STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

January 28, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The members and staff of the Information Practices Commission will meet with Governor Harry Hughes on February 8, 1982 at 11 a.m. Please gather in the Commission office (State House, Room H-4) by 10:45 a.m. Also, please notify this office if you will definitely be unable to attend the meeting.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

January 28, 1982

TO: Arthur S. Drea, Jr.
Dennis M. Sweeney
Delegate Nancy Kopp

FROM: Dennis M. Hanratty

The Information Practices Commission's meeting with Mr. Benjamin M. Bialek, Assistant Legislative Officer, Executive Department will be held on Tuesday, February 2nd, 1982 at 1 p.m. in Room 206 of the State House.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

January 25, 1982

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed is an up-to-date compilation of bills pertaining to information practices. I will continue to send you bills throughout the session if they appear to be relevant to the Commission's work. Please examine these bills carefully as the Commission may be asked to express an opinion on some of these issues.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

December 16,1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

SUBJECT: Important Commission Meeting

The Information Practices Commission will hold an important meeting on Tuesday, December 22, 1981 at 1 p.m. in the House Constitutional and Administrative Law Committee Room. The Commission will review draft chapters of the Final Report and will consider any legislative proposals left pending from the December 14th meeting.

Enclosed you will find a letter and documentation addressed to the staff by Mr. Dennis M. Parkinson, Assistant Secretary of the Department of Budget and Fiscal Planning and Chairman of the Procurement Advisory Council. The Procurement Advising Council is hopeful that the Commission will introduce legislation assigning a confidential status to procurement data under certain specified circumstances. Please review the enclosed materials in advance of next Tuesday's meeting. I would suggest that any questions regarding this proposal be directed to Mr. Parkinson at 269-2118.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

December 8, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

SUBJECT: Important Commission Meeting

The Information Practices Commission will hold a very important meeting on December 14, 1981 at 4 p.m. in the House Constitutional and Administrative Law Committee Room. The purpose of the meeting is to review the enclosed legislative and Executive Order proposals.

It is important to emphasize that any and all language contained in these proposals is subject to change by the Commission itself. Therefore, I would ask you to review these proposals carefully and to come before the Commission on Monday, if necessary, with a list of specific amendments.

You will also find in this package extracts from the Indiana Fair Information Practices Act and the Uniform Information Practices Code pertinent to access to data on the part of researchers. A majority of Commission members participating in the recent ballot by mail supported the concept that legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances. The Indiana Act and the Uniform Code provide examples regarding language that could be used in this area. Therefore, please review both Acts carefully as they will be discussed at Monday's meeting.

PROPOSED AMENDMENTS TO THE PUBLIC INFORMATION ACT

final ~~1st draft~~

ARTICLE 76A, SECTIONS 1-5

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

§1. Definitions

(a) In this article the following words have the meanings indicated.
(b) "Public Records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map, drawing, or other written document, regardless of physical form or characteristics, and including all copies thereof, that have been made by any branch of the State government, including the legislative, judicial, and executive branches, by any branch of a political subdivision, and by any agency or instrumentality of the State or a political subdivision, or received by them in connection with the transaction of public business. The term "public records" also includes the salaries of all employees of the State, of a political subdivision, and any agency or instrumentality thereof, both in the classified and nonclassified service.
(c) "Applicant" means and includes any person requesting disclosure of public records.
(d) "Written documents" means and includes all books, papers, maps, photographs, cards, tapes, recordings, computerized records, or other documentary materials, regardless of physical form or characteristics.
(e) "Political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district, and special district within the State.
(f) "Official custodian" means and includes each and every officer or employee of the State or any agency, institution, or political subdivision thereof, who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.
(g) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.
(h)"Person" means and includes any natural person, corporation, partnership, firm, association, or governmental agency.
(i) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.

§§ 1A. Only relevant and necessary information to be maintained; public access.

The State, counties, municipalities, and political subdivisions, or any agencies thereof, may maintain only such information about a person as is relevant and necessary to accomplish a purpose of the governmental entity or agency which is authorized or required to be accomplished by statute, executive order of the Governor or the chief executive of a local jurisdiction, judicial rule, or other legislative mandate. Moreover, all persons are entitled to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To this end, the provisions of this act shall be construed in every instance with the view toward public access, unless an unwarranted invasion of privacy of a person in interest would result therefrom, and the minimization of costs and time delays to persons requesting information.

§ 2. Inspection of public records generally; rules and regulations; procedures when records not immediately available; special provisions as to Charles County.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law. The official custodian of any public record shall make and publish such rules and regulations with reference to the timely inspection and production of such record as shall be reasonable necessary for the protection of such record and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom written application is made, such person shall, within ten working days of the receipt of the request, notify the applicant of this fact and if known, the custodian of the record and the location or possible location thereof.

(c) If the public records requested are in the custody and control of the person to whom written application is made but are not immediately available, the custodian shall, within ten working days of the receipt of the request, notify the applicant of this fact and shall set forth a date and hour [within a reasonable time] WITHIN THIRTY DAYS OF THE RECEIPT OF THE REQUEST at which time the record will be available for the exercise of the right given by this article.

(d) In Charles County, except for records kept by officials, agencies, or departments of the State of Maryland, public information shall be regulated by § 6 of this article.

§ 3. Custodian to allow inspection of public records; exceptions; denial of right of inspection of certain records; court order restricting disclosure of records ordinarily open to inspection.

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section:
(i) Such inspection would be contrary to any State statute;
(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law;
(iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record; or
(iv) Such public records are privileged or confidential by law.
(b) The custodian may deny the right of inspection of the following records or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest:
(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, State's attorney, the Attorney General, police department, or any investigatory files compiled for any other law-enforcement, judicial, correctional, or prosecution purposes, but the right of a person in interest to inspect the records may be denied only to the extent that the production of them would (A) interfere with valid and proper law-enforcement proceedings, (B) deprive another person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, (F) prejudice any investigation, or (G) endanger the life or physical safety of any person;
(ii) Test questions, scoring keys, and other examination data pertaining to administration of licenses or employment or academic examinations; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;
(iii) The specific details of bona fide research projects being conducted by an institution of the State or a political subdivision, except that the name, title, expenditures, and the time when the final project summary shall be available;
(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) The custodian shall deny the right of inspection of the following records or any portion thereof, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports; EXCEPT THAT THE PERSON IN INTEREST SHALL BE PERMITTED TO EXAMINE MEDICAL AND PSYCHOLOGICAL DATA TO THE SAME EXTENT THAT ACCESS IS GRANTED BY HOSPITALS AND RELATED INSTITUTIONS IN ACCORDANCE WITH ARTICLE 43, SECTION 54M OF THE ANNOTATED CODE. 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.

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the person in interest and the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(vi) Library, archives, and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;

(ix) Circulation records maintained by public libraries showing personal transactions by those borrowing from them; and

(x) The home address or telephone number of any employee of the State or any agency, instrumentality, or political subdivision of this State, whether in the classified or nonclassified service, except with the permission of the employee, unless the governmental entity which employs the person has determined that disclosure of the address or number is necessary to protect the public interest[.] ;

(xi) RECORDS DESCRIBING AN INDIVIDUAL PERSON'S FINANCES, INCOME, ASSETS, LIABILITIES, NET WORTH, BANK BALANCES, FINANCIAL HISTORY OR ACTIVITIES, OR CREDIT WORTHINESS, EXCEPT THAT SUCH RECORDS SHALL BE AVAILABLE TO THE PERSON IN INTEREST;

(xii) OCCUPATIONAL AND PROFESSIONAL LICENSING RECORDS ON INDIVIDUAL PERSONS, EXCEPT THAT THE CUSTODIAN SHALL PERMIT THE RIGHT OF INSPECTION TO THE FOLLOWING DATA: NAMES, BUSINESS ADDRESSES, BUSINESS TELEPHONE NUMBERS, EDUCATIONAL AND OCCUPATIONAL BACKGROUNDS, PROFESSIONAL QUALIFICATIONS, NON-PENDING COMPLAINTS, DISCIPLINARY ACTIONS INVOLVING FINDINGS

OF GUILT OR CULPABILITY, AND EVIDENCE PROVIDED TO THE CUSTODIAN IN ORDER TO SATISFY A STATUTORY REQUIREMENT OF FINANCIAL RESPONSIBILITY. IF THE CUSTODIAN CANNOT PROVIDE BUSINESS ADDRESSES, THEN HE SHALL PERMIT INSPECTION OF HOME ADDRESSES. THE CUSTODIAN MAY PERMIT THE RIGHT OF INSPECTION TO OTHER DATA ON INDIVIDUAL PERSONS, BUT ONLY IF INSPECTION IS REQUIRED FOR A COMPELLING PUBLIC PURPOSE AND IS PROVIDED BY RULE OR REGULATION. UPON WRITTEN REQUEST FROM AN INDIVIDUAL LICENSEE, THE CUSTODIAN SHALL DELETE THAT PERSON'S NAME FROM LICENSEE LISTS PURCHASED FROM THE CUSTODIAN;

(xiii) 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;

(xiv) SECURITY MANUALS OR ANY PUBLIC RECORD DIRECTLY RELATED TO THE MAINTENANCE OF SECURITY.

(d) WITHIN A PERIOD OF THIRTY DAYS AFTER RECEIVING A WRITTEN REQUEST FOR ACCESS TO ANY PUBLIC RECORD, THE CUSTODIAN MUST EITHER PROVIDE THE INFORMATION REQUESTED OR DENY THE REQUEST.

Whenever the custodian denies a written request for access to any public record or any portion thereof under this section, the custodian shall provide the applicant with a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and all remedies for review of this denial available under this article. The statement shall be furnished to the applicant within ten working days of denial. In addition, any reasonable severable protion of a record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure.

(e) If, in the opinion of the official custodian of any public record which is otherwise required to be disclosed under this article, disclosure of the contents of said record would do substantial injury to the public interest, the official custodian may temporarily deny disclosure pending a court determination of whether disclosure would do substantial injury to the public interest provided that, within ten working days of the denial the official custodian applies to the circuit court of the county where the record is located or where he maintains his principal office for an order permitting him to continue to deny or restrict such disclosure. The failure of the official custodian to apply for a court determination following a temporary denial of inspection will result in his becoming subject to the sanctions provided in this article for failure to disclose authorized public records required to be disclosed. After hearing, the court may issue such an order upon a finding that disclosure

would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the application sent to the circuit court served upon him in the manner provided for service of process by the Maryland Rules of Procedure and shall have the right to appear and be heard.

§ 4. Copies, printouts and photographs of public records.

(a) In all cases in which a person has the right to inspect any public records such person shall have the right to be furnished copies, printouts, or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printingout, or photographing as he may charge for furnishing copies under this section.

(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.

§ 5. Administrative review; judicial enforcement; civil liability; personnel disciplinary action; criminal liability; immunity from criminal or civil penalties.

(a) Except in cases of temporary denials under §§ 3 (e) of this subtitle any applicant denied the right to inspect public records where the official custodian of the records is an agency subject to the provisions of Subtitle 24 of Article 41 of this Code may ask for an administrative review of this decision in accordance with §§ 251 through 254 of Article 41 of this Code, however, this remedy need not be exhausted prior to filing suit in the circuit court pursuant to this article.

(b)(1) On complaint of any person denied the right to inspect any record covered by this article, the circuit court in the jurisdiction in which the complainant resides, or has his principal place of business, or in which the records are situated, has jurisdiction to enjoin the State, any county, municipality, or political subdivision, any agency, official or employee thereof, from withholding records and to order the production of any records improperly withheld from the complainant. In such a case, the court may examine the contents of the records in camera to determine whether the records or any part thereof may be withheld under any of the exemptions set forth in §§ 3, and the burden is on the defendant to sustain its action. In carrying this burden the defendant may submit to the court for review a memorandum justifying the withholding of the records.

(2) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which the complaint is made, unless the court otherwise directs for good cause shown.

(3) Except as to cases the court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom shall take precedence on the docket over all other cases and shall be heard at the earliest practicable date and expedited in every way.

(4) In addition to any other relief which may be granted to a complainant, in any suit brought under the provisions of this section in which the court determines that the defendant has knowingly and wilfully failed to disclose or fully disclose records and information to any person who, under this article, is entitled to receive it, and the defendant knew or should have known that the person was entitled to receive it, any defendant governmental entity or entities shall be liable to the complainant in an amount equal to the sum of the actual damages sustained by the individual as a result of the refusal or failure and such punitive damages as the court deems appropriate.

(5) In the event of noncompliance with an order of the court, the court may punish the responsible employee for contempt.

(6) The court may assess against any defendant governmental entity or entities reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the court determines that the applicant has substantially prevailed.

(c) Whenever the court orders the production of any records improperly withheld from the applicant, and in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall forward a certified copy of its finding to the appointing authority of the custodian. Upon receipt thereof, the appointing authority shall, after appropriate investigation, take such disciplinary action as is warranted under the circumstances.

(d) Any person who wilfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed [$100.] $1000.

(e) Criminal or civil penalties may not be imposed upon a custodian who transfers or discloses the content of any public record to the Attorney General as provided in the "employee disclosure and confidentiality protection" subtitle of Article 64A.

§ 5A. Report of personal records; access to personal records for research purposes.

(a) IN THIS SUBTITLE, "PERSONAL RECORDS" MEANS AND INCLUDES ANY PUBLIC RECORD CONTAINING 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) EACH STATE AGENCY SUBJECT TO THE STATE DOCUMENTS LAW SHALL SUBMIT A REPORT TO THE SECRETARY OF THE DEPARTMENT OF GENERAL SERVICES DESCRIBING THE PERSONAL RECORDS IT 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, RETENTION, DISPOSAL AND SECURITY (INCLUDING ACCESS CONTROLS) OF EACH SET OF PERSONAL RECORDS;

(v) AGENCY POLICIES AND PROCEDURES REGARDING ACCESS AND CHALLENGES TO PERSONAL RECORDS BY THE PERSON IN INTEREST; AND

(vi) THE CATEGORIES OF SOURCES OF INFORMATION FOR EACH SET OF PERSONAL RECORDS.

(c) EACH STATE AGENCY MAINTAINING PERSONAL RECORDS SHALL SUBMIT THE REPORT DESCRIBED IN SUBSECTION (b) BY JULY 1, 1983. THEREAFTER, A REPORT SHALL BE SUBMITTED ANNUALLY WHICH SHALL DESCRIBE ONLY THOSE SETS OF PERSONAL RECORDS WHICH WERE ELIMINATED OR ADDED SINCE THE PREVIOUS REPORT, OR WHICH CHANGED SIGNIFICANTLY SINCE THE PREVIOUS REPORT.

