STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

May 6, 1982

MEMORANDUM TO: Dennis M. Sweeney, Esq.
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FROM: Dennis M. Hanratty
Executive Director
Governor's Information Practices Commission

SUBJECT: Draft Executive Order on Privacy

Thank you very much for your comments regarding the Draft Executive Order on Privacy. In response to comments, substantive revisions have been made to the draft. I would appreciate it if you would review the enclosed revised draft and direct any additional comments to me by May 14, 1982.

cc: Benjamin M. Bialek, Esq.
Arthur S. Drea, Jr., Esq.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

DRAFT

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. Purpose - 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, to the greatest extent practicable.

Underlining indicates amendments to the draft Executive Order.

~~Strike-Out~~ indicates matter stricken from the draft Executive Order.

(f) There should be a prescribed procedure for ~~an individual~~ a data subject to learn the purpose for which personal information has been recorded and particulars about its use.

(g) There should be a prescribed procedure for ~~an individual~~ a data subject to correct or amend 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 its 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,~~

(a) ~~(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;

(b) "System" means a collection or group of records;

(c) "Data subject" means an individual about whom personal information is indexed or may be reasonably located under his name, personal number, or other identifying 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) Except as otherwise provided by law, any State agency maintaining a personal information system shall:

(1) Collect information to the greatest extent ~~feasible~~ practicable from the data subject directly; and

(2) ~~Except as otherwise provided by law, either on all new or revised forms or written correspondence requesting personal information,~~ inform any ~~individual~~ data subject 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~~ data subject which are likely to result from nondisclosure, the ~~individual's~~ data subject'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. ~~All existing forms used by State agencies shall be reviewed for conformance with this paragraph and, if nonconforming, revised or amended at the earliest practicable time.~~ This requirement shall apply only to personal information collected by an agency by means of standardized forms. Notification to the data subject may appear directly on the form or by separate statement.

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~~ a data subject in writing to correct or amend personal information pertaining to him, an agency shall:

(i) Make the requested correction or amendment and inform the ~~individual~~ data subject of the action; or

(ii) Inform the ~~individual~~ data subject 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~~ a data subject 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~~ data subject to file with the agency maintaining 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~~ a data subject has filed a statement pursuant to subsection (3), the agency shall furnish a copy of the ~~individual's~~ data subject's statement to the third party.

~~(c) Subsection (b) does not apply to charging documents, arrest logs, investigatory or intelligence records compiled by State agencies for law enforcement or litigation purposes. The ability of the data subject to inspect and challenge criminal record history shall only be as provided in Article 27, Section 742 et seq. of the Code, as amended, and rules and regulations as promulgated to implement the Criminal Justice Information System.~~

(d) Paragraphs (b) (3) and (4) do not apply to:

~~(1)~~ Records held by State agencies reflecting judicial decisions or docket entries and administrative determinations where the data subject has been afforded a hearing by the State agency and a ~~transcript~~ a record of the hearing is available. Whenever a State agency discloses to a third party personal information contested in such an administrative hearing, it shall advise the third party that a ~~transcript~~ record of the hearing may be obtained in accordance with the Public Information Act.

~~(2) Grades or other scholastic evaluations.~~

5. Security of Personal Information

(a) A State agency maintaining a personal information system shall enact and implement appropriate safeguards to ensure the integrity and 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.~~ of systems containing computerized personal information.

(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~~ whose representative 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 as a member of the Committee in any evaluation of his agency by the Committee. 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.

6. Limitations

(a) For the purposes of this Executive Order, the following data shall be exempt from the provisions of Section 1 through 4:

(1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control or reduce crime or to apprehend criminals.

(2) Investigative materials kept for the purpose of investigating a specific violation of State law and maintained by a State agency whose principal function may be other than the enforcement of criminal law.

(3) Any information which is required by statute to be withheld from the individual to whom it pertains.

(4) Student and other educational records described in COMAR 13 A. 08.02.05 N.

(5) Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not, in any reasonable way:

(i) reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications; or

(ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications.

(b) This Executive Order is not intended to supercede or repeal by implication or otherwise any authority or discretion vested in any State official or employee by any statute, rule or regulation.

EXPLANATION OF CHANGES TO PROPOSED EXECUTIVE ORDER

1. Purpose.

   This word is inserted to clarify the fact that Section 1 is a purpose clause.

2. "1 (e) Personal information should **not** be ~~used unless it is~~ accurate and current, to the greatest extent practicable."

   The original language had been criticized because it was felt that agencies should be permitted to use data that is not entirely accurate and current, as long as it is adequate for its intended use.

3. "1 (f) There should be a prescribed procedure for **an** ~~individual~~ a data subject to learn the purpose for which personal information has been recorded and particulars about its use."

   Throughout the revised Executive Order, the word "individual" has been changed to "data subject." This is necessary because the Executive Order grants rights to data subjects and not to individuals.

4. "2 (b) 'System' means a collection or group of records;"

   The previous definition of "personal information system" did not indicate clearly that a system involves a collection of records.

5. "2 (c) "Data subject" means an individual about whom personal information is indexed or may be reasonably located under his name, personal number, or other identifying particulars in a personal information system;"

It was not the intent of the Information Practices Commission to extend the Executive Order to all documents which might contain isolated references to individuals on specific pages. By inserting the word "reasonably" into the definition of data subject, we would make it clear that the Executive Order does not extend to any record for which there exists a theoretical possibility of retrieval.

6. "3 (a) Except as otherwise provided by law, any State agency maintaining a personal information system shall:"

The expression "except as otherwise provided by law" is moved to this subsection from 3 (a) (2) to prevent awkward phraseology in 3 (a) (2).

7. "3 (a) (1) "Collect information to the greatest extent ~~feasible~~ practicable from the data subject directly; and"

The feasibility standard found in 3 (a) (1) had been criticized by one department which felt that the standard would significantly hamper the ability of some agencies to carry out their functions. It was felt that 3 (a) (1) would require agencies to obtain information from data subjects, even if it was unreasonable to do so, as long as it was theoretically possible.

8. "3 (a) (2) ~~Except as otherwise provided by law, either on all new or revised forms or written correspondence requesting personal information~~, inform any ~~individual~~ data subject 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~~ data subject which are likely to result from nondisclosure, the ~~individual's~~ data subject'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. ~~All existing forms used by State agencies shall be reviewed for nonconformance with this paragraph and, if nonconforming, revised or amended at the earliest practicable time~~. This requirement shall apply only to personal information collected by an agency by means of standardized forms. Notification to the data subject may appear directly on the form or by separate statement."

As noted earlier, the "except as otherwise provided by law" provision was moved to 3(a).

This subsection was further changed in response to a suggestion that the scope of the subsection be limited to data collected by agencies through the use of standardized forms and not impact on other written correspondence. Enactment of this limitation would not have a significant adverse impact on the Executive Order, since most sensitive, personally identifiable data is collected through the use of forms anyway.

One department proposed that it would be quicker, easier and less time consuming to use an additional statement to inform the data subject of his rights. If agencies are permitted to provide such information on separate statements, it becomes unnecessary to require agencies to revise forms at the earliest practicable time.

9. "4 (b) (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~~ data subject to file with the agency maintaining 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."

This language change was suggested by one agency to clarify the fact that the statement is filed with the agency maintaining the record system.

10. "4 (b) (4) Whenever an agency discloses to a third party personal information about which ~~an individual~~ a data subject has filed a statement pursuant to subsection (3), the agency shall furnish a copy of the ~~individual's~~ data subject's statement to the third party.

The phrase "to the third party" has been added for purposes of clarification.

11. ~~"4 (c) Subsection (b) does not apply to charging documents, arrest logs, investigatory or intelligence records compiled by State agencies for law enforcement or litigation purposes. The ability of the data subject to inspect and challenge criminal record history shall only be as provided in Article 27, Section 742 et seq. of the code, as amended, and rules and regulations as promulgated to implement the Criminal Justice Information System.~~

This subsection became unnecessary because of the addition of 6 (a) (1) and (2).

12. "4 (d) ~~(1)~~ Records by State agencies reflecting judicial decisions or docket entries and administrative determinations where the data subject has been afforded a hearing by the State agency and a ~~transcript~~ record of the hearing is available. Whenever a State agency discloses to a third party personal information contested in such an administrative hearing, it shall advise the third party that a ~~transcript~~ record of the hearing may be obtained in accordance with the Public Information Act."

12. 4 (d) cont'd.:

The phrase "record of the hearing" has replaced "transcript" to enable an agency to avail itself of this exemption if it can reconstruct the hearing.

13. "4 (d) ~~(2)--Grades-or-other-scholastic-evaluations."~~

This change became unnecessary because of the addition of 6 (a) (4).

14. "5 (a) A State agency maintaining a personal information system shall enact and implement appropriate safeguards to ensure the integrity and security ~~and-confidentiality~~ of all personal information."

The key words in this subsection are "integrity and security." Inserting the additional word "confidentiality" here only confuses rather than clarifies. This is particularly the case since many of the records subject to the Executive Order are disclosable public records. Thus, if the word "confidentiality" remains, many custodians will mistakenly assume that their records are not subject to the provisions of the Executive Order because they are not confidential.

15. "5b Each State agency shall assign a data professional the responsibility to monitor the level of security ~~assigned to-computerized-personal-information-systems.~~ of systems containing computerized personal information."

This language has been changed for clarification purposes.

16. "5c 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~~ whose representative 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 as a member of the Committee in any evaluation of his agency by the Committee. 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."

The first change was made at the request of the Department of Budget and Fiscal Planning.

The second change was added to indicate that agency security officers could represent their agency in a security evaluation, but could not serve as members of the Interagency Data Security Committee during the evaluation.

17. 6 (a) For the purposes of this Executive Order, the following data shall be exempt from the provisions of Section 1 through 4:

> (1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control or reduce crime or to apprehend criminals."

This limitation was added to prevent the Executive Order from impacting adversely on the Department of Public Safety and Correctional Services and other law enforcement agencies. It is not the intent of the Information Practices Commission to jeopardize police intelligence and investigating records, or to subject the Division of Corrections to additional data

17. 6 (a) cont'd.:

challenges from inmates.

18. "6 (a) (2) Investigative materials kept for the purpose of investigating a specific violation of State law and maintained by a State agency whose principal function may be other than the enforcement of criminal law."

A number of agencies were concerned about the impact of the Executive Order on their investigative data. The basic problem is that the Public Information Act does not mandate the confidentiality of such records, but rather permits custodians to exercise discretionary denials. There was a concern that the Executive Order might be read as a gubernatorial instruction not to exercise discretionary authority.

19. "6 (a) (3) Any information which is required by statute to be withheld from the individual to whom it pertains."

This limitation has been added to make it clear that the Executive Order should not be seen as circumventing the intent of the General Assembly.

20. "6 (a) (4) Student and other educational records described in COMAR 13 A. 08.02 05 N."

The Education Department had expressed a concern regarding the potential impact of the executive order on existing statutes governing access and correction of student records. As was noted by the Department, student records are already governed by a wide range of federal and State statutes and regulations. Of particular significance are the Family Educational Rights

20. 6 (a) (4) cont'd.:

and Privacy Act (the "Buckley Amendment") and COMAR 13A.08.02

Because these statutes and regulations speak to the same issues as those contained in the Executive Order, the statutes and regulations would clearly take precedence. Thus, to a large extent, the Executive Order would not impact directly on student and educational records. Given this fact, the most sensible step would be to exempt student and other educational records from sections 1 through 4 of the Executive Order. It should be noted that this exemption is not inconsistent with the spirit of the Executive Order, since parents already have access and correction rights to their children's student records.

21. "6 (a) (5) Information consisting only of names, addresses, telephone numbers and other limited factual data which could not, in any reasonable way: i) reflect or convey anything detrimental, disparaging or threatening to an individual's reputation, rights, benefits, privileges or qualifications; or ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications."

The definitions of data subject and personal information are quite broad and would therefore encompass many record systems that are relatively minor in character. Given this fact, it is important to place some limitation on the scope of the Executive Order so as not to result in burdensome paperwork requirements for State agencies.

21. 6 (a) (5) cont'd.:

In order for an agency to avail itself of this exemption, it must satisfy three important conditions. First of all, the information must consist of limited factual data such as names, addresses and telephone numbers. In addition, this limited information cannot reflect or convey anything detrimental to an individual's reputation, rights, benefits, privileges or qualifications, or be used to determine such rights, benefits, privileges or qualifications.

22. "6 (b) This Executive Order is not intended to supercede or repeal by implication or otherwise any authority or discretion vested in any State official or employee by any statue, rule or regulation."

This change was added in response to concerns that the Executive Order might be read as removing from a custodian certain discretionary authority granted to him by the Legislature.

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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 be accurate and current, to the greatest extent practicable.

(f) There should be a prescribed procedure for a data subject to learn the purpose for which personal information has been recorded and particulars about its use.

(g) There should be a prescribed procedure for a data subject to correct or amend 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 its security or integrity.

2. Definitions-As used in this Executive Order, the term:

(a) "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;

(b) "System" means a collection or group of records;

(c) "Data subject" means an individual about whom personal information is indexed or may be reasonably located under his name, personal number, or other identifying particulars, in a personal information system;

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3. Collection of personal information by State agencies

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(2) Inform any data subject 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 data

subject which are likely to result from nondisclosure, the data subject'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. This requirement shall apply only to personal information collected by an agency by means of standardized forms. Notification to the data subject may appear directly on the form or by separate statement.

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 a data subject in writing to correct or amend personal information pertaining to him, an agency shall:

(i) Make the requested correction or amendment and inform the data subject of the action; or

(ii) Inform the data subject 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 a data subject 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 data subject to file with the agency maintaining 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.

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(d) Paragraphs (b) (3) and (4) do not apply to:

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(2) Within thirty (30) days after ~~an individual~~ a data subject 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~~ data subject to file with the agency maintaining 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~~ a data subject has filed a statement pursuant to subsection (3), the agency shall furnish a copy of the ~~individual's~~ data subject's statement to the third party.

