsible for making the assessment.

STATE DEPARTMENT OF EDUCATION

The State Department of Education consists of five principal components responsible for the handling of program-related, personally identifiable information: Division of Compensatory, Urban and Supplementary Programs, Division of Special Education, Division of Vocational Rehabilitation, Division of Vocational-Technical Education, and Division of Certification and Accreditation. It should be noted from the onset that while the State Divisions are responsible for setting overall policies in their respective areas, the local education agencies (LEAs) in the individual counties remain in certain cases the actual custodians of the records. In addition, LEAs are called upon in certain situations to expand upon State policies regarding record-keeping practices and develop more explicit procedures in accordance with State rules. Therefore, appropriate recognitions should be given to the role that LEAs perform in the maintenance of educational records.

I. Division of Compensatory, Urban and Supplementary Programs

The Pupil Services Branch of the Division provides overall direction to the Maryland Pupil Data System (PDS). PDS represents the principal statewide effort to establish minimum standardized information-gathering practices by schools. All educational institutions in the state through the twelfth grade have participated in PDS since 1970; however, phase-in of the program has taken place gradually over the previous and present decades. It is important to recognize that PDS does not establish limits on the amount or type of

information to be collected by school officials. Schools are permitted to collect personally identifiable data beyond that which is specified through PDS. While the following discussion generally describes the current PDS, there are major revisions contemplated for implementation in future years. However, the Department indicated that its concern for pupil privacy would continue to be reflected in the revised system.

A. Collection and Maintenance of Information

The Pupil Data System consists of twelve basic forms:

(a) Personal and Family Information - (Required)- As in the case of all PDS forms, the Personal and Family Information form requests the pupil's name, date of birth, sex and race. Beyond that basic data, the following information is collected: date of birth; place of birth; citizenship status; marital status; address; telephone number; names and birth dates of brothers and sisters; name, citizenship status, and years of education of the male and female head of household; and location and type of employment of the male and female head of household.

(b) Attendance Information - (Required) - This form records such items as the grade of the individual student, the total number of days absent and present for the school year, and so forth.

(c) Subject Performance Information - (Required) - This form functions as a cumulative report card of all grades received by the student for all subjects for the period of time in which he attended the particular school. Spaces are provided for the recording of any outstanding achievements of ". . ." to record any information

that would contribute to a full evaluation of his school performance."¹

(d) Standardized Test Information - (Required) - This form contains data regarding the date and results of all standardized tests taken by the student.

(e) School Enrollment Information - (Required) - The School Enrollment Information form contains basic data such as the name of institution attended, type of institution, years attended and so forth. If the student requires special classes, this information can be provided as in the following examples: "EMR-Mildly Retarded (Educable); TMR-Moderately Retarded (Trainable); EH-Emotionally Handicapped."

(f) Nonsubject Performance Information - (Required at Secondary Level, Optional at Elementary Level) The Nonsubject Performance Information Form consists of such data as participation in school and community activities, post High School plans, and employment while in school.

(g) Physical Health Information - (Required) - Physical Health Information data consists of such items as periodic measurements of a student's height and weight, a record of routine vision and hearing screening examinations, a record of physical examinations, and a record of immunizations.

(h) Referrals for Physical, Behavioral or Psychological Reasons

(Required) - as the title of this form indicates specific data is recorded if a student has been referred for non-routine physical,

behavioral or psychological reasons. The PDS manual contains the following statement; " A report resulting from any referral should not be filed in the pupil's folder. The report deals with material of a specialized nature and thus should be stored in a locked file and should be accessible to and used by authorized persons only, in accordance with local unit policy."²

(i) Health Inventory for Elementary and Secondary Pupils - (Required)

This form, to be filled out by both parents and physician, requests sensitive personal information pertaining to the individual student. For example, the physician is asked if the student has any mental, emotional or behavioral problem that might affect his school performance, and whether the student is receiving any long-term medication. Parents are informed that the information provided through this form is confidential; the form must be stored in a locked file and is available only to authorized persons.

(j) Pupil Identification Data - (Optional) This form records the student's weekly schedule, his physician, the name of the person to be notified in case of an emergency, and so forth.

(k) Dropout Information - (Optional)-This form contains various personally identifiable data regarding students who terminated enrollment without completing their school program. Included on this form is information regarding the status of the student at the time of dropping out, the reasons for dropping out or termination (e.g. physical illness, physical disability, mental illness, expulsion for disciplinary reasons, removal by court action, and incompatibility between the school and pupil), and future educational plans of the

student.

(1) Pupil Description - (Optional) - The Pupil Description form essentially is an evaluation of a high school senior by teachers who knew him as an eleventh or twelfth grade pupil. The information is sensitive in that it is based on subjective determinations. For example, the teacher asked to rate a student according to consideration of others (always considerate of others' rights and feelings, usually considerate, courteous, little evidence of consideration, sometimes inconsiderate, inadequate opportunity to observe), degree of personal responsibility, depth of understanding, degree of critical and questioning attitude, and so forth.

As noted previously, the Pupil Data System establishes certain minimum standards regarding data to be collected by LEAs. However, many other types of student records are gathered as a consequence of a decision in a local education agency. Such records may be as varied as reports of vision and hearing screenings, standardized test results, school bus behavior reports, and discipline referrals and suspension letters.

B. Access Rights of the Person in Interest

In conformity with federal law, COMAR 13A.08.02 grants the person in interest a broad right of access to "student records". (It should be noted that this regulations pertains to all student records, not merely those which are found in the Pupil Data System.)

Since the regulation only specifies rights of access to "student records", it is most important that one has a clear understanding of this term. COMAR 13A.08.02.05 N. defines "student records" in the following

manner:

". . . any information directly related to one or more students, identifiable to an individual student, and that are maintained by a local educational agency or educational agency or by a party acting for the agency or institution. Student records include, unless otherwise specified, any papers, correspondence, reports, forms, photographs, photostats, film, microfilm, electronic recordings, such as sound recording or computerized data, or other documents regardless of physical format characteristics, and all copies thereof, that are made or received and kept on file in a classroom, school office, or other approved location by the local educational agencies or educational institutions of the State of Maryland in the transaction of legitimate and recognized educational business."

The regulation specifies three types of records which are not considered to be student records. First of all, the term does not include ". . . records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof, and the personal notes of a staff member which are intended solely as an extension of memory, which do not result in any institutional or administrative decisions regarding the student, and which are not included or placed in the official records of the student, and which are not shared in any physical form with any other person, except a substitute." Second, student records do not include ". . . records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution." Finally, the term does not refer to records ". . . created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity, or assisting in that capacity; created, maintained, or used only in connection with the provisions of treatment to the student and not disclosed to anyone other than individuals providing the treatment."

There are several points to be noted regarding medical, psychiatric and psychological records. First of all, the records may only be used in conjunction with the treatment of particular students; any other uses would result in the records being considered as student records. Second, the records may be examined only by those responsible for providing the treatment; if the records are viewed by other educational officials or are used in making educational decisions about students, the records would then be regarded as student records. Finally, medical, psychiatric and psychological records not considered to student records may be examined, by an appropriate professional of the parent's choice.

As noted above, any materials regarded as student records are available for inspection by the person in interest. (For the purpose of interpreting COMAR 13A.08.02, the person in interest is considered to be the student to whom the record pertains, if he is at least eighteen years of age, or the parents of a student younger than eighteen years). The educational agency maintaining the record must grant access within forty-five days of receipt of a request from the person in interest. According to the regulation, this right of inspection includes the right to receive a response from the educational agency to any reasonable requests for explanations and interpretations of records, and the right to receive copies, if failure to provide such copies would prevent the person in interest from exercising his right of inspection.

The person in interest may request an educational agency to amend a student record pertaining to him, if he believes that the data in that record is inaccurate or misleading or constitutes a violation of his rights. Should the agency decide to reject the request of the person in interest, it must inform him of this decision within a reasonable period of time, and must advise the person in interest of his right to a hearing. If, as a

result of the hearing, the agency continues to reject the contention of the person in interest, the agency must permit him to insert a statement into the record setting forth his reasons for disagreement with the agency's decision. The statement of the person in interest then becomes a permanent part of the record and must be disclosed whenever the record itself is disclosed.

COMAR 13A.08.02 imposes on local educational agencies a number of requirements relevant to the rights of the person in interest. First of all, LEAs must inform parents and eligible students of their rights of access as specified in the regulation. Second, parents and eligible students must be provided a statement which specifies the procedure to be followed in granting access. Third, LEAs must make available for parents and eligible students a schedule of fees for copies. Finally, parents and eligible students must be informed of the types and locations of student records maintained by LEAs and the titles and addresses of the records custodians.

In an effort to familiarize itself with policies on the local level, the Commission examined the notification procedures of the Anne Arundel County Public Schools. All eligible students or parents of eligible students enrolled in county schools as of September 30, 1976 received a "Letter-Notification of School Records" from the Superintendent of Schools. Subsequent to that date, each new entrant into the school system received a copy of the letter during registration. In addition, the letter has been published annually in appropriate local newspapers. Among those items specified in the letter are the types of educational records maintained by the county schools, the position of the official responsible for maintaining the Student Cumulative Record, the procedures of the LEA in granting access, the procedures for challenging the contents of education records, and the cost charged for reproducing copies.

Although COMAR 13 A. 08.02 establishes minimum standards which must be met by LEAs in permitting access to the person in interest, there is nothing in the regulation which precludes LEAs from expanding upon these rights. The Anne Arundel County Public Schools require, for example, that a hearing must be held within fifteen days of a request from the person in interest; the State regulation does not specify a time period by which the hearing must be held.

C. Disclosure of Records to Third Parties

COMAR 13A. 08.02 establishes explicit standards regarding the disclosure of personally identifiable data from educational records. An educational agency may disclose such data without the consent of the eligible student or the parents if disclosure is: 1) to other school officials within the agency if they have been determined by the agency to have legitimate educational interests; 2) to officials of another school in which the student seeks or intends to enroll; 3) to certain specified federal and state educational authorities; 4) for purposes related to financial aid for the student; 5) to State and local officials, if reporting is required by statute; 6) to organizations conducting studies for, or on behalf of, the educational agency, provided that appropriate confidentiality and security measures are met; 7) to accrediting organizations in order to carry out accrediting functions; 8) to parents of a dependent child; 9) in order to comply with a judicial order or a subpoena, provided that the educational agency has made a reasonable effort to notify the eligible student or the parents of the student in advance; and 10) to appropriate parties in a health or safety emergency.

In addition to records which may be disclosed without the consent of

the person in interest, a local educational agency may disseminate directory information under specified conditions. COMAR 13A. 08.02 specifies directory information as including the following information relating to a student: "the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information. . .". Prior to the disclosure of directory information, however, an educational agency must give public notice of: 1) the categories of information which have been classified as directory information; 2) the right of the person in interest to refuse to permit the disclosure of directory information pertaining to him; and 3) the period of time by which the person in interest must notify the agency of that fact. Directory information pertinent to a student no longer in attendance at the educational agency may be disclosed without adhering to the above procedures.

No other disclosures of personally identifiable data from educational records may be made without the written consent of the person in interest. Such consent must include a description of the records to be disclosed, the purposes of the disclosure, and the name of the recipient of the information.

All disclosures of personally identifiable records other than those 1) released to school officials, 2) released in response to a written request from the person in interest, or 3) classified as directory information must be recorded in a log maintained by the educational agency. This log must indicate both the names of those who have requested or obtained personally identifiable data, and the legitimate interests behind such requests. The log may be inspected by the person in interest and the

records custodian or in conjunction with an audit of any agency's record-keeping practices.

D. Security of Personally Identifiable Information

Educational agencies are required to develop appropriate safeguards to protect the confidentiality of educational records.

II. Division of Special Education

The Division of Special Education provides overall administration, management and budgetary development for State and federal programs pertinent to handicapped children. LEAs are assisted by the Division in providing educational programs for handicapped children. In addition, the Division monitors the compliance of LEAs with State and federal legislation in this area. It should be noted that while general supervision is provided by the Division of Special Education, the individual local educational agencies remain the custodians of the bulk of the records relating to handicapped students.

A. Collection and Maintenance of Information

The educational records of handicapped students are subject to extensive federal regulations developed as a consequence of the Education of the Handicapped Act.³ The regulations define handicapped children ". . . as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services."⁴ The provisions of the regulations

include the State educational agency, LEAs, other state agencies involved in the education of handicapped children (such as the Maryland School for the Deaf), State correctional facilities, and private schools and facilities, if they have received referrals and placements of handicapped children from public agencies.

A public agency must develop at the beginning of each school, an individualized education program (IEP) for each handicapped child receiving special education from that agency. IEP must be in effect before educational and related services are provided to the child. The IEP must include the following items:

- "a) A statement of the child's present levels of educational performance;
- b) A statement of annual goals, including short term instructional objectives;
- c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
- d) The projected dates for initiation of services and the anticipated duration of the services; and
- e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved."5

As an example of an IEP, one may consider the Tuition Assistance Program Application Form submitted by LEAs for non-public tuition assistance for handicapped children being placed in approved special education programs in non-public schools. The application would contain certain basic pupil data such as name of the child; name, address, and telephone number of the parent, guardian or surrogate; date of birth; sex; age; race; and county of residence; The IEP itself would specify, at a minimum, the following elements:

- 1) level of services to be provided to the child (nature of services, provider of services, pupil-teacher ratio and the number of hours per week);
- 2) present levels of performance (names of tests administered, dates administered, summary

of results, and names and titles of examiners); 3) strengths, needs and achievements (assessment of strengths and needs, reading and arithmetic grade levels, age levels of language and motor skills); 4) goals and objectives (statement of annual goals including short term objectives, criteria for mastery, teaching strategies and/or techniques, services needed to accomplish goals, and duration of services); and 5) previous placement summary (dates and nature of placements, services provided, frequency of services provided, and reasons for termination).

Federal regulations specify that in submitting its annual plan to the U.S. Department of Education, a State Education agency must include certain basic data regarding handicapped children:

- "a) The estimated number of handicapped children who need special education and related services.
- b) For the current school year:
 - 1) The number of handicapped children aged birth through two, who are receiving special education and related services; and
 - 2) The number of handicapped children;
 - i) Who are receiving a free appropriate public education,
 - ii) Who need, but are not receiving a free appropriate public education,
 - iii) Who are enrolled in public and private institutions who are receiving a free appropriate public education, and
 - iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.
- c) The estimated numbers of handicapped children who are expected to receive special education and related services during the next school year.
- d) A description of the basis used to determine the data required under this section."6

In order to comply with these reporting requirements, the Division of Special Education gathers statistical data concerning the number of handicapped children, their needs for special services, and so forth, through the Special Services Information System (SSIS). SSIS serves as one of the

accounting tests used by the Division to monitor the activities of the LEAs. The system is also used by LEAs to examine service delivery needs.

A considerable amount of descriptive information is provided to the Division of Special Education through SSIS. LEAs record the following information and enter it into SSIS: birthdate, sex, race/ethnic background, county of residency, school and grade level, nature and frequency of services provided. This information is provided by the LEAs to the SEA in a nonpersonally identifiable form. The LEA does not enter the child's name onto the form. Instead, a nine digit SOUNDEX number is generated for each child as in the following example:

L 1 2 3 F 4 5 6 M

The L, F and M positions refer to the last initial, first initial and middle initial of the child. The child's identity is not revealed since each number can refer to several letters.

It should be evident that the provision of special education services to handicapped students requires the collection of a great deal of personally identifiable data. LEAs gather much information in addition to the IEP itself and data submitted in conjunction with the Special Services Information System. The following is a list of additional special education records maintained by the Anne Arundel County Public Schools:

1. Educational Assessment Form (Elementary and Secondary Forms)
2. School Team Report to the Admission, Review and Dismissal Committee
3. Referral and Disposition Form
4. Parental Permission for Proposed Special Education Placement
5. Parent Permission for Proposed Withdrawal of Special Education Service
6. Resource Teacher Special Education-diagnostic testing results and write-up
7. Special Education Annual Review
8. Check List for Reviewing Special Education Placements
9. Report Card-Homebound or Hospitalized(Elementary, Secondary)
10. Letter with date to go on Home Teaching
11. Parent Permission for Proposed Special Education Program for Visual Impairment

12. Recommendation for Visually Impaired
13. Rejection Letter for Visually Impaired
14. Report of Eye Examination
15. Request Vision Records from another County
16. Request for Ophthalmologic Report
17. Request for School Information from Visually Impaired Teacher
18. Annual Evaluation of Visually Impaired
19. Recommendation for the Hearing Impaired Program
20. Student Evaluation Sheet for the Hearing Impaired
21. Consent Record Release for Hearing Impaired
22. Authorization for Release of Records (Audiological, Psychological, Psychiatric, Neurological)
23. Screening Result/ Assessment Consent (Speech Hearing, Language Services)
24. Assessment/Recommendation (Speech and Hearing)
25. Speech/Hearing/Language Conference/Waiver Form
26. Speech and Language Assessment Report (Speech and Hearing Department)
27. Early Childhood Language and Speech Inventory
28. Student Data Card - Speech-Language-Hearing
29. Report to Parents - Speech-Language-Hearing
30. Speech Referral Form (Hearing and Language)
31. Recommendation for Communication Disorder (by Coordinator of Speech and Hearing)
32. Case Consultation
33. Summer School Data Sheet
34. Report to Outside Agencies
35. Cross Reference from "V. Reports from Public/Private Agencies and Professionals"
36. Student Information, Central Office: Special Education

B. Access Rights of the Person in Interest

The Education of the Handicapped Act establishes extensive provisions to permit parents access to their child's educational records. An agency maintaining such records must permit access within 45 days of receiving a request for access. Parents not only have the right to review these records, but should receive "reasonable explanations" for the materials found in the records and may authorize a representative to examine them. Fees may be charged for copying records for parents, but no search fees or administrative overhead fees may be passed along to the parents.

After examining the contents of their child's record, parents may request an amendment to its contents. If the agency refuses to amend, parents must be advised of their right to a hearing. Even if, after attending such a hearing, the parents are unable to convince the agency of the need for an amended record, they are still permitted to insert a statement into the record explaining both the fact that they disagree with the existing record and the reasons for such a disagreement.

Federal regulations also establish various due process protections that are accorded to the parents. Parents must be provided with written notice before changes in the identification, evaluation or educational placement of their child can be made. This written notice must be in a form understandable to the general public and must detail the reasons why the agency believes such a change is necessary. In addition, parents are permitted to initiate an impartial hearing concerning their child's case and may appeal the results of that hearing to the State Educational Agency.

The Division of Special Education plays an active role in educating parents regarding their rights under federal law. First of all, the Division publishes a booklet entitled Legal Rights-A Handbook for Parents. The booklet presents in clear language the various rights provided parents through the Education of the Handicapped Act. Parents are informed that they have the right to inspect their child's records, that they may request amendments to such records, that they may seek a hearing if they disagree with the assessment of the Local Education Agency (LEA) concerning their child, and so forth. Parents are also provided a list of the names, office addresses and telephone numbers of the Special Education Directors in each county, as well as the County Child Find Contact Persons. Finally, parents are instructed regarding whom to contact at the Maryland Advocacy Unit for the Developmentally Disabled and the State Office for Coordination

of Services to the Handicapped. The Division distributes this booklet to LEAs and to parent groups; individuals may receive a copy by requesting one from the Division.

A second means of communication with parents occurs through the distribution of a pamphlet, "Summary of Parental Rights and Responsibilities-State Level Hearings." The pamphlet is brief (four pages) but does explain the rights of parents to obtain a hearing to evaluate a decision affecting their child's education program.

In order to examine the access and disclosure provisions of an actual provider of special education, the Commission visited the Frederick campus of the Maryland School for the Deaf. The School permits parents to gain access to their child's file by directing a request to the principal. The principal will make arrangements for access within ten days of receiving the request. All reviews are conducted in the presence of a staff member of the school; copies are provided at a cost of five cents per page. If a parent requests an amendment of a particular record, the school must decide within fifteen days whether or not to honor such a request. If the school refuses to amend the record in question, it must inform the parents that they have a right to a hearing.

C. Disclosure of Records to Third Parties

Federal regulations stipulate that parental consent must be obtained before an agency maintaining special education records releases personally identifiable information to anyone other than authorized officials of participating agencies. In the event that information is released to anyone other than the parents or authorized officials, the agency must indicate that fact in a log listing the name of the recipient, the date of disclosure, and the purpose for which the information was released.

In accordance with the above requirements, the Maryland School for the Deaf will not release personally identifiable data in student files to anyone other than school personnel unless otherwise authorized by the parents in question. Explicit procedures have been established governing the dissemination of student information to professional personnel. Any school professional (e.g. an audiologist) desiring access to a student's file must file a request form with the principal's secretary, who will provide only the specific information requested, not the complete file. If any information in a student's file has been designated as "sensitive", it will not be disclosed without written authorization of the principal. Any professional receiving portions of a student's file may not duplicate them and must return them on the same day. The school also informs parents when personally identifiable data is no longer needed. If a parent requests the destruction of such information, the school may only continue to maintain the following information: student's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed.

D. Security of Personally Identifiable Information

Regulations pertinent to the Education of the Handicapped Act specify the following security practices:

- "a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.
- c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Section 121a. 129 of Subpart B and Part 99 of this title.
- d) Each participating agency shall maintain, for the public inspection, a current listing of the names and positions of those employees within the agency who may have access to

personally identifiable information."⁷

E. Education, Evaluation and Monitoring of LEAs by the Division of Special Education.

A significant feature of the Education of the Handicapped Act is the role that must be played by the State Education Agency in evaluating and monitoring LEA compliance with the Act. This requirement is met by the Division of Special Education in a number of ways. First of all, the Division maintains an active program of education LEA officials regarding the mandates of the Act. This educational process has included, among other things, the scheduling of regional meetings with LEA Directors of Special Education concerning such topics as confidentiality and access rights of the person in interest, the distribution of materials to LEAs delineating their responsibilities under the Act, and the responding by the Division to requests from LEAs for legal opinions concerning confidentiality issues.

The Division of Special Education operates on a three year cycle in evaluating the twenty-four LEAs. Division personnel conduct on-site visits and also examine individual cases. Parents, administrators and staff are requested to respond to a Division questionnaire pertinent to the requirements of the Education of the Handicapped Act. The parental questionnaire, for example, seeks to determine if LEA officials have done an adequate job in educating parents about their right of access, their right to have an independent evaluation of their children outside of the school system if they disagree with the results of the school system's testing, and so forth. Upon completion of the evaluation effort, any existing LEA weaknesses are identified and the LEA is required to take corrective action by a specified date.