(d) ANY STATE AGENCY MAINTAINING TWO OR MORE SETS OF PERSONAL RECORDS MAY COMBINE SUCH RECORDS FOR REPORTING PURPOSES, BUT ONLY IF THE CHARACTER OF THE RECORDS ARE HIGHLY SIMILAR.

(e) THE SECRETARY OF GENERAL SERVICES SHALL ISSUE REGULATIONS PRESCRIBING THE FORM AND METHOD OF FILING REPORTS OF PERSONAL RECORDS.

(f) ALL REPORTS OF PERSONAL RECORDS SHALL BE AVAILABLE FOR PUBLIC INSPECTION.

(g) IN CASES WHERE ACCESS TO NONDISCLOSABLE PERSONAL RECORDS IS DESIRED FOR RESEARCH PURPOSES, THE OFFICIAL CUSTODIAN SHALL GRANT ACCESS IF:

(i) THE RESEARCHER STATES IN WRITING TO THE OFFICIAL CUSTODIAN THE PURPOSE OF THE RESEARCH, INCLUDING ANY INTENT TO PUBLISH FINDINGS, THE NATURE OF THE PERSONAL RECORDS SOUGHT, AND THE SAFEGUARDS TO BE TAKEN TO PROTECT THE IDENTITIES OF THE SUBJECTS OF THE PERSONAL RECORDS:

(ii) THE RESEARCHER STATES THAT THE SUBJECTS OF THE PERSONAL RECORDS WILL NOT BE CONTACTED WITHOUT THE APPROVAL AND MONITORING OF THE OFFICIAL CUSTODIAN;

(iii) THE PROPOSED SAFEGUARDS ARE ADEQUATE, IN THE OPINION OF THE OFFICIAL CUSTODIAN, TO PREVENT THE IDENTITIES OF THE SUBJECTS OF THE PERSONAL RECORDS FROM BEING KNOWN; AND

(iv) THE RESEARCHER EXECUTES AN AGREEMENT WITH THE OFFICIAL CUSTODIAN WHICH INCORPORATES SUCH SAFEGUARDS FOR PROTECTION OF THE SUBJECTS OF THE PERSONAL RECORDS, DEFINES THE SCOPE OF THE RESEARCH PROJECT AND INFORMS THE RESEARCHER THAT FAILURE TO ABIDE BY CONDITIONS OF THE APPROVED AGREEMENT CONSTITUTES A BREACH OF CONTRACT.

§§ 5 B. Unlawful Disclosure, access and use of personal records; criminal liability; civil liability.

(a) EXCEPT AS OTHERWISE PROVIDED BY LAW, AN OFFICER OR EMPLOYEE OF AN AGENCY OR AUTHORIZED RECIPIENT OF RECORDS WHO WILLFULLY DISCLOSES OR PROVIDES A COPY OF ANY PERSONAL RECORDS TO ANY PERSON OR AGENCY, WITH KNOWLEDGE THAT DISCLOSURE IS PROHIBITED, SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE NOT TO EXCEED $1000.

(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 $1000.

(c) AN OFFICER OR EMPLOYEE OF AN AGENCY, A RESEARCHER OR ANY OTHER PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE THROUGH THE UNLAWFUL DISCLOSURE, ACCESS OR USE OF PERSONAL RECORDS SHALL BE LIABLE TO THE SUBJECTS OF THE PERSONAL RECORDS FOR ANY ACTUAL DAMAGES SUSTAINED BY THE SUBJECTS BY THE UNLAWFUL DISCLOSURE, ACCESS OR USE OF THE PERSONAL RECORDS AND SUCH PUNITIVE DAMAGES AS THE COURT DEEMS APPROPRIATE. THE COURT MAY ASSESS AGAINST ANY DEFENDANT REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS REASONABLY INCURRED IN ANY CASE UNDER THIS SECTION IN WHICH THE COURT DETERMINES THAT THE APPLICANT HAS PREVAILED SUBSTANTIALLY.

§§ 7-205. Miscellaneous powers and duties.

In addition to the powers and duties set forth elsewhere in this title, the Board has the following powers and duties:

(1) To adopt rules and regulations to carry out the provisions of this title;

(2) To set standards for the practice of registered nursing and licensed practical nursing;

(3) To adopt rules and regulations for the performance of delegated medical functions which are recognized jointly by the State Board of Medical Examiners and the State Board of Examiners of Nurses, under § 14-304 (d) of this article;

(4) To adopt rules and regulations for the performance of additional nursing acts that:

(i) May be performed under any condition authorized by the Board, including emergencies;

(ii) Require education and clinical experience;

(5) To adopt rules and regulations for registered nurses to perform independent nursing functions that:

(i) Require formal education and clinical experience; and

(ii) May be performed under any condition authorized by the Board, including emergencies;

(6) To adopt rules and regulations for licensed practical nurses to perform additional acts in the practice of registered nursing that:

(i) Require formal education and clinical experience;

(ii) May be performed under any condition authorized by the Board, including emergencies; and

(iii) Are recognized by the Nursing Board as proper for licensed practical nurses to perform;

(7) To keep a record of its proceedings;

(8) To submit an annual report to the Governor and Secretary;

(9) To enforce the employment record requirements of this title;

(10) To keep separate lists, which lists are open to reasonable public inspection, of all:

(i) Registered nurses licensed under this title;

(ii) Licensed practical nurses licensed under this title;

(iii) Nurse midwives certified under this title;

(iv) Nurse practitioners certified under this title; and

(v) Other licensees with a nursing specialty that is certified under this title;

(vi) EXCEPT THAT, UPON WRITTEN REQUEST FROM AN INDIVIDUAL LICENSEE, THE BOARD SHALL DELETE THAT PERSON'S NAME FROM LICENSEE LISTS PURCHASED FROM THE BOARD;

(11) To collect any funds for the Board;

(12) To report any alleged violation of this title to the State's attorney of the county where the alleged violation occurred; and

(13) In accordance with the State budget, to incur any necessary expense for prosecution of an alleged violation of this title.

§ 7-503. Confidentiality of records.

[(a) " Confidential record" defined. - (1) In this section, "confidential record" means any record of the Board that concerns and identifies a licensee, former licensee, or license applicant.

(2) "Confidential record" does not include a record:

(i) Of the successful completion of an examination;

(ii) Of a license issuance or renewal;

(iii) That indicates that an individual is not licensed or was not licensed at a particular time; or

(iv) Of a final decision of the Board under §§ 7-312 or 7-605 of this title.

(b) Scope of confidentiality. - A confidential record is exempt from:

(1) Process; and

(2) Disclosure under the "Public Information Act", Article 76A, § 1 et seq. of the Code.

(c) Access to confidential records. - A confidential record is available to:

(1) The members of the Board or its authorized employees;

(2) The individual to whom the record relates or an authorized agent of that individual;

(3) The parties to a proceeding held under §§ 7-312 or 7-605 of this title for the purpose of inspecting and copying it; and

(4) A court for judicial review of a decision of the Board in a proceeding under §§ 7-312 or 7-605 of this title.

(d) Waiver of confidentiality. - By written statement, an individual may waive the confidentiality provided for that individual under this section as to any designated record that relates to the individual.]

PROPOSED AMENDMENT TO TRANSPORTATION ARTICLE

§ 12-111. Records of Administration - In general.

(a) Records required to be kept. - The Administration shall keep a record of each application or other document filed with it and each certificate or other official document that it issues.
(b) Records are public information. - (1) Except as otherwise provided by law, all records of the Administration are public records and open to public inspection during office hours.

(2) In his discretion, the Administrator may classify as confidential and not open to public inspection any record or record entry:

(i) That is over 5 years old; or

(ii) That relates to any happening that occurred over 5 years earlier.

(3) Any record or record entry of any age shall be open to inspection by authorized representatives of any federal, State, or local governmental agency[.], 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 NON-GOVERNMENT REQUESTER.
(c) Records in microfilm. - Except for records required by law to be kept in their original or other specified form, the Administrator may order any record of the Administration to be kept on microfilm or in other microform, and the original destroyed.
(d) Destruction of old records. - Except for records required by law to be kept longer, the Administrator may destroy any record of the Administration that it has kept for 3 years or more and that the Administrator considers obsolete and unnecessary to the work of the Administration.

PROPOSED AMENDMENT TO TRANSPORTATION ARTICLE

§§ 16- 117.1 Expungement of certain driving records.

(a) Definitions. - (1) In this section the following words have the meanings indicated.
(2) "Criminal offense" does not include any violation of the Maryland Vehicle Law.
(3) "Moving violation" means a moving violation of the Maryland Vehicle Law other than a violation of any of its size, weight, load, equipment, or inspection provisions.
(b) When Administration [may] SHALL expunge records. - Except as provided in subsection (c) of this section, [if a licensee applies for the expungement of his public driving record,] the Administrator shall expunge [the record] A LICENSEE'S PUBLIC DRIVING RECORD if [at the time of application]:

(1) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 3 years, and his license has never been suspended or revoked;

(2) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 5 years, and his record shows not more than one suspension and no revocations; or

(3) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 10 years, regardless of the number of suspensions or revocations.

(c) When Administration may refuse to expunge. - The Administration may refuse to expunge a driving record if it determines that the individual [requesting the expungement] has not driven a motor vehicle on the highway during the particular conviction-free period on which he bases his request.

2nd draft

PROPOSED EXECUTIVE ORDER ON PRIVACY

WHEREAS, The Constitutions of Maryland and of the United States guarantee a fundamental right of privacy under certain circumstances; and

WHEREAS, The privacy of an individual is directly affected by the collection, maintenance, use and security of personal information by State agencies; and

WHEREAS, The increasing use of computers and sophisticated information technology, while essential to the efficient operations of State agencies, has greatly magnified the potential harm to individual privacy;

NOW, THEREFORE, I, HARRY HUGHES, GOVERNOR OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROMULGATE THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY.

1. The purpose of this Executive Order is to ensure safeguards for personal privacy by State agencies by adherence to the following principles of information practice:

   (a) There should be no personal information system whose existence is secret.

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

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

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

   (e) Personal information should not be used unless it is accurate and current.

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

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

(h) Appropriate administrative, technical and physical safeguards should be established to ensure the security of personal information and to protect against any anticipated threats or hazards to their security or integrity.

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

(a) "Personal information system" means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject;

(b) "Personal information" means any information pertaining to an individual whose identity can be ascertained therefrom with reasonable certainty either by name, address, number, description, finger or voice print, picture or any other identifying factor or factors;

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

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

3. Collection of personal information by state agencies-

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

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

(2) Except as otherwise provided by law, inform any individual requested to disclose personal information of: the principal purposes for which the agency intends to use the information, the penalties and specific consequences for the individual which are likely to result from nondisclosure, the individual's right to inspect such information, the public or nonpublic status of the information to be submitted, and the routine sharing of such information with State, federal or local government agencies.

4. Access and Correction Rights of the Data Subject-

(a) Except as otherwise provided by law, any State agency maintaining a personal information system shall permit a data subject to examine and copy any personal information that pertains to him.

(b) Except as otherwise provided by law, a data subject may request any State agency to correct or amend inaccurate or incomplete personal information pertaining to him. In complying with this requirement, a State agency shall adhere to the following procedures:

1) Within thirty (30) days after receiving a request from an individual in writing to correct or amend personal information pertaining to him, an agency shall:

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

(b) Inform the individual in writing of its refusal to correct or amend the record as requested, the reason for the refusal, and the agency procedures for review of the refusal.

2) Within thirty (30) days after an individual request review of an agency's refusal to correct or amend his record, the agency shall make a final determination.

3) If, after the review provided for by subsection (2), the agency refuses to correct or amend the record in accordance with the request, the agency shall permit the individual to file with the personal information system a concise statement of his reasons for the requested correction or amendment and his reasons for disagreement with the agency's refusal. The statement may not exceed more than two sheets of paper.

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

5. Security of Personal Information

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

insert

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 a perm. repre, ~~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, and the Chief of M

no P// The other members of the Committee shall be chosen by the Governor upon the rec of 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 shall not participate in any evaluation of his agency.

who ok/be the chairman -

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

(c) [An Interagency Data Security Committee is hereby created. The Committee shall consist of data professionals drawn from appropriate State agencies.] The Committee shall conduct 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.

PROPOSED AMENDMENTS TO THE PUBLIC INFORMATION ACT

ARTICLE 76A, SECTIONS 1-5

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

§1. Definitions

(a) In this article the following words have the meanings indicated.
(b) "Public Records" when not otherwise specified shall include any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map, drawing, or other written document, regardless of physical form or characteristics, and including all copies thereof, that have been made by any branch of the State government, including the legislative, judicial, and executive branches, by any branch of a political subdivision, and by any agency or instrumentality of the State or a political subdivision, or received by them in connection with the transaction of public business. The term "public records" also includes the salaries of all employees of the State, of a political subdivision, and any agency or instrumentality thereof, both in the classified and nonclassified service.
(c) "Applicant" means and includes any person requesting disclosure of public records.
(d) "Written documents" means and includes all books, papers, maps, photographs, cards, tapes, recordings, computerized records, or other documentary materials, regardless of physical form or characteristics.
(e) "Political subdivision" means and includes every county, city and county, city, incorporated and unincorporated town, school district, and special district within the State.
(f) "Official custodian" means and includes each and every officer or employee of the State or any agency, institution, or political subdivision thereof, who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.
(g) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.
(h)"Person" means and includes any natural person, corporation, partnership, firm, association, or governmental agency.
(i) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person, except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include the parent or duly appointed legal representative.

§ 1A. Only relevant and necessary information to be maintained; public access.

The State, counties, municipalities, and political subdivisions, or any agencies thereof, may maintain only such information about a person as is relevant and necessary to accomplish a purpose of the governmental entity or agency which is authorized or required to be accomplished by statute, executive order of the Governor or the chief executive of a local jurisdiction, judicial rule, or other legislative mandate. Moreover, all persons are entitled to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. To this end, the provisions of this act shall be construed in every instance with the view toward public access, unless an unwarranted invasion of privacy of a person in interest would result therefrom, and the minimization of costs and time delays to persons requesting information.

§ 2. Inspection of public records generally; rules and regulations; procedures when records not immediately available; special provisions as to Charles County.