~~(c) Subsection (b) does not apply to charging documents, arrest logs, investigatory or intelligence records compiled by State agencies for law enforcement or litigation purposes. The ability of the data subject to inspect and challenge criminal record history shall only be as provided in Article 27, Section 742 et seq. of the Code, as amended, and rules and regulations as promulgated to implement the Criminal Justice Information System.~~

(d) Paragraphs (b) (3) and (4) do not apply to:

~~(1)~~ Records held by State agencies reflecting judicial decisions or docket entries and administrative determinations where the data subject has been afforded a hearing by the State agency and a ~~transcript~~ a record of the hearing is available. Whenever a State agency discloses to a third party personal information contested in such an administrative hearing, it shall advise the third party that a ~~transcript~~ record of the hearing may be obtained in accordance with the Public Information Act.

~~(2) Grades or other scholastic evaluations.~~

5. Security of Personal Information

(a) A State agency maintaining a personal information system shall enact and implement appropriate safeguards to ensure the integrity and 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.~~ of systems containing computerized personal information.

(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~~ whose representative 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 as a member of the Committee in any evaluation of his agency by the Committee. 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.

6. Limitations

(a) For the purposes of this Executive Order, the following data shall be exempt from the provisions of Section 1 through 4:

(1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control or reduce crime or to apprehend criminals.

(2) Investigative materials kept for the purpose of investigating a specific violation of State law and maintained by a State agency whose principal function may be other than the enforcement of criminal law.

(3) Any information which is required by statute to be withheld from the individual to whom it pertains.

(4) Student and other educational records described in COMAR 13 A. 08.02.05 N.

(5) Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not, in any reasonable way:

(i) reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications; or

(ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications.

(b) This Executive Order is not intended to supercede or repeal by implication any other statute, rule or regulation.

EXPLANATION OF CHANGES TO PROPOSED EXECUTIVE ORDER

1. " 1 (e) Personal information should not be ~~used unless it is~~ accurate and current, to the greatest extent practicable."

The Education Department had criticized the original language of 1(e). In the view of the Assistant Attorneys General representing the Department, agencies should be permitted to use data that is not entirely accurate and current, as long as it is adequate for its intended use.

2. "1 (f) There should be a prescribed procedure for ~~an individual~~ a data subject to learn the purpose for which personal information has been recorded and particulars about its use."

Throughout the revised Executive Order, the word "individual" has been changed to "data subject." This is necessary because the Executive Order grants rights to data subjects and not to individuals. In the context of the Executive Order, an individual is a somewhat wider expression than a data subject.

3. "2(b) 'System' means a collection or group of records;"

In my opinion, the current definition of "personal information system" is inadequate. It does not add any additional information to the definition of "personal information." Most importantly, it does not indicate that a system is a collection or group of records.

4. "2(c) "Data subject" means an individual about whom personal information is indexed or may be reasonably located under his name, personal number, or other identifying particulars in a personal information system;"

This is a potentially important qualifier. It was not the intent of the Commission to extend the Executive Order to all documents which might contain isolated references to individuals on specific pages. By inserting the word "reasonably" into the definition of data subject, we would make it clear that the Executive Order does not extend to any record for which there exists a theoretical

possibility of retrieval. Thus, an individual whose name appears on page 200 of a 500 page corporate document would not be a data subject in the context of the Executive Order.

5. "3(a) Except as otherwise provided by law, any State agency maintaining a personal information system shall:"

The expression "except as otherwise provided by law" is moved to this subsection from 3(a)(2) to prevent awkward phraseology in 3(a)(2).

6. "3 (a)(1)"Collect information to the greatest extent ~~feasible~~ practicable from the data subject directly; and"

The Education Department had objected to the feasibility standard found in 3(a)(1). In the opinion of the Department, this standard would significantly hamper the ability of some agencies to carry out their functions. The Department argued that 3(a)(1) would require agencies to obtain information from data subjects, even if it was unreasonable to do so, as long as it was theoretically possible. By changing "feasible" to "practicable", the problem is resolved.

7. "3(a)(2) ~~Except as otherwise provided by law, either on all new or revised forms or written correspondence requesting personal information~~, inform any ~~individual~~ data subject 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~~ data subject which are likely to result from nondisclosure, the ~~individual's~~ data subject's right to inspect such information, the public or nonpublic status of the information be be submitted, and the routine sharing of such information with State, federal or local government agencies. ~~All existing forms used by State agencies shall be reviewed for nonconformance with this paragraph and, if nonconforming, revised or amended at the earliest practicable time.~~ This requirement shall apply only to personal information collected by an agency by means of standardized forms. Notification to the data subject may appear directly on the form or by separate statement."

As noted earlier, the except as otherwise provided by law provision was moved to 3(a). This subsection was further changed in response to a suggestion from Dennis Sweeney. Dennis recommended that the scope of this section be limited

to data collected by agencies through the use of standardized forms and not impact on other written correspondence. There were two reasons behind Dennis' suggestion. First of all, the great majority of sensitive, personally identifiable data is collected through the use of forms anyway. Therefore, enactment of this limitation will not have a significant adverse impact on the Executive Order. In addition, Dennis believes that agencies will ignore a directive that they must provide notices whenever they obtain personally identifiable data through written correspondence.

The Department of Health and Mental Hygiene proposed that it would be quicker, easier and less time consuming to use an additional statement to inform the data subject of his rights. If we permit agencies to provide such information on separate statements, it becomes unnecessary to require agencies to revise forms at the earliest practicable time.

8. "4(b)(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~~ data subject to file with the agency maintaining 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."

This was a recommendation of Mr. David B. Williams, Chief of the Management Information Systems Division, Department of Budget and Fiscal Planning.

9. "4(b)(4) Whenever an agency discloses to a third party personal information about which ~~an individual~~ a data subject has filed a statement pursuant to subsection (3), the agency shall furnish a copy of the ~~individual's~~ data subject's statement to the third party.

This was a recommendation of Mr. David B. Williams.

10. ~~"4(c) Subsection (b) does not apply to charging documents, arrest logs, investigatory or intelligence records compiled by State agencies for law enforcement or litigation purposes. The ability of the data subject to inspect and challenge criminal record history shall only be as provided in Article 27, Section 742 et seq. of the code, as amended, and rules and regulations as promulgated to implement the Criminal Justice Information System.~~

This subsection became unnecessary because of the addition of 6(a)(1) and (2).

11. "4(d)~~(1)~~ Records by State agencies reflecting judicial decisions or docket entries and administrative determinations where the data subject has been afforded a hearing by the State agency and a ~~transcript~~ record of the hearing is available. Whenever a State agency discloses to a third party personal information contested in such an administartive hearing, it shall advise the third party that a ~~transcript~~ record of the hearing may be obtained in accordance with the Public Information Act."

Dennis Sweeney proposed that the Commission replace the word "transcript" with "record". He noted that the word "transcript" has a precise meaning and that it may be preferable to use the word "record". The intention of the Commission was to enable an agency to avail itself of this exemption if it was possbile to reconstruct the hearing in some form. Thus, it would be sufficient for an agency to maintain an untranscribed recording of proceedings.

12. "4(d)~~(2) Grades or other scholastic evaluations.~~"
This change became unnecessary because of the addition of 6(a)(4).

13. "5(a) A State agency maintaining a personal information system shall enact and implement appropriate safeguards to ensure the integrity and security ~~and confidentiality~~ of all personal information."

The key words in this subsection are "integrity and security." Inserting the additional word "confidentiality" here only confuses rather than clarifies. This is particularly the case since many of the records subject to the Executive Order are disclosable public records. Thus, if the word "confidentiality" remains, may custodians will mistakenly assume that their records are not subject to the provisions of the Executive Order because they are not confidential.

14. "5b Each State agency shall assign a data professional the responsibility to monitor the level of security ~~assigned to computerized personal information systems.~~ of systems containing computerized personal information."

This was a language change suggested by Dennis Sweeney.

15. "5c 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~~ whose representative 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 participa

as a member of the Committee in any evaluation of his agency by the Committee. 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."

The first change was suggested by Mr. David B. Williams. The second change was proposed by Dennis Sweeney. Dennis was concerned that it appeared that the Governor was instructing agency security officers that they could not participate in any way in security evaluations of their agencies. He felt that the language should be changed to indicate that they could not function on the Committee's behalf in evaluations of their agencies.

16." 6(a) For the purposes of this Executive Order, the following data shall be exempt from the provisions of Section 1 through 4:

> (1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control or reduce crime or to apprehend criminals."

This limitation emerged as a result of concerns expressed by Mr. Emory A. Plitt, Counsel to the Department of Public Safety and Correctional Services. Mr. Plitt was concerned that enactment of the Executive Order would have an adverse impact on all facets of the operation of the Department. In Mr. Plitt's opinion, the Executive Order would jeopardize intelligence and investigative records of the Maryland State Police. The basic problem is that the Public Information Act does not mandate the confidentiality of such records, but rather permits custodians to exercise discretionary denials. Mr. Plitt is concerned that the Executive Order might be read as a gubernatorial instruction not to exercise discretionary authority.

In addition, Mr. Plitt saw certain problems for such units as the Division of Correction, Parole and Probation, and the Parole Commission. If notification rights were printed on all Departmental forms, Mr. Plitt suggested, many inmates would file data challenges.

17. "6(a)(2) Investigative materials kept for the purpose of investigating a specific violation of State law and maintained by a State agency whose principal function may be other than the enforcement of criminal law."

A number of agencies were concerned about the impact of the Executive Order on their investigative data. Their line of reasoning was similar in nature to the concerns of the Department of Public Safety. Therefore, it was felt that the exemption granted investigative records regarding the provisions of Section 4(b) should be extended to encompass Sections 1 through 4. Investigative records would be subject, however, to the security measures discussed in Section 5.

18. " 6(a)(3) Any information which is required by statute to be withheld from the individual to whom it pertains."

This limitation has been added to make it clear that the Executive Order should not be seen as circumventing the intent of the General Assembly.

19. "6(a)(4) Student and other educational records described in COMAR 13 A. 08.02 05 N."

The Education Department had objected to the Executive Order in large measure because of their concerns about the potential impact of the Order on existing statutes governing access and correction of student records. As was noted by the Assistant Attorneys General representing the Department, student records are already governed by a wide range of federal and state statutes and regulations. Of particular significance are the Family Educational Rights and Privacy Act (the "Buckley Amendment") and COMAR 13A. 08.02.

Because these statutes and regulations speak to the same issues as those contained in the Executive Order, the statutes and regulations would clearly take precedence. Thus, to a large extent, the Executive Order would not impact directly on student and educational records. Given this fact as well as the

continuing concerns of the Education Department, the most sensible step would be to exempt the Department from Sections 1 through 4 of the Executive Order. It should be noted that this exemption is not inconsistent with the spirit of the Executive Order, since parents already have access and correction rights to their children's student records.

20. "6(a)(5) Information consisting only of names, addresses, telephone numbers and other limited factual data which could not, in any reasonable way:
i) reflect or convey anything detrimental, disparaging or threatening to an individual's reputation, rights, benefits, privileges or qualifications; or
ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications."

In order for an agency to avail itself of this exemption, it must satisfy three important conditions. First of all, the information must consist of limited factual data such as names, addresses and telephone numbers. However, the mere fact that the data is limited in character does not mean that the agency can employ the exemption. For example, the Forest and Park Services Division of the Department of Natural Resources maintains a file containing limited factual information of licensed tree experts. However, because this information is used to determine the qualifications and privileges of tree experts, the information would be subject to the Executive Order.

Information must not only be limited in scope but must also not contain any data which either would be detrimental to an individual's reputation, rights, benefits, privileges or qualifications, or would be used to make a determination affecting an individual's rights, benefits, privileges or qualifications.

I believe that this is an important and necessary limitation, if the Executive Order is not to result in burdensome paperwork requirements for State agencies. Currently, the definitions of data subject and personal information are very broad and would encompass many record systems that are quite minor in character. For example, if an agency supervisor asks his employees

for the correct spelling of their names for the agency telephone directory, he would be required, under the Executive Order, to inform them regarding the principal purposes for which the information is intended to be used, penalties and specific consequences likely to result from nondisclosure and so forth. It is important that an exemption be established to take care of situations such as I have just described.

21. "6(b) This Executive Order is not intended to supercede or repeal by implication any other statute, rule or regulation.

This stipulation was added at the suggestion of Dale P. Kelberman, Assistant Attorney General with the Medicaid Fraud Control Unit. Mr. Kelberman noted that since the Executive Order is later in time and deals with a subject matter similar in nature to the Public Information Act, the Order could be viewed as accomplishing an unintended result.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 23, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

As you know, Ben Bialek has circulated the draft Executive Order on Privacy to various State agencies. Some agencies, especially the Departments of Education and Public Safety, had substantive criticisms regarding specific sections of the Executive Order. For your consideration, I have enclosed copies of agencies' letters which were particularly significant.

In an effort to accomodate those concerns, I have revised various portions of the Executive Order. Please examine this revised draft carefully and direct any comments to me by April 30, 1982. Please give me a call if you would like further explanation of any section of the revised draft.