III. Division of Vocational Rehabilitation

The Division of Vocational Rehabilitation directs efforts to assist handicapped persons between the ages of sixteen and sixty-nine in the development of employable skills and in obtaining employment. In order to qualify for services, it must be determined that ". . . 1) an individual has a physical or mental disability which imposes a substantial handicap to employment and 2) there is a reasonable chance that services provided will assist the disabled person in achieving employment."⁸ During fiscal year 1979, slightly over 44,000 persons were served by the Division; 15,000 to 20,000 new cases are generated each year.

A. Collection and Maintenance of Information

Individuals seeking assistance can refer themselves to the Division, or can be referred by physicians, school systems, members of the family, parole boards, health and welfare agencies, and so forth. Generally, individuals selected for the program receive a battery of assistance services including physical and psychological counseling, employment training and job placement. Every client receives a complete medical evaluation and other examinations as may be necessary. At the onset of the program, the counselor and client work together to develop an Individualized Written Rehabilitation Program (IWRP) detailing the specific service to be provided. Once a client is placed in a particular job, his progress will be monitored by the counselor for a period of sixty days; presuming that there are no significant problems at the end of that period, the rehabilitation program is considered to be complete.

Case files consist of a great variety of personally identifiable information pertinent to clients. First of all, a counselor completes a Survey Interview form for his client. The form consists of the fol-

lowing data: name of client; address; telephone number; date of birth; age; sex; social security number; race; marital status; primary source of support; number of dependents; the names, ages, relationships, occupations, salaries, and levels of education for all family members; nature of disability and details regarding hospital or clinic treatment; previously employment experience; educational experience; and military background.

Medical reports of various kinds are maintained for each client. A case referral to a medical consultant, for example, would detail the nature of major and other disabilities, present and planned occupation, tentative training plan, and comments of the consultant in response to a special problem. If the client suffers from a hearing disability, a physician would be asked to provide details regarding the client's examination, diagnosis, and prognosis.

A client is also asked to respond to a series of questions relating to his financial situation. Data is gathered regarding the client's adjusted gross income; amount of income derived from Workmen's Compensation, Supplemental Security Income, Public Assistance, Veteran's benefits, Medicaid, Medicare, and health insurance; medical and dental expenses; casualty and theft losses; and number of tax exemptions.

Data finally is recorded regarding the client's Individualized Written Rehabilitation Program. The IWRP documents the client's employment objective, the intermediate objectives, the services provided or arranged, the names of providers, the dates of services, and the objective measurements and schedules.

B. Access Rights of the Person in Interest

As in the case of records administered by the Division of Special Education, access to vocational rehabilitation data on the part of the person in interest is governed by federal statutes and regulations. First of all, since the Education of the Handicapped Act covers children from birth through twenty-one years, the Division of Vocational Rehabilitation must apply the provisions of that statute to any handicapped individual between the ages of sixteen and twenty-one.

The principal federal regulations under which the Division operates are those emanating from the Rehabilitation Act of 1973. Although the regulations do require disclosure of files to the person in interest, his right of access is limited in two significant ways: "Provided, 1) that only such information as is relevant to the needs of the client shall be released, and 2) in the case of medical or psychological information, the knowledge of which may be harmful to the client, such information will be released to the parent, guardian, or other representative of the client by the State agency, or to the client by a physician or by a licensed or certified psychologist."⁹

The Division of Vocational Rehabilitation has developed a series of access rules to which counselors and others must adhere. First of all, the person in interest is granted access to most records pertaining to him. After receiving a written request for access, the counselor or supervisor must respond within ten days notifying the client of the time and place where the record can be reviewed. As in the case of Special Education records, a division representative must be present as the client reviews his record. Copies can be obtained at a price of ten cents per page. Division rules do not specify whether or not a client can seek an

amendment to his file or can insert a statement of disagreement with the file's contents. An individual does have an opportunity to request a hearing; such hearings, however, would be provided only if there are disagreements over decisions associated with the IWRP.

While a client has direct access to most records pertaining to him, this is not the case with all such records. The following statement appears in the Division policies and procedures manual:

"There may be records of a medical, psychiatric or psychological nature which contain information not considered appropriate for the client to review or obtain. The determination of whether information could prove to be harmful to the client will usually be made on the basis of a statement from the physician, psychologist or facility supplying the report. When the counselor is faced with this situation, the following steps should be taken:

1. Inform the client that specific records contain information which require professional explanation and interpretation and review and/or release would not be in his/her best interests.
2. Inform the client that arrangements may be made for him/her to meet the person who prepared the report to discuss the material and answer any questions concerning its content.
3. The client may also designate another person as to the recipient of material when it is determined that direct disclosure would be harmful. The designated person may be the client's physician, lawyer, or parent/guardian.
4. If the options listed in numbers 2 and 3 are not accepted by the client, the counselor should arrange for other agency personnel (Supervisor, Regional Director, Regional/State Medical Advisor) to review the material and arrive at a satisfactory resolution to the problem."10

The Commission inquired as to whether the above provision meant that a physician must provide the desired record to the client's guardian or representative even if the physician believes that direct disclosure to the client would be harmful, or whether the physician had discretionary authority to deny access to the guardian or representative as well

as the client. The Division responded that, in its judgement, ". . . medical and psychological reports arranged, provided and paid for by the Division become the property of the Division and become part of the client's case record." Therefore, the Division would expect that the physician would release such information to the client or his representative.

C. Disclosure of Records to Third Parties

As in the case of the Education of the Handicapped Act, the Rehabilitation Act of 1973 requires each state receiving federal funding for Vocational Rehabilitation to develop an annual plan. The plan must state, first of all, that all personal information provided to Vocational Rehabilitation offices, including names and addresses, is considered to be confidential. Second, information and records must be used only for purposes directly connected with rehabilitation. Third, consent must be obtained from the individual before information is disclosed either directly or indirectly; such consent is not required if disclosure occurs in the normal course of program administration. A fourth requirement prohibits release of personal information to third parties without assurances by those parties that information will only be used for the purpose for which it is provided and will not be disclosed.

As just noted, while most disclosures require client consent, there are occasions when information is provided to third parties without consent. If, for example, the counselor needs to request a specialist's examination, the counselor may provide personal client information under the assertion that ". . . client consent may be assumed since applications for vocational rehabilitation services requires an understanding of and agreement to evaluation procedures".¹¹ Similarly, since job placement is an integral part of the overall program, counselors may provide information

to perspective employers under the following line of reasoning: "Placement is the primary goal of the vocational rehabilitation program and the client, 'by necessary implication', consents to such sharing of information by participation in the rehabilitation process."¹²

If anyone diagnosed as a drug or alcohol abuser is treated by the Division of Vocational Rehabilitation, his record is accorded confidentiality under the Drug Abuse Office and Treatment Act of 1972 and the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970. These acts are noteworthy for their strict requirements governing the disclosure of information to other agencies or persons. In order for records to be released, the individual must sign a disclosure consent which must include the following items: ". . . 1) the name or title of the person or organization to which disclosure is to be made; 2) the name of the patient (client); 3) the purposes or need for the disclosure; 4) the exact nature of information to be disclosed; 5) a statement that the consent is subject to revocation at any time; 6) the signature of the client and, as appropriate, the signature of the parent/guardian."¹³ In order to comply with this regulation, the Division of Vocational Rehabilitation has developed a form incorporating the six items listed above. This form is used at the present time not only in conjunction with clients diagnosed as drug or alcohol abusers but for all clients of the Division.

D. Security of Personally Identifiable Information

Staff personnel, secretaries and student-interns are instructed that client records are confidential in nature. Records must be kept in locked file cabinets whenever possible, and are not to be removed from the local office. While local offices do receive computer printouts listing name,

disability and status of case, the information is coded to prevent an identity from being revealed.

IV. Division of Vocational-Technical Education

The Division of Vocational-Technical Education is responsible for the administration, supervision and evaluation of vocational-technical education in the State. The Division maintains a variety of records which for the purposes of this report may be regarded as one overall system. The following are the names and approximate numbers of personally identifiable records maintained by the Division: Vocational-Technical Secondary Student Record (90,000), Vocational-Technical College Student Record (60,000), Vocational-Technical Adult Student Record (35,000), Vocational-Technical Secondary Teacher Record (5,000), consumer Homemaking Student (100,000), Industrial Arts Teacher and Class Card (100,000), and High School Graduate Follow-Up Questionnaire (60,000).

A. Collection and Maintenance of Information

For the most part, all Division records other than the Follow-Up Questionnaire are limited to basic directory information. The Vocational-Technical Secondary Student Record, for example, consists of the following data elements: name, social security number, age, grade, zip code, sex, race, student identification number, class number, and an indication as to the nature of vocational programs taken.

Each student graduating from the Maryland public schools is given an opportunity to participate in the High School Graduate Follow-Up Questionnaire. The following types of items appear on the questionnaire: name, address, telephone number (optional), social security number (optional), race, sex, career plans, employment status immediately after graduation, name of school presently attending, weekly salary range, job title, and

name and address of employer (optional).

Division records are computerized and indexed according to name.

B. Access Rights of the Person in Interest

Division programs are funded in part by the Vocational Education Act of 1963, as amended by Title II of the Education Amendments of 1976. Federal regulations emanating from the Act and Amendments specify that State Vocational-Education Programs are governed by the Education Division General Administrative Regulations.¹⁴ These regulations note that records pertinent to past or present student are subject to the Family Educational Rights and Privacy Act of 1974, the governing statute for student educational records.¹⁵ Therefore, all of the access and disclosure measures which were discussed in the prior analysis of the Pupil Data System are applicable to vocational-technical records as well.

C. Disclosure of Records to Third Parties

As a general rule, the Division does not disclose any data which contains a student identifier. There are only two exceptions to this rule. First of all, data is returned to the appropriate LEA for the following purposes: 1) for verification; 2) to obtain information on vocational students who leave a program prior to normal completion; and 3) to identify graduates from specific vocational programs in order to analyze program accountability. In addition to these disclosures, graduates submitting the Follow-Up Questionnaire are asked if the Division may contact their employers to ask questions about their high school programs and preparations. If permission is granted, the Division then forwards a questionnaire to the respective employers asking them to rate the graduates according to skills, abilities, and attitudes.

D. Security of Personally Identifiable Information

Data is maintained on magnetic tape, with access restricted to authorized personnel only through the use of passwords. The computer facility itself has a silent alarm system linked directly to a police station.

V. Division of Certification and Accreditation

The Division of Certification and Accreditation is responsible for regulatory and administrative functions relating to the certification of teachers and the accreditation of nonpublic schools. The Division identified two record systems containing personally identifiable data: General Educational Development (GED) Examination Records and Certification Records.

1. GED Examination Records

The Division maintains records pertinent to the administration of the testing program leading to the attainment of the Maryland High School Diploma. There are approximately 125,000 GED Examination Records.

A. Collection and Maintenance of Information

GED Examination applicants must indicate various directory and identifying information: name, address, social security number, date of birth, age, telephone number, dates of residence in Maryland, height, weight, color of eyes, color of hair, sex, names of schools attended above the sixth grade and dates attended, a photograph, and details regarding previous GED Examinations and present educational status. The information supplied by the applicant must be verified by a witness who has resided in the State for at least three months

and who is not a relative. If the applicant is age sixteen, seventeen or eighteen, an official of the last full-time school attended by the applicant must verify the date that the applicant withdrew from school.

Examination Records are maintained in both computerized and manual forms and categorized by social security number.

B. Access Rights of the Person in Interest

GED Examination Records are governed by the Family Educational Rights and Privacy Act of 1974 and thus, procedures for access and disclosure follow those discussed under the Pupil Data System section of this report.

C. Disclosure of Records to Third Parties

Personally identifiable data may not be released without the consent of the person in interest, unless records are released to the authorized recipients listed in COMAR 13 A. 08.02. In the event that information is released, the Division indicated that the subject of the record is notified of that fact and is also informed regarding the name of the recipient of the record. Data is verified as to its accuracy prior to disclosure. Logs are maintained to record the disclosure of personally identifiable data; the Division records the name and addresses of recipients, as well as the date that information is released.

D. Security of Personally Identifiable Information

The Commission was informed that Division records are subject to controlled access. Measures have been taken to prevent the unauthorized

altering of computerized data by Division personnel.

2. Certification Records

The Division issues certificates to teachers and educational personnel through the twelfth grade, and to public librarians according to the following approximate numbers and categories: 60,000-70,000 Public School Certificates, 700 State Institutions Certificates, 5,000 Nonpublic, Approved Schools Certificates, 2,000 Nonpublic, Nonapproved Schools Certificates, and 750 Public Librarians.

A. Collection and Maintenance of Information

Although separate forms are maintained for each category, all applicants are required to provide essentially the same information: name, address, social security number, race, date of birth, place of birth, sex, educational background, teaching certificates held, teaching and educational administrative experience, and other military and civilian employment experience.

Certification records are maintained in manual files and are indexed by name. The Division also noted that the Data Processing Department maintains a computer tape with information on certificates issued to all Maryland teachers.

B. Access Rights of the Person in Interest

The person in interest may examine and copy records pertaining to him.

C. Disclosure of Records to Third Parties

The Division indicated that no personally identifiable certification data is disclosed to anyone other than the subject of the record and the employing school system. The Division informed the Commission that certification information is confidential as a consequence of the Family Educational Rights and Privacy Act of 1974, also known as the Buckley Amendment. In subsequent correspondence with the Division, however, the Commission observed that the Buckley Amendment only assigned a confidential status to student records, and not to all records maintained by the Department of Education. In the absence of a State or federal statute or regulation, or court order, which prevents the disclosure of this data, certification information would be subject to the disclosure provisions of the Public Information Act. In response to the Commission's concerns, the Division agreed to seek further guidance on this point from the Attorney General's Office.

D. Security of Personally Identifiable Information

Manual certification records are maintained in locked files during nonbusiness hours. Personally identifiable computerized data remains in the possession of the Data Processing Department.

NOTES

1. Maryland State Department of Education. Division of Planning, Research and Evaluation. Maryland Pupil Data System-Manual of Instructions, August 27, 1969, p. 21.
2. Maryland Pupil Data System, p. 37.
3. 45 CFR 121 a.
4. 45 CFR 121 a.5(a).
5. 45 CFR 121 a.346.
6. 45 CFR 121 a.124.
7. 45 CFR 121 a.572.
8. Maryland State Department of Education. Division of Vocational Rehabilitation. Vocational Rehabilitation in Maryland. Annual Report 1979, p.3.
9. 45 CFR 1361.47.
10. Maryland State Department of Education. Division of Vocational Rehabilitation. Administrative Manual, 16.14.01.
11. Administrative Manual, 16.14.03.
12. Administrative Manual, 16.14.03.
13. Administrative Manual, 16.06.
14. 45 CFR 104.3.
15. 45 CFR 100 b.740.

STATE ETHICS COMMISSION

The State Ethics Commission was established by Chapter 513, Acts of 1979, to guard against improper influence on public officials and officers. The Commission maintains three record systems containing personally identifiable data: 1) Financial Disclosure Statements; 2) Lobbyist Registration and Activity Records; and 3) Advisory Opinions and Complaints.

1. Financial Disclosure Statements

The Commission maintains Financial Disclosure Statements submitted by officials pursuant to the Maryland Public Ethics Law (Article 40A, Annotated Code of Maryland). Prior to the recent amendment of the Ethics Law (Laws of 1981, Chapter 796), the State Ethics Commission had identified approximately 12,000 individuals required to file Financial Disclosure Statements. In rough numbers, 4,000 of these individuals were regular State employees, 3,500 were employed by the University of Maryland system, 3,000 were members of boards and commissions, and 2,000 fell into miscellaneous categories, such as judicial employees or employees of community colleges.

A. Collection and Maintenance of Information

Article 40A, Section 4-101 et. seq. specify conditions under which officials and candidates for office as State officials must file annual statements of financial disclosure. In order to understand the scope of the financial disclosure requirement, it is important that

one has a proper understanding of the term "official". As defined by the Ethics Law, "official" means either a State or a public official. As amended in 1981, the term public official is defined as follows:

- "1) Any individual in an executive agency who:
 - i) Is a classified employee at grade 18 or above, or, if not a classified employee, receives a rate of compensation equal thereto, or is appointed to a board or commission; and
 - ii) As determined by the Ethics Commission pursuant to Section 2-103(h), who:
 1. Is charged, individually or as a member of an executive agency, with decision making authority or acts as a principal advisor to one with such authority:
 - A. In making State policy in an executive agency; or
 - B. In exercising quasi-judicial regulatory, licensing, inspecting, or auditing functions;
 2. Whose duties are not essentially administrative and ministerial; and
 - iii) Is not a full-time or part-time faculty member at a State institution, unless the individual is also employed in another State position which does not fall under the definition or unless the individual also directly procures, directly influences, or otherwise directly affects the formulation or execution of any State contract, purchase or sale as established by the guidelines of the State Ethics Commission; provided such guidelines are promulgated as regulations and approved by the AELR Committee.
2. Any individual in the legislative branch, other than a State official, who receives a rate of compensation equal to or above grade level 18 who is so designated by order by the presiding officers of the General Assembly.
3. Any individual in the judicial branch of government, including an individual employed in the office of a clerk or court, or paid by a political subdivision to perform services in any orphans' court, a circuit court for a county, the Supreme Bench of Baltimore City or one of its courts, and any individual employed by the Attorney Grievance Commission, the State Board of Law Examiners, or the Standing Committee on Rules who:
 - i) Is classified or compensated at State grade level 18 or above; and
 - ii) Is not a judge, master, commissioner, examiner, auditor, or referee.

4. Except for any full-time or part-time faculty members at a State institution of higher education, any individual in an executive agency who, as determined by the Ethics Commission pursuant to Section 2-103(h), is charged individually or as a member of the executive agency, with decision making authority or acts as a principal advisor to one with such authority in drafting specifications for, negotiating, or executing contracts which commit the State or any executive agency to expend in excess of \$10,000 per annum."¹

The term state official is defined as follows:

"State official" means a member or member-elect of the General Assembly, a judge or judge-elect of a court created by Article IV, Section 1 of the Constitution and a person defined in Rule 11 of Maryland Rule No. 1232 or a constitutional officer or officer-elect in an executive agency of the State government. State official also means a person holding office as State's Attorney, clerk of the circuit for each county or of a court of the Supreme Bench of Baltimore City, register of wills, and sheriff."²

As noted previously, the Ethics Law mandates that officials file Financial Disclosure Statements. (Special conditions are established for certain members of boards and commissions, and for judges and candidates for judgeships; these conditions will be elaborated in a subsequent paragraph.)

Article 40A, Section 4-103 specifies that the Financial Disclosure Statement must consist of nine different schedules:

- 1) Interest in real property;
- 2) Interests in corporation;
- 3) Interests in other business entity doing business with the State;
- 4) Gifts;
- 5) Employment by entity doing business with State;
- 6) Liabilities to persons doing business with State;
- 7) List of family members employed by State;
- 8) Source of earned income; and
- 9) Additional information. Each schedule contains a series of items that must be responded to by the filer. For example, a filer submitting the Interests in real property schedule must identify, among other items, the nature and address of the property, the nature and extent of the interest held, details regarding the

acquisition of the property, the nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired, and the identity of any other person with an interest in the property.

In addition to submitting financial information to the State Ethics Commission, officials are also required to provide mailing address and title of current position or office held with the State, or office for which Certificate of Candidacy has been filed. Prior to March 1981, officials were required to indicate their current home addresses. Since that time, however, the Commission has requested agency rather than home addresses. In accordance with this new procedure, the State Ethics Commission has proceeded to block out all home addresses listed on old forms and retained in Commission files.

In contrast to other filers, board and commission members were not required to submit forms until April 15, 1981. The financial disclosure schedules completed by board and commission members at that time were somewhat similar to those filed by other officials; however, there was a reduced amount of information required from board and commission members. For example, the Interest in real property schedule submitted by a board and commission member did not require disclosure of conditions and encumbrances affecting interest, data and manner of acquisition of interest, and identity of person from whom interest was acquired. In addition, a member did not have to provide the actual dollar amount of the acquisition but only a range of value. This policy was in accordance with

Article 40A, Section 2-103(h), which granted discretionary authority to the Commission to modify the financial disclosure requirements for board and commission members if it determined that application of the article ". . . would constitute an unreasonable invasion of privacy or otherwise constitute an unreasonable hardship and would significantly reduce the availability of qualified persons for public service and if it also finds that the exemption or modification would not be contrary to the purposes of this article."³

Of some significance for the future collection practices of the State Ethics Commission is the following 1981 amendment to the Ethics Law: ". . . a member of a board or commission, who receives as compensation less per annum than 25 percent of the annual salary of an employee classified as grade 18, base level, of the State employee pay scale, shall, with respect to the requirements of subparagraphs (a) through (i) of Section 4-103, be required to disclose the required information, about only those interests, gifts, compensated positions, and liabilities which may create a conflict, as defined in subtitle 3 of this article, between the member's personal interest and his duties as a member of that board or commission."⁴

Finally, it should be noted that special provisions are in effect regarding the filing of Financial Disclosure Statements by judges and candidates for judgeships. Article 40A, Section 4-105, states that the Court of Appeals of Maryland shall promulgate and administer rules and regulations to require financial statements from judges and candidates for judgeships. Copies of such statements must be forwarded to the State Ethics Commission by the Court of Appeals or its designee.

Financial Disclosure Statements are maintained manually and are categorized by name.

B. Access Rights of the Person in Interest

Financial Disclosure Statements may be examined and copied by the person in interest.

C. Disclosure of Records to Third Parties

Inspection of Financial Disclosure Statements is regulated by Article 40A, Section 4-102 (e):

"All statements filed pursuant to this title shall be maintained by the Commission and shall be made available by the Commission, during normal office hours, for examination and copying by the public, subject, however to such reasonable fees and administrative procedures as the Commission may establish from time to time. The Commission shall require that any person examining or copying such statements shall record his name, home address, and the name of the person whose disclosure statement was examined or copied and that such record be forwarded upon request to the person whose disclosure statement was so examined or copied."