(a) All public records shall be open for inspection by any person at reasonable times, except as provided in this article or as otherwise provided by law. The official custodian of any public record shall make and publish such rules and regulations with reference to the timely inspection and production of such record as shall be reasonable necessary for the protection of such record and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(b) If the public records requested are not in the custody or control of the person to whom written application is made, such person shall, within ten working days of the receipt of the request, notify the applicant of this fact and if known, the custodian of the record and the location or possible location thereof.

(c) If the public records requested are in the custody and control of the person to whom written application is made but are not immediately available, the custodian shall, within ten working days of the receipt of the request, notify the applicant of this fact and shall set forth a date and hour [within a reasonable time] WITHIN THIRTY DAYS OF THE RECEIPT OF THE REQUEST at which time the record will be available for the exercise of the right given by this article.

(d) In Charles County, except for records kept by officials, agencies, or departments of the State of Maryland, public information shall be regulated by § 6 of this article.

§ 3. Custodian to allow inspection of public records; exceptions; denial of right of inspection of certain records; court order restricting disclosure of records ordinarily open to inspection.

(a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (b) or (c) of this section:

(i) Such inspection would be contrary to any State statute;

(ii) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law;

(iii) Such inspection is prohibited by rules promulgated by the Court of Appeals, or by the order of any court of record; or

(iv) Such public records are privileged or confidential by law.

(b) The custodian may deny the right of inspection of the following records or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest:

(i) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, county attorney, city attorney, State's attorney, the Attorney General, police department, or any investigatory files compiled for any other law-enforcement, judicial, correctional, or prosecution purposes, but the right of a person in interest to inspect the records may be denied only to the extent that the production of them would (A) interfere with valid and proper law-enforcement proceedings, (B) deprive another person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, (F) prejudice any investigation, or (G) endanger the life or physical safety of any person;

(ii) Test questions, scoring keys, and other examination data pertaining to administration of licenses or employment or academic examinations; except that written promotional examinations and the scores or results thereof shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iii) The specific details of bona fide research projects being conducted by an institution of the State or a political subdivision, except that the name, title, expenditures, and the time when the final project summary shall be available;

(iv) The contents of real estate appraisals made for the State or a political subdivision thereof, relative to the acquisition of property or any interest in property for public use, until such time as title of the property or property interest has passed to the State or political subdivision, except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by statute.

(v) Interagency or intraagency memorandums or letters which would not be available by law to a private party in litigation with the agency.

(c) The custodian shall deny the right of inspection of the following records or any portion thereof, unless otherwise provided by law:

(i) Medical, psychological, and sociological data on individual persons, exclusive of coroners' autopsy reports; EXCEPT THAT 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.

(ii) Adoption records or welfare records on individual persons;

(iii) Personnel files except that such files shall be available to the person in interest and the duly elected and appointed officials who supervise the work of the person in interest. Applications, performance ratings and scholastic achievement data shall be available only to the person in interest and to the duly elected and appointed officials who supervise his work;

(iv) Letters of reference;

(v) Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(vi) Library, archives, and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contribution;

(vii) Hospital records relating to medical administration, medical staff, personnel, medical care, and other medical information, whether on individual persons or groups, or whether of a general or specific classification;

(viii) School district records containing information relating to the biography, family, physiology, religion, academic achievement and physical or mental ability of any student except to the person in interest or to the officials duly elected and appointed to supervise him;

(ix) Circulation records maintained by public libraries showing personal transactions by those borrowing from them; and

(x) The home address or telephone number of any employee of the State or any agency, instrumentality, or political subdivision of this State, whether in the classified or nonclassified service, except with the permission of the employee, unless the governmental entity which employs the person has determined that disclosure of the address or number is necessary to protect the public interest [.] ;

(xi) RECORDS DESCRIBING AN INDIVIDUAL PERSON'S FINANCES, INCOME, ASSETS, LIABILITIES, NET WORTH, BANK BALANCES, FINANCIAL HISTORY OR ACTIVITIES, OR CREDIT WORTHINESS, EXCEPT THAT SUCH RECORDS SHALL BE AVAILABLE TO THE PERSON IN INTEREST;

(xii) OCCUPATIONAL AND PROFESSIONAL LICENSING RECORDS ON INDIVIDUAL PERSONS, EXCEPT THAT THE CUSTODIAN SHALL PERMIT THE RIGHT OF INSPECTION TO THE FOLLOWING DATA: NAMES, BUSINESS ADDRESSES, BUSINESS TELEPHONE NUMBERS, EDUCATIONAL AND OCCUPATIONAL BACKGROUNDS, PROFESSIONAL QUALIFICATIONS, NON-PENDING COMPLAINTS, DISCIPLINARY ACTIONS INVOLVING FINDINGS

except that there i shd be permit. to examine med. & psych. data to the same extent ~~as~~ that access is granted by Corp. & rela. enabl. provis

OF GUILT OR CULPABILITY, AND EVIDENCE PROVIDED TO THE CUSTODIAN IN ORDER TO SATISFY A STATUTORY REQUIREMENT OF FINANCIAL RESPONSIBILITY. IF THE CUSTODIAN CANNOT PROVIDE BUSINESS ADDRESSES, THEN HE SHALL PERMIT INSPECTION OF HOME ADDRESSES. THE CUSTODIAN MAY PERMIT THE RIGHT OF INSPECTION TO OTHER DATA ON INDIVIDUAL PERSONS, BUT ONLY IF INSPECTION IS REQUIRED FOR A COMPELLING PUBLIC PURPOSE AND IS PROVIDED BY RULE OR REGULATION. UPON WRITTEN REQUEST FROM AN INDIVIDUAL LICENSEE, THE CUSTODIAN SHALL DELETE THAT PERSON'S NAME FROM LICENSEE LISTS PURCHASED FROM THE CUSTODIAN;

(xiii) 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;

(xiv) SECURITY MANUALS OR ANY PUBLIC RECORD DIRECTLY RELATED TO THE MAINTENANCE OF SECURITY.

(d) WITHIN A PERIOD OF THIRTY DAYS AFTER RECEIVING A WRITTEN REQUEST FOR ACCESS TO ANY PUBLIC RECORD, THE CUSTODIAN MUST EITHER PROVIDE THE INFORMATION REQUESTED OR DENY THE REQUEST.

Whenever the custodian denies a written request for access to any public record or any portion thereof under this section, the custodian shall provide the applicant with a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and all remedies for review of this denial available under this article. The statement shall be furnished to the applicant within ten working days of denial. In addition, any reasonable severable protion of a record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure.

(e) If, in the opinion of the official custodian of any public record which is otherwise required to be disclosed under this article, disclosure of the contents of said record would do substantial injury to the public interest, the official custodian may temporarily deny disclosure pending a court determination of whether disclosure would do substantial injury to the public interest provided that, within ten working days of the denial the official custodian applies to the circuit court of the county where the record is located or where he maintains his principal office for an order permitting him to continue to deny or restrict such disclosure. The failure of the official custodian to apply for a court determination following a temporary denial of inspection will result in his becoming subject to the sanctions provided in this article for failure to disclose authorized public records required to be disclosed. After hearing, the court may issue such an order upon a finding that disclosure

would cause substantial injury to the public interest. The person seeking permission to examine the record shall have notice of the application sent to the circuit court served upon him in the manner provided for service of process by the Maryland Rules of Procedure and shall have the right to appear and be heard.

§ 4. Copies, printouts and photographs of public records.

(a) In all cases in which a person has the right to inspect any public records such person shall have the right to be furnished copies, printouts, or photographs for a reasonable fee to be set by the official custodian. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(b) If the custodian does not have the facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge a reasonable fee for the services rendered by him or his deputy in supervising the copying, printingout, or photographing as he may charge for furnishing copies under this section.

(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.

~~(c)~~ 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.

§ 5. Administrative review; judicial enforcement; civil liability; personnel disciplinary action; criminal liability; immunity from criminal or civil penalties.

(a) Except in cases of temporary denials under § 3 (e) of this subtitle any applicant denied the right to inspect public records where the official custodian of the records is an agency subject to the provisions of Subtitle 24 of Article 41 of this Code may ask for an administrative review of this decision in accordance with § 251 through 254 of Article 41 of this Code, however, this remedy need not be exhausted prior to filing suit in the circuit court pursuant to this article.

(b)(1) On complaint of any person denied the right to inspect any record covered by this article, the circuit court in the jurisdiction in which the complainant resides, or has his principal place of business, or in which the records are situated, has jurisdiction to enjoin the State, any county, municipality, or political subdivision, any agency, official or employee thereof, from withholding records and to order the production of any records improperly withheld from the complainant. In such a case, the court may examine the contents of the records in camera to determine whether the records or any part thereof may be withheld under any of the exemptions set forth in § 3, and the burden is on the defendant to sustain its action. In carrying this burden the defendant may submit to the court for review a memorandum justifying the withholding of the records.

(2) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within 30 days after service upon the defendant of the pleading in which the complaint is made, unless the court otherwise directs for good cause shown.

(3) Except as to cases the court considers of greater importance, proceedings before the court, as authorized by this section, and appeals therefrom shall take precedence on the docket over all other cases and shall be heard at the earliest practicable date and expedited in every way.

(4) In addition to any other relief which may be granted to a complainant, in any suit brought under the provisions of this section in which the court determines that the defendant has knowingly and wilfully failed to disclose or fully disclose records and information to any person who, under this article, is entitled to receive it, and the defendant knew or should have known that the person was entitled to receive it, any defendant governmental entity or entities shall be liable to the complainant in an amount equal to the sum of the actual damages sustained by the individual as a result of the refusal or failure and such punitive damages as the court deems appropriate.

(5) In the event of noncompliance with an order of the court, the court may punish the responsible employee for contempt.

(6) The court may assess against any defendant governmental entity or entities reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the court determines that the applicant has substantially prevailed.

(c) Whenever the court orders the production of any records improperly withheld from the applicant, and in addition, finds that the custodian acted arbitrarily or capriciously in withholding the public record, the court shall forward a certified copy of its finding to the appointing authority of the custodian. Upon receipt thereof, the appointing authority shall, after appropriate investigation, take such disciplinary action as is warranted under the circumstances.

(d) Any person who wilfully and knowingly violates the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed [$100.] $1000.

(e) Criminal or civil penalties may not be imposed upon a custodian who transfers or discloses the content of any public record to the Attorney General as provided in the "employee disclosure and confidentiality protection" subtitle of Article 64A.

§§ 5A. Report of personal records; access to personal records for research purposes.

(a) IN THIS SUBTITLE, "PERSONAL RECORDS" MEANS AND INCLUDES ANY PUBLIC RECORD CONTAINING 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) EACH STATE AGENCY UNDER THE STATE DOCUMENTS LAW SHALL SUBMIT A REPORT TO THE SECRETARY OF THE DEPARTMENT OF GENERAL SERVICES DESCRIBING THE PERSONAL RECORDS IT 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, RETENTION, DISPOSAL AND SECURITY (INCLUDING ACCESS CONTROLS) OF EACH SET OF PERSONAL RECORDS;

(v) AGENCY POLICIES AND PROCEDURES REGARDING ACCESS AND CHALLENGES TO PERSONAL RECORDS BY THE PERSON IN INTEREST; AND

(vi) THE CATEGORIES OF SOURCES OF INFORMATION FOR EACH SET OF PERSONAL RECORDS.

(c) EACH STATE AGENCY MAINTAINING PERSONAL RECORDS SHALL SUBMIT THE REPORT DESCRIBED IN SUBSECTION (b) BY JULY 1, 1983. THEREAFTER, A REPORT SHALL BE SUBMITTED ANNUALLY WHICH SHALL DESCRIBE ONLY THOSE SETS OF PERSONAL RECORDS WHICH WERE ELIMINATED OR ADDED SINCE THE PREVIOUS REPORT, OR WHICH CHANGED SIGNIFICANTLY SINCE THE PREVIOUS REPORT.

(d) ANY STATE AGENCY MAINTAINING TWO OR MORE SETS OF PERSONAL RECORDS MAY COMBINE SUCH RECORDS FOR REPORTING PURPOSES, BUT ONLY IF THE CHARACTER OF THE RECORDS ARE HIGHLY SIMILAR.

(e) THE SECRETARY SHALL ISSUE REGULATIONS PRESCRIBING THE FORM AND METHOD OF FILING REPORTS OF PERSONAL RECORDS.

(f) ALL REPORTS OF PERSONAL RECORDS SHALL BE AVAILABLE FOR PUBLIC INSPECTION.

(g) IN CASES WHERE ACCESS TO NONDISCLOSABLE PERSONAL RECORDS IS DESIRED FOR RESEARCH PURPOSES, THE CUSTODIAN Official SHALL GRANT ACCESS IF:

(i) THE RESEARCHER STATES IN WRITING TO THE Official CUSTODIAN THE PURPOSE OF THE RESEARCH, INCLUDING ANY INTENT TO PUBLISH FINDINGS, THE NATURE OF THE PERSONAL RECORDS SOUGHT, AND THE SAFEGUARDS TO BE TAKEN TO PROTECT THE IDENTITIES OF THE SUBJECTS OF THE PERSONAL RECORDS;

(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.

§ 5 B. Unlawful Disclosure, access and use of personal records; criminal liability; civil liability.

(a) EXCEPT AS OTHERWISE PROVIDED BY LAW, AN OFFICER OR EMPLOYEE OF AN AGENCY OR AUTHORIZED RECIPIENT OF RECORDS WHO WILLFULLY DISCLOSES OR PROVIDES A COPY OF ANY PERSONAL RECORDS TO ANY PERSON OR AGENCY, WITH KNOWLEDGE THAT DISCLOSURE IS PROHIBITED, SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE NOT TO EXCEED $1000.

(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 $1000.

(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.

PROPOSED AMENDMENTS TO HEALTH OCCUPATIONS ARTICLE

§§ 7-205. Miscellaneous powers and duties.