Also enclosed in this mailing are copies of those privacy and public information bills which were passed by the General Assembly in its 1982 session.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 20, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The following is a report on privacy and public information bills introduced in the 1982 General Assembly session:

1. SB 12 (Stone) Vehicle Registration Listings - Public Disclosure - FAILED

2. SB 196 (Curran-Departmental-Public Safety and Correctional Services)- Patuxent Institution - Records - PASSED

3. SB 199 (Curran-Departmental - Public Safety and Correctional Services)- Inmate Records - Disclosure - FAILED

4. SB 211 (Curran - Departmental - Public Safety and Correctional Services) - Division of Parole and Probation - Access to Juvenile Records - FAILED

5. SB 361 (Curran - Judicial Conference) - Inmate Records - Disclosure - PASSED

6. SB 362 (Curran-Judicial Conference) - Division of Parole and Probation- Access to Juvenile Records - PASSED

7. SB 390 (Stone) - Workmen's Compensation Records - FAILED

8. SB 399 (Chairman, Committee on Finance) - Commission on Medical Discipline of Maryland- Investigations- Physicians - Disciplinary Actions - FAILED

9. SB 404 (Chairman, Joint Committee on Legislative Ethics) - Public Ethics- General Assembly -Representing Before State Agencies - PASSED

10. SB 602 (Cade) Birth Certificates - Misuse - FAILED

11. SB 603 (Denis) Health-Rights of Patients - FAILED

12. SB 648 (Douglass and Bonvegna) Voter Registration Records-Cancellation or Changes - FAILED

13. SB 717 (Stone) - Medical Records - Cost of Copying -FAILED

14. SB 719 (Cade, Long and Shore) - Public Information - Letters of Reference - FAILED

15. SB 784 (McGuirk) - Insurance Information and Privacy Protection - FAILED

16. SB 883 (Dorman) - Vehicle Laws - Drivers' Records and Insurance- FAILED

17. SB 915 (Hickman)- Juvenile Drivers-Treated as Adult Drivers- FAILED

18. HB 106 (Douglass) - Criminal Law-Protection of Informers - FAILED

19. HB 109 (Chasnoff) - Medical Review Committees - Confidentiality- PASSED

20. HB 143 (Baker) - Adoption - Open Records - FAILED

21. HB 144 (Baker)-Adoption - Records- FAILED

22. HB 145 (Baker) - Adoption-Records - FAILED

23. HB 197 (Brown - Departmental - Health and Mental Hygiene) Commission on Medical Discipline - Records- PASSED

24. HB 351 (Brown and Pesci) - Health-Sentinel,Birth Defects-Information - PASSED

25. HB 532 (Burkhead)-Juvenile Causes - Records-FAILED

26. HB 542 (Masters, Morsberger and Kountz) -Vehicle Laws-Expungement of Driving Records - PASSED

27. HB 855 (Owens-Judicial Conference) - Division of Parole and Probation-Access to Juvenile Records -Failed

28. HB 857 (Owens-Judicial Conference)-Inmate Records-Disclosure - FAILED

29. HB 884 (Alperstein and Levin) -Juvenile Records-Credibility-FAILED

30. HB 978 (BAker) - Adoption Records - Inspection - PASSED

31. HB 1023 (Bienen, DiPietro and Parlett) - Health - Rights of Patients- PASSED

32. HB 1074 (Weisengoff) - Police and Court Records- _____ - PASSED

33. HB 1401 (Rush and Burkhead) - Juvenile Court Records- Confidentiality- FAILED

34. HB 1605 (Toth) - Motor Vehicle Administration Records- Requests for Information- FAILED

35. HB 1606 (Toth) - Public Information - State- Licensed Individuals- FAILED

36. HB 1626 (Amoss, Kach and Booth) - Public Information- Right of Inspection of Records - FAILED

37. HB 1894 (Pesci and Pitkin) - Child Abuse - Expungement of Report - FAILED

38. HB 1919 (Pitkin) - Physicians-Patient's Consent to Surgery - FAILED

Please contact this office if you would like a copy of any bill.

DRAFT

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, to the greatest extent practicable.

Underlining indicates amendments to the draft Executive Order.

~~Strike-Out~~ indicates matter stricken from the draft Executive Order.

(f) There should be a prescribed procedure for ~~an individual~~ a data subject to learn the purpose for which personal information has been recorded and particulars about its use.

(g) There should be a prescribed procedure for ~~an individual~~ a data subject to correct or amend personal information.

(h) Appropriate administrative, technical and physical safeguards should be established to ensure the security of personal information and to protect against any unanticapted threats or hazards to its 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;~~

(a) ~~(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;

(b) "System" means a collection or group of records.

(c) "Data subject" means an individual about whom personal information is indexed or may be reasonably located under his name, personal number, or other identifying 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~~ practicable from the data subject directly; and

(2) Except as otherwise provided by law, either on all new or revised forms ~~or written correspondence~~ requesting personal information or by separate statement, inform any ~~individual~~ data subject request 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~~ data subject which are likely to result from nondisclosure, the ~~individual's~~ data subject'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. ~~All existing forms used by State agencies shall be reviewed for conformance with this paragraph and, if non-conforming, revised or amended at the earliest practicable time.~~

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~~ a data subject in writing to correct or amend personal information pertaining to him, an agency shall:

(i) Make the requested correction or amendment and inform the ~~individual~~ data subject of the action; or

(ii) Inform the ~~individual~~ data subject 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~~ a data subject 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~~ data subject to file

with the agency maintaining 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~~ a data subject has filed a statement pursuant to subsection (3), the agency shall furnish a copy of the ~~individual's~~ data subject's statement to the third party.

~~(c) Subsection (b) does not apply to charging documents, arrest logs, investigatory or intelligence records compiled by State agencies for law enforcement or litigation purposes. The ability of the data subject to inspect and challenge criminal record history shall only be as provided in Article 27, Section 742 et seq. of the Code, as amended, and rules and regulations as promulgated to implement the Criminal Justice Information System.~~

(d) Paragraphs (b) (3) and (4) do not apply to:

~~(1)~~ Records held by State agencies reflecting judicial decisions or docket entries and administrative determinations where the data subject has been afforded a hearing by the State agency ~~and a transcript is available~~. Whenever a State agency discloses to a third party personal information contested in such an administrative hearing, it shall advise the third party ~~that a~~ as to the availability of a transcript of the hearing ~~may be obtained~~ in accordance with the Public Information Act.

~~(2) Grades or other scholastic evaluations.~~

5. Security of Personal Information

(a) A State agency maintaining a personal information system shall enact and implement appropriate safeguards to ensure the integrity and security~~, and confidentiality~~ of all personal information.

(b) Each State agency shall asign a data professional the responsibility to monitor the level of security ~~assigned to computerized personal information systems.~~ of systems containing computerized personal information.

(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~~ whose representative shall be the Chairman. The other members of the 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 as a member of the Committee in any evaluation of his agency by the Committee. 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 appropraite levels of security.

6. Limitations

(a) For the purposes of this Executive Order, the following data shall be exempt from the provisions of Sections 1 through 4:

(1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control or reduce crime or to apprehend criminals if the information is:

(i) compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and ~~di~~sposition of criminal charges, sentencing, confinement, release, and parole and probation status; or

(ii) compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual; or

(iii) contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.

(2) Information, other than that maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal law, consisting solely of investigative materials maintained by an agency for the purpose of investigating a specific violation of State law.

(3) Any information which is required by statute to be withheld from the individual to whom it pertains.

(4) Student and other educational records described in COMAR 13 A. 08.02.05 N.

(5) Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not, in any reasonable way:

(i) reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications; or

(ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications.

(b) This Executive Order is not intended to supercede or repeal by implication any other statute, rule or regulation.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 9, 1982

To : Arthur S. Drea, Jr.
Dennis M. Sweeney

From : Dennis M. Hanratty

Enclosed is a copy of the revised draft Executive Order indicating amendments made to the original draft. I would appreciate it if you would give particular attention to Sections 2(b) (3) and 2(d) (6). Section 2 (b) (3) may have to be modified to give a blanket exemption to investigative records maintained by non-criminal justice agencies, in order to meet agencies' exemptions. Please examine Section 2(d) (6) to determine if it would have any unintended negative consequences on the Executive Order.

DRAFT

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 or confidential 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 or confidential information system whose existence is secret.

(b) Personal or confidential information should not be collected unless the need for it has been clearly established.

(c) Personal or confidential information should be appropriate and relevant to the purpose for which it has been collected.

Underlining indicates amendments to the draft Executive order.

~~Strike-Out~~ indicates matter stricken from the draft Executive Order.

(d) Personal or confidential information should not be obtained by fraudulent and unfair means.

(e) Personal or confidential information should ~~not be used unless it is~~ accurate and current, to the greatest extent practicable.

(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.

(g) There should be a prescribed procedure for an individual to correct or amend inaccurate personal information.

(h) Appopriate administrative, technical and physical safeguards should be established to ensure the security of personal or confidential 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;~~

(a) "System" means a collection or group of records.

(b) "Confidential information" means:

(1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control, or reduce crime or to apprehend criminals if the information is (i) compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of

identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; or (ii) compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual; or (iii) contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.

(2) Information consisting solely of written testing or examination material, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity of fairness of the testing or examination process.

(3) Information, other than that maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal law, consisting solely of investigative materials maintained by an agency for the purpose of investigating a specific violation of State law, but only so long as an investigation is in progress and such investigative information has not been maintained for a period longer than is necessary to complete a criminal, civil, or administrative prosecution or initiate other remedial action. An agency may keep the source or sources of information used for an investigation under this section confidential so long as it determines that confidentiality is necessary to protect its law enforcement activities.

(4) Any information which is required by statute to be withheld from the individual to whom it pertains.

(c) "Personal information" means any information in any record about an individual that is maintained by a State agency including, but not limited to , his education, financial transactions, medical or employment history. It does not mean information found to be confidential or nonpersonal.

(d) "Nonpersonal information" means:

(1) Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not, in any reasonable way (i) reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications or (ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications.

(2) An agency telephone book or directory which is used exclusively for telephone and directory information.

(3) Any card catalog of any library, or the contents of any book listed within such card catalog.

(4) Any mailing list which is used exclusively for the purpose of mailing agency information.

(5) Records required by law to be maintained and used solely as a system of statistical records, but only if such records are maintained for statistical research or reporting purposes only and are not used in whole or in part in making any determination about an identifiable individual.

(6) Records to which an individual has the right of examination;

~~(c)~~ (e) "Data subject" means an individual about whom ~~personal~~ information is indexed or may be reasonably located under his name, personal number, or other identifiable particulars,; ~~in a personal information system;~~

~~(d)~~ (f) "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 or confidential information system shall:

(1) Collect information to the greatest extent ~~feasible~~ practicable from the data subject directly; and

(2) Except as otherwise provided by law, on all new or revised forms or written correspondence requesting personal or confidential information, or by separate statement, 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. All existing forms used by State agencies shall be reviewed for conformance with this paragraph and, if non-conforming, revised or amended at the earliest practicable time.

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:

(i) Make the requested correction or amendment and inform the individual of the action; or

(ii) 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 agency maintaining 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 to the third party.

~~(c) Subsection (b) does not apply to charging documents, arrest logs, investigatory or intelligence records compiled by State agencies for law enforcement or litigation purposes. The ability of the data subject to inspect and challenge criminal record history shall only be as provided~~

~~in-Article-27,-Section-742-et-seq.of-the-Code,-as-amended,-and-rules-and-regulations-promulgated-to implement-the-Criminal-Justice-Information-System.~~

~~(d)-Paragraphs--(b)-(3)-and-(4)-do-not~~ apply to:

~~(1)-Records-held-by-State-agencies reflecting-judicial-decisions-or-docket-entries-and-administrative-determinations-where-the-data-subject-has-been-afforded-a-hearing-by-the-State agency-and-a-transcript-is-available.--Whenever-a-State-agency-discloses-to-a-third-party-personal information-contested-in-such-an-administrative-hearing,-it-shall-advise-the-third-party-that-a-transcript-of-the-hearing-may-be-obtained-in accordance-with-the-Public-Infromation-Act.~~

~~(2)-Grades-or-other-scholastic-evaluations.~~

5. Security of ~~personal~~ information

(a) A State agency maintaining a personal or confidential information system shall enact and implement appropriate safeguards to ensure the integrity, security, and confidentiality of all ~~personal~~ such information.

(b) Each State agency shall assign a data professional the responsibility to monitor the level of security assigned to computerized personal or confidential 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 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~~ whose representative shall be the chairman. ~~The~~ 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 ongoing risk analyses throughout State agencies. The purpose of the analyses shall be to determine the appopriate security measures to be assigned to each computerized personal and confidential information system, and to formulate, review and audit the appropriate levels of security.

6. This Executive Order is not intended to supercede or repeal by implication any other statute, rule or regulation.

DRAFT

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 or confidential information system whose existence is secret.

(b) Personal or confidential information should not be collected unless the need for them has been clearly established.

(c) Personal or confidential information should be appropriate and relevant to the purpose for which they have been collected.

(d) Personal or confidential information should not be obtained by fraudulent and unfair means.

(e) Personal or confidential information should be accurate and current, to the greatest extent practicable.

(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 or confidential 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) "System" means a collection or group of records.

(b) "Confidential information" means:

(1) Any information in any record maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal laws, including efforts of the Department of Public Safety and Correctional Services to prevent, control, or reduce crime or to apprehend criminals if the information is (i) compiled for the purpose of identifying individual criminal offenders and alleged offenders and consists only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; or (ii) compiled for the purpose of a criminal investigation of suspected criminal activities, including reports of informants and investigators, and associated with an identifiable individual; or (iii) contained in any record which could identify an individual and which is compiled at any stage of the process of enforcement of the criminal laws, from the arrest or indictment stage through release from supervision and including the process of extradition or the exercise of executive clemency.

(2) Information consisting solely of written testing or examination material, or scoring keys used solely to determine individual qualifications for appointment or promotion in public service, or used to administer a licensing examination, or academic examination, the disclosure of which would compromise the objectivity of fairness of the testing or examination process.

(3) Information, other than that maintained by a State agency which performs as its principal function any activity pertaining to the enforcement of criminal law, consisting solely of investigative materials maintained by an agency for the purpose of investigating a specific violation of state law, but only so long as an investigation is in progress and such investigative information has not been maintained for a period longer than is necessary to complete a criminal, civil, or administrative prosecution or initiate other remedial action. An agency may keep the source or sources of information used for an investigation under this section confidential so long as it determines that confidentiality is necessary to protect its law enforcement activities.

(4) Any information which is required by statute to be withheld from the individual to whom it pertains.