In accordance with the above statute, a requester seeking to examine or copy a Financial Disclosure Statement must list the following items on the Commission's inspection request form:

- 1) name of requester; 2) address of requester; 3) date of examination;
- 4) name of subject of the record examined; and 5) an indication as to whether the record was examined or copied. Although not specifically addressed by the statute, the State Ethics Commission staff have eliminated routine access to inspection request forms to anyone other than the original filer of the Financial Disclosure Statement. Since no third party has requested access to these inspection request forms, the Commission has not actually dealt with this particular issue.

D. Security of Personally Identifiable Information

Financial Disclosure Statements are maintained in an office which is locked after business hours. Although file cabinets housing the statements do not lock, the State Ethics Commission asserted that the cabinets remain under the direct monitoring and supervision of staff personnel.

2. Lobbyist Registration and Activity Reports

The Ethics Law requires lobbyists and other engaged in certain types of lobbying activities to register and report on their actions with the State Ethics Commission. During calendar years 1980 and 1981, approximately 400 individuals registered, representing approximately 500 employers.

A. Collection and Maintenance of Information

Article 40A, Section 5-103(a) requires the following persons to register with the State Ethics Commission: "1) A lobbyist; 2) Any person who has expended \$500 or more for compensation of one or more registrants in a reporting period; and 3) Any person who expends \$2,000, including postage, in a reporting period for the express purpose of soliciting others to communicate with any official to influence any legislative or executive action."⁵ The Ethics Law defines a lobbyist as ". . . any person who, within a reporting period, in the presence of any official or employee in the legislative or executive branch has communicated with that official or employee for the purpose of influencing any legislative action, and who, for that purpose and exclusive of the personal travel or subsistence expenses of that person or representative of that person, either incurs

expenses of \$100 or more or receives \$500 or more as compensation, or any person who expends a cumulative value of \$100 or more during a reporting period on one or more officials or employees in the executive branch for meals, beverages, special events or gifts in connection with or with the purpose of influencing executive action."⁶

Each registrant must submit the following information to the Commission on an annual basis: name and permanent address; name and permanent address of any person who will be required to register as a lobbyist on behalf of the registrant; name, permanent address, business telephone and nature of business of the registrant's employer; and the identification on which the registrant expects to act or employ someone to act during the registration period. A registrant must complete a separate registration form for each employer.

A registrant must also file an activity report with the Commission twice each year. Among the items contained in this report are the following: registrant's total expenditures for meals and beverages for officials or employees or their immediate families; total expenditures for salaries, compensation and reimbursed expenses for the registrant's staff; and details pertinent to officials or employees, or members of their immediate families, who have benefited from gifts with a cumulative value of \$75 or more.

Lobbyist Registration and Activity Reports are maintained manually and are indexed by name.

B. Access Rights of the Person in Interest

The person in interest may examine and copy registration and activity reports pertaining to him.

C. Disclosure of Records to Third Parties

Lobbyist Registration and Activity Reports are disclosable public documents which may be examined and copied; there is, however, one exception to this general rule:

"1) If any report filed with the Commission contains the name of an official or employee in either the executive or the legislative branch or member of his immediate family, as required under Section 5-105(a)(3) of this title, the Commission shall notify the official or employee within 30 days. The Commission shall keep the report confidential for 60 days following the receipt of it.

2) Following notification of the inclusion of his name in a report filed by a registrant an official or employee shall have 30 days to file a written exception to the inclusion of his name."⁷

D. Security of Personally Identifiable Information

Security procedures for registration and activity reports are identical to those previously discussed under the financial disclosure section of this report.

3. Advisory Opinions and Complaints

The Commission issues Advisory Opinions and responds to or initiates complaints in accordance with the Ethics Law. Approximately 75 opinions are issued annually, while 10 complaints are examined during the same period.

A. Collection and Maintenance of Information

Article 40A, Section 2-104 requires the issuance of an advisory opinion by the Commission in response to a written request by a person subject to the provisions of the Ethics Law. In addition, the Commission may issue an opinion in response to a request from any other person. Compulsory advisory opinions must be issued by

the Commission within sixty days after receipt of such requests.

Section 2-105 of the Ethics Law states that ". . . any person may file, under oath, a written, signed complaint with the Commission alleging a violation of any of the provisions of this article, and the Commission on its own motion may issue a complaint alleging a violation of this article." A complaint pertinent to a judge or involving a conflict of interest charge against a member of the legislative branch must be referred by the Commission to the respective judicial or legislative ethics bodies. All other complaints must be investigated by the staff counsel of the State Ethics Commission, who is responsible for collecting evidence regarding the complaint and referring the matter to the Commission for disposition.

Before referring the evidence to the Commission, the staff counsel must notify both the complainant and respondent. The Commission shall dismiss the complaint if the respondent takes appropriate corrective action within fifteen days of the notice. The Commission shall also dismiss the complaint if it determines that the evidence does not warrant further proceedings. If the complaint is not dismissed, the Commission must then hold a hearing in accordance with the Administrative Procedure Act. The staff counsel is responsible for presenting all evidence pertinent to the complaint and making such recommendations as seem appropriate to him. The respondent may be represented at the hearing by counsel. Should the Commission determine that the respondent has not violated the provisions of the Ethics Law, it must dismiss the complaint and so notify the complainant and respondent. If, however, the Commission rules that a violation has occurred, the Commission may issue a cease and desist order, may reprimand the respondent, or may make further recommendations to the appropriate authorities.

Data in this file is maintained manually and is categorized by name and cross-indexed chronologically.

B. Access Rights of the Person in Interest

As Advisory Opinions are not issued in identifiable form, this point is not relevant. As noted above, complaint hearings must be handled in accordance with the Administrative Procedure Act, which grants access, copying and challenge rights to the person in interest.

C. Disclosure of Records to Third Parties

Article 40A, Section 2-105 (c) stipulates that "before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion, shall, to the fullest extent possible, be deleted, and the identity of the person shall not be revealed." Section 2-105 (e) governs the disclosure of complaint data:

"Notwithstanding any other provisions of law to the contrary, following the filing of a complaint and unless and until the matter is referred for prosecution or a finding of a violation has been made, the proceedings, meetings and activities of the Commission and its employees in connection with the complaint shall be conducted in a confidential manner. The Commission, its staff, the complainant and the respondent shall not disclose any information relating to the complaint, including the identity of the complainant and the respondent, except that the Commission may release any information at any time if the release has been agreed to in writing by the respondent, and the identity of the complainant shall be disclosed to the respondent, at the request of the respondent, at any time."

D. Security of Personally Identifiable Information

Security measures in effect to protect opinions and complaints

data mirror those discussed in the Financial Disclosure Statement section of this report. It should be noted that complaint materials are kept separate from other Commission information.

NOTES

1. Md. Ann. Code, Art. 40A, Sec. 1-201 (aa). AELR refers to the Committee on Administrative, Executive and Legislative Review.
2. Md. Ann. Code, Art. 40A, Sec. 1-201 (dd).
3. The actual language of this subsection has been modified as a consequence of the Laws of 1981, Ch. 796; however, the basic concept still remains.
4. Md. Ann. Code, Art. 40A, Sec. 4-101 (a)(2).
5. It should be noted that Article 40A, Section 5-101 specifically excludes certain categories of individuals from the registration requirement.
6. Md. Ann. Code, Art. 40A, Sec. 1-201 (s).
7. Md. Ann. Code, Art. 40A, Sec. 5-106 (b).

STATE SCHOLARSHIP BOARD

The State Scholarship Board is responsible for the administration of eighteen different categories of grants for college education: General State Scholarships, Senatorial Scholarships, House of Delegate Scholarships, War Orphans Grants, POWs Grants, Reimbursement of Firemen, Professional School Scholarships (five categories), Teachers of Deaf/Hearing, Family Practice Medical Scholarships, Family Practice Residency, Children of Deceased Firemen, Law Enforcement Officers, Rescue Squad Members and Maryland National Guardsmen, Distinguished Scholar Awards, Postsecondary Proprietary Grants, and Graduate Nursing Grants. The Board is charged with developing rules and regulations for each program, providing for and conducting examinations of applicants, determining financial need, and, with the exception of the Senatorial Scholarship Program, selecting scholarship recipients.

A. Collection and Maintenance of Information

All State Scholarship Programs are "need-based", with the exception of House of Delegate Scholarships, War Orphans Grants, POWs Grants, Family Practice Residency, and Distinguished Scholar Awards. Since the other awards have a need component, the Board must collect financial statements from individual applicants. This includes applicants for the two largest State grant programs, General State Scholarships and Senatorial Scholarships.

In order to apply for a need-based grant, a student must submit a

completed Financial Aid Form (FAF) to the College Scholarship Service of Princeton, New Jersey. The College Scholarship Service is responsible for determining the estimated contribution that can be paid by the student or his parents for his education. FAF solicits a great deal of data pertinent not only to the student, but also to his parents, if the parents provided a minimal level of assistance during the past year. First of all, a student is asked to indicate certain basic directory data, such as name, address, social security number, date of birth, citizenship status, and marital status. If a student indicates that parents have provided financial assistance as specified in the form, parents must then indicate their marital status, age of the oldest parent, and the total size of the household. A student and/or parents are required further to submit various financial information, among which is the following: adjusted gross income for the previous year, amount of federal income tax paid, nontaxable income derived from social security benefits and Aid to Families with Dependent Children, and details pertinent to assets such as cash, savings and checking accounts, real estate and investments.

Attached to the FAF is the Financial Aid Form-Supplement. This form is not required for State Scholarship programs; however, since it is attached, many applicants assume that the information on the supplement must be provided and therefore send it along with the FAF. The College Scholarship Service then forwards the supplement, along with the FAF, to the State Scholarship Board. In addition to requesting income data similar to FAF, the supplement asks for such information as the date of the parents' divorce, amount of alimony and child support, amount of monthly home mortgage and rental payment, and names of parents' employers.

The FAF (and the Financial Aid Form-Supplement, if provided) constitute by far the most sensitive type of personally identifiable information at

the State Scholarship Board. In addition to the FAF, four separate rosters of names are generated by the Board: 1) an alphabetical list of all applicants in all programs; 2) a list, by college, of all applicants in all programs; 3) a list of all applicants by specific program; 4) a list of all awards recipients. During the 1980-81 period, approximately 20,000 names will appear on Board rosters, while another 8,000 names will be placed on a late file. The final form containing personally identifiable information is the recipient Statement of Acceptance, which indicates the annual amount of the individual's award. Approximately 15,000 applicants receive and eventually use an award.

In most cases, the individual himself provides all of the information that is necessary in order for the State Scholarship Board to make its determination. Occasionally, the Board will receive a phone call from someone complaining about another individual who has been awarded a scholarship. Complaints of this nature usually involve allegations that the recipient, or the recipient's parents, have financial assets of such nature that the applicant could not qualify for a need-based grant. In such a situation, the Board thanks the complainant for the information and informs him that the allegations will be investigated. The recipient is then contacted by the Board and asked to provide additional documentation. The complainant is not informed about the results of the investigation. Once the recipient of an award actually enrolls in a college, the Board asks the college to verify the fact that the recipient is registered at that institution. Individuals are made aware of this verification process through a notice in the application package.

The Board is in the process of transferring from a manual to a computerized system. Up until one year ago, approximately 95% of the records were maintained in manual files; at the present time, 70% of the records

are computerized. Computerized information that is personally identifiable is categorized by social security number.

B. Access Rights of the Person in Interest

Applicants and recipients are permitted to examine and copy data pertaining to them.

C. Disclosure of Records to Third Parties

In the great majority of categories of scholarships administered by the Board, the College Scholarship Service is the only non-Board entity with access to personal information. Once the data arrives at Board headquarters, there is no further dissemination. According to Article 18, Section 407(c)(2) of the Annotated Code, the Board must publish the names of all recipients of State scholarships; the list appears in the Board's Annual Report. Two precautions are taken in conjunction with the list. First of all, recipients are informed of the fact that their names will appear in the Annual Report and also that the Annual Report is a public document. Second, the Board will not disclose in its list the amount of money awarded to each recipient. Since most of the awards are need-based, disclosure of the fact, for example, that an applicant received at or near the maximum allowed could prove rather embarrassing for the applicant or for his parents.

Unlike other need-based programs, the determination of awards for Senatorial Scholarships is made not by the State Scholarship Board but by the individual Maryland State Senators. If a student wishes to apply for a Senatorial Scholarship, he must indicate that fact on the FAF and also note his legislative district and the name of his State Senator. When the FAF is returned to the Board from the College Scholarship Service,

the form is forwarded to the respective Senator for his consideration.

Senators employ various procedures in selecting recipients and in the handling of personally identifiable data. Three of the forty-seven Senators have delegated their responsibilities to the State Scholarship Board; FAFs from applicants residing in these three districts do not leave the possession of the Board. In the other forty-four districts, however, FAFs are sent to the respective Senators. If the applicant filled out the Financial Aid Form-Supplement, that information is also forwarded to the Senator. A Senator is free to select recipients by himself, or he can assign this task to a committee that he appoints. Interviews may be scheduled if these are deemed to be beneficial by the Senator or his committee.

The Executive Director of the Board informed the Commission that measures have been taken to make Senators and their staff aware of the sensitive character of the information contained in the FAFs. A workshop is held in Annapolis at the beginning of each legislative session, and among the issues covered at that workshop is the need for confidentiality for the financial data appearing on the FAFs. The Board also provides a written statement regarding confidentiality in the instructional materials sent to Senators. That having been said, the level of confidentiality to be assigned the data is a matter to be determined by the individual Senators. Once the FAFs are sent to the Senators, they become the permanent custodian of those forms.

D. Security of Personally Identifiable Information

The State Scholarship Board indicated that access to records is restricted to authorized employees, and that such employees are trained to protect the confidentiality of data. Computerized records of the Board

are generated, as previously indicated, by the College Scholarship Service; data changes made by a Board employee must be accompanied by the employee's code number, so as to enable the Board to identify the person making the change. Personally identifiable data sent from the Board is stamped "confidential", to remind recipients of the sensitivity of the material.

UNIVERSITY OF MARYLAND

The University of Maryland is administered by a fifteen member Board of Regents. The University consists of five principal campuses: the Baltimore City Campus (UMAB), the Baltimore County Campus (UMBC), the College Park Campus (UMCP), the Eastern Shore Campus (UMES) and University College. In addition, administrative offices for the University Colleges are located in College Park. Mention should also be made of the University's Agricultural Extension Station, which conducts a wide variety of agricultural research programs throughout the State, the Center for Environmental and Estuarine Services, responsible for conducting studies of environmental problems important to the State, and the Cooperative Extension Service, which provides "off campus out-of-classroom" educational programs.

A survey on record-keeping practices was sent to the University of Maryland; responses were received from various offices within the University system. Because individual campuses did not identify themselves on all of the responses, the record-keeping practices of the University cannot be discussed by campus. Instead, the Commission has analyzed responses by "type" of record system. In addition, overall University-wide policies will be discussed in relation to the record system to which they pertain.

The following types of record systems have been identified for the purpose of this report:

I. Student Related

1. University Policy
2. Admissions and Registration
3. Resident Life
4. Student Health
5. Student Accounts

6. Student Financial Aid
7. Development and Placement
8. Miscellaneous
 - a. Inquiry List
 - b. Excel Experiential Learning Program
 - c. Credit by Exam

II. Personnel Related

1. University Policy
2. Applicants and Employees (faculty, staff, and students)
3. Promotion and Tenure Files (Faculty)
4. Affirmative Action Records

III. Campus Police/Disciplinary

1. Campus Police
2. Disciplinary

IV. Alumni Records

I. STUDENT RELATED RECORDS

1. University-Wide Policy - The Family Educational Rights and Privacy Act of 1974 (The Buckley Amendment)

Although a review of COMAR regulations revealed no record-keeping requirements imposed on public post-secondary institutions within the state, the University of Maryland is governed by the provisions of the Family Educational Rights and Privacy Act of 1974, also known as the Buckley Amendment. The Act imposes significant requirements on educational institutions in the areas of access, correction and disclosure of student records.

In order to understand the scope (and limitations) of the Buckley Amendment, it is important to understand the meaning of the terms "educational agency" and "educational records". An educational agency or institution is defined, in the Act, as a public or private agency or institution that receives federal funds. Educational records consist of information related to a student and maintained by an educational agency. Educational records do not

include records of employees who are not attending the University, student records maintained by a physician, psychiatrist or psychologist and used in treatment, campus police records kept separate from education records, notes and records of professors for their own use, and records containing information relating to an individual's activities after he is no longer a student. (The student does have the right to have medical records reviewed by a physician or professional of his choice.)

The Buckley Amendment provides a student with a partial right to access educational records pertaining to him; however, he is not allowed access to: a) a financial record of his parents; b) confidential letters of recommendation placed in the file prior to January 1, 1975, and c) confidential letters of recommendation pertaining to admission to an educational institution, job placement, or honors and awards, if the student has waived the right to access to these letters. The student who waives his right to access to these items will be informed of the names of those making confidential recommendations. He may revoke this waiver at any time.

Under the Buckley Amendment, a student who believes that his educational records are inaccurate or misleading may file a written request challenging the contents of such records. An educational agency must either amend the record in question or provide the student with an opportunity for a hearing. A student whose hearing appeal is unsuccessful nonetheless is permitted to insert a statement of disagreement into his file. This statement must be disclosed at all times when the educational agency disseminates the contested portion of the file.

An educational agency is permitted to disclose "directory information" to the general public, subject to two conditions. First of all, the agency must provide students with annual public notice of the categories of information that are considered to be directory in character. Second, students must be

permitted a period of time in the beginning of each school year when they may contact the educational agency and indicate that they are opposed to the dissemination of directory information pertaining to them. If students do not object, the following types of information may be disclosed: name, address, telephone listing, date and place of birth, photograph, major field of study, participation in activities and sports, weight and height of athletic teams, dates of attendance, degrees and awards received, and most recent previous institution attended.

Student consent is not required prior to disclosure, if the recipient falls into any of the following categories: 1) officials at the educational agency with legitimate educational interests; 2) officials at other schools to which the student seeks to enroll or is currently enrolled; 3) federal representatives performing federally-mandated educational functions; 4) specified persons and organizations in connection with an application for financial aid; 5) state and local officials with a statutory requirement to examine such files; 6) research organizations under specified circumstances; 7) accrediting institutions; 8) a student's parents, but only to the extent that the student is considered a dependent for income tax purposes; 9) appropriate parties in specified emergency situations; and 10) in response to a court order or subpoena.

All other requests for educational records will not be honored without the written authorization of the student in question. This consent must specify the nature of the records to be disclosed, the identity of the recipient, and the purpose of the disclosure.

2. Student Admissions and Registration Records

Some respondents indicated that separate files were established for applicants and matriculated students while others combine the two, discarding

files of applicants who are not accepted or who do not matriculate within a specific time period. Both are treated in generally the same fashion; therefore, the responses will be discussed jointly.

A. Collection and Maintenance of Information

University offices follow Equal Employment Opportunity Commission (EEOC) regulations and University policy in the collection of information. Such information includes applications for admissions, prior transcripts, letters of recommendation, correspondence, and test scores. These materials are obtained from the individual, other institutions and agencies, the Educational Testing Service, and other sources. Respondents stated that the person in interest is aware of the types of information which are collected in the admissions process. In addition, once a student has been accepted and has registered, information regarding registration and grades is placed in his file or in a separate file.

Files are both manual and computerized.

B. Access Rights of the Person in Interest

As discussed earlier, the Buckley Amendment requires that procedures be established to allow the student access to his files. It should be noted that this does not include an applicant who fails to matriculate. All respondents to the survey stated that access is provided, often with a member of the staff present. The only exception applies to confidential letters of recommendation to which the student has waived the right of access. Generally, a copy will be provided to the student (unless he has an outstanding debt, stated one respondent), or he may hand-copy any item in his file. An exception is made

for transcripts from other schools, which are not furnished to the student. Procedures are established to provide for this right of access. The College Park Campus requires that a written request be submitted and a response will be made within at least 45 days.

Procedures are also in effect, as indicated earlier, to allow for the correction of records. The majority of the respondents indicated that the student is aware of this right but some confusion was evident as to how he is made aware. Three respondents stated that this information could be found in the University catalog.

C. Disclosure of Records to Third Parties

Disclosure of admissions and registration records is governed by the previously discussed Buckley Amendment. Although the Act requires that records be kept for certain types of disclosures, only four out of fourteen respondents stated that logs of some form were maintained. In addition, only five respondents indicated that students are informed of potential disclosures that can be made without their authorization.

D. Security of Personally Identifiable Information

In general, admissions and registration records are placed in locked file cabinets in a secure area with limited access. Computerized records are protected through the use of codes, passwords, and limited access.

Recipients of information are asked to not redisclose the information without the student's written authorization. Many respondents also stated that recipients are subject to applicable state and federal laws and regulations.

In addition to admissions records, registration rosters (official lists of enrolled students and their grades) are also maintained by the respondents. They are available to students, faculty and administrative officials and clerical staff. One respondent indicated that rosters are destroyed at the end of each school term.

The University of Maryland at College Park stated that a tape containing a subset of individual student data maintained by the Administrative Computer Center is sent to the Office of Institutional Studies. This list contains a "scrambled" social security number and is used to study student progression and transfers.

3. Resident Life Records

A. Collection and Maintenance of Information

Information relating to the provision of University housing to students is maintained in these files including housing applications and contract cards. Information is obtained from the student and other University offices and is maintained in both a manual and computerized fashion.

B. Access Rights of the Person in Interest

The responses received from Resident Life and from Graduate Housing Offices indicated that the individual is allowed to access, copy and correct his file. Respondents also indicated that written procedures exist governing access and that the student is informed of the procedure to correct files. It should be noted that the Buckley Amendment applies to these records.

C. Disclosure of Records to Third Parties

Data is disclosed primarily to record-keeping personnel and logs are maintained. Respondents stated that the Buckley Amendment governed their collection and disclosure procedures.

D. Security of Personally Identifiable Information

Limited access, staffed offices and passwords are used to ensure that information is secure. Respondents stated that third party recipients are informed of the confidentiality of information.

4. Student Health Records

A. Collection and Maintenance of Information

As discussed earlier, the Buckley Amendment does not cover records maintained by a physician, psychologist or psychiatrist, and used in treatment of a student.