In addition to the powers and duties set forth elsewhere in this title, the Board has the following powers and duties:

(1) To adopt rules and regulations to carry out the provisions of this title;

(2) To set standards for the practice of registered nursing and licensed practical nursing;

(3) To adopt rules and regulations for the performance of delegated medical functions which are recognized jointly by the State Board of Medical Examiners and the State Board of Examiners of Nurses, under § 14-304 (d) of this article;

(4) To adopt rules and regulations for the performance of additional nursing acts that:

(i) May be performed under any condition authorized by the Board, including emergencies;

(ii) Require education and clinical experience;

(5) To adopt rules and regulations for registered nurses to perform independent nursing functions that:

(i) Require formal education and clinical experience; and

(ii) May be performed under any condition authorized by the Board, including emergencies;

(6) To adopt rules and regulations for licensed practical nurses to perform additional acts in the practice of registered nursing that:

(i) Require formal education and clinical experience;

(ii) May be performed under any condition authorized by the Board, including emergencies; and

(iii) Are recognized by the Nursing Board as proper for licensed practical nurses to perform;

(7) To keep a record of its proceedings;

(8) To submit an annual report to the Governor and Secretary;

(9) To enforce the employment record requirements of this title;

(10) To keep separate lists, which lists are open to reasonable public inspection, of all:

(i) Registered nurses licensed under this title;

(ii) Licensed practical nurses licensed under this title;

(iii) Nurse midwives certified under this title;

(iv) Nurse practitioners certified under this title; and

(v) Other licensees with a nursing specialty that is certified under this title;

(vi) EXCEPT THAT, UPON WRITTEN REQUEST FROM AN INDIVIDUAL LICENSEE, THE BOARD SHALL DELETE THAT PERSON'S NAME FROM LICENSEE LISTS PURCHASED FROM THE BOARD:

(11) To collect any funds for the Board;

(12) To report any alleged violation of this title to the State's attorney of the county where the alleged violation occurred; and

(13) In accordance with the State budget, to incur any necessary expense for prosecution of an alleged violation of this title.

§ 7-503. Confidentiality of records.

[(a) " Confidential record" defined. - (1) In this section, "confidential record" means any record of the Board that concerns and identifies a licensee, former licensee, or license applicant.

(2) "Confidential record" does not include a record:

(i) Of the successful completion of an examination;

(ii) Of a license issuance or renewal;

(iii) That indicates that an individual is not licensed or was not licensed at a particular time; or

(iv) Of a final decision of the Board under §§ 7-312 or 7-605 of this title.

(b) Scope of confidentiality. - A confidential record is exempt from:

(1) Process; and

(2) Disclosure under the "Public Information Act", Article 76A, § 1 et seq. of the Code.

(c) Access to confidential records. - A confidential record is available to:

(1) The members of the Board or its authorized employees;

(2) The individual to whom the record relates or an authorized agent of that individual;

(3) The parties to a proceeding held under §§ 7-312 or 7-605 of this title for the purpose of inspecting and copying it; and

(4) A court for judicial review of a decision of the Board in a proceeding under §§ 7-312 or 7-605 of this title.

(d) Waiver of confidentiality. - By written statement, an individual may waive the confidentiality provided for that individual under this section as to any designated record that relates to the individual.]

PROPOSED AMENDMENT TO TRANSPORATION ARTICLE

§ 12-111. Records of Administration - In general.

(a) Records required to be kept.- The Administration shall keep a record of each application or other document filed with it and each certificate or other official document that it issues.

(b) Records are public information. - (1) Except as otherwise provided by law, all records of the Administration are public records and open to public inspection during office hours.

(2) In his discretion, the Administrator may classify as confidential and not open to public inspection any record or record entry:

(i) That is over 5 years old; or

(ii) That relates to any happening that occurred over 5 years earlier.

(3) Any record or record entry of any age shall be open to inspection by authorized representatives of any federal, State, or local governmental agency[.], 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 NON-GOVERNMENT REQUESTER.

(c) Records in microfilm. - Except for records required by law to be kept in their original or other specified form, the Administrator may order any record of the Administration to be kept on microfilm or in other microform, and the original destroyed.

(d) Destruction of old records. - Except for records required by law to be kept longer, the Administrator may destroy any record of the Administration that it has kept for 3 years or more and that the Administrator considers obsolete and unnecessary to the work of the Administration.

PROPOSED AMENDMENT TO TRANSPORTATION ARTICLE

§ 16- 117.1 Expungement of certain driving records.

(a) Definitions. - (1) In this section the following words have the meanings indicated.
(2) "Criminal offense" does not include any violation of the Maryland Vehicle Law.
(3) "Moving violation" means a moving violation of the Maryland Vehicle Law other than a violation of any of its size, weight, load, equipment, or inspection provisions.
(b) When Administration [may] SHALL expunge records. - Except as provided in subsection (c) of this section, [if a licensee applies for the expungement of his public driving record,] the Administrator shall expunge [the record] A LICENSEE'S PUBLIC DRIVING RECORD if [at the time of application]:

(1) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 3 years, and his license has never been suspended or revoked;

(2) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 5 years, and his record shows not more than one suspension and no revocations; or

(3) The licensee has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding 10 years, regardless of the number of suspensions or revocations.

(c) When Administration may refuse to expunge. - The Administration may refuse to expunge a driving record if it determines that the individual [requesting the expungement] has not driven a motor vehicle on the highway during the particular conviction-free period on which he bases his request.

Last draft

PROPOSED EXECUTIVE ORDER ON PRIVACY

WHEREAS, The Constitutions of Maryland and of the United States guarantee a fundemental right of privacy under certain circumstances; and

WHEREAS, The privacy of an individual is directly affected by the collection, maintenance, use and security of personal information by State agencies; and

WHEREAS, The increasing use of computers and sophisticated information technology, while essential to the efficient operations of State agencies, has greatly magnified the potential harm to individual privacy;

NOW, THEREFORE, I, HARRY HUGHES, GOVERNOR OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND THE LAWS OF MARYLAND, DO HEREBY PROMULGATE THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY.

1. The purpose of this Executive Order is to ensure safeguards for personal privacy by State agencies by adherence to the following principles of information practice:

   (a) There should be no personal information system whose existence is secret.

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

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

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

   (e) Personal information should not be used unless it is accurate and current.

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

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

(h) Appropriate administrative, technical and physical safeguards should be established to ensure the security of personal information and to protect against any anticipated threats or hazards to their security or integrity.

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

(a) "Personal information system" means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject;

(b) "Personal information" means any information pertaining to an individual whose identity can be ascertained therefrom with reasonable certainty either by name, address, number, description, finger or voice print, picture or any other identifying factor or factors;

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

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

3. Collection of personal information by state agencies-

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

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

(2) Except as otherwise provided by law, inform any individual requested to disclose personal information of: the principal purposes for which the agency intends to use the information, the penalties and specific consequences for the individual which are likely to result from nondisclosure, the individual's right to inspect such information, the public or nonpublic status of the information to be submitted, and the routine sharing of such information with State, federal or local government agencies.

4. Access and Correction Rights of the Data Subject-

(a) Except as otherwise provided by law, any State agency maintaining a personal information system shall permit a data subject to examine and copy any personal information that pertains to him.

(b) Except as otherwise provided by law, a data subject may request any State agency to correct or amend inaccurate or incomplete personal information pertaining to him. In complying with this requirement, a State agency shall adhere to the following procedures:

1) Within thirty (30) days after receiving a request from an individual in writing to correct or amend personal information pertaining to him, an agency shall:

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

(b) Inform the individual in writing of its refusal to correct or amend the record as requested, the reason for the refusal, and the agency procedures for review of the refusal.

2) Within a reasonable period of time, after an individual requests review of an agency's refusal to correct or amend his record, the agency shall make a final determination.

3) If, after the review provided for by subsection (2), the agency refuses to correct or amend the record in accordance with the request, the agency shall permit the individual to file with the personal information system a concise statement of his reasons for the requested correction or amendment and his reasons for disagreement with the agency's refusal. The statement may not exceed more than two hundred (200) words.

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

5. Security of Personal Information

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

(b) Each State agency shall assign a data professional on a permanent basis whose responsibility is that of monitoring the level of security assigned to computerized personal information systems.

(c) 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 _____.

1st draft

PROPOSED EXECUTIVE ORDER ON PRIVACY

WHEREAS, The Constitutions of Maryland and of the United States guarantee a fundemental right of privacy under certain circumstances; and

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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;

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

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

   (e) Personal information should not be used unless it is accurate and current.

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

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

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

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3. Collection of personal information by state agencies-

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

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

(2) Except where prohibited by law, inform any individual requested to disclose personal information of: the principal purposes for which the agency intends to use the information, 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.

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1) Within thirty (30) days after receiving a request from an individual in writing to correct or amend personal information pertaining to him, an agency shall:

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

(b) Inform the individual in writing of its refusal to correct or amend the record as requested, the reason for the refusal, and the agency procedures for review of the refusal.

2) Within a reasonable period of time, after an individual requests review of an agency's refusal to correct or amend his record, the agency shall make a final determination.

3) If, after the review provided for by subsection (2), the agency refuses to correct or amend the record in accordance with the request, the agency shall permit the individual to file with the personal information system a concise statement of his reasons for the requested correction or amendment and his reasons for disagreement with the agency's refusal. The statement may not exceed more than two hundred (200) words.

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:

(a) Clearly identify the disputed portion of the information; and

(b) Furnish a copy of the individual's statement.

5. Security of Personal Information

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

(b) Each State agency shall assign a data professional on a permanent basis whose responsibility is that of monitoring the level of security assigned to computerized personal information systems.

(c) 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 _____.

(b) In cases where access to confidential or restricted records containing personal information is desired for research purposes, the agency shall grant access if:

(1) The requester states in writing to the agency the purpose, including any intent to publish findings, the nature of the data sought, what personal information will be required, and what safeguards will be taken to protect the identity of the data subjects;

(2)The proposed safeguards are adequate to prevent the identity of an individual data subject from being known;

(3)The researcher executes an agreement on a form, approved by the oversight committee on public records, with the agency, which incorporates such safeguards for protection of individual data subjects, 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 and could result in civil litigation by the data subject or subjects;

(4) The researcher agrees to pay all direct or indirect costs of the research; and

(5) Improper disclosure of confidential or restricted personal information by a state employee is cause for action to dismiss the employee.

UNIFORM INFORMATION PRACTICES CODE

Article 1, Section 1-105

(10)"Research record" means an individually identifiable record collected solely for a research purpose not intended to be used in individually identifiable form to make any decision or to take any action directly affecting the individual to whom the record pertains.

Article 3, Section 3-108

(a)(6)An agency may disclose or authorize disclosure of an individually identifiable record for research purposes only if the agency:
establish reasonable safeguards to assure the integrity, confidentiality, and security of individually identifiable records.

Article 3, Section 3-109

(a) An agency may disclose or authorize disclosure of an individually identifiable record for research purposes only if the agency:

(1) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information in individually identifiable form and the additional risk to individual privacy as a result of the disclosure will be minimal;

(2) receives adequate assurances that the recipient will establish the safeguards required by section 3-108 (a)(6) and will remove or destroy the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(3) Secures from the recipient of the records a written statement of his understanding of and agreement to the conditions of this subsection; and

(4) Prohibits any subsequent use or disclosure of the record in individually identifiable form without express authorization of the agency or the individual to whom the record pertains.

(b) A person or agency may use or disclose a research record only if:

(1) The person or agency reasonable believes that use or disclosure will prevent or minimize physical injury to an individual and the disclosure is limited to information necessary to protect the individual who has been or may be injured;

(2) The record is disclosed in individually

identifiable form for the purpose of auditing or evaluating a research program and :

(i) The audit or evaluation is expressly authorized by law, and

(ii) no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section; or

(3) the record is furnished in compliance with a search warrant or subpoena as provided in section 3-110(a).

Article 3, Section 3-110

(a) A court may issue a search warrant or subpoena concerning a research record only if the purpose of the warrant or subpoena is to assist inquiry into an alleged violation of law by a person using the record for a research purpose or by a person or agency maintaining the record.

(B) Any research record obtained pursuant to subsection (a), as well as any information directly or indirectly derived from the record, may not be used as evidence in an administrative, judicial, or legislative proceeding except in a proceeding against the person using the record for a research purpose or a person or agency maintaining the record.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

November 20, 1981

TO: Information Practices Commission Members

FROM: Arthur S. Drea, Jr.

The staff has brought to my attention certain issues which require consideration by Commission members. These issues have been discussed by us at some point during the Commission's existence but either were inadvertently left off the original ballot or were debated and not resolved.

In lieu of convening a special meeting, I am hopeful that we can make decisions by mail regarding these issues. Enclosed you will find a ballot which will be used to determine the Commission's stand on certain positions. Where appropriate, the staff has placed a notation if background information is available pertinent to a particular issue. Please feel free to make any comments regarding the items appearing on this ballot.

All ballots must be received by the Commission staff by December 1, 1981.

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: Dennis M. Sweeney

1. 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 it is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations.
(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".)
YES ✓ NO ____

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board.
YES ✓ NO ____

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper).
YES ____ NO ✓

4. 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.
YES ____ NO ✓

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances.
(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)
YES ✓ NO ____

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: N. Kopp

1. 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 it is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations.
(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".)

YES X NO ___

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board.

YES X NO ___

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper).

YES ___ NO ___ ?

4. 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.

YES ___ NO X may accept & have additional X days upon explanation

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances.
(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)

is very tightly specified

YES X NO ___

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: Grea

1. 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". In order for an agency to continue to employ this phrase, rules and regulations must be adopted by July 1, 1983.(Please refer to the staff memo of November 5, 1981, for background information on the problem of "sociological data".) YES ✓ NO ___

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board. YES ✓ NO ___

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration. YES ___ NO ✓

   (For background information, see page 34 of the staff's Issues Paper).

4. 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. YES ✓ NO ___

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances. YES ___ NO ✓

   (See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)

Please feel free to make any comments or observations on other side of ballot.

All ballots should be sent to: Governor's Information Practices Commission
State House Room H-4 Annapolis, Md. 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: Donald Tynes

1. 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 it is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations.
(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".)
YES ✓ NO ____

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board.
YES ✓ NO ____

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper).
YES ✓ NO ____

4. 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.
YES ✓ NO ____

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances.
(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)
YES ✓ NO ____

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: Tim Hickman

1. 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 it is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations.
(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".)
YES ✓ NO ____

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board.
YES ____ NO ✓

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper).
YES ____ NO ✓

4. 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.
YES ✓ NO ____

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances.
(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)
YES ____ NO ✓

unless extremely sensitive

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: Albert Gardner

1. 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 it is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations.
(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".)
YES ✓ NO ___

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board.
YES ✓ NO ___

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper).
YES ✓ NO ___

4. 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.
YES ✓ NO ___

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under ~~specified circumstances~~ conditions should be clearly stated
~~(See the testimony of~~ Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)
YES ✓ NO ___

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME: John Clinton

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(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".) YES ✓ NO ___

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board. YES ✓ NO ___

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper). YES ✓ NO ___

4. 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. YES ✓ NO ___

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances. (What will these circumstances be? Who will decide?)
(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.) YES ✓ NO ___
but not my Questions

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

November 6, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

SUBJECT: Catalogue of Record Systems

As a supplement to questions 28 through 35 on the Commission ballot, I am forwarding the following materials from California which illustrate a catalogue of record systems: 1) Article 4, Sections 1798.9 and 1798.10 of the California Civil Code mandating notification requirements for records maintaining personal or confidential information; 2) instructions given to agencies for reporting personal or confidential records; and 3) an agency reporting sheet to be filed for each record system containing personal or confidential data. The cumulative total of all sheets constitutes California's Catalogue of Record Systems.