(c) "Personal Information" means any information in any record about an individual that is maintained by a State agency including, but not limited to, his education, financial transactions, medical or employment history. It does not mean information found to be confidential or nonpersonal.

(d) "Nonpersonal information" means:

(1) Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not, in any reasonable way (i) reflect or convey anything detrimental, disparaging, or threatening to an individual's reputation, rights, benefits, privileges, or qualifications or (ii) be used by an agency to make a determination that would affect an individual's rights, benefits, privileges, or qualifications.

(2) An agency telephone book or directory which is used exclusively for telephone and directory information.

(3) Any card catalog of any library, or the contents of any book listed within such card catalog.

(4) Any mailing list which is used exclusively for the purpose of mailing agency information.

(5) Records required by law to be maintained and used solely as a system of statistical records, but only if such records are maintained for statistical research or reporting purposes only and are not used in whole or in part in making any determination about an identifiable individual.

(6) Records to which an individual has the right of examination.

(e) "Data subject" means an individual about whom information is indexed or may be reasonably located under his name, personal number or other identifiable particulars.

(f) "State agency" means every agency, board, commission, department, bureau, or other entity of the executive branch of Maryland state government.

3. Collection of Information by State Agencies

(a) Any State agency maintaining a personal or confidential information system shall:

(1) Collect information to the greatest extent practicable from the data subject directly; and

(2) Except as otherwise provided by law, on all new or revised forms or written correspondence requesting personal or confidential information, or by separate statement, inform any individual requested to disclose such 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, and the routine sharing of such information with State, federal or local government agencies. All existing forms used by State agencies shall be reviewed for conformance with this paragraph and, if non-conforming, revised or amended at the earliest practicable time.

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 to him, an agency shall:

(i) Make the requested correction or amendment and inform the individual of the action; or

(ii) 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 any 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 agency maintaining 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 to the third party.

5. Security of Information

(a) A State agency maintaining a personal or confidential information system shall enact and implement appropriate safeguards to ensure the integrity, security, and confidentiality of all such information.

(b) Each State agency shall assign a data professional the responsibility to monitor the level of security assigned to computerized personal or confidential 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 Department of Budget and Fiscal Planning, whose representative 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 ongoing 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 and confidential information system, and to formulate, review and audit the appropriate levels of security.

6. This Executive Order is not intended to supercede or repeal by implication any other statute, rule or regulation.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 19, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed is the enrolled version of House Bill 1481.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 13, 1982

To : Information Practices Commission Members

From : Dennis M. Hanratty

The following is an updated report on action taken by the General Assembly regarding the Commission's bills:

House Bill 1480 - FAILED

The Senate Constitutional and Public Law Committee gave a favorable report to HB 1480, but amended the bill in response to a request from Mr. William Bricker, Motor Vehicle Administrator.

Mr. Bricker informed the Committee that he periodically expunges the driving records of those licensees who have not been convicted of a moving violation or a criminal offense for the preceding three years and have never had their licenses suspended or revoked. He indicated, however, that he would prefer to receive written applications in cases involving licensees whose records indicated past suspensions or revocations. Letters would enable the Motor Vehicle Administration to determine that licensees were actually driving motor vehicles during the conviction-free period.

The amended version of HB 1480 adopted by the Constitutional and Public Law Committee required automatic expungement for those licensees without any prior suspensions or revocations, but written applications where suspensions or revocations were involved. The Committee's action was endorsed by the Senate on 3rd reading on April 10. However, the House Judiciary Committee did not issue a recommendation as to whether or not the House of Delegates should concur with the Senate's amendment. Therefore, the bill died at the close of the session last night.

House Bill 1481 - PASSED

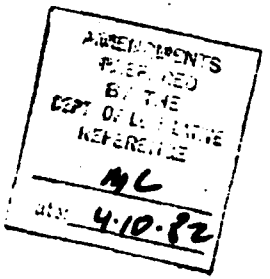
House Bill 1481 received a favorable report without amendments from the Constitutional and Public Law Committee. In response to a request from Senator O'Reilly, the Senate amended HB 1481 on 3rd reading on April 10. The House Constitutional and Administrative Law Committee recommended on April 12 that the House of Delegates concur with the Senate's amendment. The House of Delegates adopted the recommendation of the Constitutional and Administrative Law Committee.

A copy of HB 1481 and amendment is enclosed.

House Bill 1483 - PASSED

House Bill 1483 received a favorable report without amendments from the Constitutional and Public Law Committee. HB 1483 was adopted by the Senate on 3rd reading on April 12.

BY SENATOR O'REILLY



AMENDMENTS TO HOUSE BILL NO. 1481

(THIRD READING FILE BILL)

AMENDMENT NO. 1

IN LINE 90 ON PAGE 2, AFTER "SECTION" INSERT: "3(F) AND".

AMENDMENT NO. 2

AFTER LINE 280 ON PAGE 6, INSERT:

"(F) NOTHING IN THIS ARTICLE SHALL PRECLUDE A MEMBER OF THE GENERAL ASSEMBLY FROM ACQUIRING STATISTICAL INFORMATION, INCLUDING NAMES AND ADDRESSES, OF INDIVIDUALS WHO ARE LICENSED OR COMPLY WITH REGISTERING REQUIREMENTS UNDER THE LAWS OF THIS STATE.".

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 5, 1982

HOUSE BILL 1483

House Bill 1483 represents part of the Information Practices Commission's overall effort to improve the record-keeping practices of government agencies. The intent of the bill is to bring the disclosure policies of the Board of Examiners of Nurses in line with the policies of other licensing boards.

Currently, the great majority of personally identifiable licensing data maintained by licensing boards is available for public inspection. This includes not only information which appropriately should be disclosed, such as name, business address and occupational background, but also data such as detailed physical description, age, sex, social security number, race, marital status, and so forth. After a thorough examination of this issue, the Information Practices Commission proposed in House Bill 1481 that the following licensing information should be made available in response to Public Information Act requests: name, business address, business telephone number, educational and occupational background, professional qualifications, orders and findings that result from formal disciplinary actions and evidence provided to the custodian in order to satisfy a statutory requirement of financial responsibility. Other data could be released by the custodian, but only if disclosure is necessary for a compelling public purpose and is provided by rule or regulation. Finally, a custodian would be required to delete a licensee's name from lists purchased from the custodian, upon written request from the licensee.

The enactment of House Bill 1481 will result in increased privacy protection for licensees as varied as dentists, physical therapists, barbers and plumbers. This is because, at the present time, virtually all records pertinent to these licensees is subject to public inspection.

In contrast to the situation just described, Title 7 of the Health Occupations Article contains a very strict confidentiality section which prevents the Board of Examiners of Nurses from releasing virtually all personally identifiable licensing data. All licensing data regarding nurses is nondisclosable to the public, with the exception of the following information: 1) the successful completion of an examination by a licensee or applicant; 2) a license issuance or renewal; 3) an indication that an individual is or is not licensed at a particular time; and 4) a final decision of the Board of Examiners of Nurses in cases involving potential license revocations.

The Information Practices Commission does not believe it is appropriate that the records of the Board of Examiners of Nurses be treated differently from the records of other licensing boards. Therefore, the Commission proposes in House Bill 1483 the repeal of the confidentiality statute of the Board of Examiners of Nurses. If this is done, the Board will be subject to the specific licensing language in House Bill 1481, along with all other licensing boards. It should be noted that House Bill 1481 is contingent on the passage of House Bill 1483. Therefore, it will be impossible to have a situation where the nurses' confidentiality provision was repealed without the concurrent enactment of the Commission's proposals for the protection of licensing information.

As noted earlier, House Bill 1481 states that a custodian would be required to delete a licensee's name from lists purchased from the custodian, upon written request from the licensee. Many licensees are extremely annoyed about the practice

of mailing lists and have complained to their respective boards. Currently, however, boards do not have any authority to delete the names of those individuals from their lists. While the proposal contained in House Bill 1481 will address this problem for nearly all licensing boards, specific language must be added to Title 7 of the Health Occupations Article in order to grant the Board of Examiners of Nurses the authority to delete names from lists. This is necessary because Article 7-205 (10) requires the Board of Examiners of Nurses "to keep separate lists, which lists are open to reasonable public inspection, of all." Thus, House Bill 1483 contains the identical provision regarding deletion of licensees' names as that found in House Bill 1481.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

HOUSE BILL 1481

House Bill 1481 represents modifications to the State's Public Information Act as proposed by the Governor's Information Practices Commission. Over the last two years, the Information Practices Commission has engaged in an exhaustive examination of the record-keeping practices of every Executive branch State agency. Each member of the General Assembly received a copy of the Commission's Final Report, which contains detailed analyses of each agency's information practices.

Enactment of House Bill 1481 will have two important results. First of all, it will strengthen the ability of citizens to obtain disclosable public records from government agencies. In addition, increased protection will be given to a number of sensitive, personally identifiable record systems maintained in agencies' files.

1. Line 107 through the unnumbered line following line 145 and line 251 through 268

A. PROPOSAL

The Commission's proposed amendment to Article 76A, Section 2 (line 107 through the unnumbered line following line 145) must be examined in the context of the language found in line 251 through line 268. The Information Practices Commission proposes that a records custodian be required to make a definitive decision regarding a records request within a period of 30 days of the request. If the requester agrees, this time period can be extended for an additional 30 days. Should a custodian receive a misdirected records request, he must notify the requester of that fact within 10 working days and provide him with the name of the custodian, if known.

B. CURRENT PROBLEM

Currently, some records custodians are taking advantage of a loophole in the Public Information Act. Under the current statute, a custodian must notify a

requester, "within ten working days of denial", that the request has in fact been denied. However, a custodian is not under any legal requirement to contact the requester prior to an official denial. Therefore, a custodian can deny effectively a request simply by not responding to the request. The Commission was provided with evidence indicating that some custodians have ignored Public Information Act requests for a period exceeding seven months. The Commission's proposal will take care of this problem.

2. Line 156 through line 159

A. PROPOSAL

Line 156 through line 159 would require that a records custodian allow a person in interest to examine medical and psychological data to the same extent that access is granted by hospitals and related institutions in accordance with Health-General Article 4-302(B). This provision of the Health-General Article stipulates that the person in interest has the right to inspect medical records pertaining to him. A limited right of access exists for those psychiatric or psychological medical records where the attending physician believes disclosure to be medically contraindicated. In such a situation, however, the facility would have to release a summary of the record to the person in interest.

B. CURRENT PROBLEM

The Commission encountered numerous situations where agencies refuse to allow the person in interest the right of inspection to medical data. The State Retirement System, the Social Services Administration, the Income Maintenance Administration, and the Medical Advisory Board of the Motor Vehicles Administration do not release medical records without the written consent of the physicians submitting the records.

It should be noted that some agencies currently permit access to medical data. Local education agencies, for example, allow parents to examine medical information which is placed in their child's educational file. The person in interest may also inspect medical information in the files of the Workmen's Compensation Commission.

Inspection has been entirely manageable in both cases.

3. Line 159 through the second unnumbered line following line 161

A. PROPOSAL

These lines specify that a custodian may deny access to records on the basis of sociological data only pursuant to rules defining, for the records in his possession, the meaning and scope of sociological data.

B. CURRENT PROBLEM

The basic problem with the current sociological data exemption is that the term is not defined and therefore is susceptible to varying interpretations. Indeed, not only is there an absence of a definition in the Public Information Act itself, but the Commission discovered that sociological data does not appear in pertinent court cases, Attorney General Opinions, or in information practices statutes of other governmental units.

Because of this lack of definition, agencies are employing the sociological data exemption to prevent the disclosure of a wide range of personally identifiable data, among which is the following: amount of social security benefits, burial plans of elderly citizens, religious affiliation, bank account numbers monthly rent or mortgage payments, and information concerning the support and custody of children.

Thus, under the current situation, agencies have a significant amount of discretion determining what is and is not sociological. This discretion creates a potential for abuse as the sociological data exemption can enable an agency to refuse to release data which should be released.

This potential for abuse would be eliminated if the legislature abolished the sociological data exemption. However, such a step would not be in the public interest. Because of the sociological data exemption, agencies are able to treat certain personal and sensitive data with the confidentiality that it deserves. An elderly person's burial plans should not be available for public inspection.

One possible solution to the sociological data problem might be the formulation

of a definition to be inserted into the Public Information Act. The difficulty with this approach, however, is that the variation of data elements considered to be sociological by agencies precludes a meaningful definition. In addition, a definition based on current usage of the term might become obsolete as new records systems are developed.

The most appropriate solution is to require those agencies employing the exemption to promulgate rules explaining their usage of the term. Through the rule-making process, the Legislature can make sure that the exemption is not being abused. It also ensures that agencies will continue to have some flexibility in this area. It should be noted that the change would not become effective until July 1, 1983. This will give agencies sufficient time in which to promulgate such rules.

4. Line 212 through the unnumbered line following line 216

A. PROPOSAL

These lines will require custodians to prevent the disclosure, except as otherwise provided by law, of personally identifiable financial data, such as income, bank balances and credit reports. It is important to emphasize the phrase "except as otherwise provided by law". This amendment will have no impact whatsoever on those records which the Legislature has determined should be available for public inspection. Thus, for example, financial disclosure statements of public officials will continue to be disclosable public documents. The Commission has also added language in this section to make it absolutely clear that salaries of government employees shall continue to be open to public inspection.

B. CURRENT PROBLEM

The basic problem in this area is that there is a significant variation in statutes governing financial data. A number of record systems containing financial information, such as income tax data, are governed by explicit confidentiality provisions. However, other types of financial information are inadvertently disclosable under the Public Information Act. A case in point is that data collected from low-income families

applying for loans under the Maryland Housing Rehabilitation Program. Such data includes present monthly income, monthly housing expenses, assets, laibilities, credit reports, and personal financial statements. Because there is no reference to confidentiality of this data in the Annotated Code, the data becomes subject to the disclosure provisions of the Public Information Act.