A total of eight respondents were identified as maintaining student health records. Included in these eight are three counseling record systems because it was impossible to determine the exact type of counseling provided. Only the five systems that could be accurately identified are discussed in this report.

Respondents indicated that any pertinent information, such as medical records and sick certificates, would be maintained in the files. The main source of information is the student himself. Data is also collected from other health professionals or institutions with a release from the student. Records are maintained in a manual form.

B. Access Rights of the Person in Interest

Four facilities stated that access would be allowed with the

the qualification that psychiatric records in two facilities and gynecological records in one facility would not be accessible. Three respondents indicated that the student could copy and contest the accuracy of his records. Five respondents stated that the students were aware of their access rights.

C. Disclosure of Information to Third Parties

Disclosure of information in student health records is made to other health care providers (usually upon request of the student), Personnel Services, and the State Accident Commission. One respondent stated that communicable diseases reports are sent to appropriate authorities in accordance with Article 43, Section 78.

Four facilities stated that the student is informed of potential disclosures and that logs are maintained.

D. Security of Personally Identifiable Information

General security provisions include limited access and locked files. Respondents generally stated that redisclosure provisions do not exist. One respondent did indicate that third parties are subject to federal law and prior consent requirements.

5. Student Account Records

A. Collection and Maintenance of Information

A total of five respondents handled records relating to student accounts. Information pertaining to financial billing and collection purposes is collected by these offices. This information is obtained primarily from the individual himself, although some items may also come from other University offices. Two respondents indicated that the indi-

vidual is informed that information obtained from other sources has been placed in his file. One respondent stated that individuals are not told that credit information had been obtained from other sources. Data is maintained in both manual and computerized form.

B. Access Rights of the Person in Interest

Four of the respondents replied that the individual can access his file and all stated that he can copy it or contest the accuracy of the information contained in the file. Four offices stated that there were written policies concerning correction. Three stated that policies that exist are made known to the individual.

C. Disclosure of Information to Third Parties

Respondents indicated that information may be disclosed to other University Student Services Offices and the State Central Collection Agency. One respondent indicated that information is never disclosed without authorization.

COMAR regulation 17.01.04 and 17.01.05 require that a state agency submit the original copies of documents used in the collection effort to the Central Collection Agency. Accounts transferred manually or by computer tape must contain all available information, including debtor's phone number, social security number, birth date and driver's license number, if these items are known.

Four respondents indicated that the student is informed of potential disclosures and that records are reviewed periodically for accuracy. Logs are maintained in some form.

It should be noted that one respondent cited the "Federal Privacy of Information Act" as regulating the collection and disclosure practices, while another stated that the Privacy Act and Freedom of

Information Act govern access and collection. Only one respondent mentioned the Buckley Amendment.

D. Security of Personally Identifiable Information

Locked cabinets and limited access are employed by these offices to ensure confidentiality of records. Computerized information is protected through security codes. One respondent indicated that "the Maryland State Central Collection Unit follows applicable portions of State and Federal law in this regard". Another respondent stated that recipients are subject to applicable state and federal laws and regulations.

6. Financial Aid Records

A total of three respondents were identified as handling student financial aid records.

A. Collection and Maintenance of Information

Applications for financial aid contain information on the financial status of the student and/or his parents who fill out the required forms. Data is evaluated to determine need status. Data is maintained in both manual and computerized form.

B. Access Rights of the Person in Interest

Access to financial aid files, with the exception of the parent's confidential statement, is provided to the student. All respondents indicated that there were written procedures concerning access and correction and three stated that the individual was familiar with them.

C. Disclosure of Information to Third Parties

One respondent indicated that disclosure of financial aid information is made to the University administration and auditors, while two respondents stated that disclosure was made to those individuals or agencies as specified by the Buckley Amendment. Two of the three respondents stated that students are informed of potential disclosures, while all noted that logs are kept.

D. Security of Personally Identifiable Information

Security measures employed by Financial Aid offices include locking fire resistant file cabinets, restricted access and passwords. Two respondents stated that third party recipients are informed of confidentiality requirements.

7. Development and Placement Records

A. Collection and Maintenance of Information

Three respondents were identified as handling Development and Placement Offices records. Resumes, letters of recommendation, personal data sheets and other academic information are compiled into a credentials packet to be used by interviewers. Files are maintained in a manual form.

B. Access Rights of the Person in Interest

Respondents stated that access to these files is governed by the Buckley Amendment. As a consequence, the person in interest is permitted to examine, copy, and challenge information pertaining to him. Two offices indicated that a written policy concerning access has been

developed and that individuals have been made aware of it. Procedures are also in effect to allow the correction and some are publicized in the guide given to students.

C. Disclosure of Records to Third Parties

Disclosure is made to potential employers and graduate schools. All respondents stated that disclosure logs are maintained.

D. Security of Personally Identifiable Information

Locked files and limited access are used to protect files, with information treated in a confidential manner. One respondent indicated that files are stamped "confidential".

8. Miscellaneous Records

Three record systems unique to the University College also exist:

A) the Inquiry List; B) Excel Experiential Learning Program, and C) Credit by Exam.

A. Inquiry List

The University College stated that name, address and information for mailing purposes is collected from individuals seeking information. Occasionally, the respondent stated, a relative may call to request that someone be placed on the mailing list. Address changes supplied by the Post Office are recorded to update the mailing list.

No requests for access have ever been received, the respondent indicated, but access would be allowed in the event that a request was submitted. Policies for requesting corrections of data are outlined in the University College newsletter.

Disclosure is limited to University staff maintaining the files and producing the mailing labels. Mailing lists are also supplied to others within the University of Maryland University College who need labels selected by certain attributes. The individual is not informed of potential disclosures but a label log is kept.

B. Excel Experiential Learning Program

Also maintained by the University College, information is collected from the individual considering admission to this program. In addition, files contain a faculty evaluation of a student's portfolio and transcripts of college work.

There have never been any requests to review or copy files but requests would be allowed, the respondent stated. However, the student is not allowed to see the faculty evaluation of his portfolio. Procedures exist to enable the student to correct information and these are publicized in the student guide.

Disclosure is made only to deans, staff, and faculty evaluators. No information is released without the specific permission of the Assistant Dear or Dean. Records are kept in locked filing cabinets.

C. Credit by Exam

This program allows the student to obtain credit for prior learning or experience by taking and passing an exam on the subject. Information is collected from the applicant on the application form. Exam questions and exams are also placed in the student's file.

The respondent stated that the individual has seen all of the records and that there were no conditions when access in some form would not be provided. Policies for correction, the respondent indicated, are not necessary.

Disclosure is made to the dean's staff and to the instructor preparing and grading the examination. Files are kept in a locked file and access to the files is limited.

II. PERSONNEL RECORDS

1. University Policy

Personnel records are maintained on faculty, academic staff and student employees of the University. Respondents to the survey stated that the record-keeping practices for employees of the University campuses are governed primarily by the Maryland Public Information Act.

Article 76A, Section 1(b) of the Public Information Act defines "public records" as including the salaries of all state employees; since these are not accorded a confidential status elsewhere in the Annotated Code, they are therefore open for public inspection. Three other sections of the Public Information Act have direct relevance for the personnel files of University employees. Section 3(c)(iii) specifies that personnel files shall not be disclosed except to the person in interest or the duly elected and appointed officials who supervise the work of the person in interest. Letters of reference are confidential as a consequence of Section 3(c)(iv). Finally, the home addresses and phone numbers of State employees cannot be disclosed without their permission under Section 3(c)(x), unless the governmental entity employing such persons determines that disclosure of addresses and phone numbers is necessary to protect the public interest.

The University has developed a policy statement concerning information that can be released in response to requests pertaining to University employees (faculty, staff and students). Seven items are defined by the University as public information: 1) the fact that a person is or has been employed by the University, 2) the individual's classification and title, 3) salary,

4) home address, campus address and phone number if listed in the campus directory, 5) dates of employment, 6) employment status, and 7) academic degrees received, if listed in the University catalog.

According to the policy statement, such information can be verified telephonically provided the caller identifies himself, his organization and first provides each of the items to be verified. No other information can be provided telephonically. A written inquiry can also be verified in writing. It should be noted that this policy includes information regarding retirement system beneficiaries as non-disclosable information.

The policy also provides procedures for University officials, investigative agencies or others with a subpoena and investigators from governmental agencies to access employee records after appropriate channels have been followed. Investigators for the Legislative Auditor, Division of Fiscal Research and the State Accident Fund are also allowed access to personnel files in the performance of their statutory duties. The Defense Investigative Service is provided information which is considered covered by the Privacy Act of 1974. Any other requests must be sent to the records custodian or the Director of Personnel for appropriate consultation with counsel. The Director of Personnel has the authority to release information in the case of an emergency.

The employee is granted the right to inspect his file with the exception of letters of reference. Copies will be made upon approval of the appropriate person.

The responses of the University campuses concerning personnel records have been divided into three categories for the purposes of discussion:

- a. Applicant and Employee Files (29 responses)
- b. Promotion and Tenure Files-Faculty (8responses)
- c. Affirmative Action/Employee Relations Files (4 responses)

2. Applicant and Employee Files

Of the 29 responses identified as pertaining to Applicant and Employee files, eleven concerned personnel records and 19 were specifically titled "Faculty Applicant and Personnel Files".

A. Collection and Maintenance of Information

Several respondents stated that Equal Employment Opportunity Commission guidelines and University Policy govern their information collection while one respondent cited the State Department of Personnel. As was the case with student files, some campuses establish files for applicants which are either turned into employee or faculty files once the applicant is hired, or destroyed after a specified time period if the applicant is not hired. Some respondents do maintain separate files with one file containing application materials and another consisting of employment records. Whatever method chosen, however, procedures for their treatment do not differ substantially.

Information collected from faculty applicants includes vitae (certified as current), letters of reference and general correspondence. Once a faculty applicant is hired, additional materials would be included with his records including the appointment form, leave and payroll records, retirement system information, and annual reviews.

Applicants for other positions would submit a resume/application, references, and general correspondence. After being hired, an employee's file would also include appointment form, payroll and leave forms and any letters of reprimand, performance appraisals, etc.

This information is collected primarily from the individual himself and from past and present supervisors and other departments within the University. The subject is usually aware of the information collected.

Files across campus may be maintained in either a manual or computerized system.

B. Access Rights of the Person in Interest

Access and the right to copy are provided to the employee, in some cases in the presence of office personnel representatives. One respondent stated that no requests had ever been received from applicants. The only limit placed on this access right is that the employee is not permitted access to confidential letters of reference. Twelve respondents stated that they did not permit the employee to access letters of reference.

The Public Information Act delineates the access rights of the person in interest, as discussed earlier in this section, but only five respondents indicated that the individual is aware of the policies regulating record-keeping practices. One respondent stated that the person in interest could take notes but could not copy his file.

Fifteen offices stated that policies exist for the correction of records, although only nine noted that these were in writing. Seven stated that the procedure was publicized to the employee through employee policy manuals and the Annual Data Verification Form. This form, which appears to be used University-wide, documents personal, employment, and background data. This form is not completed by student employees. Information supplied includes name, social security number, marital status (optional), ethnic code, sex code, and citizenship. The employee has the option on this form of indicating which types of personal information he wishes to have included or excluded from the telephone directory.

C. Disclosure of Records to Third Parties

Respondents to the survey stated that information on faculty and other employee applicants and employees is disclosed routinely to administrative personnel, University officials (Dean, Chancellor, Chairman), Federal and State investigators and state agencies, search and evaluating committees (faculty applicants), payroll and personnel offices and supervisors. Two respondents stated that no information was disclosed without authorization from the employee, while another indicated that disclosures were made only when ordered by the legal affairs assistant. An additional response indicated that date of employment and title would be supplied for an employee applying for credit. Three respondents stated that employment references were supplied.

Of all the respondents, only three cited the Public Information Act as governing disclosure practices. Four others indicated that they adhered to the Buckley Amendment. This latter statement is notable in light of the fact that the Buckley Amendment applies only to student educational records and not to employee and faculty personnel files.

Few logs are kept and few offices inform the employee of potential disclosures that can be made without his permission.

D. Security of Personally Identifiable Information

Limited access, locked files and secure file rooms are the primary measures used to ensure security. Passwords and personal access codes protect computerized information. One respondent stated that no items in the data base can be released without authorization from the Director of Personnel.

Third parties are governed by regulations limiting disclosure,

according to two respondents. In the case of faculty appointment and search committees, members are reminded of the confidentiality of the data.

3. Promotion and Tenure Files - Faculty

A. Collection and Maintenance of Information

Eight offices were identified as handling faculty promotion and tenure records. These offices collect information such as current certified vitae, letters of recommendation, and various supporting materials including examples of scholarly work. These materials are submitted by the individual and by the departments. The faculty member is aware of the type of information that will be reviewed. Files are manually maintained.

B. Access Rights of the Person in Interest

The faculty member in question is generally not allowed access to his promotion and tenure file. One respondent stated that full access was provided and two stated that the person in interest can examine all materials with the exception of confidential letters of reference. The person in interest is allowed to update his vitae. At various stages in the tenure consideration process, written procedures supplied to the person in interest explain where and to whom the materials will be sent. A candidate has the right to receive reports of the various reviewing committees and University faculty. Confidential reports are not included.

C. Disclosure of Records to Third Parties

Information is disclosed to members of the promotion and tenure committee and administrators at various levels who recommend action. No logs are maintained. The person in interest is informed of disclosure practices in the Tenure Procedures.

D. Security of Personally Identifiable Information

The confidentiality of these files is the joint responsibility of the Department Chairman and the Chairman of the Promotions and Tenure Committee. Access will be given to members of the appropriate committees and dossiers cannot be removed from the office where they are maintained, except in cases involving committee meetings. Secretaries in offices where files are maintained are also to be instructed in access restrictions.

Respondents indicated that security of these documents is rigorous. File cabinets are locked and limited access is provided. Committee members are encouraged to treat contents of the files and the deliberations of the committees as confidential.

4. Affirmative Action/Employee Relations Files

A. Collection and Maintenance of Information

Guidelines cited for the collection of information included the Human Relations Code (specifies procedures for complainants and respondents), federal, state and local laws, and University Policy.

Information collected by these offices concerns complaints, pertinent equity analysis data, and anything relevant to the investigation of a charge of discrimination. Information is primarily obtained from

the complainant and the respondent and is manually maintained.

B. Access Rights of the Person in Interest

Three of the respondents indicated that the person in interest can both examine and copy information pertaining to him. The remaining respondent indicated that case information was shared with both the complainant and respondent. All facilities stated that procedures existed to enable the person in interest to contest the accuracy of the records and that these were made known to the individual. Two respondents indicated that the University grievance process is publicized in employee manuals.

C. Disclosure of Records to Third Parties

Respondents stated that information in their files is disclosed to the complainant and respondent, appropriate administrative personnel, employee representatives in grievance proceedings and to the Equal Employment Opportunity Commission and the Maryland Commission on Human Relations, if the individual files a charge of discrimination.

D. Security of Personally Identifiable Information

Access is restricted and files are locked. Confidentiality requirements are emphasized.

III. CAMPUS POLICE/DISCIPLINARY

1. Campus Police Records

Campus Police maintain records on a variety of items including personnel records, Identification badge records, criminal arrest records and criminal and interal investigation files.

Personnel files of the Campus Police are treated in the same fashion as personnel files throughout the University and therefore will not be discussed here. One should note, however, that restrictions are placed in investigative records pertaining to applicants and officers. Applicants who are not selected are not permitted to review background investigation material, while police personnel may not review Internal Investigation folders.

A. Collection and Maintenance of Information

The Campus Police indicated that various items of information are collected relative to an investigation. The Commission is unable, based on the information provided, to determine the types or the extent of data collected concerning an investigation. Respondents cited the Public Information Act, the Law Enforcement Bill of Rights (Article 27, Section 728-734) and the Criminal Records Section of Criminal Law (Article 27, Section 735-753) as governing the collection of information. Information is collected from the individual, witnesses, and any accomplices. Four respondents identified as handling Campus Police records.

B. Access Rights of the Person in Interest

Two respondents indicated that access to information in some form is permitted; one of these offices prohibits access to suspects in unsolved crimes. Both permit corrections to be made, while only the office which allows full access lets the person in interest also copy materials. A third respondent does not permit access or copying of materials, but has established procedures for the correction of materials.

C. Disclosure of Records to Third Parties

Disclosure is made to other criminal justice agencies, States Attorney's Office, courts and Student Discipline. Logs are kept by two offices. The individual is not informed of disclosures that can be made without his authorization.

D. Security of Personally Identifiable Information

Limited access and locked files in a restricted area are used to ensure security. Confidential information is not computerized.

2. Disciplinary Records

Disciplinary records are considered to be student records and therefore subject to the Buckley Amendment. Three respondents identified to handling Disciplinary records.

A. Collection and Maintenance of Information

The Code of Student Conduct and the Buckley Amendment were cited as regulating the collection of information. Information is collected from the individual and any complainant (student or employee). The individual is notified if any information is placed in his file.

B. Access Rights of the Person in Interest

The person in interest is allowed to access and copy files pertaining to him. Two respondents stated that procedures exist to correct and these are publicized.

C. Disclosure of Records to Third Parties

University employees with valid reasons may obtain information in student disciplinary files. In addition, information may be disclosed to federal and state agencies.

D. Security of Personally Identifiable Information

Locked files are used to ensure security of records.

IV. ALUMNI RECORDS

The Commission assumes that the Buckley Amendment does not apply to Alumni Records since these records contain information pertaining to individuals who are no longer students in attendance at the University.

A. Collection and Maintenance of Information

Information is collected to establish a list of current members of the Association and potential contributors (name, address, phone number, year of graduation, if applicable). Information is obtained from the Association, student public directories, individual contributors, relatives, and colleagues. Systems are both manual and computerized.

B. Access Rights of the Person in Interest

The person in interest is allowed to access and copy files maintained on him, unless the materials are confidential and require the approval of a third party. Change of address is requested on the annual update.

C. Disclosure of Records to Third Parties

Files may be used by staff personnel in the development and evaluation

function. Upon approval of the executive committee, name, address and phone number may be disclosed to qualified individuals conducting research.

D. Security of Personally Identifiable Information

Access is limited and files are locked.

WORKMEN'S COMPENSATION COMMISSION

The Workmen's Compensation Commission is responsible for processing and adjudicating all claims filed by employees alleging work-related injuries. An employee must notify his employer of any such injury; the employer is then required to file an Employer's First Report of Injury with the Commission. If an employee misses more than three days of work as a consequence of the injury, he must file an Employee's Claim with the Commission in order for the insurance carrier to pay temporary total disability benefits. Unless the insurer or the employer disputes the information provided by the employee, the Commission will issue an award to provide payment to the employee. In those cases where one of the parties disputes the employee's facts regarding the injury, the Commission will schedule a hearing, take testimony of all parties and then issue a decision on the claim.

The Commission identified one general claims file record system containing program-related, personally identifiable data.

I. Claims File Record System

The Workmen's Compensation Commission maintains records pertinent to all claims filed by employees. Approximately 820,000 records are contained in this system.

A. Collection and Maintenance of Information

It is evident that validation of claims by the Workmen's Compensation Commission necessitates the collection by the Commission of a considerable

amount of personally identifiable information. The following are items typically found in claims files:

1. Employer's First Report of Injury or Occupational Disease

The employer is required to provide information concerning the employee's name, address, telephone number, social security number, marital status, sex, nationality, age, occupation, period of employment, and rate of pay, as well as pertinent facts relating to the injury.

2. Employee's Claim - The employee provides his name, address, telephone number, social security number, sex, age, marital status, place of birth, ability to speak English, occupation, salary, employer's name and address, and various facts pertaining to the injury.

3. Various Medical Reports - Files also contain copies of the standardized Surgeon's Report form typically used by physicians to provide information about an employee to the Commission. As might be expected, the information submitted pertains largely to the physical condition of the employee, covering such areas as the description of the injury, x-ray diagnosis and the likelihood of further treatment.

It is important to note that physicians do not necessarily confine themselves to this specific standardized form in reporting information to the Commission. At their discretion, physicians may attach supporting materials or may simply provide the necessary information through a letter addressed to the Commission. Claims records, therefore, may contain quite detailed information

concerning the physical examination of the employee or may hold highly sensitive data about the employee's previous medical history.

4. Letters From Attorneys Representing the Employee and Employer

5. Decision of the Workmen's Compensation Commission

It is evident from the above list that data is gathered from a number of sources in addition to the subject of the record. While the subject may be aware of the existence of some of the forms in his file, there may be others of which he is unaware. The Workmen's Compensation Commission indicated that individuals are not informed of the type of data collected about them. Unsolicited comments received by the Commission are verified with the individual during the insuring process.

Claims records are maintained in manual form. When a claim is filed initially with the Commission, a central index card is made indicating the claimant's name, social security number, name of employer, name of insurance company and alleged accidental injury. At that time, an internal claim number is assigned to that file; all claims are filed subsequently according to claim number.

B. Access Rights of the Person in Interest

The person in interest may inspect all claims file data pertaining to him. The Commission indicated that the person in interest is informed of his right of access, may receive copies of requested materials, and may challenge the accuracy of information contained in his files. The hearing process serves as the principal mechanism whereby an individual may contest data supplied by other parties.

C. Disclosure of Records to Third Parties

The provisions governing access to claims files by third parties are much less clear than those pertaining to the person in interest. At the root of the problem is the fact that the Commission's records are regulated by a rather ambiguous statute, Article 101, Section 4:

"The Commission shall be in continuous session and open for the transaction of business during all business hours of each and every day, excepting Saturdays, Sundays and legal holidays. All sessions shall be open to the public, and shall stand and be adjourned without further notice thereof on its record. All proceedings of the Commission shall be shown on its record of proceedings, which shall be a public record, and shall contain a record of each case considered and the award paid or allowed to any employee of the Commission, or to any other person for services. Provided, however, that any person in the employ of the Commission who shall divulge any information secured by him in respect to the transactions, property or business of any person, firm, company or corporation, association of joint partnership to any person other than the members of the Commission, shall be guilty of a misdemeanor, and subject to a fine of not less than \$100 or more than \$500 or imprisonment, not exceeding 18 months in the discretion of the court, and shall thereafter be disqualified from holding any appointment or employment with the Commission."