Begin Screen 1-0-45
End Screen 1-0-55

Article 4. Notification Requirements

1798.9. Each agency maintaining a system of records containing personal or confidential information on July 1, 1978, shall, within 90 days thereafter, file with the Office of Information Practices the notice specified in Section 1798.10. Such notices shall also be filed with that office by such agencies on July 1, 1979, and on the first day of July in each year thereafter. Such notices shall be permanent public records. The Office of Information Practices may establish regulations prescribing the form and method of updating the notices required by Section 1798.10 to implement this section. Any agency maintaining more than one system of records may combine such notices when convenient and appropriate.

1798.10. Notices required to be filed by Section 1798.9 shall specify each of the following:

(a) The name of the agency and the division within the agency that is maintaining the records containing personal or confidential information and the name or title of the system of records, if any, in which such information is maintained.

(b) A brief description of the kinds of personal and confidential information contained in the record system, including the categories of individuals and the approximate number of individuals on whom records containing personal or confidential information are maintained in the system.

(c) Each major use or purpose within the agency for the personal or confidential information within the system.

(d) Disclosures of the information that will be made pursuant to subdivision (e) or (f) of Section 1798.24.

(e) The legal authority which authorizes the

maintenance of personal or confidential information.

(f) Retention and disposal policies for the personal or confidential information.

(g) The general source or sources of the information in the system.

(h) The title and business address of the agency official responsible for maintaining the records.

(i) The procedures to be followed for an individual to gain access to, and contest the contents of, records containing personal information.

If an agency fails to file such a report, the office promptly shall inform the agency and if the agency fails to comply within 30 days thereafter, the office shall report on such violation in accordance with subdivision (b) of Section 1798.6.

APPENDIX E

1. NAME OF AGENCY

2. DATE OF REPORT

3. RECORD SYSTEM TITLE

4. DESCRIPTION OF RECORDS

5. RETENTION PERIOD

6. FINAL DISPOSAL METHOD

7. INFORMATION SOURCE(S)

8. CATEGORY OF INDIVIDUALS WITHIN THIS SYSTEM

9. APPROXIMATE NUMBER OF INDIVIDUALS WITHIN THIS SYSTEM

10. MAJOR USE(S) OR PURPOSE(S) OF THE INFORMATION

11. WRITTEN PROCEDURES FOR ALLOWING ACCESS TO THE DATA SUBJECT

☐ WERE ☐ WILL BE SENT TO THE O.I.P. BY (DATE)▶

12. WRITTEN PROCEDURES FOR ALLOWING THE DATA SUBJECT TO AMEND OR CONTEST PERSONAL RECORDS

☐ WERE ☐ WILL BE SENT TO O.I.P. BY (DATE)▶

13. LEGAL AUTHORITY FOR MAINTENANCE OF THE INFORMATION

14. DISCLOSURES PER SECTION 1798.24 (e)(f) CIVIL CODE

15. PHYSICAL FORM OF THE RECORDS

☐ PAPER ☐ COMPUTER ☐ MICROFILM/MICROFICHE ☐ OTHER (SPECIFY):

16. TITLE OF OFFICIAL RESPONSIBLE FOR MAINTAINING THE RECORD SYSTEM

17. DIVISION

PHONE

18. SECTION

19. UNIT

20. ADDRESS

CITY

ZIP

INSTRUCTIONS FOR PERSONAL/CONFIDENTIAL RECORDS REPORT

1. NAME OF AGENCY - Name of State Department, Board, Commission, etc., which has final authority and responsibility for the statutory or constitutional function; i.e., "appointing power".

2. DATE OF REPORT - Date report was prepared.

3. RECORDS SYSTEM TITLE - A record system is a group of related records arranged under a single filing category kept together as a unit because they deal with a particular subject or result from the same activity.

4. DESCRIPTION OF RECORDS - Kinds of information and documents contained in the system.

5. RETENTION PERIOD - Total length of time the records are kept in the office and in central storage.

6. FINAL DISPOSAL METHOD - Methods used for final disposal or destruction of the records (e.g., shredding, state archives, etc.). Do not include central storage as a final disposal of the records.

7. INFORMATION SOURCE(S) - i.e., data subject, parents, neighbors, employers, law enforcement, physicians, etc.

8. CATEGORY OF INDIVIDUALS WITHIN THE SYSTEM - Category of individuals to whom records pertain, (e.g., employees of the agency, drivers license holders, etc.).

9. APPROXIMATE NUMBER OF INDIVIDUALS - The approximate number of individuals on whom records containing personal or confidential information are kept within the system.

10. MAJOR USE(S) OR PURPOSE(S) OF THE INFORMATION - Why the information is collected and how it is used.

11. ACCESS PROCEDURES - re: written procedures to be followed for the data subject to gain access to the records.

12. DISPUTE PROCEDURES - re: written procedures to be followed for the data subject to amend or contest the contents of such records.

13. LEGAL AUTHORITY FOR MAINTENANCE OF THE INFORMATION - Specific State or Federal statute which authorizes maintenance of these records.

14. DISCLOSURES PER SECTION 1798.24 (e), (f) - List principle disclosures pursuant to section 1798.24 (e), (f) of the Information Practices Act.

15. PHYSICIAL FORM OF THE RECORDS - Self explanatory.

16. TITLE OF OFFICIAL RESPONSIBLE FOR MAINTAINING THE RECORDS SYSTEM - The person to contact for information about the records.

17. DIVISION, PHONE - Subdivision of the Department, Board, etc., having responsibility for the records.

18. SECTION - More specific description of No. 17, if applicable.

19. UNIT - Further specific description of No. 18, if applicable.

20. ADDRESS, CITY, ZIP - Self explanatory.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

Carl Cantwicks
Gov. Office

October 27, 1981

Information Practices Commission - Ballot

Date of Vote: November 2, 1981

Time of Vote: 4. p.m.

Place of Vote: House Constitutional and Administrative Law Committee Room

I. Collection of Personally Identifiable Information

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

a. of the principal purposes 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 ___

e. of the sharing of nonpublic status info. with other govt. agencies

B. To the greatest extent possible, personally identifiable information should be collected from the subject of the record system. 5. YES ✓ NO ___

II. Access Rights of the Person in Interest

routine

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 ___

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 the requested correction or amendment and 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 ✓

III. Disclosure of Personally Identifiable Records

A. Should the Commission attempt to define confidential or private data so as to exclude directory informantion from other types of personally identifiable information? 13. YES ___ NO ✓

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 or routine Govt. Agency, or prem. invest., or other law, 14. YES ___ NO ✓

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 or by order of Ct, 15. YES ✓ NO ___

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 ✓

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 ___

Requires mechanism to separate —

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 with respect to that individual. 18. YES ___ NO ✓

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 ___

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 ___

civil +

IV. Security of Personally Identifiable Records

A. An agency maintaining personally identifiable data shall enact and implement appropriate safeguards to ensure the integrity, security and confidentiality of such data. 23. YES ✓ NO ___

B. Records custodians shall be barred from disclosing administrative or technical information, including software, operating protocols, employee manuals or other information, the disclosure of which would jeopardize the security of a record-keeping system. 24 YES ✓ NO ___

C. A team of data professionals should be employed to conduct a risk analysis throughout State government. The purpose of the analysis is to determine the appropriate ~~level of~~ security to be assigned to each computerized record system. This team may be drawn from data professionals already employed in State Government. 25. YES ✓ NO ___

D. The State should assign a data professional ~~for~~ at 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 an individually identifiable record whose disclosure is prohibited to him is subject to criminal penalties. 27. YES ✓ NO ___

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 ___

VI. Bills From the 1980 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___

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___
Exception in HB 1267

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___

D. Access to voter registration lists should be restricted to public interest purposes only. 43. YES ✓ NO___

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 government 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 familiarize motorists with the expungement policy. 48. YES___ NO ✓

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 ✓

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 ___

VIII. Public Information Act Issues Not Previously Found in This List

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 ___

B. ~~In all~~ cases involving a denial ~~of~~ a 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 ___~~

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 ___

(With Max wording)

D. Fee Charges Passed Along to Recipients of Public Records- Dennis Sweeney is drafting language in this area and will present it to the Commission when completed.

(All language)

4-3

✓

yes no

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

November 6, 1981

ADDENDUM

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 guilt or culpability was determined.

info. relating to financial requirements,

57. YES ✓ NO ___

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

58. 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.

59. YES ___ NO ___

except cust. may release for compelling pub. purpose if provided by r or reg.

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME:_____

1. 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 it is presently administered until July 1, 1983, by which time agencies would be required to adopt rules and regulations.
(Please refer to the staff memo of November 5, 1981 for background information on the problem of "sociological data".) YES____ NO____

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board. YES____ NO____

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration.
(For background information, see page 34 of the staff's Issues Paper). YES____ NO____

4. 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. YES____ NO____

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances.
(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.) YES____ NO____

Please feel free to make any comments or observations on other side of ballot.

All Ballots should be sent to: Governor's Information Practices Commission
State House Room H-4
Annapolis, Maryland 21404

GOVERNOR'S INFORMATION PRACTICES COMMISSION

BALLOT

NAME:_____

1. 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 it is presently
(Please refer to the staff memo of November 5, 1981, for background information on the problem of "sociological data".) YES____ NO____

2. Upon written request from a licensee, a licensing board shall delete the name of that licensee from mailing lists purchased from the board. YES____ NO____

3. Licensing boards shall be granted the same discretion over the sale of mailing lists as that presently accorded the Motor Vehicle Administration. YES____ NO____

(For background information, see page 34 of the staff's Issues Paper).

4. 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. YES____ NO____

5. Legislation should be drafted to permit researchers to have access to personally identifiable data, under specified circumstances. YES____ NO____

(See the testimony of Mr. Lee David Hoshall at the Commission's Baltimore Public Hearing and pages 43-46 of the Uniform Information Practices Code.)

Please feel free to make any comments or observations on other side of ballot.

All ballots should be sent to: Governor's Information Practices Commission
State House Room H-4 Annapolis, Md. 21404

STAFF RECOMMENDATIONS FOR PRIVACY AND PUBLIC ACCESS POSITIONS

1. Areas to be Addressed by Executive Order:

   A. Ballot numbers 1-4A (informs the subject of: intended use of data, consequences for failing to provide data, right of access, public or nonpublic status of data, and routine sharing of nonpublic data).

   B. Ballot Number 5 (Requires collection of data from the subject of the record, to the greatest extent possible).

   C. Ballot Numbers 6-8 (permits subject to examine, copy and request correction of data pertaining to him).

   D. Ballot Numbers 9-11 (establishes procedures for permitting challenges to data by the subject, and authorizing insertion of statement of disagreement into the file).

   E. Ballot Number 23 (requires establishment of appropriate safeguards to protect personally identifiable data).

   F. Ballot Number 25 (requires development of a risk analysis task force).

   G. Ballot Number 26 (assigns a data professional in each agency to monitor security).

2. Areas to be Addressed by Legislation:

   A. Ballot Number 15 (prohibits disclosure of financial data pertaining to an individual, unless authorized by law).

   B. Ballot Number 22 (provides for civil and criminal penalties for unlawful disclosure of personally identifable data).

   C. Ballot Number 24 (prohibits disclosure of manuals and other information which would jeopardize a system's security).

D. Ballot Number 27 (establishes criminal penalties for unlawful access to personally identifiable data).

E. Ballot Numbers 28-35 (requires development of a catalogue of record systems).

F. Ballot Number 40 (permits the person in interest to access medical data in agency files).

G. Ballot Number 46 (requires that MVA records released for employment purposes be the same for all requesters).

H. Ballot Number 47 (requires MVA to expunge records automatically provided that drivers fulfill the stipulations of the law).

I. Ballot Number 54 (requires custodians to provide public records within 30 days, or deny the request).

J. Ballot Number 56 (permits inspection of letters of comment pertaining to applicants for public appointment).

K. Ballot Numbers 57-58 (permits access to certain licensing data, and restricts access to all other licensing data).

L. "The Sweeney Amendment" (clarifies the status of copying charges for public records).

3. Recommendations not to be included in either the Executive Order or Legislation

A. Ballot Numbers 41-43 (recommends standardization of data collected and disseminated by election boards, and use of elections data for public purposes only).

B. Ballot Number 44 (recommends that MVA publicize right of drivers to request deletion of names from mailing lists).
** Deletion of names is not required by statute.

C. Ballot Number 50 (recommends clarification of confidential and non-confidential data in medical records guidelines of the Department of Health and Mental Hygiene).

D. Ballot Number 51 (recommends adoption by the Department of Health and Mental Hygiene of regulations for disclosure of medical records).

4. Positions Approved by the Commission and requiring additional clarification

A. Ballot Number 52 (requires standardized disclosure policy for all licensing boards of the Department of Health and Mental Hygiene).

B. Ballot Number 53 (requires standardized expungement policy for all licensing boards of the Department of Health and Mental Hygiene).

5. Issues which were either discussed and left unresolved by the Commission, or which were inadvertently left off the ballot.

A. What should the Commission do to clarify the problem of sociological data?

B. Should a licensee be permitted to contact a licensing board and request deletion of his name from a mailing list?

C. Should licensing boards be given the same discretion over the sale of mailing lists as that given to MVA? (pp. 34 of the Issues Paper).

D. Should the Commission recommend that certain restrictions be placed on the inspection and copying of voter registration records, as opposed to purchasing a list? If so, what should be done? (pp.32-33 of the Issues Paper).

E. Should the Commission recommend that records custodians release salary information upon reciept of a written request? (pp. 33-34 of the Issues Paper).

F. Should the Division of Corrections revise DCR 200-1? (pp. 35-36 of the Issues Paper).

G. What should the Commission do about personally identifiable records which are disclosable to third parties under the Public Information Act, and which have not been classified as sociological? (e.g. underwriting application data of the Maryland Automobile Insurance Fund- pp. 16-17 of the Issues Paper).