5. Line 217 through the unnumbered line following line 233

A. PROPOSAL

These lines establish certain criteria for the disclosure of occupational and professional licensing data. A custodian shall make the following licensing information available in response to Public Information Act requests: names, business addresses, business telephone numbers, educational and occupational backgrounds, professional qualifications, orders and findings that result from formal disciplinary actions, and evidence provided to the custodain in order to satisfy a statutory requirement of financial responsibility. Other data could be released by a custodian, but only if disclosure is necessary for a compelling public purpose and is provided by rule or regulation. Finally, a custodian would be required to delete a licensee's name from lists purchased from the custodian, upon written request from the licensee.

B. CURRENT PROBLEM

Currently, the great majority of licensing data is available for public inspection. This includes such information as detailed physical description, age, sex, social security number, race, marital status, ans so forth. In addition, many licensees are extremely annoyed about the practice of mailing lists and have complained to their respective boards. However, boards do not have any authority to delete the names of those individuals from their lists. The Commission's proposals address both of these issues.

6. Line 235 through the unnumbered line following line 242

A. PROPOSAL

This amendment would assign a confidential status to most personally identifiable retirement data during the lifetime of the person in interest. Data would be

available to the person in interest and to his appointing authority. However, upon request, the custodian would be required to indicate whether a person was receiving a retirement or pension allowance. After the death of the person in interest, information would be released to the personal representative and beneficiaries of the person in interest, and to others who, in the opinion of the retirement system administrators, have demonstrated a valid claim of right to benefits.

B. CURRENT PROBLEM

Currently, all retirement data other than medical and psychological information is available for public inspection. Among disclosable items 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 that many members are quite distressed to learn that beneficiary information 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 undercover police agents. Many members are also concerned about the disclosure of retirement allowance estimates.

7. Line 244 through the unnumbered line following line 245

A. PROPOSAL

This would provide that manuals detailing the security procedures of information systems and other records related to the security of such systems shall be confidential unless otherwise provided by law.

B. CURRENT PROBLEM

Currently, security manuals are not subject to any specific confidentiality provision. Thus, in responding to a Public Information Act request, a custodian

either would have to release these manuals or temporarily deny the request on the grounds that disclosure would do substantial injury to the public interest. A denial on such a basis, however, would necessitate the filing of an application in circuit court within ten days of the date of temporary denial.

Clearly, the public interest is served by maintaining the confidentiality of security manuals. Disclosure of the Baltimore and Annapolis Data Centers' security manuals could frustrate the General Assembly's efforts to prevent public inspection of income tax data, social services data, and many other record systems maintained at these Centers.

8. Line 309 through line 321

A. PROPOSAL

These lines would grant the custodian discretionary authority to charge reasonable fees for the search and preparation of records for inspection and copying, but only after the passage of two hours of official or employee time needed to respond to a request for information. The custodian also could waive such fees if he determined that a waiver would serve the public interest.

B. CURRENT PROBLEM

The Attorney General has indicated to the Commission that the current language of Article 76A, Section 4 is quite ambiguous regarding the charging of search and preparation fees. Because of this ambiguity, most State agencies do not charge such fees.

This issue is particularly significant for those agencies maintaining record systems containing corporate financial data. Businesses file numerous Public Information Act requests with governmental agencies in an effort to learn important pieces of information about their competitors. Those businesses which submitted the data originally arereluctant to see this data released. Therefore, custodians frequently must spend a great deal of time examining the contents of this data to determine if it is "confidential financial information" and therefore nondisclosable. These expensive preparation charges are, in most cases, absorbed by the taxpayers.

While it is entirely appropriate that requesters be required to pay fees for complicated records searches, the same principle should not apply to manageable records requests. A search and preparation charge system should not serve as a mechanism for discouraging Public Information Act requests. Requests that can be handled by the custodian within a period of two hours should not be subject to search and preparation fees; instead, expenses should be absorbed by the agency as part of its public service requirements.

Although the current statute does not contain a fee waiver provision, the Attorney General has encouraged most State agencies to waive fees if they determine such action to be in the public interest. Thus lines 320-321 merely represents a codification of existing agency practices.

9. Line 397 through the second unnumbered line following line 405

A. PROPOSAL

These lines establish civil penalties for those who willfully and knowingly violate the law through the unlawful disclosure, access or use of personally identifiable data. Violators are liable for actual and punitive damages and litigation costs incurred by defendants. These penalties are highly similar in character to the current civil penalties which can be imposed on custodians for willingly and knowingly refusing to release disclosable public records.

B. CURRENT PROBLEM

Current statutes do not provide for the imposition of civil penalties in cases involving disclosure, access or use of personally identifiable data. Thus, while a civil case can be pressed for failure to release a disclosable record, an individual who unlawfully releases medical and psychological records is not subject to civil sanctions.

10. Unnumbered line following line 409

A. PROPOSAL

This amendment increases maximum criminal penalties for violation of the Public Information Act from $100 to $1000.

B. CURRENT PROBLEM

A $100 maximum fine for a Public Information Act violation is simply too low when compared with other sections of the Annotated Code containing criminal provisions for the unlawful disclosure of specified personally identifiable records.

11. Line 411 through the second unnumbered line following line 414

A. PROPOSAL

These lines would establish criminal penalties for those who, by false pretenses, bribery or theft, gain access to or obtain confidential personally identifiable data.

B. CURRENT PROBLEM

At the present time, a records custodian is the only person who can actually willfully and knowingly violate a provision of the Public Information Act. Thus, an individual other than a custodian who unlawfully gains access to confidential personally identifiable records cannot be prosecuted under the Public Information Act.

12. Line 425 through the unnumbered line following line 469

A. PROPOSAL

This amendment imposes certain record-keeping requirements on those State agencies subject to the State Documents Law which maintain personally identifiable records. The intent of this amendment is to build upon the work of the Commission by establishing a mechanism for the on-going review of agency record-keeping practices.

State agencies maintaining personally identifiable data would be required to submit a report by July 1,1983 to the Department of General Services indicating the following information: 1) the names of all sets of personally identifiable records; 2) an indication as to the type of information contained in sets of records, as well as the types of persons on whom information is maintained; 3) the uses and purposes of the information; 4) agency security procedures (including methods used to prevent unauthorized access), the method of storage of data, the categorization system used by the agency, and retention and disposal procedures; 5) policies governing access and challenges to the data by the records subjects; and 6) an indication as to the

sources of information. Agencies maintaining two or more sets of personally identifiable records could combine those sets for reporting purposes, but only if the sets were highly similar. Once the initial reports were submitted to the Department of General Services, agencies would only have to submit reports in subsequent years for those record sets which either changed significantly since the previous report or were eliminated or added since the previous report.

It should be emphasized that the filing of these reports will be a very simple exercise which should take no more than a few hours, per agency, in the first year, and less time in subsequent years. All of the information to describe an individual record system should fit on one standardized form to be devised by the Department of General Services.

While the exercise is simple, it can serve as a very effective management tool for officials of State agencies. Through the review of the Department of General Services, the reports can help to highlight certain substantive record-keeping problems regarding access, security, disposal and so forth. What is envisioned, therefore, is a type of continuation of the review of record-keeping practices that was conducted by the Commission. This review substantively improved the information practices of, among other agencies, the Department of Health and Mental Hygiene, the Department of Public Safety and Correctional Services, and the Department of Natural Resources.

13. Line 471 through the unnumbered line following line 492

A. PROPOSAL

This amendment would grant discretionary authority to official custodians to allow access to personally identifiable information to researchers under certain specified circumstances.

Under the Commission's proposal, personally identifiable data can be released to a researcher by a custodian, but only if certain conditions are met: 1) the researcher provides a written statement to the custodain delineating both the nature of the research project and the safeguards to be taken to protect the identities of

the persons in interest; 2) the researcher agrees that he will not contact any persons in interest without the express authorization and monitoring of the custodian; 3) the custodian asserts that the security measures to be employed by the researcher are sufficient to prevent the public identification of the persons in interest; and 4) the researcher enters into a contract with the agencies stipulating, among other things, that a violation of the agreement constitutes a breach of contract. Such a violation would expose the researcher to the civil and criminal penalties discussed earlier.

B. CURRENT PROBLEM

Currently, many confidentiality statutes do not allow for the possibility of access to data by researchers, thus forcing custodians 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.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 2, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed are revised copies of House Bills 1481 and 1483.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 30, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The following is an update on the Commission's bills:

1. House Bill 1480-HB 1480 received a favorable vote without amendments from the House Judiciary Committee. The House of Delegates passed the bill on 3rd reading on March 26th.

2. House Bill 1481-HB 1481 was reported favorable with amendments by the House Constitutional and Administrative Law Committee. A copy of these amendments is enclosed. HB 1481 was considered by the full house on 2nd reading on March 26th; it is anticipated that the bill will receive a 3rd reading today.

3. House Bill 1482-HB 1482 was reported unfavorably by the House Constitutional and Administrative Law Committee. A number of representatives of counties and municipalities testified against the bill, maintaining that HB 1482 would adversely affect the ability of local governments to screen school bus driver applicants.

4. House Bill 1483-HB 1483 received a favorable vote with an amendment from the House Constitutional and Administrative Law Committee. A copy of this amendment is enclosed. HB 1483 was considered by the full House on 2nd reading on March 26th, and should receive a 3rd reading today.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 12, 1982

To : Information Practices Commission Members

From : Dennis M. Hanratty

The House Judiciary Committee will consider House Bill 1480 (Transportation- Expungement of Driving Records) on Monday, March 22, 1982 at 1 P.M.

Enclosed you will find a copy of the draft Executive Order on Privacy currently being circulated to the major State agencies by Mr. Benjamin Bialek, Assistant Legislative Officer, Executive Department. As you will note, Mr. Bialek has made certain preliminary changes to the Commission's original proposal. Should you have any questions regarding these changes, I would suggest that you contact Mr. Bialek at 269-3336 (Public) or 224-3336 (Marcom). In all likelihood, other changes will also be made in response to agency comments. Barring any major problems, it is anticipated that the Governor will issue the Executive Order within the coming month.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 5, 1982

TO: Mr. Arthur S. Drea, Jr., Chairman
Delegate Nancy Kopp

FROM: Dennis M. Hanratty

Enclosed please find notes pertinent to the Commission's major bill, House Bill 1481. You may find these notes to be helpful for Monday's presentation.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 3, 1982

TO : Information Practices Commission Members

FROM : Dennis M. Hanratty

This is to alert you to the fact that it will be necessary to amend certain language found in lines 173-176 of House Bill 1481. Current language reads as follows:

> "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;"

This section should be amended to read:

> "Records describing a natural person's finances, income other than the salaries of public employees, 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;"

The change from "individual person" to "natural person" is necessary because the Commission staff has been advised that a court might interpret "individual person" to refer to a corporation as well as a natural person. Therefore, the Commission's proposal might conflict with the current section of the Public Information Act governing corporate financial data, Article 76A, Section 3(c) (v). Under that provision, a custodian needs to determine that the financial data submitted by a corporation is "confidential data" before restricting its disclosure. In contrast, the Commission's proposal would make individually identifiable financial information confidential unless another law permitted its disclosure. Thus, unless "natural person"

is inserted in place of "individual person", certain corporate financial data which currently is available for public inspection would become confidential.

In addition to this change, the phrase "other than the salaries of public employees" has been inserted after the word "income". Currently, public employee salary information is available for public inspection.

The only reference to salaries in the Public Information Act is that found in the definition of "public records", Article 76A, Section 1(b): "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." Although the obvious intent in Section 1(b) was to permit public inspection of salary data, this data is disclosable not because of its inclusion in the "public records" definition but because there is no specific section of the Annotated Code restricting its disclosure.

The definition of "public records" which is found in the Public Information Act is so broad as to encompass all government records. One could therefore appropriately state, "The term 'public records' also includes all personally identifiable medical and psychological data in the possession of government agencies." Nonetheless, medical and psychological data would continue to be nondisclosable, because they are assigned a confidential status elsewhere in the Code.

However, if the Code contains a specific reference to the confidentiality of income data, it is entirely possible that the salaries of public employees would become nondisclosable. Therefore, it will be necessary to insert a qualifying phrase to make it clear that public employee salary information will continue to be available for public inspection.

BACKGROUND INFORMATION - HOUSE BILL 1481

In developing policy recommendations, the Information Practices Commission attempted to balance 3 competing interests: 1) the information requirements of government agencies; 2) the public's right to examine government information; and 3) the privacy rights of the subjects of agency files. We recognize that each of these interests is important, but none is absolute. While agencies need to collect much information which is personally identifiable if they are to provide services to the public, this need cannot serve as the basis for the indiscriminant collection of information. In a similar sense, the public's right of access to government information helps to prevent secrecy in government and therefore is very important; however, this right of access cannot extend to such areas as detailed medical and psychological reports on individual patients in State facilities. Finally, it is most important that the government makes every effort to respect the privacy of individuals, and develops appropriate safeguards to ensure the security of confidential information. At the same time, however, there are certain occasions where the public's right of access must outweigh an individual's privacy interest.

A. Time Period of Response to a Public Information Act Request

1. Lines 105-106 and Lines 206-208

Lines 105-106 require that disclosable records in the custody and control of the custodian, but not immediately available, must be provided within thirty days of the receipt of the request. Current language, deleted in line 105, stipulates that such requests must be honored "within a reasonable time." Lines 206-208 will stipulate the following: "Within a period of 30 days after receiving a written request for access to any public record, the custodian shall either provide the information requested or deny the request."

It is important to emphasize that lines 105-106 and lines 206-208, while related, deal with distinct issues. The assumption of Section 2(c) of the Public Information Act (lines 100-108) is that the custodian has already made a decision to provide the requested records. Thus, amending this section to require the custodian to provide such records within thirty days does not address itself to cases where the custodian has not yet decided whether records should be released. Therefore, additional language must be inserted in Section 3(d) of the Public Information Act (lines 206-220) to take care of these situations.