In attempting to deal with the mandates of the legislature, the Workmen's Compensation Commission appears to have developed a series of informal rules, the statutory basis of which is unclear to the Information Practices Commission:

1) Workmen's Compensation Commission will provide claim file information over the telephone only to the attorneys involved in the claim, the insurance companies involved in the claim, the employer and employee.

2) A claim file will be made available to anyone who wishes to come into the Commission office and examine it. Copies will be provided of documents in that file for a specified fee. Two general restrictions

are in operation here. First of all, the requester must either provide the Commission with a specific claim number or a specific employee name. Requests to examine "the files" will not be honored by the Commission. Second, if a physician marks a particular medical report as being confidential, that report is available only to the person in interest. The Commission indicated that it is relatively rare that reports are marked in such a fashion, and also relatively rare that visitors arrive at the Commission asking to examine files.

3) The Commission will not honor written requests from organizations seeking information about a number of specific individuals. For example, the Commission recently denied a request from Baltimore City government which wanted to know whether certain applicants for employment had ever filed workmen's compensation claims. The Commission also refused to provide information to a Montgomery County environmental action group seeking to demonstrate that workers of a particular firm had suffered certain disabling consequences. (The Information Practices Commission is not clear as to whether or not this group would be provided specific files if members of the group actually visited the office of the Workmen's Compensation Commission).

In those cases where claim files are made available to those other than the individual himself (i.e. to insurance companies, attorneys, employers, and anyone who might visit the Commission office), the Workmen's Compensation Commission does not maintain disclosure logs to record the dissemination of information. The person in interest is not notified regarding the disclosure of such records and the name of the recipient of the records. The accuracy of the information is not verified before

it is disseminated. Finally, the Commission asserted that individual claimants have no opportunity to prevent information that was obtained for one purpose from being used or made available for other purposes.

D. Security of Personally Identifiable Information

The Workmen's Compensation Commission indicated that all claim files not in transit or being worked on are maintained in file rooms; these rooms are accessible to Commission personnel only. In the event that files must be transported from one office to another, they are carried by Commission personnel. The Commission does not permit a claimant or an attorney to carry files. Files examined by the subject of the record or by third parties must be reviewed in the presence of Commission personnel.

PUBLIC INFORMATION ISSUES

Since 1970, records of Maryland State and local governments have been regulated by the Public Information Act (Article 76A, Section 1 et seq. of the Maryland Annotated Code). The Act provides for public access to government records unless the records fall into one of the specified categories of exemption. As part of its overall review of State record-keeping practices, the Information Practices Commission conducted a thorough review of both the provisions of the Public Information Act and the manner in which the mandates of the Act are being implemented by the various agencies of government.

The Commission has already reported about much of this review in previous chapters. For example, the reports on the Department of Public Safety and Correctional Services and the Department of Economic and Community Development note the variety of ways in which agencies employ the Public Information Act's sociological data exemption. The specific provisions of the Public Information Act regarding access to law enforcement investigatory data are also discussed in the Department of Public Safety report. The Department of Personnel report contains much information concerning the confidentiality of personnel data under the Act. Various reports refer to the status of medical and psychiatric information under the Public Information Act.

Agencies participating in the Commission's personal record-keeping practices survey were also asked a series of questions regarding access to public records. First of all, agencies were asked to detail their procedures in responding to requests for access to public records. The Commission furthermore asked agencies to provide examples of situations in the past

that have resulted in their denying access to public records. Third, agencies were requested to indicate whether they have a specified period of time by which they definitely respond to a public records request. Finally, the Commission asked agencies to document their fee schedule in responding to requests for materials.

The general impression of the Information Practices Commission is that the Public Information Act has served and continues to serve as a very effective vehicle in granting access to government records. Based on both responses to Commission questions and the few number of complaints concerning the public records provisions of the Act that were directed to the Commission, the evidence would appear to indicate that Executive agencies are making, on the whole, a good faith effort to comply with the requirements of the Public Information Act. The Commission believes that there are two basic reasons why the Act appears to work well. First of all, amendments to the Public Information Act in 1978 significantly strengthened the ability of requesters to obtain documents from government agencies. Among other things, Chapter 1006 of the Laws of 1978 granted requesters the right to ask for administrative review of agency denials, permitted requesters to appeal denials in circuit court, and established civil penalties for records custodians who knowingly and willfully fail to disclose records which should be disclosed. A second reason for the Act's success is that the Attorney General's Office has played an important role in educating agency officials regarding their obligations under the Public Information Act. This educational process has occurred through seminars in various agencies and through the development of a Public Information Act manual which has been widely circulated throughout State Government.

In the course of conducting its investigation of the Public Information Act, however, the Commission did encounter two practices that appear to be inconsistent with the Act. First of all, it appears that in a few cases,

agencies are requiring individuals to justify the basis for the request. The Act itself does not place such a burden on the requester. For example, The Employment Security Administration stated the following general policy: "Requests must be in writing or in person. The request must stipulate the reason why the information is needed." Similarly, in response to a question from the Commission regarding examples of situations in the past that have caused agencies to deny requests for access, the Community Development Administration-Development Finance Program responded: "The individual requesting the information could not show cause why the information should be released."

A second practice that appears not to be in harmony with the Public Information Act is that of denying access to requests due to a lack of personnel. It is perhaps understandable for agencies that may already be understaffed to be unhappy over the prospect of complying with numerous record requests. The fact remains, however, that the Act does not allow denial simply because the request is burdensome. Thus, the current practice of the Insurance Division, while understandable, does not appear to have a legal basis: "We do not have a record of those people whom we have refused. The only refusals we have had in the last few years have been insurance companies asking us to check long lists of individuals for licenses other than their own. These refusals have been because of a lack of personnel to do the job. We do provide this information if the list contains only 2-3 names."

Besides these miscellaneous bases for denial, the Commission asserts that there are three elements of the Public Information Act requiring additional examination: 1) the time period by which agencies must respond to records requests; 2) copying and other fees assessed requesters by agencies; and 3) clarification of the term "letters of reference."

1. Time Period for Response - The Public Information Act stipulates that when a custodian denies a written request for access to a specified record, he must

provide the requester with a written statement delineating the legal basis for the denial and explaining all remedies available to the requester. This statement must be provided within ten days of the actual date of denial. However, the basic problem with this section of the Act is that custodians do not operate under a time restriction prior to the issuance of an official statement of denial. Thus, the Act permits an agency to deny access to records without having to make a formal statement of denial. Since an agency is not bound by a time limit prior to official denial, a requester might simply abandon his request in frustration over a lack of communication from the agency.

At its Baltimore public hearing, the Commission heard from Mr. Lee David Hoshall, a researcher affiliated with the Criminal Justice Department of the University of Baltimore. In subsequent communication with the Commission, Mr. Hoshall produced copies of correspondence directed to both the Baltimore Community Relations Commission and the Baltimore City Police Department. The letters indicated that Mr. Hoshall made requests for various data from these two entities and cited the Public Information Act as the legal basis for his request.

In examining the correspondence provided by Mr. Hoshall, it is clear that the Baltimore City Police Department responded to the requests in a timely fashion. The Department's Assistant Solicitor indicated within two weeks of the initial request that the desired documents would be available under the Public Information Act.

This was not the case, however, regarding the records Mr. Hoshall attempted to obtain from the Community Relations Commission. The Commission determined at its March 19, 1980 meeting that it would seek legal advice from the City Solicitor's office regarding the appropriateness of releasing the documents in question. Mr. Hoshall followed this up with a formal request for the

documents on May 8, 1980. The City Solicitor's office did not issue an opinion on the case until October 14, 1980, approximately two weeks after Mr. Hoshall threatened to publicize the fact of the City's lack of response. The evidence appears suggestive that the opinion was delivered in October only because of the unusual degree of persistence exhibited by Mr. Hoshall.

The Commission uncovered no evidence to suggest that State Executive branch agencies are using this gap in the existing statute to frustrate requests for public records. In response to the Commission's question regarding the time period employed in responding to requests, most agencies asserted that access is either authorized or granted within two to three weeks. The Regional Planning Council, for example, responds definitively within seventy-two hours. The Maryland Small Business Development Financing Authority indicated that an initial response is issued within five days after receiving the request; access is then authorized within a period of the next ten days. The Department of Agriculture will make a formal determination within twenty days, a time period which may be extended for an additional fifteen days in more complex situations. A number of agencies (e.g. Income Maintenance Administration, the Community Development Administration-Rehabilitation Programs, and the Maryland Industrial Development Financing Authority) stated that while no formal time schedule had been established, access was authorized as quickly as possible, in many cases the same day.

It is impossible to determine whether the State Executive agency practices just mentioned can be considered to be representative for county and municipality policies as well. One should recognize that State Executive agencies operate not only under the mandates of the Public Information Act but also the requirements of the Citizens Response Plan. Article 41, Section 14H, adopted by the 1980 General Assembly, compels State Executive agencies to develop procedures for responding to communication from the public and to submit these procedures

for examination to the Administrative, Executive and Legislative Review Committee (AELR) of the General Assembly. AELR developed certain minimum guidelines which included the following statement:

"All written communications requiring response should be responded to or acknowledged within ten (10) business days of receipt. If the communication cannot be properly responded to within ten business days the agency should provide the sender with a notice of acknowledgement. This note should identify the individual responsible for reply, the reason for delay, if possible, the telephone number of the individual assigned the responsibility of reply, and an indication as to the date by which the correspondent can expect an appropriate reply."¹

While it is important to note that the AELR guidelines do not actually require a State Executive agency to respond in a definitive manner by a specified date, a response similar to that of the Baltimore City Solicitor's Office would clearly be unacceptable. Thus, if one reads the Public Information Act in conjunction with the Citizen Response Plan, there is at least an implicit burden placed upon State Executive agencies to respond to requests within a reasonable period of time. This is not the case, however, with respect to counties and municipalities, which are not bound by the provisions of the Citizen Response Plan.

2. Cost of Documents - Article 76A, Section 4(a) states the following:

"In all cases in which a person has the right to inspect any public records, such person shall have the right to be furnished copies, printouts, or photographs for a reasonable fee to be set by the official custodian."

Difficulties revolve around the meaning of the phrase "reasonable fee". Should "reasonable fee" be interpreted to mean only the actual operating costs of the copier? Does it include the time spent by employees in searching for a specified document? Can it also involve expenditures associated with removing non-disclosable portions of a document? An Attorney General's opinion in 1974 implied that fees of various kinds could be passed along to the requester:

"Moreover, we believe that in computing the reasonable charges for supplying

copies, he (the custodian) may properly take into account the time spent by his clerical staff in complying with the request, as well as the usual mechanical costs of duplicating."²

On the whole, fees assessed by State Executive agencies appear to be quite minimal. A number of agencies (e.g. Social Services Administration, Maryland Small Business Development Financing Authority, and Community Development Administration-Single Family Programs) assess no fees of any kind. The most typical response indicated that fees are charged only for the actual cost of operating the agency copier.

In other cases, however, it is evident that the requester is assessed various forms of fees. For example, The Employment Security Administration informed the Commission: "The agency is entitled to charge for copies of documents and will do so if the number of documents requested is excessive. The fees charged would entail only the actual costs of employee time and copying expenses." The Regional Planning Council issued the following statement: "The only fees charged for handling requests for RPC public records, is the actual cost (computer time, copying fees, administrative fees, etc.) for fulfilling the request."

3. Clarification of the term "letters of reference" - Article 76A, Section 3(c)(iv) states that, unless otherwise provided by law, letters of reference are prohibited from disclosure. In the majority of cases, there does not appear to be any disagreement regarding the meaning of the phrase "letters of reference." A letter of reference is ordinarily understood to mean a written evaluation of various aspects of an individual's background by another person who has a sufficient enough level of contact with the individual being examined to make accurate assessment. It is usually assumed that the subject of the letter has contacted the other individual and has asked him to submit an evaluative statement. The subject of the letter is frequently barred from

examining the letter itself on the assumption that this will permit the writer to be as honest as possible in his evaluation.

Though the above statement may appear to be a reasonable accurate description of the ordinary usage of the term "letter of reference", it may be too narrow from the standpoint of the Public Information Act. The Act provides for no definition of the term and therefore may make it possible for various types of personally identifiable comments to qualify as letters of reference. These comments then may be assigned confidential status as specified by Article 76A, Section 3(c)(iv).

This issue was brought to the Commission's attention by Councilwoman Esther P. Gelman, member of the Montgomery County Council, in response to a ruling issued by Mr. Paul A. McGuckian, County Attorney. According to the Montgomery County Code, the County Executive is permitted to appoint three members to the Washington Suburban Sanitary Commission, subject to confirmation by the County Council. Appointments must be drawn from a list of applicants; the list is considered to be a public record and is therefore open to inspection. It is a common practice for members of the public to then submit letters to the County Executive in support of, or in opposition to, a particular candidate. In August 1979, Mr. McGuckian issued an opinion which stated that written comments from members of the public regarding Sanitary Commission applicants were letters of reference and therefore prohibited from disclosure under the Public Information Act.

In the opinion of Councilwoman Gelman, these comments were not submitted by members of the public to government agencies with the expectation that such comments remain confidential. Such a policy, in her view, was a significant departure from the basic premise of openness in government which is the foundation of the Public Information Act. The Information Practices Commission

believes that the Attorney General is in the best position to resolve this conflict. Therefore, the Commission will be directing a letter to the Attorney General requesting an advisory opinion on this matter.

NOTES

1. General Assembly of Maryland, Administrative, Executive and Legislative Review Committee, "Citizen Response Plan-Basic Minimum Guidelines for State Agency Response to Citizen Inquiries and Complaints", n.d., p.2.
2. 59 Opinions of the Attorney General 590 (1974).

RECOMMENDATIONS

The formulation of sound public policy in the area of information practices is an exceedingly difficult task. Above all else, the policy formulator must strike a very delicate balance among three competing interests: the information requirements of public agencies, the right of the public to be informed about activities of government, and the privacy rights of individuals. The difficulty, of course, is that while each of these rights is essential, none is absolute.

Government could not function without access to accurate information. Law enforcement agencies would be seriously hampered in the performance of their duties if they were unable to gather investigative data. Physicians in State health facilities could not provide adequate medical treatment if detailed medical histories of patients were unavailable. At the same time, however, these legitimate information requirements cannot serve as a justification for the collection of any and all information. It is reasonable to assume that agencies should only collect that information which is relevant and necessary to the performance of their duties. Similarly, the information needs of agencies, however legitimate, cannot be seen as justifying the indiscriminate use of this information.

As noted earlier in this report, a distinctive precept of our political system is that the public must be permitted to examine the actions of those who exercise power in its name. To the greatest extent possible, government agencies should facilitate public access to records. Yet the public's right of access cannot and should not extend to all data in government files.

we have seen, many agencies, such as State psychiatric facilities and Social Service Departments, maintain highly sensitive data pertaining to clients of those agencies. Public examination of such files would constitute a clear violation of these clients' privacy rights.

This, of course, leads directly to the third basic right to be balanced, the right of individual privacy. Individuals have the right to expect that personally identifiable data submitted to government agencies will be handled in a responsible manner. However, individuals must also recognize that the provision of services by the government frequently requires the collection of personal data.

In examining the record-keeping practices of State agencies and in developing recommendations for corrective action, the members of the Information Practices Commission have tried to be conscious of the legitimate needs and rights of all three competing interests. Furthermore, the Commission asserts that these recommendations are fiscally prudent measures. Acutely conscious of the financial pressures imposed upon the State primarily through federal budget reductions, the Commission has attempted to formulate proposals which do not result in significant additional expenditures. Most of these proposals have no cost implications whatsoever, while the great majority of the remaining proposals can be implemented with minimal additional revenue. Despite this fact, the Commission believes that enactment of the following recommendations will be a major step towards balancing the information needs of agencies, the public's right of access, and the privacy concerns of individuals.

1. Within a period of thirty days after receiving a written request for access to any public record, the custodian should either provide the information requested or deny the request.

As noted previously, the General Assembly in 1978 enacted a substantive revision of those sections of the Public Information Act granting access to

public records. This revision significantly expanded the public's right of access.

Of some concern, however, is the fact that the Public Information Act does not contain an explicit time period by which custodians must respond in a definitive manner to requesters. Once the custodian actually denies a request for access to a specified record, he must provide the requester with a written statement, within ten days of the actual date of denial, delineating the legal basis for the decision and explaining all remedies available. However, until the custodian issues a formal statement of denial, he does not operate under an explicit time period.

This provision of the Public Information Act thus enables a custodian effectively to deny access to records without having to make a formal declaration of denial. The Commission received testimony at its Baltimore public hearing which suggested that some custodians are taking advantage of this loophole in the Act. The Commission therefore recommends that the Public Information Act be amended to require that within thirty days of the receipt of a request for access to public records, the custodian shall either provide the requested record or deny the request. The Commission believes that a thirty day limit is a reasonable length of time for both custodians and requesters.

2. Agencies should be permitted to assess reasonable fees for the search and preparation of records for inspection and copying. However, search and preparation fees should not be charged for the first four hours of time required to respond to a request. The custodian should have the discretionary authority to waive all fees if he determines that a waiver would be in the public interest. The custodian should take into consideration the ability of a requester to pay for fee charges.

Article 76A, Section 4(a) specifies that the right of inspection of public records also entails the right to receive copies at a reasonable fee to be determined by the custodian. There is, however, some question regarding the meaning of the phrase "reasonable fee". Should the term be interpreted to mean only the actual operating costs of the copier? Does it include the time

spent by employees in searching for specified document? Can it also involve expenditures associated with removing non-disclosable portions of a document?

These questions are of particular significance for those agencies which maintain record systems containing corporate financial information. Businesses file numerous Public Information Act requests with government agencies in an effort to learn important pieces of information about their competitors. As might be expected, those businesses which submitted the data originally to the government are reluctant to see this data released.

The Public Information Act stipulates that the custodian shall prevent the disclosure of confidential commercial and financial information. While this may appear to be a relatively straightforward proposition, it is frequently very difficult for a custodian to determine whether a specific commercial or financial document is "confidential." In order to make such a determination, agency officials must spend a great deal of time in examining the contents of corporate documents; often, this involves line-by-line discussions of these documents with representatives of the corporation which originally submitted them.

The Information Practices Commission does not believe that taxpayers should be required to subsidize highly complex and very expensive records requests. The Commission asserts, therefore, that custodians should have the authority to pass along reasonable search and preparation fees associated with the inspection and copying of documents. At the same time, however, the Commission maintains that search and preparation fees should not be assessed if the total effort involves four hours or less of employee time. The typical public records request can probably be handled by the custodian in less than one-half of a working day. The Commission believes that the charging

of search and preparation fees for manageable records requests would be contrary to the spirit of the Public Information Act.

The Information Practices Commission asserts further that the custodian should have the discretionary authority to waive any costs or fees associated with the examination and copying of public records if he determines that a waiver would serve the public interest. The custodian should consider the ability of requesters to pay for such fees. The Commission is of the opinion that these recommendations are consistent with the basic philosophy that the public should have a right of access to government records. The inability of requesters to pay for fees should not be used by agencies as a roadblock to access.

3. Except as otherwise provided by law, a State agency requesting an individual to disclose personally identifiable information should inform that individual of: the principal purposes for which the information is intended to be used, the penalties and specific consequences for the individual which are likely to result from nondisclosure, the individual's right to inspect such information, the public or nonpublic status of the information to be submitted, and the routine sharing of such information with state, federal, or local government agencies.

The Information Practices Commission asserts that when an individual provides personally identifiable data to a State agency, the agency in turn should have an obligation to provide certain basic facts to the individual. First of all, an individual has a right to be told why the agency needs the information in the first place. What are the purposes behind the request for information? An individual also should be told what will happen to him if he does not provide the information. Are there criminal penalties for failure to disclose the information? Will non-disclosure result in the withdrawal by the agency of certain services currently being provided to the individual? An individual should also

be informed as to whether or not he may inspect this information when it appears in the agency's files. An agency should furthermore indicate to an individual if the information to be provided will be available for public inspections, or if it will be accorded a confidential status. As we have seen in our previous examination of State agencies' record-keeping practices, many record systems containing personally identifiable information are disclosable under the Public Information Act. An individual should be told about that at the time that he provides the information to the agency. Finally, an individual should be provided with a list of the names of those government agencies to whom information is released routinely.

The Information Practices Commission recommends that the Governor use his authority of Executive Order and require State agencies to provide to individuals the basic facts discussed above. The Commission is certain that the enactment of such an Executive Order would not place substantive additional administrative burdens on State agencies. All of the items described above can fit easily on a tear-off sheet which could be attached to standardized forms presently employed by agencies, or could be placed on a separate sheet which an individual could retain. While this is therefore a relatively simple matter, the Commission strongly asserts that enactment of this recommendation would be a significant step forward in expanding the basic information rights of individuals in dealing with their State government.

4. To the greatest extent feasible, a State agency maintaining records containing personally identifiable information should collect that information directly from the subjects of the records.

As noted previously, government agencies have a legitimate need for personally identifiable information. Without this information, agencies

decisions which could impact on them directly should not be made on the basis of erroneous, outdated, or irrelevant information derived from third parties.

The Information Practices Commission recommends that the Governor use his authority of Executive Order to require State agencies to collect information directly from the subjects of the records, to the greatest extent possible. The Commission recognizes that there are certain situations in which this requirement would not be feasible. Collecting law enforcement investigative data directly from the individual being investigated obviously would invalidate the agency's activity. However, in many other circumstances, it would be both feasible and highly desirable to collect information from the records subjects.

5. Except as otherwise provided by law, a State agency maintaining personally identifiable information about an individual should permit that individual to examine and copy information pertaining to him, to challenge the accuracy of that information, and, if his challenge is not accepted by the agency, to insert a concise statement of disagreement into the record.

As is evident from an examination of the record-keeping practices of State agencies, there is a tremendous variation across agencies regarding the right of the subject of the record (i.e. the person in interest) to examine, copy and challenge data pertaining to him. As a general rule, one can say that the most detailed and explicit policies in this area involve those agencies whose records are subject to federal regulations. Particularly noteworthy in this regard are student records maintained by educational agencies, records maintained by the Mental Retardation Administration and data stored in the Central Repository of the Department of

Public Safety. All of these agencies embody protections similar in scope to the Commission's recommendations.

The Information Practices Commission was pleased to discover that many State records custodians permit not only examination and copying of data by the person in interest, as would be required if the record is subject to the Public Information Act, but challenges as well. Yet while this practice is commendable, it does not appear in either statutory or regulatory form and is therefore subject to change at any time.