H. Should an agency collect and maintain all personally identifiable records with the accuracy, completeness, timeliness and relevance reasonably necessary to assure fairness in agency action affecting the individual to whom they maintain?

I. Should legislation be developed to specify access to personally identifiable records to researchers? (pp. 43-45 of the Uniform Information Practices Code).

J. Should a time limit be specified by which an agency must respond to a request by the person in interest to a) examine data pertaining to him; b) challenge the contents of a record?

M. Should an agency collecting personally identifiable information from an individual be required to inform that individual as to whether compliance is voluntary or mandatory?

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

November 10, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

SUBJECT: Important Commission Meeting

The Information Practices Commission will hold a very important meeting on Monday, November 16th, 1981 at 4 p.m. in the House Constitutional and Administrative Law Committee Room. The Commission will conclude it discussion of the ballot, and will also decide whether to recommend an omnibus bill, modifications to existing statutes, adoption of rules and regulations, and so forth. Please make every effort to attend this most important meeting.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 30, 1981

OFFICIAL

Governor's Information Practices Commission Meeting
Minutes from September 28, 1981.

The meeting of the Governor's Information Practices Commission was held on September 28, 1981. Members in attendance were: Mr. John Clinton, Mr. Wayne Heckrotte, Senator Hickman, Mr. Donald Tynes, and Mr. Robin Zee.

Commission members began with an examination of the draft report of the record keeping practices of the Comptroller's Office. The Commission determined that Mr. Dennis Hanratty would present the draft report and that Mr. Clinton would respond to the report on behalf of the Comptroller's Office. Mr. Clinton indicated that he had obtained reactions to the report from the various divisions and was also able to provide supplementary information for those sections of the draft report where the staff indicated some uncertainity about agency policies.

Mr. Hanratty felt that it would be useful for Commission members to take a close look at the Combined Registration Application form. The application form is significant, Mr. Hanratty stated, in that it is used to determine liability for any of the following taxes: Income Withholding, Retail Sales, Motor Fuels, Alcohol, Tobacco, Admissions/Amusements, and Unemployment Insurance. All applicants provide responses to the first eleven questions on the form while other sections are relevant only to specific applicants. Therefore, Mr. Hanratty noted,

every division of the Comptroller's Office maintaining personally identifiable data would appear to have, at a minimum, the following information: name of individual or corporation, address, telephone number, federal identification number or social security number, location of the records, type of ownership, nature of business activity, and names, titles, home addresses and social security numbers for all owners, partners, corporation officers or trustees.

Turning his attention to the records of the Retail Sales Tax Division, Mr. Hanratty suggested that the most significant issue from the perspective of the Information Practices Commission involves the disclosure of Combined Registration application form data. Mr. Hanratty observed that Article 81, Section 366 prevents the Comptroller or his employees from disclosing "...the amount of sales, the amount of tax paid or any other particulars set forth in any return..." of the Retail Sales Tax Division. Mr. Hanratty stated that the Assistant Attorney General assigned to the Retail Sales Tax Division had interpreted this statute in a narrow manner and had determined that the Division could only restrict that data which actually appeared on returns. Therefore, any information appearing on the application form was disclosable. Mr. Clinton agreed to check this comment with the Division.

Mr. Hanratty then discussed the record-keeping practices of the Income Tax Division. He suggested that the two most important areas to discuss involved disclosure of records and security of personally identifiable data. Mr. Hanratty began by noting Article 81, Section 300, which states that the Division cannot disclose "...the amount of income or any particulars set forth or disclosed in any return under this subtitle." The section also prohibits, Mr. Hanratty noted, disclosure of any federal tax return information.

Mr. Hanratty pointed to subsection (b) of Article 81, Section 300, which allows the release of income tax data to other states and to the federal government. Mr. Hanratty noted that Maryland has tax-sharing agreements with other states and with the Internal Revenue Service (IRS) and observed that these

agreements were discussed in the report. Mr. Hanratty felt that the agreement with IRS was particularly noteworthy as IRS has imposed strict requirements on the Comptroller's Office regarding the release of personal data.

Discussion ensued regarding the security of tax records. Mr. Hanratty noted that records are protected by an ACF-2 security system and that the Income Tax Division had taken such steps as adding a building security force, developing a security manual, establishing a remote facility for securing critical files, and installing a fire protection system. He also noted that the draft report contained a considerable amount of discussion about the various security measures required by the federal government as a precondition to reviewing federal tax data. Mr. Hanratty noted that federal inspectors had been very pleased with the results of their annual security audit.

Mr. Clinton supplemented Mr. Hanratty's presentation on security by providing the following statement to the Commission:

> "(1) Regarding Security Risk Analysis: In 1978, the Annapolis and Baltimore Data Centers were the subject of the most extensive security risk analysis of any State data center. The analysis was conducted by Computer Resource Controls, Rockville, Maryland.
>
> As part of this analysis of the ADC and BCD, specific security suggestions were given for the various divisions of the Comptroller's Office. These suggestions have resulted in tighter security in all divisions.
>
> In addition to the 1978 study, other steps have been taken:
>
> a. In 1980 the Executive Protection Division of the State Police conducted a survey of the physical security of the Income Tax and Treasury Buildings. This led to the installation of the halon fire protection system (p.9 - Draft Report) as well as increased security control over the tunnel connecting the two buildings.
>
> b. An internal auditor in General Accounting Division(GAD) has also done a risk analysis of the financial systems in all of the Comptroller's divisions.
>
> 2. Regarding Storage of Backup Data: A (Department of General Services) DGS warehouse is used as a storage site for critical data held by ADC and BDC. Each user agency identifies the material to be kept on backup. (Department of Human Resources) DHR and (Department of Health and Mental Hygience) DHMH store their backup material at their own locations."

Mr. Hanratty felt that there was really little difference between the manner in which Individual Income Tax Returns Data was handled, and the handling of Corporation Tax Returns and Estimated Tax Returns; therefore, he did not believe that the Commission needed to take a look at these latter two systems. However, he did believe that the Commission should examine the Employer Withholding Account Application record system, since the data for this system comes from the Combined Registration Application form. Mr. Hanratty expressed some concern as to whether this record system was confidential under Article 81, Section 300. He noted that while the Income Tax Division doesn't disclose this information, it appeared to him that this might not be in accordance with current statute; in Mr. Hanratty's opinion, the statute covers only that data appearing on income tax returns, and not all information of the Income Tax Division.

Mr. Clinton responded by issuing the following statement:

> "The Income Tax Division - upon the advice of a long line of Assistant Attorneys General - has always interpreted the work "returns" broadly to include any return/exchange of information from the taxpayer. This includes estimated payments, forms, correspondence, withholding, account applications and anything else received from the taxpayer. The Assistant Director of the Income Tax Division said to me when we discussed this portion of the draft report: " In the final analysis, the purpose of Article 81, Section 300 is to protect the rights and privacy of the taxpayer." Income Tax information (in any form - not simply that supplied on the 502 return) is very personal and due that protection. The Income Tax Division will continue to provide that protection until it is required to change as a result of legislative action."

The Commission then moved to a discussion of the Alcohol and Tobacco Tax Division. Mr. Hanratty thought that the Commission should examine the disclosure of these records. He noted that there does not exist any statute which states that tax records of the Alcohol and Tobacco Tax Division are confidential. However, Mr. Hanratty also commented that Division tax records had been classified as confidential by a 1959 Attorney General's Opinion. The Attorney General relied

heavily on the concept of legislative intent in determining that disclosure of amusement tax returns would frustrate the desire of the legislative to treat income tax data and retail sales data as confidential. This opinion was applied subsequently to other tax records of the Comptroller's Office, such as the Alcohol and Tobacco Tax Division.

Mr. Hanratty stated that it was important to realize that this opinion only applied to tax returns and not to all information. So, it would appear therefore that license and permit data of the Alcohol and Tobacco Tax Division should be disclosed under the Public Information Act.

Mr. Clinton commented that it had never been the intention of the Comptroller's Office to treat license and permit applications data as confidential; the only information that could not be disclosed was tax data. Mr. Clinton also provided supplementary information in order to clarify some questions Mr. Hanratty had raised in the draft report. Mr. Clinton indicated, first of all, that the person in interest could examine, copy or challenge any license or permit data pertaining to him. Mr. Clinton also pointed out that the Alcohol and Tobacco Tax Enforcement Unit does have police and law enforcement powers, including arrest and search and seizure, and that therefore the Unit does have certain discretionary authority to prevent the person in interest from examining background investigation data pertaining to him. Finally, Mr. Clinton provided the following statement reqarding the disclosure of Credit Control File records:

> "The Credit Control List is published periodically by ATTD. Retailers on this list must pay wholesalers by cash or check. The purpose of this list is to tell wholesalers to whom they can extend credit. The list is public information. However, the background details as to why XYZ Liquor is on the list is not public information."

Mr. Hanratty indicated that he did not see any substantive issues in the other record systems of the Comptroller's Office that needed to be discussed by Commission members. Mr. Clinton provided the following information concerning security of General Accounting Division records, a topic which the staff had

identified in the draft report as requiring additional information:

> "A. Disbursement Transmittal File: These records are viewed as public records. Prior to audit, they are kept in a locked vault. After audit they are available to the public so no special precautions are taken. They are secured as normal business records would be. If there is any tax refund information in this file, it is handled under Article 81, Section 300 and is not disclosable.
>
> B. Transaction History and Vendor Indebtedness Records: The ACF-2 data security package applies to both of these record systems. GAD has imposed individual controls under ACF-2 on a need-to-know basis. Persons seeking access to information in these files must go through the division security officer for access."

Mr. Clinton finally noted that disclosure of employees tax withholding deductions are prohibited both by Article 81, Section 300 and by federal law.

The Commission next turned its attention to the record-keeping practices of the Department of Licensing and Regulation. Mr. Hanratty proceeded to discuss each section of the Department for which he had received information. Mr. Hanratty noted that the Savings and Loan Association Files contained information that largely pertained to savings and loan associations rather than to individuals. However, he did point out that there is some data in the file which is personally identifiable, in particular the amount of deposits and level of indebtedness to a savings and loan association by the officers and directors of the association, and the name, address and number of shares owned by a stockholder in a stock-chartered association. Mr. Hanratty observed that all of this information was considered to be confidential by statute.

The Commission then examined the Division of Occupational and Professional Licensing, which is responsible for licensing individuals engaged in various business activities. Mr. Hanratty noted, first of all, that records of the Maryland Home Improvement Commission were all disclosable under the Public Information Act. The same was true, Mr. Hanratty observed, for records of the Maryland Real Estate Commission. The Commission requires resident brokers license applicants to provide a resume of real estate activity for the last three years,

including the approximate number of listings obtained, the approximate number of sales completed, the approximate number of rental accounts handled, the estimated total volumne of cumulative business during the past three years and the names and addresses of brokers over the past three years. Mr. Hanratty indicated that he had not yet received any data pertinent to the licensing boards. Mr. Zee offered to contact Mr. Gordon Wilcox, Coordinator of the Department of Licensing and Regulation, to see if this information would be forthcoming.

At that time, the Commission shifted its attention to an examination of the Division of Labor and Industry, which is responsible for the expungement of laws and regulations pertaining to workers and employees. Mr. Hanratty noted that Apprenticeship and Training Council Unit Files and Fee Charging Employment Agency Unit Files were both disclosable under the Public Information Act. Mr. Hanratty felt that this was curious, since the two record systems contained essentially the same data. Mr. Hanratty also noted that Employment of Minors records, Lie Detector records, Railroad Safety records and Safety Inspection records all contained personally identifiable data and were all disclosable under the Public Information Act.

Mr. Hanratty felt that Commission members should take note of the Maryland Occupational Safety and Health File. He pointed in particular to the Health Effects Unit, which provides medical-related support to the Maryland Occupational Safety and Health Act personnel. The Health Effects Unit is governed by very explicit regulations regarding collection, disclosure and security of employee medical records. With respect to collection of data, the Health Effects Unit must provide a written access order signed by the Commissioner of Labor and Industry. The access order must indicate the statutory purposes for which access is desired, an explanation as to why there is a need to receive personally identifiable data, a description of the type of data to be received, the names, addresses and telephone numbers of all personnel expected to review and analyze the data, and the anticipated period of time during which data will be retained.

Data released to the Health Effects Unit can only be disclosed to : 1) any person whose name appears on the access order; 2) an Assistant Attorney General working for the program; 3) a contractual physician; 4) the National Institute for Occupational Safety and Health; 5) the Attorney General or a State's Attorney; and 6) a public health agency under very strict conditions. Medical records must be kept separate from other files, and must be secured in a locked cabinet or vault. Logs must be kept to record the uses and transfers of any medical data. Finally, the inter-agency mail system cannot be used to send medical data.

The Commission adjourned and scheduled its next meeting for October 5, 1981.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 27, 1981

Information Practices Commission - Ballot

Date of Vote: November 2, 1981

Time of Vote: 4. p.m.

Place of Vote: House Constitutional and Administrative Law Committee Room

I. Collection of Personally Identifiable Information

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

a. of the principal purposes 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____

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____

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 the requested correction or amendment and 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___

III. Disclosure of Personally Identifiable Records

A. Should the Commission attempt to define confidential or private data so as to exclude directory informantion from other types of personally identifiable information? 13. YES___NO___

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___

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___

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___

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____

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 with respect to that individual. 18. YES____ NO____

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____

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____

IV. Security of Personally Identifiable Records

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

B. Records custodians shall be barred from disclosing administrative or technical information, including software, operating protocols, employee manuals or other information, the disclosure of which would jeopardize the security of a record-keeping system. 24 YES____ NO____

C. A team of data professionals should be employed to conduct a risk analysis throughout State government. The purpose of the analysis is to determine the appropriate level of security to be assigned to each computerized record system. This team may be drawn from data professionals already employed in State Government. 25. YES____ NO____

D. The State should assign a data professional for each agency on a permanent basis whose responsibility is that of monitoring the level of security assigned records containing personally identifiable information. 26. YES____ NO____

E. A person who, by false pretense, bribery, or theft, gains access to or obtains a copy of an individually identifiable record whose disclosure is prohibited to him is subject to criminal penalties. 27. YES____ NO____

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____

VI. Bills From the 1980 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___

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___

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___

D. Access to voter registration lists should be restricted to public interest purposes only. 43. YES___ NO___

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 government 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 familiarize motorists with the expungement policy. 48. YES___ NO___

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___

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____

VIII. Public Information Act Issues Not Previously Found in This List

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____

B. In all cases involving a denial of a 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____

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____

D. Fee Charges Passed Along to Recipients of Public Records- Dennis Sweeney is drafting language in this area and will present it to the Commission when completed.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

November 6, 1981

ADDENDUM

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.