The amendment found in lines 206-208 is a more significant change than lines 105-106. The intent of this amendment is to take care of situations where certain records custodians have taken advantage of a loophole in the Public Information Act. Under the current statute, a custodian must notify a requester, "within ten working days of denial", that the request has in fact been denied. However, a custodian is not under any legal requirement to contact the requester prior to an official denial. Therefore, a custodian can deny effectively a request simply by not responding to the request.

The Commission was provided with evidence at its Baltimore Public Hearing indicating that some custodians are taking advantage of this loophole. A researcher with the University of Baltimore submitted documentation to the Commission that demonstrated that Baltimore City had ignored a Public Information Act request for a period of seven months. A response was issued finally when the researcher threatened to publicize the City's action.

The changes in lines 105-106 are necessary to conform to lines 206-208. The Commission has made a policy decision in lines 206-208 that the custodian must either release the requested documents or deny

the request within thirty days. Therefore, it is also necessary to amend Section 2(c) to conform to the thirty day requirement.

B. Access By the Person in Interest to Medical and Psychological Data

1. Lines 117-120

Lines 117-120 would require that a records custodian allow a person in interest to examine medical and psychological data to the same extent that access is granted by hospitals and related institutions in accordance with Health-General Article 4-302(B). This provision of the Health-General Article stipulates that the person in interest has the right to inspect medical records pertaining to him. A limited right of access exists for those psychiatric or psychological medical records where the attending physician believes disclosure to be medically contraindicated. In such a situation, however, the facility would have to release a summary of the record to the person in interest.

The Commission encountered numerous situations where agencies refuse to allow the person in interest the right of inspection to medical data. The State Retirement System, the Social Services Administration, the Income Maintenance Administration, and the Medical Advisory Board of the Motor Vehicles Administration do not release medical records without the written consent of the physicians submitting the records.

It should be noted that some agencies currently permit access to medical data. Local education agencies, for example, allow parents to examine medical information which is placed in their child's educational file. The person in interest may also inspect medical information in the files of the Workmen's Compensation Commission. Inspection has been entirely manageable in both cases.

C. Denial on the Basis of Personally Identifiable Sociological Data

1. Lines 120-124

Lines 120-124 specify that a custodian may deny access to records on the basis of sociological data only pursuant to rules defining for the records in his possession, the meaning and scope of sociological data.

The basic problem with the current sociological data exemption is that the term is not defined and therefore is susceptible to varying interpretations. Indeed, not only is there an absence of a definition in the Public Information Act itself, but the Commission staff has determined that sociological data does not appear in pertinent court cases, Attorney General opinions, or in information practices statutes of other governmental units.

The staff encountered numerous instances where agencies were employing this exemption. The Division of Parole and Probation, for example, has determined that the following personally identifiable data pertinent to parollees is sociological and therefore nondisclosable: earnings, monthly rent or mortgage payment, description of housing facilities, personal values and beliefs, religious affiliation, and information concerning the support and custody of children. The Office on Aging has employed the exemption to prevent the disclosure of various items of information relating to elderly persons for whom the Office serves as public guardian. Among the data elements considered to be sociological are amount of social security benefits, burial plans, bank account numbers, and information relating to the functional ability of specific elderly persons.

Under the current situation, agencies have a significant amount of discretion determining what is and is not sociological. This discretion creates a potential for abuse as the sociological data exemption can enable an agency to refuse to release data which should be released.

This potential for abuse would be eliminated if the legislature abolished the sociological data exemption. However, such a step would

not be in the public interest. Because of the sociological data exemption, agencies are able to treat certain personal and sensitive data with the confidentiality that it deserves. An elderly person's burial plans should not be available for public inspection.

One possible solution to the sociological data problem might be the formulation of a definition to be inserted into the Public Information Act. The difficulty with this approach, however, is that the variation of data elements considered to be sociological by agencies precludes a meaningful definition. In addition, a definition based on current usage of the term might become obsolete as new records systems are developed.

The most appropriate solution is to require those agencies employing the exemption to promulgate rules explaining their usage of the term. Through the rule-making process, the legislature can make sure that the exemption is not being abused. It also ensures that agencies will continue to have some flexibility in this area. It should be noted that the change would not become effective until July 1, 1983. This will give agencies sufficient time in which to promulgate such rules.

D. Denial on the Basis of Personally Identifiable Financial Data

1. Lines 173-176

Lines 173-176 would require a custodian to prevent the disclosure, except as otherwise provided by law, of "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."

The basic problem in this area is that there is a significant variation in statutes governing financial data. A number of record systems containing financial information, such as income tax data, are governed

by explicit confidentiality provisions. However, other types of financial information are inadvertently disclosable under the Public Information Act. A case in point is that data collected from low-income families applying for loans under the Maryland Housing Rehabilitation Program. Such data includes present monthly income, monthly housing expenses, assets, liabilities, credit reports, and personal financial statements. Because there is no reference to confidentiality of this data in the Annotated Code, the data becomes subject to the disclosure provisions of the Public Information Act.

E. Denial on the Basis of Personally Identifiable Occupational and Professional Licensing Data.

1. Lines 178-192

Lines 178-192 will establish certain criteria for the disclosure of occupational and professional licensing data. A custodian shall make the following licensing information available in response to Public Information Act requests: "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." Other data could be released by a custodian, but only if disclosure is necessary for a compelling public purpose and is provided by rule or regulation. Finally, a custodian would be required to delete a licensee's name from lists purchased from the custodian, upon written request from the licensee.

Currently, the great majority of licensing data is available for public inspection. This includes such information as detailed physical description, age, sex, social security number, race, marital status, and so forth. In addition, many licensees are extremely annoyed about

the practice of the selling of mailing lists and have complained to their respective boards. However, boards do not have any authority to delete the names of those individuals from their lists. The Commission's proposals address both of these issues.

F. Denial on the Basis of Personally Identifiable Retirement Data

1. Lines 194-202

This amendment would assign a confidential status to most personally identifiable retirement data during the lifetime of the person in interest. Data would be available to the person in interest and to his appointing authority. However, upon request, the custodian would be required to indicate whether a person was receiving a retirement or pension allowance. After the death of the person in interest, information would be released to the personal representative and beneficiaries of the person in interest, and to others who, in the opinion of the retirement system administrators, have demonstrated a valid claim of right to benefits.

Currently, all retirement data other than medical and psychological information is available for public inspection. Among disclosable items 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 Board of Trustees of the Employees, Teachers and State Police Retirement Systems are quite concerned about the public character of this data. The Boards noted that many members are quite distressed to learn that beneficiary information 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 undercover police agents. Many members are also concerned about the disclosure of retirement allowance estimates.

G. Confidentiality of Information Systems Security Manuals

1. Lines 203-205

Lines 203-205 would provide that manuals detailing the security procedures of information systems and other records related to the security of such systems shall be confidential unless otherwise provided by law.

Currently, security manuals are not subject to any specific confidentiality provision. Thus, in responding to a Public Information Act request, a custodian either would have to release these manuals or temporarily deny the request on the grounds that disclosure would do substantial injury to the public interest. A denial on such a basis, however, would necessitate the filing of an application in circuit court within ten days of the date of temporary denial.

Clearly, the public interest is served by maintaining the confidentiality of security manuals. Disclosure of the Baltimore and Annapolis Data Centers' security manuals could frustrate the General Assembly's efforts to prevent public inspection of income tax data, social services data, and many other record systems maintained at these Centers.

H. Provisions for the Assessments of Search and Preparation Fees

1. Lines 249-261

Lines 249-261 would grant the custodian discretionary authority to charge reasonable fees for the search and preparation of records for inspection and copying, but only after the passage of two hours of

official or employee time needed to respond to a request for information. The custodian also could waive such fees if he determined that a waiver would serve the public interest.

The Attorney General has indicated to the Commission that the current language of Article 76A, Section 4, is quite ambiguous regarding the charging of search and preparation fees. Because of this ambiguity, most State agencies do not charge such fees.

This issue is particularly significant for those agencies maintaining record systems containing corporate financial data. Businesses file numerous Public Information Act requests with governmental agencies in an effort to learn important pieces of information about their competitors. Those businesses which submitted the data originally are reluctant to see this data released. Therefore, custodians frequently must spend a great deal of time examining the contents of this data to determine if it is "confidential financial information" and therefore nondisclosable. These expensive preparation charges are in most cases, absorbed by the taxpayer.

While it is entirely appropriate that requesters be required to pay fees for complicated records searches, the same principle should not apply to manageable records requests. A search and preparation charge system should not serve as a mechanism for discouraging Public Information Act requests. Requests that can be handled by the custodian within a period of two hours should not be subject to search and preparation fees; instead, expenses should be absorbed by the agency as part of its public service requirements.

Although the current statute does not contain a fee waiver provision, the Attorney General has encouraged most State agencies to waive fees if they determine such action to be in the public interest. Thus, lines 257-261 merely represents a codification of existing agency practices.

I. Civil and Criminal Penalties for the Violation of Personally Identifiable Records Provisions

1. Lines 337-346

These lines establish civil penalties for those who willfully and knowingly violate the law through the unlawful disclosure, access or use of personally identifiable data. Violators are liable for actual and punitive damages and litigation costs incurred by defendants. These penalties are highly similar in character to the current civil penalties which can be imposed on custodians for willingly and knowingly refusing to release disclosable public records.

Current statutes do not provide for the imposition of civil penalties in cases involving disclosure, access or use of personally identifiable data. Thus, while a civil case can be pressed for failure to release a disclosable record, an individual who unlawfully releases medical and psychological records is not subject to civil sanctions.

2. Line 350

This amendment increases criminal penalties for violation of the Public Information Act from $100 to $1000. This increased amount is more consistent with other sections of the Annotated Code, containing criminal provisions for the unlawful disclosure of specified personally identifiable records.

3. Lines 351-356

These lines would establish criminal penalties for those who, by false pretenses, bribery or theft, gain access to or obtain confidential personally identifiable data.

J. Report of Personally Identifiable Records

1. Lines 365-410

Lines 365-410 would impose certain record-keeping requirements on those State agencies subject to the State Documents Law which maintain personally identifiable records. The intent of this amendment is to build upon the work of the Commission by establishing a mechanism for the on-going review of agency record-keeping practices.

State agencies maintaining personally identifiable data would be required to submit a report by July 1, 1983 to the Department of General Services indicating the following information: 1) the names of all sets of personally identifiable records; 2) an indication as to the type of information contained in sets of records, as well as the types of persons on whom information is maintained; 3) the uses and purposes of the information; 4) agency security procedures (including methods used to prevent unauthorized access), the method of storage of data, the categorization system used by the agency, and retention and disposal procedures; 5) policies governing access and challenges to the data by the records subjects; and 6) an indication as to the sources of information. Agencies maintaining two or more sets of personally identifiable records could combine those sets for reporting purposes, but only if the sets were highly similar. Once the initial reports were submitted to the Department of General Services, agencies would only have to submit reports in subsequent years for those record sets which either changed significantly since the previous report or were eliminated or added since the previous report.

It should be emphasized that the filing of these reports will be a very simple exercise which should take no more than a few hours,

per agency, in the first year, and less time in subsequent years. All of the information to describe an individual record system should fit on one standardized form to be devised by the Department of General Services.

While the exercise is simple, it can serve as a very effective management tool for officials of State agencies. Through the review of the Department of General Services, the reports can help to highlight certain substantive record-keeping problems regarding access, security, disposal and so forth. What is envisioned, therefore, is a type of continuation of the review of record-keeping practices that was conducted by the Commission. This review substantively improved the information practices of, among other agencies, the Department of Health and Mental Hygiene, the Department of Public Safety and Correctional Services, and the Department of Natural Resources.

K. Access to Personally Identifiable Data by Researchers

1. Lines 411-430

This amendment would grant discretionary authority to official custodians to allow access to personally identifiable information to researchers under certain specified circumstances.

Currently, many confidentiality statutes do not allow for the possibility of access to data by researchers, thus forcing custodians 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.

Under the Commission's proposal, personally identifiable data can be released to a researcher by a custodian, but only if certain conditions are met: 1) the researcher provides a written statement to the custodian delineating both the nature of the research project and the safeguards to be taken to protect the identities of the records subjects; 2) the researcher agrees that he will not contact any records subjects without the express authorization and monitoring of the custodian; 3) the custodian asserts that the security measures to be employed by the researcher is sufficient to prevent the public identification of the records subjects; and 4) the researcher enters into a contract with the agencies stipulating among other things, that a violation of the agreement constitutes a breach of contract. Such a violation would expose the researcher to the civil and criminal penalties discussed earlier.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 2, 1982

TO: INFORMATION PRACTICES COMMISSION MEMBERS

FROM: DENNIS M. HANRATTY

Enclosed are draft minutes from the Commission's last five meetings (November 2nd, November 9th, November 16th, December 14th and December 22nd). Please review these minutes and notify me of any corrections by March 15th. The minutes will be considered official after that date.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 2, 1982

OFFICIAL MINUTES

GOVERNOR'S INFORMATION PRACTICES COMMISSION
Meeting of December 22 , 1981

The Governor's Information Practices Commission met on December 22, 1981. The following Commission members attended the meeting: Mr. Arthur S. Drea, Jr., Chairman; Mr. Donald Tynes, Sr., Mr. Albert Gardner, Mr. Wayne Heckrotte, Mr. John Clinton, Senator Timothy Hickman, Delegate Nancy Kopp, and Mr. Robin Zee.

The Commission began by examining the proposed Executive Order on privacy. Members made only one change to Sections 1 through 4. The last sentence of Section 4 (b)(3) was amended to read: "The statement may not exceed two sheets of paper."