A more important concern involves those types of records which are not available for inspection, copying or challenge by the person in interest. In many cases, agencies' policies and procedures appear to be rather arbitrary. For example, the Maryland Small Business Development Financing Authority permits the person in interest to examine only that portion of the data pertaining to him which he actually submitted to the authority. Other data, such as letters from financial institutions and credit reports, may not be examined. The Maryland Housing Fund informed the Commission that the person in interest may challenge data pertaining to him, but may not inspect such data. Quite obviously, the absence of inspection of records precludes the effective challenging of these records. The Department of Health and Mental Hygiene indicated that most of the personally identifiable records of the Juvenile Services Administration may not be inspected by the person in interest, his parents, or his legal representative.

The Information Practices Commission asserts that inspection, copying and challenges of data by the person in interest constitute compelling rights which only should be denied if prohibited by law. The Commission therefore recommends to the Governor that he use his authority of Executive Order to require State agencies to provide these rights to the person in interest.

The Commission recommends, first of all, that, unless otherwise provided by law, the person in interest should be permitted to examine and copy information pertaining to him which is maintained in State agency files. In addition, the person in interest should be able to request any State agency to correct or amend inaccurate or incomplete information pertaining to him. The Commission recommends that within thirty days after receiving such a request from the person in interest, an agency shall either make the requested correction or amendment and inform the person in interest of the action, or inform him of its refusal to correct or amend, the reason for the refusal and agency procedures for review of the refusal. The Commission furthermore recommends that an agency shall make a final determination within thirty days after the person in interest requests a review of an agency's refusal to correct or amend his record. Should that agency again refuse to correct or amend the record, the Commission recommends that the person in interest be permitted to file with the disputed record a concise statement not to exceed two sheets of paper. This statement should explain the reasons why the person in interest requested the correction or amendment, as well as his reasons for disagreeing with the agency's refusal to correct or amend. The Commission finally recommends that the agency be required to furnish this statement whenever it discloses the disputed record to a third party.

6. The person in interest should be permitted to inspect and challenge medical records pertaining to him which are contained in the files of public agencies, to the same extent as permitted by hospitals or related institutions.

Article 43, Section 54M permits the person in interest to examine, copy, challenge and insert a statement of disagreement with any medical records pertaining to him which are maintained by a hospital or related institution.

The only exception involves medical records which pertain to a psychiatric or psychological problem where the attending physician believes that access would be medically contraindicated. In such a situation, and upon written request by the person in interest, the institution shall provide the person in interest with a summary of the records' contents.

As has been noted throughout this report, a number of State agencies place limitations on the ability of the person in interest to inspect medical records contained in their files. The State Retirement System will not grant access unless authorization is received from the physician. The basic position of the Retirement System is that these medical records belong neither to the person in interest nor to the State but rather are the property of the individual physician, who alone may make decisions regarding access. The Medical Advisory Board of the Motor Vehicle Administration only permits the person in interest to inspect those parts of the records which contain "general papers". Confidential medical information may be examined by the legal representative of the person in interest, but only with the understanding that the information may not be revealed to the client. Both the Income Maintenance and Social Services Administration refuse to permit the person in interest to examine medical data, unless authorized to do so by the physician submitting the data.

The Information Practices Commission believes that it is most important that individuals have a right to examine data which could have a significant impact on them. Needless to say, medical records maintained by public agencies fall in this category. The Data contained in these records is used in the determination of benefit levels, driving privileges, and many other important areas.

The Commission believes that access should be granted not only because

of the significance of the data, but also because the experience of other public agencies strongly suggests that access will not result in any substantive problems. The Workmen's Compensation Commission, for example, grants the person in interest full access to medical records. Local educational agencies similarly grant parents full access to any medical information placed in the student records of their children. Access in both cases has been entirely manageable. The Commission recommends, therefore, that Article 76A, Section 3 (c)(i) be amended to permit the person in interest to have access to medical records in agency files to the same extent that access is granted by hospitals or related institutions.

7. In order to employ the sociological data exemption contained in the Public Information Act, custodians should be required to promulgate rules which define, for the records in their possession, the meaning and scope of sociological data.

Article 76 A, Section 3 (c)(i) requires records custodians to prohibit the disclosure, unless otherwise provided by law, of "medical, psychological and sociological data on individual persons, exclusive of coroners' autopsy report." The expression "sociological data" is the source of considerable confusion for State agencies.

The Commission has discovered that it is impossible to determine the meaning of the term by examining the definitions section of the Public Information Act, by identifying the legislative intent of the General Assembly in including the term, by reading court cases or Attorney General opinions, or by considering similar state or federal statutes. First of all, sociological data is not defined in the Public Information Act, or, for that matter, anywhere else in the Maryland Annotated Code. Second, the term does not appear in committee files pertinent to the Public

Information Act. Third, the term is not clarified in any court interpretation or Attorney General opinion of which the Commission is aware. Finally, a search through various state and federal information practices statutes has proved fruitless. As best as can be determined, the expression is unique to Maryland.

Thus, the State is left entirely to its own resources in attempting to come to grips with sociological data. Given the broad research interests found within the discipline of sociology, virtually every piece of information could qualify as sociological data. Such an interpretation, of course, would negate the Public Information Act itself as all information would then be nondisclosable. It is also most doubtful that the General Assembly intended the expression to prevent the release of all personally identifiable data. If such was the case, there would have been no need for subsequent statements in the Public Information Act preventing the release of library circulation records, personnel files, and adoption records. If, however, one interprets the expression to mean data furnished by a sociologist, then the expression becomes meaningless for all practical purposes, since sociologists provide relatively little data appearing in the files of most agencies.

Given the fact that one is dealing with a vague term which has never been defined, it is not surprising that sociological data is used in different ways by different agencies. Agencies as diverse as the Department of Economic and Community Development, the Office on Aging and the Division of Parole and Probation employ the exemption to prevent the disclosure of a wide range of personally identifiable data, including data pertinent to the functional ability of elderly persons, income, credit reports, age, sex, marital status, names of clients' relatives and dependents, and evaluations of clients' adjustment problems and attitudes.

Despite the diverse manner in which the expression has been used, the Information Practices Commission asserts that the sociological data exemption has served a useful purpose in preventing the disclosure of information which should not be released. The Commission does not believe that the public interest would be served by the public inspection of the burial plans of an elderly person for whom the Office on Aging serves as public guardian, or by the disclosure by the Division of Parole and Probation of a detailed description of a parolee's housing facilities.

The Commission recognizes that the variety of data elements subsumed by agencies under the sociological data umbrella precludes the formulation of a definition which could be inserted into the Public Information Act. The Commission also acknowledges that new record systems may be created in the future by agencies, and that these systems may contain other data elements which also deserve confidentiality.

The Information Practices Commission knows that there are no easy answers to this problem. It believes, however, that the best alternative available would be for the Legislature to require that records custodians may deny the right of inspection to records on the basis of sociological data only pursuant to rules which define, for the records in their possession, the meaning and scope of sociological data. This approach is reasonable, the Commission asserts, for two reasons. First of all, this approach would enable custodians to continue to assign a confidential status to data which should be confidential. At the same time, the issuance of rules will ensure that agencies are not abusing the exemptions by preventing the disclosure of information which should be available for public inspection.

8. The Public Information Act should be modified to prohibit the disclosure, unless otherwise provided by law, of personally identifiable data describing an individual's income, finances, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness.

In the performance of their duties, public agencies quite properly collect a significant amount of detailed financial information pertaining to individuals. This data is essential in determining eligibility for State scholarship programs, income maintenance benefits, subsidized housing programs, and many other areas.

While the Commission recognizes that this data must be available to agencies, this does not mean that such information should be disclosable to third parties. The Commission has discovered, however, that there are inconsistencies in the statutes pertaining to financial data. For example, state statutes and regulations ensure that financial information regarding clients of the Department of Human Resources is strictly confidential. In contrast, there is no specific section of the Maryland Annotated Code which assigns a confidential status to the varied pieces of financial data provided by applicants for the Maryland Housing Rehabilitation Program. Given the broad right of access to records that is required by the Public Information Act, officials of that program would either have to release the information in response to a request, or determine that it was sociological in character.

The Commission does not believe that a public purpose is served by these statutory inconsistencies. Therefore, it recommends that an amendment be added to the Public Information Act specifying that personally identifiable data which is financial in character be nondisclosable, unless otherwise provided by law. It is important to emphasize the last phrase, "unless otherwise provided by law." Enactment of the above recommendation would have no impact whatsoever on those personally identifiable financial

records which the Legislature has determined should be available for public inspection. For example, the salaries of public employees would continue to be disclosable under the Public Information Act; the Commission completely supports the disclosure of this information. The Commission's recommendation, therefore, would only affect financial data in those record systems, such as the Maryland Housing Rehabilitation Program, which have been inadvertently disclosable.

9. Current statutes governing personally identifiable occupational and professional licensing data should be revised to permit public inspection of the following information pertinent to licensees: names, business addresses, business telephone numbers, educational and occupational backgrounds, professional qualifications, non-pending complaints, disciplinary actions involving findings of guilt or culpability, and evidence provided to the custodian in order to satisfy a statutory requirement of financial responsibility. If the custodian cannot provide business addresses, then he shall permit inspection of home addresses. 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 should delete that person's name from licensee lists purchased from the custodian.

The observation was made earlier in this report that the formulation of sound public policy in the area of information practices requires the striking of a delicate balance among competing interests. The occupational and professional licensing field provides a good illustration of this dictum. The various licensing boards throughout the State need to collect a sufficient amount of personally identifiable information in order to assess the qualifications of candidates. The public has a right to examine certain items in licensure files to be assured that specific licensees are competent and qualified. Licensees, in turn, have a right to expect that boards limit themselves to the collection of relevant and necessary information, and that strict limitations are placed on the type of personally

identifiable data available for public inspection.

As is clear from this report, State licensing boards collect a great deal of personally identifiable information, among which is the following: home and business address and telephone number, social security number, age, sex, race, height, weight, color of hair and eyes, citizenship status, length of residence in the State, marital status, name and address of employer, bank account numbers, medical records, occupational background, educational background and complaint history. Much of this information clearly is relevant to the licensure functions of the boards. However, boards should examine their collection requirements on a periodic basis to ensure that extraneous data is not collected. For example, the Commission questions whether there is a valid basis for the Maryland Racing Commission to require married women who are applying for thoroughbred owner licenses to provide various additional details about their husbands.

The Information Practices Commission has invested a considerable amount of time and energy in attempting to determine which data elements pertinent to licensees should be available for the public, and which items should be confidential. The Commission believes that its recommendations constitute a careful balancing of the access rights of the public and the privacy rights of licensees. The Commission asserts that the public has a right to have access to basic directory information about a licensee, should it need to contact the licensee. The Commission believes, however, that under usual circumstances, the business address and business telephone number should be disclosed rather than residential data. If, however, the board cannot furnish the business address, it should make the licensee's home address available to the public. The Commission furthermore asserts that the public has a right to examine a licensee's educational and occupational background and professional qualifications. Before hiring a plumber,

for example, an individual should have the right to assess that plumber's credentials as presented to the Department of Licensing and Regulation. The Commission also believes that the public has a right to know the nature of non-pending complaints directed to boards against specific licensees. If a board has determined that a licensee was guilty or culpable of some unfair or illegal practice and subsequently took disciplinary action against that licensee, the public has a right to know that as well. Finally, if a licensee is required by statute to provide evidence of financial responsibility, that evidence should also be available for public inspection. This latter issue is of particular importance in the home improvement field.

The Commission does not believe that the release of other personally identifiable information pertinent to licensees would serve the public interest. Instead, disclosure of other information would constitute an unreasonable invasion of the privacy rights of licensees. In order to assess the competency of licensees, the public does not need to know licensee's race, social security number, place of birth, and so forth. The Commission recognizes that there may be extenuating circumstances in which a compelling public purpose would be served by the release of data in addition to that recommended by the Commission. The Commission believes that discretionary authority should be given to records custodians to release additional data; however, custodians should be required to issue rules and regulations explaining the need and the basis for disclosure.

The Information Practices Commission asserts, finally, that licensees should be given the right to have their names deleted from licensure lists which are purchased from boards. Many businesses purchase lists of licensees' names and addresses from licensing boards throughout the State. While the Commission does not object as such to this practice, it does recognize that some licensees may find it quite irritating to receive large amounts of adver-

tising mail. At the present time, however, licensing boards do not have any statutory authority to remove the names of licensees who are offended by these mailings. The Commission believes that the Public Information Act should be amended to accomodate these concerns.

10. Retirement files or records pertaining to public employees should be restricted to the person in interest and to his appointing authority. After the death of the person in interest, files or records should 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 should indicate whether a person is receiving any retirement or pension allowance.

As noted previously, most of the personally identifiable data collected by the State Retirement Systems, as well as the retirement systems of local governments, is disclosable under the Public Information Act. In practical terms, the State Retirement Systems office must disclose all of its program-related, personally identifiable information with the exception of medical data. Among those items which are available for public inspection are birth and death certificates pertaining to members, the names, addresses, dates of birth and relationships to the members of all primary and contingent beneficiaries, members' retirement allowance estimates, and details regarding disability payments currently or previously received by members.

The Boards of Trustees of the Employees, Teachers and State Police Retirement Systems are quite concerned about the public character of this data. The Boards noted to the Commission that many members are very distressed to learn that information pertaining to beneficiaries is available for public inspection. The State Police Board expressed the fear that disclosure of its retirement data could result in the public identification of certain categories of employees, such as undercover police agents. Many members are also concerned about the disclosure of retirement allowance

estimates, since they may not want anyone to know that they are considering retirement.

The Information Practices Commission asserts that the privacy interests of members and retirees far outweigh any public interest that would be served by permitting continued inspection of this information. The Commission believes that the public has a right to know if a particular individual is receiving a retirement or pension allowance supported in part by public funds. Beyond that fact, however, the Commission feels that the sensitivity of the data in retirement files warrants that data being restricted to the person in interest and his appointing authority. Upon the death of the person in interest, other requesters may have valid reasons to justify access to this data. The Commission asserts that the data should be available to beneficiaries and the personal representative of the person in interest. In addition, records custodians should be granted discretionary authority to release this information to others who can demonstrate a valid claim of right to benefits.

The Information Practices Commission wishes to emphasize that nothing in this proposal speaks to the issue of a spouse's right to inspect retirement data or other financial information. This issue is currently under consideration by a legislative subcommittee. The Commission believes, therefore, that it is more appropriately the place of this subcommittee to develop recommendations pertaining to spousal rights.

11. Motor Vehicle Administration records which are released to a government agency for employment purposes should contain only that information which is available for inspection by a non-government requester.

By statute, records of the Motor Vehicle Administration are available for public inspection. However, a distinction is made regarding the nature of data accessible to non-government requesters and that disclosable to government agencies. Inspection of a driving record by a non-government

requester is restricted to data pertaining to the last thirty-six months. In contrast, a government agency seeking examination of the identical record would receive a complete copy of the record. The complete copy must be furnished in accordance with Transportation Article Section 12-111 (a)(3): "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 Information Practices Commission recognizes that there are many situations in which it is entirely appropriate that government agencies receive complete records. Such would be the case, for example, with regard to criminal investigations. The Commission asserts, however, that records released for employment purposes should contain the same information, whether the record is released to a government agency or a non-government requester. In the Commission's opinion, the current statute allows for illogical scenarios. For example, if a municipality requests a driving record for an individual who has applied for a position as an accountant, the municipality would receive a complete copy of the record. However, a private trucking company requesting records of prospective drivers would be limited to thirty-six month versions.

The Commission does not believe that the public interest is served by continuing this government/non-government distinction in its present form. The Commission recommends, therefore, that Motor Vehicle Administration records released to any government agency for employment purposes be limited to the thirty-six month versions presently given non-government requesters.

12. Expungement of Motor Vehicle Administration driving records should be an automatic process, as long as licensees satisfy the requirement set forth in State statutes.

Transportation Article Section 16-117.1 sets forth certain conditions which must be met in order to expunge a driving record. For example, expungement of a record of a driver whose license has never been suspended

or revoked would require that driver to be conviction-free of a moving violation or a criminal offense involving a motor vehicle for the preceding three years. The statute establishes stiffer standards for drivers whose licenses have been suspended or revoked previously.

Despite these varying standards, the clear intent of the General Assembly was to make expungement of a driving record an automatic process, as long as the driver satisfies the conditions stipulated in the statute. If appropriate conditions are fulfilled, the Motor Vehicle Administration does not have any discretionary authority to prevent expungement.

The Commission is concerned, however, by the fact that, in reality, expungement is not an automatic process. If a driver has satisfied the requirement of the statute, his record is not automatically purged. Instead, the responsibility rests with the driver to notify the Motor Vehicle Administration that he is both eligible for expungement and desirous of having the record expunged.

In the opinion of the Commission, such a policy only rewards those drivers who are knowledgeable about the Annotated Code. The Motor Vehicle Administration informed the Commission that automatic expungement would present substantive administrative burdens. The Commission has been assured, however, by data processing specialists that automatic expungement is both administratively quite feasible and also far less expensive than notifying drivers when they become eligible for expungement. The Commission recommends, therefore, the amendment of Transportation Article Section 16-117.1 to require automatic expungement of driving records, as long as licensees fulfill the statutory requirements.

13. A State agency maintaining personally identifiable information should be required to submit a report to the Secretary of the Department of General Services describing the personally identifiable records maintained. The report should include: a) the name of the agency and the division within the agency that is maintaining personally identifiable records, and the name and location of each set of personally identifiable records; b) a brief description of the kinds of information contained in each set of personally identifiable records and the categories of individuals concerning whom records are maintained; c) the major uses and purposes of the information contained in each set of personally identifiable records; d) agency policies and procedures regarding storage, retrievability, retention, disposal and security, including access controls, of each set of personally identifiable records; e) agency policies and procedures regarding access and challenges to personally identifiable records by the person in interest; and f) the categories of sources of information for each set of personally identifiable records. Subsequent to the filing of this report, a report should be submitted annually which should describe only those sets of personally identifiable records which were eliminated or added since the previous report, or which changed significantly since the previous report. A State agency maintaining two or more sets of personally identifiable records may combine such records for reporting purposes, but only if the character of the records is highly similar. All reports should be available for public inspection.

The Information Practices Commission believes that its compilation of an inventory of personally identifiable records in the possession of State agencies has proven to be a very positive experience. As a result of analysis and recommendations by the Commission, a number of State agencies have improved their record-keeping practices.

The Commission pointed out to the Department of Natural Resources that the personal history statement required of all applicants for the Natural Resources Police Force contained much information which was extraneous to the application process. The Department reviewed the statement and agreed to withdraw it from circulation. In response to a Commission suggestion, the Motor Vehicle Administration decided to revise its procedures for the examination and purchasing of driving records. The Department of Health and Mental Hygiene agreed to review its guidelines for the release of medical records and to promulgate rules and regulations in that area. The Department of Health and Mental Hygiene agreed to overhaul completely

its regulation pertaining to the release of vital records, after the Commission pointed out that the regulation exceeded the statutory authority granted to the Department by the Legislature. After the Commission demonstrated to the Division of Corrections the very ambiguous character of its regulation governing access to inmate base file records, the Division determined that it would issue new regulations. The Maryland State Police agreed to change certain inaccurate statements in its Public Information Act manual. When the Commission alerted the Department of Assessments and Taxation to problems regarding the disclosure of Homeowners' Property Tax Credit Program records, the Department agreed to introduce corrective legislation for the 1982 General Assembly session.

While much has been accomplished through the Commission's intervention, the Commission recognizes the practical limitations of its work. In the years ahead, State agencies will create many new record systems and will generate substantive revisions of systems currently in existence. These systems will necessitate the collection and dissemination of personally identifiable data. These new systems will not have the benefits of the Commission's review.

The Commission believes that there should be some continuing mechanism to ensure review of agency practices. The Commission asserts that this review can be accomplished by requiring State agencies to file annual reports with the Records Management Division of the Department of General Services. These reports would be brief descriptions of the personally identifiable records in the possession of agencies. Agencies would be asked to explain the basic nature of their personally identifiable records, and would provide basic information regarding the type of information collected, the types of individuals concerning whom records are maintained, the manner in which information is categorized, the sources of the infor-

mation, the major uses of the data, the access rights of the person in interest, security procedures, and retention and disposal information.

It is critical to emphasize that this report would be a relatively simple exercise which should not result in any additional agency expenditures. All of the items listed above could easily fit on one standardized form which could be devised by the Department of General Services. Once the initial reports were filed, agencies would only be expected to submit new annual reports when personally identifiable record systems were added or deleted, or when existing systems were changed in a substantive manner. In addition, much of this information has already been gathered by agencies in responding to the questionnaires of the Information Practices Commission.

Though the process is relatively simple, the Commission believes that the reports can serve as a very effective management tool for officials of State agencies. First of all, the reports can help to highlight certain substantive record-keeping problems regarding access, security, disposal and so forth. Equally important, the reports can assist in identifying record systems which should be eliminated, thus saving tax dollars. The Commission therefore believes that implementation of this recommendation should be accomplished as soon as possible.

14. Legislation should be enacted to grant access to nondisclosable personally identifiable records for research purposes. However, the custodian should grant access only if: a) the researcher states in writing to the custodian the purpose of the research including any intent to publish findings, the nature of the records sought, and the safeguards to be taken to protect the identities of the subjects of the records; b) the researcher states that the subjects of the records will not be contacted without the approval and monitoring of the custodian; c) the proposed safeguards are adequate, in the opinion of the custodian, to prevent the identities of the subjects of the records from being known; and d) the researcher executes an agreement with the custodian which incorporates such safeguards for protection of the subjects of the records, defines the scope of the research project and informs the researcher that failure to abide by conditions of the approved agreement constitutes a breach of contract.

An individual entrusting a government agency with sensitive, personally identifiable information has a right to expect that the agency will handle the information with the care and confidentiality it deserves. For example, the Commission asserts that the privacy interests of a record subject regarding personally identifiable medical information clearly is greater than the public's right to inspect that data.

The Commission believes, however, that there may be certain situations in which a significant public purpose would be served by the examination of such data by researchers. Without question, society has benefited immeasurably by the advances in medical research over the past decades. Yet many of these advances would not have been possible without access to personally identifiable data.