57. YES____ NO____

58. All personally identifiable occupational and professional licensing data other than that described in #57 shall be nondisclosable. 58. 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. 59. YES____ NO____

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

October 7, 1981

OFFICIAL

Minutes-Governor's Information Practices Commission Meeting of October 5, 1981.

The Governor's Information Practices Commission met on October 5, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Senator Timothy Hickman, Delegate Nancy Kopp, Mr. Donald Tynes, Mr. Wayne Heckrotte, Mr. John Clinton, Mr. Dennis Sweeney, and Mr. Judson Garrett.

Mr. Drea began the meeting by noting that the following Monday was a State holiday and thus, it would not be possible to hold a meeting on that date. However, Mr. Drea observed that the Commission could not afford to miss any time at this point. After some discussion, the next meeting of the Commission was scheduled for October 13, 1981 at 4 p.m., in the Clipper Room of the World Trade Center. Mr. Dennis Hanratty reminded Commission members that the meeting on October 19, 1981 would be devoted to an examination of the Uniform Information Practices Code as drafted by the National Conference of Commissioners on Uniform State Laws. Mr. Ronald Plesser, a former Director of the Federal Privacy Commission and a member of the Committee responsible for drafting the Uniform Code, would appear before the Information Practices Commission at that time. Mr. Drea informed the Commission members that an invitation had also been extended to Mr. Michael Cramer, one of the Maryland representatives on the Uniform Information Practices Code drafting committee.

Mr. Drea requested the cooperation of the members in holding weekly meetings for the remainder of the month. Mr. Drea noted that once the Commission had determined its course of action in response to the issues confronting it, the staff could begin preparation of the Final Report. During that period, which could take from two to four weeks, no meetings would be held. The Commission would then reconvene to approve or disapprove the Final Report; if approved, the Report could be forwarded on to the Governor for his consideration.

Mr. Drea began discussion of the Issues Paper by stating that the issues in the report had been well-presented. Mr. Heckrotte challenged that assertion, maintaining that the Issues Paper did not really contain a discussion of issues. First of all, Mr. Heckrotte argued that the Issues Paper was much too long. Instead of a report that was 54 pages in length, Mr. Heckrotte felt that the report should only be about 5 pages. Furthermore, he felt that the report provided too much detail about particular record systems and did not focus on the general issues. He thought that it would be preferable to have a report which stated, first of all, whether or not there was a problem and second, what was the nature of the problem. Mr. Heckrotte emphasized that his criticism was really not directed at the staff but at the Commission itself.

Mr. Garrett commented that he felt that the staff had done a good job in collecting data from agencies and presenting that data to the Commission members. He noted that the entire process had been an excellent learning experience regarding agency record-keeping practices. That having been said, Mr. Garrett also felt that Mr. Heckrotte was substantially correct in his comments regarding the Issues Paper. In Mr. Garrett's opinion,

the Issues Paper dealt with symptons rather than with the issues themselves.

Mr. Heckrotte added that all of the issues in the paper were legitimate, but were simply too broad. He felt that the Commission did not need to go into each and every agency. The Issues Paper, he asserted, was a good reference report which could accompany the Commission's final report. The final report, however, should be quite short.

Mr. Drea responded by stating that he did not feel that the final report would look anything like the Issues Paper. He envisaged the Issues Paper as an internal Commission document designed to identify problems. Mr. Drea also noted that a wide range of options were available to members to deal with information practices problems. The Commission could decide to support an Omnibus bill. It could also recommend the establishment of another body which would resolve privacy and public information problems. Mr. Drea observed that the Commission could recommend amendments to various sections of the Annotated Code. Finally, the Commission could recommend that the Governor change agency record-keeping practices by Executive Order. Mr. Drea anticipated that this decision would be made only after a thorough review of current agency practices.

Mr. Sweeney felt that the Commission would be well-advised to deal with the common problems. He thought that the Uniform Information Practices Code might be helpful in this regard. Mr. Drea stated he was leaning against supporting the Uniform Code at this time. Mr. Drea observed that he was impressed with the uniformity in record-keeping practices that appears to exist across state agencies. He felt that it was only natural that there be some diversity. There are a number of special cases, he maintained, that could be dealt with more appropriately thorough rules and regulations rather than through statutes. On the other hand, Mr. Drea noted that there were some particular

statutes that should be addressed. He cited the example of the statute governing Workmen's Compensation Commission records. Mr. Drea felt that the Information Practices Commission would be lax in its responsibility if it did not make some type of recommendation in this area.

Mr. Sweeney stated that he was surprised at the small number of problems that appear to exist throughout state agencies. He was not sure that the problems that do exist were of such a magnitude as to warrant a radical solution. Senator Hickman observed, however, that many abuses might not necessarily be revealed through the use of a survey.

A number of possibilities were discussed by Commission members regarding the shape of the Commission's final recommendations. Delegate Kopp observed that the Commission could inform the Governor about any record-keeping practices that should be examined; the Commission could furthermore give the Governor a series of recommendations. Then, the Governor's staff could examine problems in further depth. Mr. Clinton suggested that the Commission could also recommend a broad omnibus act which would require agencies to have written procedures in the area of information practices. It would also be possible, however, for the Commission to deal with more specific problems. Some members also expressed the opinion that the Governor should be made aware of the fact that many agencies are not familiar with the statutes that govern their record-keeping practices.

The Commission then turned its attention to a discussion of the points raised in the Issues Paper. Commission members first considered the topic of collection of extraneous information. Mr. Garrett noted that the Public Information Act already contains a statement that requires agencies to collect

only that information which is relevant and necessary. Mr. Sweeney noted, however, that this provision might not be enforceable. Commission members also discussed the need for a review of personnel forms used throughout the State to determine if extraneous information was collected. Mr. Tynes informed the Commission that a review of agency personnel practices was being carried out by the Equal Employment Opportunity Commission. Mr. Drea expressed support for an amendment that would standardize the types of information collected by various election boards. Indeed, he saw no reason why a Uniform Voter Registration form could not be used. Mr. Drea felt that any effort at standardization would be supported by the State Elections Administrator.

The Commission next considered issues affecting access to information on the part of the person in interest. Mr. Dennis Hanratty felt that access to the person in interest was one area where the Commission could deal with general issues. Mr. Hanratty expressed the opinion that, in ordinary circumstances, the person in interest should be permitted to examine, copy, and contest the accuracy of information pertaining to him. Mr. Hanratty noted that if a particular record system was disclosable under the Public Information Act, then the person in interest would have a right to inspect and copy records pertaining to him. Of course, the same rights would be available also to a third party. However, the Public Information Act does not give a person in interest a statutory right to challenge the accuracy of information.

Mr. Hanratty cited favorably the procedures followed by the Division of Special Education in permitting access to parents of students. Mr. Hanratty felt that, with few exceptions, these policies could be adopted statewide.

Mr. Hanratty also expressed a view that the Commission should address itself to examination of those record systems which do not permit access to the person in interest. Mr. Garrett stated, however, that he did not believe that the Commission had expertise to deal with such areas as access to psychological records.

Discussion ensued over the right of access of the person in interest to those records considered to be nondisclosable under the Public Information Act. Mr. Sweeney noted that, in his opinion, it would be illogical to assume that the General Assembly intended to create a situation where an individual could not examine his own library circulation records or confidential financial data which he submitted to an agency. Mr. Sweeney suggested that the Public Information Act be revised to state that, unless specified otherwise, a person in interest has a general right to inspect records pertaining to him.

The Commission then began consideration of issues pertinent to the disclosure of records to third parties. Mr. Hanratty noted that a number of record systems containing sensitive, personally identifiable information are available for public inspection. He felt that in this particular area of the report, Commission members should take a close look at each of the record systems listed in the paper to determine whether they should be confidential or disclosable. Mr. Hanratty also stated that there may be cases in which some of the data of a particular record system would be disclosable, while other data would be undisclosable. For example, members may decide to recommend release of names and addresses of licensees, while restricting release of other types of licensee information.

Mr. Drea noted that, in his view, all personally identifiable information should be confidential except in those instances where disclosure would be beneficial to the general public. Mr. Drea maintained that the determination of record-keeping practices should not be left in the hands of the agency.

Each agency should be thoroughly reviewed and recommendations presented.

The meeting adjourned at this time.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 26, 1981

OFFICIAL

Minutes-Governor's Information Practices Commission Meeting
October 13, 1981

The meeting of the Governor's Information Practices Commission was held on October 13, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Wayne Heckrotte, Senator Timothy Hickman, Mr. Dennis Sweeney and Mr. Donald Tynes.

The Commission approved as official the minutes from the meetings of August 24th, August 31st, September 14th and September 21st.

Mr. Drea felt that the Commission should continue its discussion of the Issues Paper. Mr. Dennis Hanratty recommended that, in preparing for next week's discussion of the Uniform Information Practices Code, Commission members should read the Code in conjunction with the Issues Paper. The intent of this exercise, Mr. Hanratty explained, would be to determine whether the Code provided an adequate resolution of the problems that the Commission had identified over the last several months. Both Mr. Hanratty and Mr. Drea expressed concerns about the section of the Code regulating disclosure of records to third parties.

Mr. Clinton asked Mr. Drea for the legislature's likely reaction to the Code. Could it be anticipated, Mr. Clinton inquired, that the legislature would adopt the Code in its present form, or would the Code merely be a starting point

for subsequent action? Mr. Drea felt that the legislature would be inclined to modify the Code in some form.

Mr. Drea also noted that the Code could be burdensome for many agencies in requiring them to go through their records and determine which records were disclosable and which were not.

Before proceeding with a continuation of the Issues Paper, Mr. Hanratty informed Commission members that he had received a telephone call from Ms. Mildred Wittan, Administrative Specialist with the State Board of Physical Therapy Examiners. Ms. Wittan wanted to express the continued concern of her Board, and, indeed, of all of the Health Professionals Boards, regarding the disclosure of licensure data. In Ms. Wittan's opinion, disclosure of this data constituted a violation of the privacy of individual licensees. Mr. Hanratty felt that disclosure of licensure data was a major issue confronting the Commission in that it affected a number of Departments of State Government. Mr. Clinton suggested that the Commission send a letter or press release to all agencies giving them a final date in which to appear before the Commission and express viewpoints. Mr. Drea felt that all agency responses should be in writing, given the tight time schedule that the Commission already faced.

The Commission then turned to an examination of the Issues Paper, considering the topic of inspection of voter registration lists. Mr. Clinton stated that it appeared that anyone can inspect voter registration lists. Mr. Hanratty noted that an Election Board can deny a person the right to purchase a list, if the list is to be used for commercial purposes, but that the same person can inspect the list and make copies of the list. Every county, with the exception of Baltimore County, refuses to disseminate in purchased voter registration lists all of the information originally collected from applicants. Therefore, commercial enterprises denied the right to purchase a list may become privy to more information by inspecting a list.

The Commission also discussed the issue of restricting the use of voter registration lists to political purposes. Mr. Hanratty reminded Commission members that it had been specifically requested to examine this issue by Delegate Helen Koss, Chairman of the House Constitutional and Administrative Law Committee. Senator Hickman noted that many people had expressed the view that they do not register to vote because they do not want to serve on juries. He stated, however, that this may only be an excuse for failure to register. Mr. Heckrotte suggested that individulas be informed when they register to vote that they become prospective jurors. He also noted that lists of prospective jurors could be obtained from other sources.

Mr. Hanratty felt that the issue was wider than merely using voter registration lists for jury purposes. He noted that Mrs. Marie Garber, former Elections Administrator for Montgomery County, had compiled a list of typical uses of voter registration lists; users included groups as varied as the League of Women Voters, the March of Dimes and county governments.

The Commission also discussed the copying of voter registration lists. Mr. Hanratty noted that the Attorney General had ruled that the right of inspection of voter registration lists also involved the right to copy such lists. Senator Hickman asked if copying had to be done by hand. Mr. Hanratty stated that is was his understanding that the Attorney General had ruled that Boards must allow photocopying of lists.

Mr. Drea observed that salary data of public employees was disclosable, and asked if members had any problems with that fact. Mr. Heckrotte stated that while he agreed with disclosure of salary information for public officials, the salaries of other public employees should remain confidential. Mr. Drea disagreed, expressing the view that disclosure of salary information constituted a significant check on agencies paying exhorbitant salaries. Mr. Heckrotte countered that government agencies lose many qualified people because of the public character of salary

information.

Mr. Tynes stated that the Department of Personnel makes a distinction between public officials and other state employees. The Department will respond to requests for names and salaries of public officials, but not for other employees. In cases where the Department receives requests for names and salaries of all employees receiving over a certain specified salary, the Department assesses a fee. Mr. Hanratty questioned whether the Department had the statutory authority to deny requests for salary data for any public employee. Mr. Drea seconded that concern, noting that there is no section of the Public Information Act giving any discretion to records custodians in the handling of salary information.

Commission members turned their attention to the sale of computer lists containing personally indentifiable information. Mr. Drea noted that the specifications contained in the computer list contract of the Motor Vehicle Administration and felt that this contract could be emulated by other agencies. He also observed that regulations should be adopted that would involve the imposition of a fine on those who misuse the information that they obtained.

Mr. Drea noted the confusing character of Division of Correction regulation DCR 200-1 and felt that this regulation should be cleaned up. In this regard, the Commission also briefly touched upon the topic of disclosure of sociological data. Commission members agreed that this was an area requiring modification. Mr. Drea asked Mr. Hanratty if any comments had been received from the Department of Public Safety and Correctional Services regarding the Commission's draft report. Mr. Hanratty stated that he sent a copy of the report to Mr. William Clark, Special Assistant to the Secretary, requesting comments but had not received any response. Mr. Hanratty also noted that he had sent a followup letter to Mr. Clark, indicating that if the Commission did not receive any comments by November 2, 1981, it would be forced to assume that the Department agreed with everything contained in the draft report.

Commission members turned to the topic of disclosure of medical records. Mr. Drea noted that situation currently existing in the Department of Health and Mental Hygiene, where disclosure is governed by Departmental guidelines without any legal status. He felt that it would be much more preferable for the Department to adopt regulations in this area. Mr. Drea observed that the Commission had discussed this point with Ms. Beatrice Weitzel, Executive Assistant to the Secretary of the Department of Health and Mental Hygiene, during her visit to the Commission last month.