Mr. Clinton presented his proposed language to Section 5(c):

> " An Interagency Data Security Committee is hereby created. This Committee shall consist of nine data professionals within State service with the following State agencies having an automatic seat on the Committee: Comptroller of the Treasury, Department of Transportation, Department of Public Safety and Corrections, the University of Maryland, and the State Colleges.
> The other members of the Committee shall be chosen by (the Governor)(the Chief of the Division of Management Information Systems). This Committee shall be chaired by the Chief of the Division of Management Information Systems. If any agency security officer is assigned to this Committee, he (she) shall not participate in any evaluation of his (her) agency.
> The Committee shall conduct a risk analysis throughout State agencies. The purpose of the analysis 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."

After much discussion, Section 5(c) was approved by the Commission in the following form:

" 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."

Having concluded its examination of the proposed Executive Order, the Commission directed its attention to the proposed legislation. It was noted, first of all, that the proposed amendment pertinent to occupational and professional licensing records had been modified in accordance with the members' requests of the previous week. Mr. Hanratty also pointed out that the amount of the fine for violation of the Public Information Act was being changed from $100 to $1000. Mr. Hanratty observed that Mr. Sweeney had recommended that change at the Commission's previous meeting.

Mr. Hanratty presented to the Commission draft language for the proposed new section of the Public Information Act allowing researchers access to personally identifiable data under certain specified circumstances. This concept had been approved by the members at the previous meeting.

"g) In cases where access to nondisclosable personal records is desired for research purposes, the custodian shall grant access if:
i) The researcher states in writing to the 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;
ii) The researcher states that the subjects of the personal records will not be contacted without the approval and monitoring of the custodian;
iii) The proposed safeguards are adequate, in the opinion of the custodian, to prevent the identities of the subjects of the personal records from being known; and
iv) The researcher executes an agreement with the 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."

Senator Hickman proposed that all references to "the custodian" in this proposed subsection be changed to "the official custodian." The Commission members approved this change, as well as the remainder of the draft language presented by Mr. Hanratty.

The Commission also looked at Section 5B(c), the civil penalties provision which had been developed by Mr. Hanratty and Mr. Sweeney:

"(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 and use of personal records shall be liable to the subjects of the personal records for any actual damages sustained by the subjects by the unlawful disclosure, access and 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 reasonably incurred in any case under this section in which the court determines that the applicant has prevailed substantially."

The above language was approved by the Commission.

Mr. Hanratty informed the Commission that it had not yet resolved the issue of access by the person in interest to medical data in agency files. Mr. Hanratty proposed the following additional language to 3(c)(i) of the Public Information Act: "except that the person in interest shall be permitted to examine medical and psychological data maintained in government files to the same extent that access is granted by hospitals and related institutions in accordance with Article 43, Section 54 M of the Annotated Code." Mr. Drea suggested that the phrase

"maintained in government files" be deleted since the Public Information Act only pertains to government records. Mr. Hanratty's proposal, as well as the amendment offered by Mr. Drea, were adopted by the Commission.

After completing its analysis of the proposed legislation, the Commission considered the proposal of Mr. Dennis Parkinson, Assistant Secretary of the Department of Budget and Fiscal Planning and Chairman of the Procurement Advisory Council. Mr. Parkinson had asked the Commission to sponsor legislation of the Procurement Advisory Council which related to the confidentiality of procurement data. The Council proposed to amend Article 76A, Section 3 (c)(v) to read as follows:

> "Trade secrets, proprietary information, information privileged by law, and confidential commercial, financial (including but not limited to detailed price or cost proposals submitted pursuant to Article 21, Section 3-203, 9-109 and 9-209), geological, or geophysical data furnished by or obtained from any person."

The Council also proposed adding a new exemption to this section:

> "xi) Any pre-contract award documentation which contains procurement strategy, plans or market analyses; plans, discussions, summaries of proceedings, or results of negotiations with vendors or contractors; registers of vendors receiving solicitations; written evaluations of vendor's proposals; technical and price proposals submitted by vendors; or any other procurement-related documentation when a written determination is made by the custodian that disclosure to the applicant would be contrary to the public interest. Notwithstanding the provisions of this section, the documentation identified in paragraph (xi) to which a contract applies shall become a public record for purposes of this act upon the approval and final execution of the contract."

Mr. Hanratty informed Commission members that he had received a telephone call from Mr. Garrett. Mr. Hanratty indicated that Mr. Garrett had wanted to convey to the Commission his thoughts regarding the proposal of the Procurement Advisory Council. In Mr. Garrett's opinion, procurement data was a subject that fell within the Commission's jurisdiction. At the same time however, he believed that the issue was so complex that the Commission needed additional information before moving ahead. Mr. Garrett felt that the Commission should

consider suggesting to the Governor that the life of the Commission be extended for the purposes of studying the status of commercial and financial data in agency files. Mr. Garrett suggested that the Commission hold a public hearing at which businessmen and government officials could present their views; the Commission could also examine some of the proposals of the Reagan Administration pertinent to procurement data.

Mr. Garrett also wanted to inform the Commission that he had certain specific problems with the draft language of the Procurement Advisory Council. Mr. Garrett indicated that he had researched the term "proprietary information" and still did not understand its meaning. He was not at all certain that it added anything to the current language prohibiting the disclosure of confidential commercial and financial data. In addition, Mr. Garrett did not believe that price proposals should be assigned a confidential status. Mr. Garrett finally felt that it was important for the Commission not to create a situation where vendors and contractors would be granted the authority to determine that the information they provided to government agencies was confidential.

Senator Hickman observed that the Information Practices Commission had been investigating the handling of personally identifiable data. In Senator Hickman's view, examination of procurement information fell outside of the scope of the Governor's Executive Order establishing the Commission. Mr. Drea recommended that the Commission not take a position on Mr. Parkinson's proposal. Mr. Drea felt that the proposal was complex and would require much more time than was available to the Commission. In Mr. Drea's opinion, the legislative proposal of the Procurement Advisory Council should be sponsored by that Council rather than by the Commission. The Commission unanimously supported Mr. Drea's recommendation.

The Commission then turned its attention to the proposed Introduction, Recommendations and Summary of the Final Report. The Commission approved

the proposed Introduction without changes. The Commission also approved the draft Recommendations, making only minor modifications. First of all, the Commission supported Delegate Kopp's request to modify the discussion of the Recommendations dealing with retirement data, so as to indicate that the particular recommendation did not speak to the issue of a spouse's right to examine such data. The Commission also requested Mr. Hanratty to amend the discussion pertinent to the catalogue of record systems, indicating that much of the information to be required from agencies has already been gathered in responding to the Commission's questionnaires. Finally, the members asked Mr. Hanratty to modify the discussion of the Interagency Security Task Force to reflect the changes that had been made by the Commission. Mr. Drea felt that the Summary needed to be rewritten. Mr. Drea stated that the Summary should read like a press release. It should flow easily and should be simplistic in character. Mr. Heckrotte proposed using a bullet style, and suggested that the Summary not exceed two pages. Mr. Hanratty expressed the view that the complex character of the Commission's recommendations did not easily lend themselves to a short statement. If the Summary was limited to a few pages, it would be too general to be meaningful. Mr. Gardner supported Mr. Hanratty's concern. However, Mr. Drea and Mr. Heckrotte stated that the Summary could be limited to a few pages and still be meaningful. Mr. Drea offered to write a draft of the Summary and to call on Mr. Heckrotte for assistance.

After concluding discussion of the structure and content of the Final Report, Mr. Drea addressed the Commission members regarding their future roles. He urged members to play an active role in attempting to sell the Commission's recommendations to their departments, to the Governor, and to the legislature. Mr. Drea asked members to report any problems to Mr. Hanratty, so that he could provide assistance. Mr. Heckrotte asked Mr. Hanratty to let members know when hearing dates had been scheduled for the Commission's bills. Mr. Hanratty agreed to do so. Mr. Drea noted that the next meeting of the Commission would be devoted to briefing the Governor

and/or his staff regarding the Commission's recommendations. The Commission adjourned.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

OFFICIAL MINUTES

Governor's Information Practices Commission
Meeting of December 14, 1981

The Governor's Information Practices Commission met on December 14, 1981. The following Commission members attended the meeting: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Albert Gardner, Senator Timothy Hickman, Mr. Dennis Sweeney, Mr. Donald Tynes and Mr. Robin Zee.

Mr. Drea opened the meeting by asking Mr. Hanratty to present the results of the Commission's mail ballot. Mr. Hanratty, noted, first of all, that a majority of members voted in support of the following statement:

> "The phrase 'sociological data' shall continue to remain in the Public Information Act as a specific exemption to disclosure;however, agencies seeking to employ this exemption shall be required to promulgate rules which define, for their record systems, the meaning of 'sociological data: the exemption for'sociological data' would continue as is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations."

Mr. Hanratty also observed that the Commission supported the position that "Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board." In addition, members approved the following position: "A request by the person in interest to correct or amend a record pertaining to him must be accepted or rejected by an agency within 30 days of the receipt of the request."

Mr. Hanratty noted that two positions on the ballot still remained to be resolved. First of all, Mr. Hanratty indicated that Commission members were evenly divided regarding the following position: "Licensing boards shall be granted the same discretion over the sale of mailings lists as that presently accorded the Motor Vehicle Administration." After discussing this matter at length, members attending the December 14th meeting determined that licensing boards should not have such discretionary authority.

Finally, Mr. Hanratty stated that a majority of the members voted to support drafting legislation to permit researchers to have access to personally identifiable data under specified circumstances; nonetheless, Mr. Hanratty noted that the proposal had been worded ambiguously and was therefore subject to various interpretations. Commission members thus determined to reopen the topic for discussion.

As an aid to the discussion, Mr. Hanratty distributed copies of those sections of the Indiana Fair Information Practices Act and the Uniform Information Practices Code pertaining to access to records by researchers. Mr. Zee expressed his concern regarding the absence of a definition of "researcher." He wondered whether these statutes applied to university-affiliated researchers only, or to individual requesters as well. Mr. Sweeney stated his view that the public interest was served by allowing, for example, medical researchers to examine records under controlled situations. Mr. Sweeney recalled that the Attorney General had determined recently that current statutes did not permit the examination of vital records by researchers seeking to discover the cause of sudden infant death syndrome. Senator Hickman felt strongly, however, that individuals whose names appear on cancer registries should not have to endure visits and phone calls from researchers. After considerable discussion, members decided to support legislation granting researchers access to personally identifiable records but only under tightly controlled circumstances. The Commission also decided to recommend that

researchers should not be permitted to contact records subjects without the approval and monitoring of the official custodian.

Having resolved the two remaining issues from the ballot, the Commission then turned its attention to the draft Proposed Executive Order on Privacy and to the draft legislative recommendations. Mr. Hanratty proceeded to discuss the contents of the Proposed Executive Order. Commission members debated whether the ten "principles of information practice" contained in section one ought to contain the word "should"or"shall". The Commission determined that "should" was more appropriate as the section was a purpose clause. Mr. Clinton noted the definition of "state agency" as being ". . . every agency, board, commission, department, bureau or other entity of the executive branch of Maryland State government,", and asked whether this definition included agencies such as the Comptroller's Office. Mr. Sweeney stated that the definition was wide enough to include those agencies. Mr. Tynes directed the Commission's attention to Section 4 (b)(2), which would require an agency to make a final determination within a reasonable period of time after an individual requests review of an agency's refusal to correct or amend his record. After some discussion, the subsection was amended to require the determination within thirty days. Commission members also discussed Section 4 (b) (3), which would permit the person in interest to file a 200 word statement of disagreement if the agency refused to correct or amend his record in accordance with his request. Commission members decided to amend the language of that subsection to indicate that the statement could not exceed two sheets of paper.

Commission members gave particular attention to Section 5, which would require agencies maintaining personally identifiable information to develop adequate security measures. The draft of subsection (b) read as follows: "Each State agency shall assign a data professional on a permanent basis whose responsibility is that of monitoring the level of security assigned to

computerized personal information systems." After some discussion, the subsection was modified to read: "Each State agency shall assign a data professional the responsibility to monitor the level of security assigned to computerized personal information systems." The Commission also reviewed subsection (c), which had appeared in the following draft form:

> "The Data Security Task Force is hereby created. The Task Force shall consist of _____data professionals drawn from the following State agencies:_____. The Task Force shall conduct a risk analysis throughout State agencies. The purpose of the analysis shall be to determine the appropriate security measures to be assigned to each computerized personal information system, and to formulate, review, and audit such appropriate levels of security. The Task Force shall submit a final report by _____."

At the request of the Chairman, Mr. Clinton agreed to revise this subsection and to submit a draft to the Commission for the following meeting.

The Commission then proceeded to examine the draft legislative recommendations. Mr. Hanratty began by reviewing the draft language pertinent to the Public Information Act. Mr. Hanratty noted, first of all, that the following definition of "personal records" had been added to Section 1: " . . . 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." Mr. Hanratty stated that the definition had been necessary because of the creation of Section 4A, "Report of Personal Records." The Commission made two changes regarding the definition. First of all, members decided to modify the first words of the definition to read ". . . any public records containing information . . .". In addition, Commission members moved the definition to Section 4A. Mr. Sweeney had noted that some records custodians might become confused if Section 1 contained both "public records" and "personal records" definitions.

Since the Commission had already examined the "personal records" definition, members determined that they would proceed to an examination of Section 4A, which reads as follows:

"a) Each State agency shall submit a report to _____ describing the personal records its maintains. The report shall include:
i) 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;
ii) 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;
iii) The major uses and purposes of the information contained in each set of personal records;
iv) Agency policies and procedures regarding storage, retrievability, access controls, retention, disposal, accuracy and security of each set of personal records;
v) Agency policies and procedures regarding access to personal records by the person in interest; and
vi) The categories of sources of information for each set of personal records.

b) Each State agency maintaining personal records shall submit the report described in subsection (a) 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.

c) Any State agency maintaining two or more sets of personal records may combine such records for reporting purposes, if the character of such records are highly similar.

d) The _____ shall be responsible for establishing regulations prescribing the form and method of filing reports of personal records.

e) All reports of personal records shall be available for public inspection."