Because many confidentiality statutes do not allow for the possibility of access to this data by researchers, custodians frequently are forced to deny requests for data needed to support very legitimate research projects. For example, the Attorney General determined in 1978 that the confidentiality provisions of the vital records statute were such that researchers seeking to identify the cause of sudden infant death syndrome could not be permitted to examine certain birth and death certificate information.

The Commission feels that a mechanism should be established to permit access to personally identifiable information for meritorious research projects while, at the same time, protecting the privacy rights of the records subjects. The Commission believes that the best way to accomplish both goals is to require researchers to meet certain specified conditions prior to the release of personally identifiable data. First of all, a researcher should be required to provide a written statement to

the custodian explaining the purpose of the research project, the nature of the records needed to achieve the project's goals, and the specific safeguards that will be taken to protect the identities of the records subjects. The Commission also firmly believes that the researcher should agree that he will not contact the records subjects in any way without the prior approval and monitoring of the custodian. Third, the Commission feels that the data should not be released unless the custodian is convinced of the adequacy of the researcher's proposed safeguards to prevent the public identification of the records subjects. Finally, the researcher should be required to execute an agreement with the custodian delineating all of the above points and attesting to the fact that failure to abide by the conditions of the agreement would constitute a breach of contract.

15. Security manuals or any public record directly related to the maintenance of security should not be available for public inspection.

The Public Information Act grants a broad right of access to public records. Access must be granted to any record which is not either expressly confidential by statute, regulation or court order, or subject to the discretion of the custodian. Inspection of other records may be denied temporarily if the custodian determines that inspection would be contrary to the public interest; a permanent denial, however, can only be issued by a court.

The Commission asserts that the public interest is served well by these provisions of the Public Information Act. Without such language, the public would be unable to scrutinize carefully the actions of government officials.

Obviously, however, there need to be certain exceptions to this right of access. For example, the Legislature has determined that the sensitivity

of personally identifiable income tax records, social services data, medical information, and so forth, is such that these records should not be available for public inspection. The Commission believes that an exemption should also be granted for agency security manuals and other information directly related to security.

The Information Practices Commission does not believe that the public interest is served by permitting requesters, for instance, to examine security manuals of the Baltimore and Annapolis Data Centers. Examination of these manuals might enable someone to gain access to, and alter, sensitive records which individuals have entrusted to government agencies. This, of course, would frustrate the intent of the Legislature to regard certain records as deeply personal and therefore confidential. Individual privacy is, in the Commission's opinion, too important to permit such a situation.

16. State agencies maintaining personally identifiable records should enact and implement appropriate safeguards to ensure the integrity, security and confidentiality of such records. In addition, those State agencies maintaining computerized personally identifiable records should assign a data professional the responsibility of monitoring the level of security assigned to these records. Finally, the State should create an Interagency Data Security Committee consisting of data professionals within State service. This Committee would conduct on-going risk analyses throughout State government in order to determine the appropriate security measures to be assigned to each computerized personally identifiable record system, and to formulate, review and audit the appropriate levels of security.

The preceding discussions of State agencies' record-keeping practices suggested a significant variation in security procedures across agencies. Some agencies, such as the Comptroller's Office and the Juvenile Services Administration, have invested a considerable amount of time and energy in reviewing and expanding their security measures. In other cases, levels of security did not appear to be sufficient to match the sensitive character of data maintained. For instance, the Social Services Administration indicated that while workers were required to keep records in file drawers,

such files remained unlocked. The Administration also stated that security of computerized data was limited to restrictions on access codes.

The Commission recognizes and applauds those actions occurring at the present time to strengthen the level of security in State agencies. The Management Information Systems Division of the Department of Budget and Fiscal Planning requires data processing administrators for both State computer centers and user agencies to file an annual physical security survey. The Legislative Auditor conducts extensive audits of agencies' activities, including analyses of electronic data processing security.

The Information Practices Commission asserts that these efforts should be continued and expanded. The Commission recommends that the Governor use his authority of Executive Order to require that all State agencies take affirmative measures to develop safeguards appropriate to the sensitivity of their data. The Commission also recommends to the Governor that an Executive Order be enacted to require that each State agency maintaining computerized personally identifiable data designate one current employee to take on additional security responsibilities for the agency. This employee would conduct periodic monitoring of agency security practices and would have the authority to make unannounced security inspections.

Finally, the Commission recommends to the Governor that he use his authority of Executive Order to establish an Interagency Data Security Committee. This Committee would conduct on-going risk analyses of those State agencies maintaining computerized personally identifiable data in order to determine the appropriate level of security for each record system. This Committee would also formulate, audit and review those levels of security. The risk analyses would be similar in scope to those performed by a private consulting firm regarding security at the Baltimore and

Annapolis Data Centers. The Commission believes that such analyses would have a positive impact on agencies' security practices.

Operationally, the Commission recommends that the Interagency Data Security Committee be composed of nine data professionals within State service with the following agencies having a permanent representative on the Committee: Comptroller of the Treasury, Department of Transportation, Department of Public Safety and Correctional Services, the University of Maryland, the State Colleges, and the chief of the Division of Management Information Systems, Department of Budget and Fiscal Planning, who shall be the chairman. The other members of the Committee should be chosen by the Governor upon the recommendation of the chairman. If any agency security officer is assigned to this Committee, he should not participate in any evaluation of his agency. The Commission believes that by utilizing the considerable data processing expertise which exists already in these agencies, the costs of on-going risk analyses would be reduced significantly.

17. Criminal and civil penalties should be established for the unlawful access, disclosure and use of personally identifiable records.

The Commission asserts that individual privacy is of such importance that criminal and civil penalties should be established as a deterrent to the unlawful access, disclosure and use of personally identifiable data. Accordingly, the Commission recommends, first of all, that an amendment be added to the Public Information Act to require that, except as otherwise provided by law, an officer or employee of an agency or authorized recipient of records who willfully discloses or provides a copy of any personally identifiable records to any person or agency, with knowledge that disclosure is prohibited, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed

\$1000. The Commission also recommends that an amendment be added to the Public Information Act to require that, except as otherwise provided by law, a person who, by false pretenses, bribery or theft, gains access to or obtains a copy of any personally identifiable data whose disclosure is prohibited to him is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1000. Finally, the Commission recommends amending the Public Information Act to specify that an officer or employee of an agency, a researcher or any other person who violates the law through the unlawful disclosure, access and use of personally identifiable records shall be liable to the records subjects for any actual damages sustained by the subjects by the unlawful disclosure, access and use of the records and such punitive damages as the court deems appropriate. The court may assess against such defendants reasonable attorney fees and other litigation costs reasonably incurred in such cases in which the court determines that the applicant has prevailed substantially.

18. The Election Code should be revised to standardize the information collected from registrants by the local elections boards. The Election Code should also be revised to standardize the nature of voter registration data appearing on lists purchased from the boards.

The Commission determined that there were some notable variations in the type of personally identifiable information collected from registrants by the local elections boards. In addition to that data collected by every board, the Commission identified items of information found in the voter registration records of some boards and not others: name of spouse, length of residence in the State, social security number, military status, and so forth.

Variations also can be found in the nature of personally identifiable

data appearing on registration lists purchased from the boards. Article 33, Section 3-22 (a) requires that such lists contain names, addresses and party affiliations of all registrants in that particular precinct. Though this statute specifies the type of information that must be disseminated, local boards are free to disclose personally identifiable information in addition to name, address and party affiliation. Sixteen of the twenty-four boards limit disclosure to the above three items of information. Substantial variations, however, occur in the remaining counties. The Baltimore County Board, for instance, discloses sex, age, place of birth, telephone number, term of residence in Maryland, state of birth and date of last election in which the registrant voted.

The Information Practices Commission does not believe that these variations serve any public purpose. Instead, the additional data elements collected and disseminated constitute, in the Commission's view, an unnecessary invasion of privacy. The Commission proposes that the Elections Laws Task Force examine this issue to determine if there are any obstacles to standardization. Barring the discovery of such obstacles, the Commission believes that there should be revision of the Election Code.

APPENDICES



The State of Maryland
Executive Department

EXECUTIVE ORDER

01.01.1980.11

Information Practices Commission

- WHEREAS, The Constitutions of Maryland and of the United States guarantee a fundamental right of privacy under certain circumstances; and
- WHEREAS, There must be a reasonable balance between an individual's right of privacy and the public's right to be informed; and
- WHEREAS, A society founded on democratic values necessarily requires governmental openness and accountability and
- WHEREAS, It is well recognized that in an age of computers there are contrasting dangers of overexposing personal information and underexposing information that should be made public; and
- WHEREAS, State government must seek a proper balance between the individual right of personal privacy, the practices of public organizations in accumulating, maintaining and disseminating information about people, and the need of the public to be informed;
- NOW, THEREFORE, I, HARRY HUGHES, GOVERNOR OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROMULGATE THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY.
1. The Information Practices Commission is hereby created.
 2. The Commission consists of thirteen members appointed by the Governor, one of whom shall be a member of the House of Delegates, one of whom shall be a member of the Senate, one of whom shall represent the Department of Personnel, one of whom shall represent the Comptroller of the Treasury, one of whom shall represent the Department of General Services, one of whom shall represent the Attorney General's Office, and seven public-at-large members. The Governor shall designate a chairperson from among the thirteen members.
 3. The Commission shall conduct a thorough study of policies and procedures regarding the collection, maintenance, use, security, dissemination, and destruction of personal records held by State government and, in connection with that study, shall:
 - (a) Study the policies and procedures of the Uniform Freedom of Information Act and the proposed Uniform Fair Information Practices

(Privacy) Act, and, where appropriate, examine the extent to which they interact and interface. The points for initial study may include:

(1) The draft proposal of the National Conference of Commissioners on Uniform State Laws entitled, "Uniform Privacy Act;"

(2) House Bill 112 of 1980;

(3) The report of the United States "Privacy Protection Study Commission";

(b) Hold hearings in which persons with an interest in information practices may present their views;

(c) Conduct meetings, research programs, investigations and discussions as necessary to gather information relating to information practices.

(d) Submit by October 1, 1980, an interim report together with any preliminary legislative proposals regarding the Public Information Act (Art. 76A, §1 et sec. of the Maryland Annotated Code) or any other provision of State law that would be necessary to implement the recommendations of the report; and

(e) Submit a final report by October 1, 1981, together with any legislative proposals necessary to implement the recommendations of that report.

4. Each State agency shall cooperate fully with the Commission in its efforts to accomplish its mandate under this Order.



GIVEN Under My Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 25th day of July, 1980.

Harry Hughes
Harry Hughes
Governor of Maryland

ATTEST:

Fred L. Wineland
Fred L. Wineland
Secretary of State

PROPOSED EXECUTIVE ORDER ON PRIVACY

WHEREAS, The Constitutions of Maryland and of the United States guarantee a fundamental right of privacy under certain circumstances; and

WHEREAS, The privacy of an individual is directly affected by the collection, maintenance, use and security of personal information by State agencies; and

WHEREAS, The increasing use of computers and sophisticated information technology, while essential to the efficient operations of State agencies, has greatly magnified the potential harm to individual privacy;

NOW, THEREFORE, I, HARRY HUGHES, GOVERNOR OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROMULGATE THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY.

1. The purpose of this Executive Order is to ensure safeguards for personal privacy by State agencies by adherence to the following principles of information practice:
 - (a) There should be no personal information system whose existence is secret.
 - (b) Personal information should not be collected unless the need for it has been clearly established.
 - (c) Personal information should be appropriate and relevant to the purpose for which it has been collected.
 - (d) Personal information should not be obtained by fraudulent and unfair means.
 - (e) Personal information should not be used unless it is accurate and current.

- (f) There should be a prescribed procedure for an individual to learn the purpose for which personal information has been recorded and particulars about its use and dissemination.
- (g) There should be a prescribed procedure for an individual to correct or amend inaccurate personal information.
- (h) Appropriate administrative, technical and physical safeguards should be established to ensure the security of personal information and to protect against any anticipated threats or hazards to their security or integrity.

2. Definitions - As used in this Executive Order, the term:

- (a) "Personal information system" means any record keeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject;
- (b) "Personal information" means 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;
- (c) "Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in a personal information system;
- (d) "State agency" means every agency, board, commission, department, bureau, or other entity of the executive branch of Maryland State government.

3. Collection of personal information by state agencies

- (a) Any State agency maintaining a personal information system shall:
 - (1) Collect information to the greatest extent feasible from the data subject directly; and
 - (2) Except as otherwise provided by law, inform any individual requested to disclose personal information of: the principal purposes for which the information is intended to be used, the penalties and specific consequences for the individual which are likely to result from nondisclosure, the individual's right to inspect such information, the public or nonpublic status of the information to be submitted, and the routine sharing of such information with State, federal or local government agencies.

4. Access and Correction Rights of the Data Subject

- (a) Except as otherwise provided by law, any State agency maintaining a personal information system shall permit a data subject to examine and copy any personal information that pertains to him.
- (b) Except as otherwise provided by law, a data subject may request any State agency to correct or amend inaccurate or incomplete personal information pertaining to him. In complying with this requirement, a State agency shall adhere to the following procedures:
 - 1) Within thirty (30) days after receiving a request from an individual in writing to correct or amend personal information pertaining to him, an agency shall:
 - (a) Make the requested correction or amendment and inform the individual of the action; or
 - (b) Inform the individual in writing of its refusal to correct or amend the record as requested, the reason for the refusal, and the agency procedures for review of the refusal.
 - 2) Within thirty (30) days after an individual requests review of an agency's refusal to correct or amend his record, the agency shall make a final determination.
 - 3) If, after the review provided for by subsection (2), the agency refuses to correct or amend the record in accordance with the request, the agency shall permit the individual to file with the personal information system a concise statement of his reasons for the requested correction or amendment and his reasons for disagreement with the agency's refusal. The statement may not exceed two sheets of paper.
 - 4) Whenever an agency discloses to a third party personal information about which an individual has filed a statement pursuant to subsection (3), the agency shall furnish a copy of the individual's statement.

5. Security of Personal Information

- (a) A State agency maintaining a personal information system shall enact and implement appropriate safeguards to ensure the integrity, security, and confidentiality of all personal information.
- (b) Each State agency shall assign a data professional the responsibility to monitor the level of security assigned to computerized personal information systems.

(c) An Interagency Data Security Committee is hereby created. This Committee shall consist of nine data professionals within State service with the following agencies having a permanent representative on the Committee: Comptroller of the Treasury, Department of Transportation, Department of Public Safety and Correctional Services, the University of Maryland, the State Colleges, and the chief of the Division of Management Information Systems, Department of Budget and Fiscal Planning, who shall be the chairman. The other members of the Committee shall be chosen by the Governor upon the recommendation of the chairman. If any agency security officer is assigned to this Committee, he shall not participate in any evaluation of his agency. The Committee shall conduct on-going risk analyses throughout State agencies. The purpose of the analyses shall be to determine the appropriate security measures to be assigned to each computerized personal information system, and to formulate, review and audit the appropriate levels of security.

Typed by pc/Somerville
 Proofread by J. MB
 Corrected by
 Checked by EP JS JS-AM

By: Delegate Kopp	26
A BILL ENTITLED	29
AN ACT concerning	33
Public Information Practices	36
FOR the purpose of revising certain provision of law	40
relating to public access to records maintained by the	41
State and by political subdivisions of the State;	
defining certain terms; altering and establishing	42
certain penalties; and generally relating to the	43
information practices of the State and its political	
subdivisions.	
BY repealing and reenacting, without amendments,	45
Article 76A - Public Information	48
Section 1 and 1A	50
Annotated Code of Maryland	52
(1980 Replacement Volume and 1981 Supplement)	53
BY repealing and reenacting, with amendments,	56
Article 76A - Public Information	59
Section 2, 3, 4, and 5	61
Annotated Code of Maryland	63
(1980 Replacement Volume and 1981 Supplement)	64
BY adding to	67
Article 76A - Public Information	70
Section 5A and 5B	72
Annotated Code of Maryland	74
(1980 Replacement Volume and 1981 Supplement)	75
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF	79
MARYLAND, That section(s) of the Annotated Code of Maryland	80
read(s) as follows:	

 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
 [Brackets] indicate matter stricken from existing law.
 Numerals at right identify computer lines of text.

Article 76A - Public Information	83
1.	86
(a) In this article the following words have the meanings indicated.	89
(b) "Public records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map, drawing, or other written document, regardless of physical form or characteristics, and including all copies thereof, that have been made by any branch of the State government, including the legislative, judicial, and executive branches, by any branch of a political subdivision, and by any agency or instrumentality of the State or a political subdivision, or received by them in connection with the transaction of public business. The term "public records" also includes the salaries of all employees of the State, of a political subdivision, and any agency or instrumentality thereof, both in the classified and nonclassified service.	92 93 94 95 96 97 98 99 100 102 103
(c) "Applicant" means and includes any person requesting disclosure of public records.	106 107
(d) "Written documents" means and includes all books, papers, maps, photographs, cards, tapes, recordings, computerized records, or other documentary materials, regardless of physical form or characteristics.	110 111 112
(e) "Political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district, and special district within the State.	115 116 117
(f) "Official custodian" means and includes each and every officer or employee of the State or any agency, institution, or political subdivision thereof, who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.	120 121 122 123 124
(g) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.	127 128
(h) "Person" means and includes any natural person, corporation, partnership, firm, association, or governmental agency.	131 132

(i) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.	136 137 138 139
1A.	142
The State, counties, municipalities, and political subdivisions, or any agencies thereof, may maintain only such information about a person as is relevant and necessary to accomplish a purpose of the governmental entity or agency which is authorized or required to be accomplished by statute, executive order of the Governor or the chief executive of a local jurisdiction, judicial rule, or other legislative mandate. Moreover, all persons are entitled to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To this end, the provisions of this act shall be construed in every instance with the view toward public access, unless an unwarranted invasion of the privacy of a person in interest would result therefrom, and the minimization of costs and time delays to persons requesting information.	145 146 147 148 149 150 151 152 153 154 155 156
2.	159
(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law. The official custodian of any public record shall make and publish such rules and regulations with reference to the timely inspection and production of such record as shall be reasonably necessary for the protection of such record and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.	162 163 164 165 167 168 169
(b) If the public records requested are not in the custody or control of the person to whom written application is made, such person shall, within ten working days of the receipt of the request, notify the applicant of this fact and if known, the custodian of the record and the location or possible location thereof.	172 173 175 176 177
(c) If the public records requested are in the custody and control of the person to whom written application is made but are not immediately available, the custodian shall, within ten working days of the receipt of the request, notify the applicant of this fact and shall set forth a date and hour [within a reasonable time] WITHIN 30 DAYS OF THE RECEIPT OF THE REQUEST at which time the record will be	180 181 182 183 184 185 186

available for the exercise of the right given by this article.	186
(d) In Charles County, except for records kept by officials, agencies, or departments of the State of Maryland, public information shall be regulated by § 6 of this article.	189 190 191
3.	194
(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section:	197 198 199 200
(i) Such inspection would be contrary to any State statute;	203
(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law;	206 207
(iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record; or	210 211
(iv) Such public records are privileged or confidential by law.	214
(b) The custodian may deny the right of inspection of the following records or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest:	217 218 219 220
(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, State's attorney, the Attorney General, police department, or any investigatory files compiled for any other law-enforcement, judicial, correctional, or prosecution purposes, but the right of a person in interest to inspect the records may be denied only to the extent that the production of them would	223 224 225 226 227 228
(A) interfere with valid and proper law-enforcement proceedings, (B) deprive another person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, (F) prejudice any investigation, or (G) endanger the life or physical safety of any person;	229 230 231 232 233 234 235

(ii) Test questions, scoring keys, and other examination data pertaining to administration of licenses or employment or academic examinations; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;	238 239 240 241 242 243
(iii) The specific details of bona fide research projects being conducted by an institution of the State or a political subdivision, except that the name, title, expenditures, and the time when the final project summary shall be available;	246 247 248 249
(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.	252 253 254 255 256 257 258
(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.	261 262 263
(c) The custodian shall deny the right of inspection of the following records or any portion thereof, unless otherwise provided by law:	266 267 268
(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports; EXCEPT THAT THE PERSON IN INTEREST SHALL BE PERMITTED TO EXAMINE MEDICAL AND PSYCHOLOGICAL DATA TO THE SAME EXTENT THAT ACCESS IS GRANTED BY HOSPITALS AND RELATED INSTITUTIONS IN ACCORDANCE WITH ARTICLE 43, § 54M OF THE CODE. AFTER JULY 1, 1983, A CUSTODIAN MAY DENY THE RIGHT OF INSPECTION TO RECORDS ON THE BASIS OF SOCIOLOGICAL DATA ONLY UNDER RULES THAT DEFINE FOR THE RECORDS IN HIS POSSESSION, THE MEANING AND SCOPE OF SOCIOLOGICAL DATA;	271 272 273 274 275 276 277 278
(ii) Adoption records or welfare records on individual persons;	281
(iii) Personnel files except that such files shall be available to the person in interest, and the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;	284 285 286 287 288 289

(iv) Letters of reference;	292
(v) Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;	295 296 297
(vi) Library, archives, and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution;	300 301 302
(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;	305 306 307 308
(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement, and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;	311 312 313 314 315
(ix) Circulation records maintained by public libraries showing personal transactions by those borrowing from them; [and]	318 319
(x) The home address or telephone number of any employee of the State or any agency, instrumentality, or political subdivision of this State, whether in the classified or nonclassified service, except with the permission of the employee, unless the governmental entity which employs the person has determined that disclosure of the address or number is necessary to protect the public interest[.];	322 323 324 325 326 327
(XI) 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;	329 330 331 332
(XII) 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, NONPENDING COMPLAINTS, DISCIPLINARY ACTIONS INVOLVING FINDINGS OF GUILT OR CULPABILITY, AND EVIDENCE PROVIDED TO THE CUSTODIAN IN ORDER TO SATISFY A STATUTORY REQUIREMENT OF FINANCIAL RESPONSIBILITY. IF THE CUSTODIAN	334 335 336 337 338 339 340

CANNOT PROVIDE BUSINESS ADDRESSES, THEN HE SHALL PERMIT 341
 INSPECTION OF HOME ADDRESSES. THE CUSTODIAN MAY PERMIT THE 342
 RIGHT OF INSPECTION TO OTHER DATA ON INDIVIDUAL PERSONS, BUT 343
 ONLY IF INSPECTION IS REQUIRED FOR A COMPELLING PUBLIC 344
 PURPOSE AND IS PROVIDED BY RULE OR REGULATION. ON WRITTEN 345
 REQUEST FROM AN INDIVIDUAL LICENSEE, THE CUSTODIAN SHALL 346
 DELETE THAT PERSON'S NAME FROM LICENSEE LISTS PURCHASED FROM
 THE CUSTODIAN;

(XIII) RETIREMENT FILES OR RECORDS ON INDIVIDUAL 348
 PERSONS, EXCEPT THAT SUCH FILES OR RECORDS SHALL BE 349
 AVAILABLE TO THE PERSON IN INTEREST AND TO HIS APPOINTING 350
 AUTHORITY. AFTER THE DEATH OF THE PERSON IN INTEREST, SUCH 351
 FILES OR RECORDS SHALL BE AVAILABLE TO ANY BENEFICIARY, THE 352
 PERSONAL REPRESENTATIVE OF THE ESTATE OF THE PERSON IN 353
 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. ON 354
 REQUEST, THE CUSTODIAN SHALL INDICATE WHETHER A PERSON IS 355
 RECEIVING ANY RETIREMENT OR PENSION ALLOWANCE; AND

(XIV) SECURITY MANUALS OR ANY PUBLIC RECORD 357
 DIRECTLY RELATED TO THE MAINTENANCE OF SECURITY. 358

(d) (1) WITHIN A PERIOD OF 30 DAYS AFTER RECEIVING A 360
 WRITTEN REQUEST FOR ACCESS TO ANY PUBLIC RECORD, THE 361
 CUSTODIAN SHALL EITHER PROVIDE THE INFORMATION REQUESTED OR 362
 DENY THE REQUEST.

(2) Whenever the custodian denies a written 365
 request for access to any public record or any portion 366
 thereof under this section, the custodian shall provide the 367
 applicant with a written statement of the grounds for the 368
 denial, which statement shall cite the law or regulation 369
 under which access is denied and all remedies for review of
 this denial available under this article. The statement 370
 shall be furnished to the applicant within ten working days 371
 of denial. In addition, any reasonably severable portion of 372
 a record shall be provided to any person requesting such 373
 record after deletion of those portions which may be
 withheld from disclosure. 374

(e) If, in the opinion of the official custodian of 377
 any public record which is otherwise required to be 378
 disclosed under this article, disclosure of the contents of 379
 said record would do substantial injury to the public 380
 interest, the official custodian may temporarily deny 381
 disclosure pending a court determination of whether
 disclosure would do substantial injury to the public 382
 interest provided that, within ten working days of the 383
 denial the official custodian applies to the circuit court 384
 of the county where the record is located or where he

maintains his principal office for an order permitting him 385
to continue to deny or restrict such disclosure. The 386
failure of the official custodian to apply for a court 387
determination following a temporary denial of inspection 388
will result in his becoming subject to the sanctions
provided in this article for failure to disclose authorized 389
public records required to be disclosed. After hearing, the 390
court may issue such an order upon a finding that disclosure 391
would cause substantial injury to the public interest. The 392
person seeking permission to examine the record shall have 393
notice of the application sent to the circuit court served 394
upon him in the manner provided for service of process by
the Maryland Rules of Procedure and shall have the right to 395
appear and be heard. 396

4. 399

(a) In all cases in which a person has the right to 402
inspect any public records such person shall have the right 403
to be furnished copies, printouts, or photographs for a 404
reasonable fee to be set by the official custodian. Where 405
fees for certified copies or other copies, printouts, or
photographs of such record are specifically prescribed by 406
law, such specific fees shall apply.

(b) If the custodian does not have the facilities for 409
making copies, printouts, or photographs of records which 410
the applicant has the right to inspect, then the applicant 411
shall be granted access to the records for the purpose of 412
making copies, printouts, or photographs. The copies,
printouts, or photographs shall be made while the records 413
are in the possession, custody, and control of the custodian 414
thereof and shall be subject to the supervision of such 415
custodian. When practical, they shall be made in the place
where the records are kept, but if it is impractical to do 416
so, the custodian may allow arrangements to be made for this 417
purpose. If other facilities are necessary the cost of 419
providing them shall be paid by the person desiring a copy,
printout, or photograph of the records. The official 420
custodian may establish a reasonable schedule of times for 421
making copies, printouts, or photographs and may charge a 422
reasonable fee for the services rendered by him or his
deputy in supervising the copying, printingout, or 423
photographing as he may charge for furnishing copies under 424
this section.

(C) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS 426
SECTION, THE OFFICIAL CUSTODIAN MAY CHARGE REASONABLE FEES 427
FOR THE SEARCH AND PREPARATION OF RECORDS FOR INSPECTION AND 428
COPYING.

(D) THE OFFICIAL CUSTODIAN MAY NOT CHARGE ANY SEARCH 430
OR PREPARATION FEE FOR THE FIRST 4 HOURS OF OFFICIAL OR 431
EMPLOYEE TIME THAT IS NEEDED TO RESPOND TO A REQUEST FOR 432
INFORMATION.

(E) THE OFFICIAL CUSTODIAN MAY WAIVE ANY COST OR FEE 434
CHARGED UNDER THIS SUBTITLE IF A WAIVER IS REQUESTED AND THE 435
OFFICIAL CUSTODIAN DETERMINES THAT A WAIVER WOULD BE IN THE 436
PUBLIC INTEREST. THE OFFICIAL CUSTODIAN SHALL CONSIDER, 437
AMONG OTHER RELEVANT FACTORS, THE ABILITY OF THE REQUESTER 438
TO PAY THE COST OR FEE. 439

5. 441

(a) Except in cases of temporary denials under Section 444
3(e) of this subtitle any applicant denied the right to 445
inspect public records where the official custodian of the 446
records is an agency subject to the provisions of Subtitle 447
24 of Article 41 of this Code may ask for an administrative 448
review of this decision in accordance with Section 251 449
through 254 of Article 41 of this Code, however, this remedy
need not be exhausted prior to filing suit in the circuit 450
court pursuant to this article. 451

(b) (1) On complaint of any person denied the right to 454
inspect any record covered by this article, the circuit 455
court in the jurisdiction in which the complainant resides, 456
or has his principal place of business, or in which the 457
records are situated, has jurisdiction to enjoin the State, 458
any county, municipality, or political subdivision, any 459
agency, official or employee thereof, from withholding 460
records and to order the production of any records 461
improperly withheld from the complainant. In such a case,
the court may examine the contents of the records in camera 462
to determine whether the records or any part thereof may be 463
withheld under any of the exemptions set forth in Section 3, 464
and the burden is on the defendant to sustain its action. 465
In carrying this burden the defendant may submit to the 466
court for review a memorandum justifying the withholding of
the records.

(2) Notwithstanding any other provision of law, 469
the defendant shall serve an answer or otherwise plead to 470
any complaint made under this subsection within 30 days 471
after service upon the defendant of the pleading in which 472
the complaint is made, unless the court otherwise directs 473
for good cause shown.

(3) Except as to cases the court considers of 476
greater importance, proceedings before the court, as 477
authorized by this section, and appeals therefrom shall take 478
precedence on the docket over all other cases and shall be 479

heard at the earliest practicable date and expedited in every way.	479 480
(4) In addition to any other relief which may be granted to a complainant, in any suit brought under the provisions of this section in which the court determines that the defendant has knowingly and wilfully failed to disclose or fully disclose records and information to any person who, under this article, is entitled to receive it, and the defendant knew or should have known that the person was entitled to receive it, any defendant governmental entity or entities shall be liable to the complainant in an amount equal to the sum of the actual damages sustained by the individual as a result of the refusal or failure and such punitive damages as the court deems appropriate.	483 484 485 486 487 488 489 490 491 492
(5) In the event of noncompliance with an order of the court, the court may punish the responsible employee for contempt.	495 496
(6) The court may assess against any defendant governmental entity or entities reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the court determines that the applicant has substantially prevailed.	499 500 501 502
(c) Whenever the court orders the production of any records improperly withheld from the applicant, and in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall forward a certified copy of its finding to the appointing authority of the custodian. Upon receipt thereof, the appointing authority shall, after appropriate investigation, take such disciplinary action as is warranted under the circumstances.	505 506 507 508 509 510 511
(d) Any person who wilfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed [\$100] \$1,000.	514 515 516
(e) Criminal or civil penalties may not be imposed upon a custodian who transfers or discloses the content of any public record to the Attorney General as provided in the "employee disclosure and confidentiality protection" subtitle of Article 64A.	519 520 521 522
5A.	525
(A) IN THIS SUBTITLE, "PERSONAL RECORDS" MEANS AND INCLUDES ANY PUBLIC RECORD THAT CONTAINS INFORMATION PERTAINING TO AN INDIVIDUAL WHOSE IDENTITY CAN BE	527 528 529

ASCERTAINED THEREFROM WITH REASONABLE CERTAINTY EITHER BY NAME, ADDRESS, NUMBER, DESCRIPTION, FINGER OR VOICE PRINT, PICTURE, OR ANY OTHER IDENTIFYING FACTOR OR FACTORS.	529 530 531
(B) EACH STATE AGENCY SUBJECT TO THE STATE DOCUMENTS LAW SHALL SUBMIT A REPORT TO THE SECRETARY OF THE DEPARTMENT OF GENERAL SERVICES DESCRIBING THE PERSONAL RECORDS THAT THE AGENCY MAINTAINS. THE REPORT SHALL INCLUDE:	533 534 535
(1) 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;	537 538
(2) 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;	540 541 542
(3) THE MAJOR USES AND PURPOSES OF THE INFORMATION CONTAINED IN EACH SET OF PERSONAL RECORDS;	544 545
(4) AGENCY POLICIES AND PROCEDURES REGARDING STORAGE, RETRIEVABILITY, RETENTION, DISPOSAL, AND SECURITY, INCLUDING ACCESS CONTROLS, OF EACH SET OF PERSONAL RECORDS;	547 548 549
(5) AGENCY POLICIES AND PROCEDURES REGARDING ACCESS AND CHALLENGES TO PERSONAL RECORDS BY THE PERSON IN INTEREST; AND	551 552
(6) THE CATEGORIES OF SOURCES OF INFORMATION FOR EACH SET OF PERSONAL RECORDS.	554
(C) EACH STATE AGENCY THAT MAINTAINS PERSONAL RECORDS SHALL SUBMIT THE REPORT DESCRIBED IN SUBSECTION (B) 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.	556 557 558 559 560
(D) ANY STATE AGENCY THAT MAINTAINS 2 OR MORE SETS OF PERSONAL RECORDS MAY COMBINE SUCH RECORDS FOR REPORTING PURPOSES, BUT ONLY IF THE CHARACTER OF THE RECORDS ARE HIGHLY SIMILAR.	562 563 564
(E) THE SECRETARY OF GENERAL SERVICES SHALL ISSUE REGULATIONS PRESCRIBING THE FORM AND METHOD OF FILING REPORTS OF PERSONAL RECORDS.	566 567
(F) ALL REPORTS OF PERSONAL RECORDS SHALL BE AVAILABLE FOR PUBLIC INSPECTION.	569

(G) WHEN ACCESS TO NONDISCLOSABLE PERSONAL RECORDS IS DESIRED FOR RESEARCH PURPOSES, THE OFFICIAL CUSTODIAN SHALL GRANT ACCESS IF: 571
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(1) THE RESEARCHER STATES IN WRITING TO THE OFFICIAL CUSTODIAN THE PURPOSE OF THE RESEARCH, INCLUDING ANY INTENT TO PUBLISH FINDINGS, THE NATURE OF THE PERSONAL RECORDS SOUGHT, AND THE SAFEGUARDS TO BE TAKEN TO PROTECT THE IDENTITIES OF THE SUBJECTS OF THE PERSONAL RECORDS; 574
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(2) THE RESEARCHER STATES THAT THE SUBJECTS OF THE PERSONAL RECORDS WILL NOT BE CONTACTED WITHOUT THE APPROVAL AND MONITORING OF THE OFFICIAL CUSTODIAN; 579
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(3) THE PROPOSED SAFEGUARDS ARE ADEQUATE, IN THE OPINION OF THE OFFICIAL CUSTODIAN, TO PREVENT THE IDENTITIES OF THE SUBJECTS OF THE PERSONAL RECORDS FROM BEING KNOWN; AND 582
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(4) THE RESEARCHER EXECUTES AN AGREEMENT WITH THE OFFICIAL CUSTODIAN WHICH INCORPORATES SUCH SAFEGUARDS FOR PROTECTION OF THE SUBJECTS OF THE PERSONAL RECORDS, DEFINES THE SCOPE OF THE RESEARCH PROJECT AND INFORMS THE RESEARCHER THAT FAILURE TO ABIDE BY CONDITIONS OF THE APPROVED AGREEMENT CONSTITUTES A BREACH OF CONTRACT. 586
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5B. 592

(A) EXCEPT AS OTHERWISE PROVIDED BY LAW, 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, IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, SHALL BE PUNISHED BY A FINE NOT TO EXCEED \$1,000. 594
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(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, ON CONVICTION, SHALL BE PUNISHED BY A FINE NOT TO EXCEED \$1,000. 600
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(C) AN OFFICER OR EMPLOYEE OF AN AGENCY, A RESEARCHER, OR ANY OTHER PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE THROUGH THE UNLAWFUL DISCLOSURE, ACCESS, OR USE OF PERSONAL RECORDS IS LIABLE TO THE SUBJECTS OF THE PERSONAL RECORDS FOR ANY ACTUAL DAMAGES SUSTAINED BY THE SUBJECTS BY THE UNLAWFUL DISCLOSURE, ACCESS, OR USE OF THE PERSONAL RECORDS AND SUCH PUNITIVE DAMAGES AS THE COURT DEEMS APPROPRIATE. THE COURT MAY ASSESS AGAINST ANY DEFENDANT REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS 605
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REASONABLY INCURRED IN ANY CASE UNDER THIS SECTION IN WHICH 612
THE COURT DETERMINES THAT THE APPLICANT HAS PREVAILED 613
SUBSTANTIALLY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act 617
shall take effect July 1, 1982.

Typed by Somerville/mk
 Proofread by _____
 Corrected by _____
 Checked by _____

By: Delegate Kopp	26
A BILL ENTITLED	29
AN ACT concerning	33
Health Occupations - Information Practices	36
FOR the purpose of providing that the State Board of	40
Examiners of Nurses shall delete the name of a licensee	41
from certain lists under certain circumstances; and	42
repealing certain provisions relating to the	43
confidentiality of records maintained by the Board of	43
Examiners of Nurses.	
BY repealing and reenacting, with amendments,	45
Article - Health Occupations	48
Section 7-205	50
Annotated Code of Maryland	52
(1981 Volume and 1981 Supplement)	53
BY repealing	56
Article - Health Occupations	59
Section 7-503	61
Annotated Code of Maryland	63
(1981 Volume and 1981 Supplement)	64
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF	68
MARYLAND, That section(s) of the Annotated Code of Maryland	69
read(s) as follows:	
Article - Health Occupations	72
7-205.	76
(a) In addition to the powers and duties set forth	79
elsewhere in this title, the Board has the following powers	80
and duties:	

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.	
[Brackets] indicate matter stricken from existing law.	
Numerals at right identify computer lines of text.	

(1) To adopt rules and regulations to carry out the provisions of this title;	83
(2) To set standards for the practice of registered nursing and licensed practical nursing;	86 87
(3) To adopt rules and regulations for the performance of delegated medical functions which are recognized jointly by the State Board of Medical Examiners and the State Board of Examiners of Nurses, under § 14-304(d) of this article;	90 91 92
(4) To adopt rules and regulations for the performance of additional nursing acts that:	95 96
(i) May be performed under any condition authorized by the Board, including emergencies; and	99 100
(ii) Require education and clinical experience;	103
(5) To adopt rules and regulations for registered nurses to perform independent nursing functions that:	106 107
(i) Require formal education and clinical experience; and	110
(ii) May be performed under any condition authorized by the Board, including emergencies;	113 114
(6) To adopt rules and regulations for licensed practical nurses to perform additional acts in the practice of registered nursing that:	117 118
(i) Require formal education and clinical experience;	121
(ii) May be performed under any condition authorized by the Board, including emergencies; and	124 125
(iii) Are recognized by the nursing Board as proper for licensed practical nurses to perform;	128 129
(7) To keep a record of its proceedings;	132
(8) To submit an annual report to the Governor and Secretary;	135

(9) To enforce the employment record requirements of this title;	138
(10) To keep separate lists, which lists are open to reasonable public inspection, of all:	141
(i) Registered nurses licensed under this title;	142
(ii) Licensed practical nurses licensed under this title;	145
(iii) Nurse midwives certified under this title;	148
(iv) Nurse practitioners certified under this title; and	151
(v) Other licensees with a nursing specialty that is certified under this title;	154
(11) To collect any funds of the Board;	157
(12) To report any alleged violation of this title to the State's attorney of the county where the alleged violation occurred; and	160
(13) In accordance with the State budget, to incur any necessary expense for prosecution of an alleged violation of this title.	163
	164
(B) WITH REGARD TO ANY LIST KEPT BY THE BOARD UNDER PARAGRAPH (A)(10) OF THIS SECTION, UPON WRITTEN REQUEST FROM AN INDIVIDUAL LICENSEE THE BOARD SHALL DELETE THAT INDIVIDUAL'S NAME FROM ANY LICENSEE LIST PURCHASED FROM THE BOARD.	167
	168
[7-503.	170
(a) (1) In this section, "confidential record" means any record of the Board that concerns and identifies a licensee, former licensee, or license applicant.	171
	172
(2) "Confidential record" does not include a record:	175
(i) Of the successful completion of an examination;	178
	179
	182
	185

(ii) Of a license issuance or renewal;	188
(iii) That indicates that an individual is not licensed or was not licensed at a particular time; or	191 192
(iv) Of a final decision of the Board under §§ 7-312 or 7-605 of this title.	195
(b) A confidential record is exempt from:	198
(1) Process; and	201
(2) Disclosure under the "Public Information Act", Article 76A, § 1 et seq. of the Code.	204 205
(c) A confidential record is available to:	208
(1) The members of the Board or its authorized employees;	211
(2) The individual to whom the record relates or an authorized agent of that individual;	214 215
(3) The parties to a proceeding held under §§ 7-312 or 7-605 of this title for the purpose of inspecting and copying it; and	218 219
(4) A court for judicial review of a decision of the Board in a proceeding under §§ 7-312 or 7-605 of this title.	222 223
(d) By written statement, an individual may waive the confidentiality provided for that individual under this section as to any designated record that relates to the individual.]	226 227 228
SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1982.	232

Typed by 111/somerville
Proofread by _____
Corrected by _____
Checked by _____

By: Delegate Kopp 26

A BILL ENTITLED 29

AN ACT concerning 33

Transportation - Information Practices 36

FOR the purpose of specifying certain requirements with 40
regard to Motor Vehicle Administration records that are 41
requested by certain governmental agencies under
certain circumstances.

BY repealing and reenacting, with amendments, 43

Article - Transportation 46
Section 12-111 48
Annotated Code of Maryland 50
(1977 Volume and 1981 Supplement) 51

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 54
MARYLAND, That section(s) of the Annotated Code of Maryland 55
read(s) as follows:

Article - Transportation 58

12-111. 62

(a) The Administration shall keep a record of each 66
application or other document filed with it and each 67
certificate or other official document that it issues.

(b) (1) Except as otherwise provided by law, all 71
records of the Administration are public records and open to 72
public inspection during office hours.

(2) In his discretion, the Administrator may 75
classify as confidential and not open to public inspection 76
any record or record entry:

(i) That is over 5 years old; or 79

(ii) That relates to any happening that 82
occurred over 5 years earlier.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Numerals at right identify computer lines of text.

(3) (I) Any record or record entry of any age shall be open to inspection by authorized representatives of any federal, State, or local governmental agency. 85
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(II) HOWEVER, A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY REQUESTING A RECORD FOR EMPLOYMENT PURPOSES SHALL BE PROVIDED ONLY INFORMATION THAT IS AVAILABLE FOR INSPECTION BY A NONGOVERNMENTAL REQUESTER. 90
91
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(c) Except for records required by law to be kept in their original or other specified form, the Administrator may order any record of the Administration to be kept on microfilm or in other microform, and the original destroyed. 96
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(d) Except for records required by law to be kept longer, the Administrator may destroy any record of the Administration that it has kept for 3 years or more and that the Administrator considers obsolete and unnecessary to the work of the Administration. 102
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104
105

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1982. 109

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Proofread by _____
Corrected by _____
Checked by _____

By: Delegate Kopp 26

A BILL ENTITLED 29

AN ACT concerning 33

Transportation - Expungement of Driving Records 36

FOR the purpose of altering certain provisions of law 40
relating to the duty of the Motor Vehicle 41
Administration to expunge public driving records.

BY repealing and reenacting, with amendments, 43

Article - Transportation 46
Section 16-117.1 48
Annotated Code of Maryland 50
(1977 Volume and 1981 Supplement) 51

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 54
MARYLAND, That section(s) of the Annotated Code of Maryland 55
read(s) as follows:

Article - Transportation 58

16-117.1. 61

(a) (1) In this section the following words have the 64
meanings indicated. 65

(2) "Criminal offense" does not include any 68
violation of the Maryland Vehicle Law. 69

(3) "Moving violation" means a moving violation 72
of the Maryland Vehicle Law other than a violation of any of 73
its size, weight, load, equipment, or inspection provisions. 74

(b) Except as provided in subsection (c) of this 78
section, [if a licensee applies for the expungement of his 79
public driving record,] the Administration shall expunge
[the] A LICENSEE'S PUBLIC DRIVING record if[, at the time of 81
application]:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Numerals at right identify computer lines of text.

(1) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 3 years, and his license never has been suspended or revoked;	84 85 86
(2) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 5 years, and his record shows not more than one suspension and no revocations; or	89 90 91
(3) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 10 years, regardless of the number of suspensions or revocations.	94 95 96
(c) The Administration may refuse to expunge a driving record if it determines that the individual [requesting the expungement] has not driven a motor vehicle on the highways during the particular conviction-free period on which he bases his request.	98 99 100 101
SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1982.	105