The Commission made a number of revisions to the draft of Section 4A. First of all, subsections a and d were modified to require the forwarding of reports to the Secretary of the Department of General Services. Subsection a(4) was changed to read: "Agency policies and procedures regarding storage, retrievability, retention, disposal, and security (including access controls) of each set of personal records;" Subsection a(5) was revised as follows: "Agency policies and procedures regarding access and challenges to personal records by the person in interest; ". Finally, Section 4A was renumbered to appear as Section 5A.

Mr. Hanratty noted that an amendment had been added to Section 2 c, deleting the words "within a reasonable time" and replacing them with the phrase "within thirty calendar days of the receipt of the request". Commission members removed the word "calendar."

The Commission then turned its attention to a number of amendments which had been made to Section 3c of the Public Information Act. Subsection (i) currently prevents the disclosure, except as otherwise provided by law, of "medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports." Mr. Hanratty proposed the following amendment to this subsection:

> " If the custodian denies the right of inspection to records on the basis of sociological data, he shall be required to promulgate rules which define, for the records in his possession, the meaning of sociological data. The exemption for sociological data shall continue as presently administered until July 1, 1983, by which time rules shall be adopted by the custodian."

After discussing the proposed amendment, the Commission decided to adopt the language offered by Mr. Sweeney: "After July 1, 1983, a custodian may deny the right of inspection to records on the basis of sociological data only pursuant to rules which define, for the records in his possession, the meaning and scope of sociological data."

The Commission also considered an amendment to subsection 3 (c)(iv), which currently prevents the disclosure of letters of reference, unless otherwise provided by law. Mr. Hanratty proposed adding the following language in accordance with an earlier decision of the Commission: "letters of reference, exclusive of letters of reference pertaining to individual persons seeking appointment to positions of a significant public policy-making character on boards and bodies." Commission members discussed the issue and determined that they would not recommend revision of subsection 3(c)(iv) but would instead seek an advisory opinion on the subject from the Attorney General.

The Commission examined four proposed additions to Section 3 c. The Commission approved the addition of subsection 3(c)(xi), which would prevent, except as otherwise provided by law, "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." The Commission also approved without change the addition of subsection 3(c) (xiii), which would prevent, except as otherwise provided by law,

> "retirement files or records on individual persons, except that such files or records shall be available to the person in interest and to his appointing authority. After the death of the person in interest, such files or records shall 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 shall indicate whether a person is receiving any retirement or pension allowance."

A third amendment would have prevented the disclosure, except as otherwise provided by law, of "administrative or technical information, including software, operating protocols, employee manuals, or other information, but

only if inspection would jeopardize the security of a record." The Commission decided to replace this amendment with the following language: "security manuals or any public record directly related to the maintenance of security."

Finally, the Commission considered subsection 3(c)(xii), which would have prohibited the disclosure, except as otherwise provided by law, of

> "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, non-pending complaints, and disciplinary actions involving findings of guilt or culpability. If the custodian does not maintain business addresses and business telephone numbers, then he shall permit the right of inspection to home addresses and home telephone numbers, should such information exist in his files. 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 shall delete that person's name from licensee lists purchased from the custodian."

The Commission made two changes to the above language. First of all, the first sentence was amended to include: " and evidence provided to the custodian in order to satisfy a statutory requirement of financial responsibility." The members also deleted the second sentence and replaced it with the following statement: " If the custodian cannot provide business addresses, then he shall permit inspection of home addresses."

The Commission approved without modification the following amendment to Section 4, drafted by Mr. Sweeney:

> " c) Except as provided in subsection (b), the official custodian may charge reasonable fees for the search and preparation of records for inspection and copying.
> d) The official custodian may not charge any search or preparation fee for the first four hours of official or employee time that is needed to respond to a request for information.
> e) The official custodian may waive any cost or fee charged under the subtitle if a waiver is requested and the official custodian determines that a waiver would be in the public interest. The official custodian shall consider, among other relevant factors, the ability of the requester to pay for the cost or fee."

Commission members also approved the following amendments to Section 5A:

> a) 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, shall be guilty of a misdemeanor and, upon conviction therefore, shall be punished by a fine not to exceed $100.
> 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, upon conviction thereof, shall be punished by a fine not to exceed $100.

Two changes were made pertinent to Section 5A. First of all, Commission members increased the fines for violations of subsections (a) and (b) to $1000. Second, members instructed the staff to draft language adding a civil penalty for statutory violations in the handling of personally identifiable records.

The Commission finally approved two proposed amendments to the Transportation Article. Section 12-111(3) currently reads as follows: "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 Commission supported the addition of the following language:

" . . . except that records requested by any federal, State or local government agency that are solicited for employment purposes shall contain only that information which is available for inspection by a nongovernment requester." In addition, the Commission supported amending Transportation Article Section 16-117.1 to require automatic expungement of a licensee's public driving record, as long as the licensee satisfies the provisions stipulated in the Annotated Code.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 26, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The House Constitutional and Administrative Law Committee will meet on Monday, March 8, 1982, at 4 p.m. to consider House Bills 1481, 1482, and 1483. It is expected that Delegate Kopp and Mr. Drea will provide the principal testimony on behalf of these bills. Naturally, Commission members are invited to attend and provide additional support.

The House Judiciary Committee has not yet scheduled a hearing for House Bill 1480. I will let you know as soon as a hearing date has been announced.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 23, 1982

To: Information Practices Commission Members

From: Dennis M. Hanratty

Enclosed are additional bills pertaining to record-keeping practices.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 19, 1982

TO: Information Practices Commission

FROM: Dennis M. Hanratty

Enclosed are copies of the four bills of the Information Practices Commission.

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 19, 1982

OFFICIAL MINUTES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. Issues Relating to Specific Agencies

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

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

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

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

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

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

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

Examination was then made of Issue 43:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Issue 54 pertained to a public access question:

VII. <u>Public Information Act Issues Not Previously Found in this List.</u>

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

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

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

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

55. YES____ NO____

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

Issue 56 was then examined by the Commission:

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

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

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

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

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

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

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

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

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

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

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

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

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 4, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

As you know, the bills drafted by the Information Practices Commission have been submitted to the Governor's Legislative Office for consideration.

Mr. Benjamin M. Bialek, Assistant Legislative Officer, Executive Department, contacted this office earlier in the week and indicated that he wished to propose certain minor, technical changes to the Commission's legislation. It was not possible to convene the entire Commission to meet with Mr. Bialek on such short notice. Delaying the meeting would have had an adverse impact on the Commission's efforts. Therefore, Mr. Drea, Mr. Sweeney and I met with Mr. Bialek on February 2, 1982 in order to hear Mr. Bialek's recommendations.

Enclosed you will find a report of our meeting with Mr. Bialek. As is evident from an examination of this report, Mr. Bialek's proposals represent technical clarifications which do not have a substantive impact on the Commission's legislation. <u>However, if you find any proposal to be objectionable, please let me know at once and I will contact Mr. Bialek.</u>

Meeting with Mr. Benjamin M. Bialek, Assistant Legislative Officer, Executive Department - February 2, 1982.

Mr. Bialek proposed the following changes to the four bills drafted by the Information Practices Commission. All bills appear in the appendix of the Commission's Final Report. References to line numbers pertain to the numbers which appear on the right side of every bill page.

I. Public Information Bill

1. Lines 89-158 -Since the Commission has made no changes to existing legislation in Article 76A, Sections 1 and 1A, there is no need to repeal and reenact these sections.

2. Line 275 - Replace "Article 43 § 54 M" with "Article 43 § 54 M (b)."

3. Lines 334-347 - Access should be granted to the person in interest. At the same time, however, language must be developed which will not inadvertently permit access to investigatory data.

4. Unnumbered line between 342 and 343 - Replace "to other data" with "of other data."

5. Lines 357-358 - Replace "Security manuals or any public record directly related to the maintenance of security" with "Information system security manuals or other similar public records related to the security of information systems."

6. Line 426 - Replace "Except as provided in subsection (B)" with "Except as provided in subsection (D)."

7. Lines 430-432 - Change the four hour time period to two hours.

8. Line 515 - Replace "article" with "subtitle."

9. Line 525 - A heading will have to be given to this subtitle.

10. Line 529 - Replace "an individual" with "a natural person."

11. Line 533 - Replace "Each State agency" with "Each State agency or instrumentality."

12. Line 556 - Replace "Each State agency" with "Each State agency or instrumentality."

13. Line 562 - Replace "Any State agency" with "Any State agency or instrumentality."

14. Line 564 - Replace "are" with "is".

15. Line 572 - Replace "the official custodian shall" with "the official custodian of a State agency or instrumentality may".

16. Lines 582-583 - Delete "in the opinion of the official custodian".

17. Line 587 - Replace "the official custodian" with "the agency or instrumentality".

18. Line 594 - Delete "except as otherwise provided by law".

19. Line 595 - Replace "an agency" with " a State agency or instrumentality."

20. Line 597 - Insert, after the word "agency", " in violation of this article."

21. Line 600 - Delete "except as otherwise provided by law".

22. Line 602 - Insert, after the word 'obtains', "in violation of this article."

23. Line 606 - Replace "violates" with "knowingly and willfully violates".

24. Line 607 - Replace "subtitle" with "article".

II. Transportation Bills - no recommended changes

III. Health Occupations Bill - While the legislative office did not object as such to the concept, it would like to receive the opinion of the Department of Health and Mental Hygiene before proceeding.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 3, 1982

OFFICIAL MINUTES

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

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

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

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

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

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

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

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

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

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

YES____ NO____

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

YES____ NO____

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

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

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

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

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

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

were no longer relevant.

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

The Commission then considered issue 22.

"J. An officer or employee of an agency who willfully discloses or provides an individually identifiable record to any person or agency is subject to criminal penalties." 22. YES____ NO____

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

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

IV. Security of Personally Identifiable Records

A. An agency maintaining personally identifiable data shall enact and implement appropriate safeguards to ensure the integrity, security and confidentiality of such data. 23. YES____ NO____

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

24. YES____ NO____

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

25. YES____ NO____

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

26. YES____ NO____

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

27. YES____ NO____

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

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

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

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

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

V. Catalogue of Record Systems

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

a) the name and location of such records; 28. YES____ NO____

b) the categories of individuals contained in the record system; 29. YES____ NO____

c) the categories of records maintained in the system; 30. YES____ NO____

d) the uses of such records; 31. YES____ NO____

e) policies and procedures regarding storage, retrievability, access controls, retention, disposal, accuracy and security of such records; 32. YES____ NO____

f) agency procedures whereby an individual can be notified on request if the system of records contains a record pertaining to that individual; 33. YES____ NO____

g) and the categories of sources of records in the system; 34. YES____ NO____

h) This report shall be open to public inspection. 35. YES____ NO____

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

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

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

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

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

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

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

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

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

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

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

February 2, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed are two additional bills pertaining to information practices.

HB #855

HB #857

STATE HOUSE, ROOM H-4, ANNAPOLIS, MARYLAND 21404, (301) 269-2810, TELETYPEWRITER FOR DEAF 269-2609

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OFFICIAL MINUTES

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

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

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

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

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

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

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

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

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

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

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

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

I. <u>Collection of Personally Identifiable Information</u>

A. An agency collecting personally identifiable information from an individual should inform that individual:

a. of the principal purpose for which the agency intends to use the information: 1. YES____ NO____

b. of the consequences to the individual of not providing the information; 2. YES____ NO____

c. of his right to inspect such information, if such a right exists; 3. YES____ NO____

d. of the public or nonpublic status of the information to be submitted. 4. YES____ NO____

B. To the greatest extent possible, personally identifiable information should be collected from the subject of the record system. 5. YES____ NO____

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

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

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

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

The Commission then examined issues 6 through 8:

II. Access Rights of the Person in Interest

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

a. shall be permitted to examine all data pertaining to him; 6. YES___ NO___

b. shall be permitted to copy all data pertaining to him; 7. YES___ NO___

c. shall be permitted to request a correction of a particular record. 8. YES___ NO___

The Commission unanimously supported issues 6 through 8.

Commission members proceeded to consider issues 9 through 12:

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

a. amend the record in question; or
b. inform the individual of its refusal to amend the record, the reason for the refusal, and the agency procedures for review of the refusal. 9. YES___ NO___

C. If, after appropriate agency review, an agency refuses to correct or amend the record in accordance with the request from the person in interest, the agency shall permit the person in interest to file with the record a concise statement of his reasons for disagreement with the agency's refusal. 10. YES___ NO___

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

a. Any future recipients of the disputed portion of the record; 11. YES___ NO___

b. any past recipients of the disputed portion of the record, to the extent that they can be identified. 12. YES___ NO___

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

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

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

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

> B. An agency disclosing personally identifiable data shall keep an accurate record of all such disclosures including, but not necessarily limited to, the date of the disclosure, the name and address of the recipient of the data, the statutory authority permitting the disclosure of information, and the purported use of the information by the recipient. This requirement does not apply to information released under a public information statute. 14. YES____ NO____

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

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

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

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

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

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

Mr. Garrett stated that the Commission should still support issue

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

The Commission examined issue 13:

III. Disclosure of Personally Identifiable Information

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

13. YES____ NO____

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

Issue 15 was considered next:

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

15. YES____ NO____

The Commission voted unanimously to adopt issue 15.

Issue 16 was then considered by the Commission:

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

16. YES____ NO____

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

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

Issue 17 was next on the agenda:

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

17. YES____ NO____

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

The Commission then examined issue 18:

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

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

18. YES____ NO____

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

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

G. All information collected from individuals seeking professional licenses shall continue to be available for public inspection. 19. YES____ NO____

H. All information collected from individuals seeking professional licenses shall be confidential. 20. YES____ NO____

I. Licensing boards may only release the names and addresses of licensees. 21. YES____ NO____

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

Senator Hickman proposed amending issue 19 to read as follows: "All information collected from individuals seeking professional licensees which deal with name, professional address and telephone number, professional

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

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