The Commission noted the confusing character of the Vital Records statute in the Annotated Code. Mr. Hanratty informed members that the Code Revision Commission was in the process of revising this statute and would send a draft copy to the Information Practices Commission at the end of October.

Commission members turned their attention to the area of expungement of records. Mr. Drea felt that a differentiation should be made between expungement of Motor Vehicle Administration records and criminal records. He did not believe that the Commission should involve itself in the subject of expungement of criminal records, given the sensitivity of the field. Mr. Clinton suggested that, at a minimum, individuals should be informed that they may be eligible for expungement of driving records. Mr. Heckrotte stated that, based on his experience in the data processing field, it would be more expensive for agencies to notify individuals that they are eligible for expungement than it would be to expunge automatically. Mr. Drea instructed Mr. Hanratty to solicit the Motor Vehicle Administration's objections to automatic expungement and also to find out if any profit was received by the State through the sale of computer lists.

The Commission considered a number of topics associated with the Public Information Act. There appeared to be general agreement that a time period should be imposed on agencies by which they would be forced to release public documents. Members generally felt that thirty days was an adequate period of time.

Mr. Drea also observed that there was considerable confusion regarding the cost of providing copies of documents. Should costs represent only the actual operating expenses of the copier, or could they also involve such things as the time spent by employees in searching for specific documents, or expenditures associated with removing non-disclosable protions of documents? Mr. Drea felt that copying charges should be limited to copier expenses. Mr. Sweeney expressed some reservations about this portion. He informed Commission members that he had spent a good deal of time interpreting the "confidential commercial or financial data" section of the Public Information Act. He noted that companies routinely file requests under the Public Information Act for commercial or financial data about their competitors. Those companies that originally submitted the data object to its disclosure, claiming that the information is confidential. The Attorney General's Office, therefore, must invest numerous hours with the companies responsible for originally submitting the information, going over documents line by line to determine if the data is confidential. In Mr. Sweeney's opinion, the requesting companies should be required to pay something for these services, since the intent of their requests is not one of serving the public interest but rather to attain competitive advantage. Commission members discussed a possible arrangement where agencies would provide a certain number of hours to a company free of charge, but after that, would begin assessing overhead charges. Mr. Sweeney offered to draft new language in this area and to present it to the Commission for its consideration.

Commission members discussed the problem presently existing in the area of confidentiality of letters of reference,noting that the phrase "letters of reference" can also include unsolicited letters of comments about applicants for public positions. Mr. Drea suggested that the Public Information Act should specify what is meant by a letter of reference.

The Commission also noted the variability in agency practices regarding the confidential status of sociological data. Mr. Hanratty felt that the term should be eliminated from the current statute. Mr. Drea asked Mr. Hanratty to see if he could come up with an adequate definition of the term.

The meeting adjourned, with the next meeting scheduled for October 19, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 27, 1981

OFFICIAL

Governor's Information Practices Commission - Minutes
Meeting of October 19, 1981.

The Information Practices Commission held a meeting on October 19, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Albert Gardner, Mr. Judson Garrett, Senator Timothy Hickman, Delegate Nancy Kopp, Mr. Dennis Sweeney, Mr. Donald Tynes and Mr. Robin Zee.

The Commission welcomed Delegate Helen Koss, Chairman of the House Constitutional and Administrative Law Committee, and Delegate Donald Robertson, House Majority Leader, who were attending the meeting as observers.

The purpose of the Commission's meeting was to receive an explanation of the Uniform Information Practices Code, as developed by the National Conference of Commissioners on Uniform State Laws. Representing the National Commissioners was Mr. Ronald Plesser, a Washington attorney and a co-reporter for the Uniform Information Practices Code. Mr. Plesser informed the Commission that in addition to his participation in the development of the Uniform Code, he served in 1975 as General Counsel to the Federal Privacy Commission.

Mr. Gardner asked Mr. Plesser if any states had adopted the Uniform Information Practices Code. Mr. Plesser indicated that it had been introduced in a number of state legislatures, but as of yet, had not been enacted into law in any state. Mr. Plesser stated that the Code had passed the Illinois House, but had not survived in the Senate.

Mr. Drea informed Mr. Plesser that the Commission had been engaged in an extensive examination of the record-keeping practices of State agencies. He indicated that the Commission had studied approximately thirty to forty reports on agency policies in the area of information practices. However, the Commission had not considered information practices in the private sector. Senator Hickman told Mr. Plesser that the Commission was attempting to decide whether it should support the adoption of an omnibus privacy and public information statute, or whether it should recommend changes on an agency by agency approach.

Mr. Plesser began his discussion of the Uniform Code by stating that there were certain record systems that were not well-suited to a uniform approach. He cited criminal records as being one area that should be handled separately. Citing his experience with the Federal Privacy Act, Mr. Plesser observed that the Act worked well with a surprisingly small amount of litigation. In Mr. Plesser's opinion, the Federal Privacy Act functioned as an effective management tool. This was due in considerable part to the support functions performed by the Office of Management and Budget. Mr. Drea informed Mr. Plesser that the Commission had received testimony pertinent to the Privacy Act from two representatives of the Office of Management and Budget; while their opinion of the Act was favorable, it was not as favorable as Mr. Plesser's.

Mr. Plesser stated that the Uniform Code represented an attempt to set basic State agency information practices standards. The National Conference of Commissioners supported standards rather than prohibitions regarding particular record systems in part because of the experience of the Minnesota privacy statute. The Minnesota legislature had attempted to establish hard and fast rules of disclosure; in the view of the National Commissioners, however, that approach had proven to be too inflexible. Mr. Plesser observed that there has been a continual need to amend Minnesota's Act because of its inflexibility.

Mr. Drea asked Mr. Plesser to take Commission members through the Uniform Code and also suggested that members ask questions as Mr. Plesser proceeded. Mr. Plesser briefly noted the definitions of the Code as found in Article 1 and observed that the Act does not apply to records of the legislature or the judiciary. He also pointed out that the term "accessible record" applies not only to those personally identifiable records maintained according to an established retrieval scheme but also to otherwise retrievable records which can be located without unreasonable agency expenditures.

Mr. Plesser then proceeded to discuss Article 2, the Freedom of Information part of the Uniform Code. He noted, first of all, that Article 2, Section 2-101(1) would permit public inspection of opinions and judicial order. Mr. Garrett asserted, however, that Section 2-101(1) would be invalid in Maryland unless it was adopted as a rule. Mr. Plesser observed that Article 2, Section 2-102(a) requires agencies to permit public access to "government records", a term which was purposefully defined in a very broad manner. However, Section 2-102(b) only requires public inspection of data which is readily retrievable. Thus, an agency is not required to create a new record system in order to fulfill a Freedom of Information request.

Mr. Plesser noted that within a period of seven days after receiving a written request for access to a government record, an agency must either make the record available to the requester, inform the requester that unusual circumstances have delayed inspection for an additional period of time, not to exceed twenty-one (21) days after receipt of the request, inform the requester that the agency does not possess the requested record, or deny the request. Thus, an agency does not have to obtain a record from another agency on behalf of the requested. Mr. Sweeney felt that the language pertaining to the number of days by which a record should be made available is somewhat confusing. Mr. Garrett and Mr. Drea agreed with the observation.

Mr. Gardner asked Mr. Plesser if the time period still applied if the agency had to go through a document and determine which portions could be released. Mr. Plesser commented that, in his opinion, the information would still have to be made "readily accessible". Mr. Plesser felt that the time period could be changed to satisfy the concerns of the Commission.

Mr. Sweeney called the Commission's attention to the importance of the word "unusual" in Article 2, Section 2-102(d)(2). Mr. Zee asked whether seven days referred to calendar days or working days. Mr. Plesser indicated that it referred to calendar days.

Mr. Garrett expressed the view that Article 2, Section 2-102 (d) does not take into account Article 2, Section 2-103(b), which requires that in certain circumstances, an agency "... shall make reasonable efforts to notify the person to whom the record relates and provide him an opportunity to object to disclosure of the record." Mr. Plesser agreed that this was a good observation and an area that perhaps needed some adjustment.

Discussion then ensued over the issues of charges for copying government records. Mr. Plesser pointed out that this was a controversial portion of the Code. The drafters of the Code felt that an agency should only charge for the actual expenses associated with using a copier, and should not assess search charges or other administrative expenses. Mr. Plesser thought that agencies should waive charges under twenty-five dollars.

Mr. Garrett noted that part of Article 2, Section 2-102(e) which states that agencies "...may charge the currently prevailing commercial rate for copying." In his opinion, this language established a profit for agencies that should not exist. Mr. Plesser responded that in his opinion, the commercial rate was usually less than the rate charged by government agencies. Mr. Sweeney agreed with this position.

Mr. Plesser briefly discussed Article 2, Section 2-103(a) which delineates certain types of government records that are not subject to mandatory public inspection. He noted in particular Article 2, Section 2-103(a)(12) which does not require disclosure of "...an individually identifiable record not disclosable under Article 3."

At this point, Mr. Drea felt that the Commission's time would be better spent if Mr Plesser went directly to Article 3, Disclosure of Personal Records. Mr. Drea felt that this was a part of the Uniform Code that was of particular importance to the Commission, since it represented a distinct approach to the subject of records disclosure.

Mr. Drea informed Mr. Plesser that Mr. Dennis Hanratty had examined this part of the Code and had found certain inconsistencies. Mr. Drea noted, first of all, that there appeared to be some tension between Article 3, Section 3-101(1), which permits inspection of such things as education and training background and previous work experience of government employees, and Article 3, Section 3-102 (b)(4), which states that personnel file data constitutes an example of information in which the individual has a significant privacy interest. Mr. Plesser responded that he did not believe that these two sections were in conflict, since the personnel file statement was meant to protect data which was more sensitive than educational background or previous work experience. Mr. Hanratty stated that his concern was based on the fact that these items are presently considered to be nondisclosable in Maryland. Thus, adoption of the Uniform Code would result in more information released about government employees than is presently the case.

Delegate Kopp observed that, in her opinion, there was a conflict between Article 3, Section 3-101(1), and Article 3, Section 3-102 (b)(5). The latter section states that "...information relating to an individuals's nongovernmental

employment history" is data in which the individual has a significant privacy interest. Mr. Plesser responded that Article 3, Section 3-101(l) was intended to apply to governmental work experience, as opposed to nongovernmental employment, but acknowledged that there was some confusion in the Code.

Mr. Hanratty then pursued the issue of disclosure of licensee data. Mr. Hanratty asked Mr. Plesser if he saw any tension between Article 3, Section 3-101 (3), which authorized disclosure of "...information collected and maintained for the purpose of making information available to the general public", and Article 3, Section 3-102(8), which identifies "...information complied as part of an inquiry into an individual's fitness to be granted or to retain a license, . . .", as data in which the individual has a significant privacy interest. Mr. Hanratty pointed out that license application forms typically request such things as name, address, race, sex, marital status, income, arrest and conviction details and so forth. Which of these data elements, Mr. Hanratty inquired, would be available for public inspection? Mr. Plesser responded at first that, Article 3, Section 3-101(3) was meant to cover deeds and land records, and not individual licensees. However, after it was noted that the comments on page 27 clearly indicate that the subsection was meant to cover business and professional licensee information, Mr. Plesser stated that the intent of the Code was to permit requesters to contact a State agency to find out if a particular professional had a license and was in good standing, but it would not allow disclosure of other personally identifiable data about that professional. Mr. Hanratty informed Mr. Plesser that such a position would be a radical departure from current policy in Maryland, since virtually all licensee information is available for public inspection.

Mr. Garrett expressed concern regarding Article 3, Section 3-101(6) which authorized disclosure of personally identifiable information"pursuant to a showing of compelling circumstances affecting the health or safety of any individual, in which case the agency shall make reasonable efforts to notify

the individual to whom the record refers." Mr. Garrett felt that inclusion of this subsection could place in jeopardy an on-going investigation. Mr. Garrett also objected to Article 3, Section 3-101 (7) which authorizes disclosure of personally identifiable data "pursuant to an order of a court in which case the agency shall notify the individual to whom the record refers by mailing a copy of the order to his last known address." In Mr. Garrett's view, if a court decided to release a record and did not believe it to be necessary to notify the subject of a record, why should the legislature require it?

Mr. Plesser pointed out Article 3, Section 3-101(10), which authorizes disclosure of personally identifiable data " in any other case, not a clearly unwarranted invasion of personal privacy." This subsection, Mr. Plesser indicated, led directly into Article 3, Section 3-102(a) which states the following: "Disclosure of an individually identifiable record does not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interest of the individual." Mr. Plesser stated that the intent in this section was to develop a standard by which to weigh the public interest and the privacy interest of the subject of the record. Again, he referred to the Minnesota experience as one where rigid statements proved unworkable.

Delegate Kopp suggested that a general standard could be adopted, while at the same time specific prohibitions could be added for particular record systems. She cited as one example library circulation records, which she felt should be protected. Mr. Plesser stressed that the Code would not permit disclosure of any particular record which the legislative had determined to be confidential. Mr. Hanratty observed, however, that many of the most important prohibitions on record disclosure can be found in the Public Information Act. If the Public Information Act was repealed, as would be necessary if the Uniform Code was adopted,

these prohibitions would also be repealed. He noted that this would be the case for the prohibition against disclosure of library circulation records.

Mr. Drea asked Mr. Plesser if the Office of Information Practices, an optional feature of the Uniform Code, was in fact a critical feature of the Code. Mr. Plesser responded that while the Office would be a very useful entity, the Code could operate without it.

Mr. Plesser suggested that the scope of the disclosure standard will ultimately only be determined as a consequence of judicial decisions. Mr. Garrett expressed some concern about this point. He observed that he could foresee a patchwork of decisions, depending on which judge heard the case. Furthermore, he noted that the State currently has explicit prohibitions rather than standards, and that the prohibitions appear to work very wel. Mr. Garrett noted that there has been very little litigation.

Mr. Drea noted Article 3, Section 3-102(b)(3) which identifies "information relating to eligibility for social services or welfare benefits or to the determination of benefit levels" as being data in which the individual has a significant privacy interest. Mr. Drea stressed that, in his opinion, all personally identifiable data regarding welfare recipients should remain confidential. However, to the extent that there was a minimal public purpose to be served by permitting public inspection of welfare data, Mr. Drea stated, it would be in the area of eligibility. Mr. Drea felt that there was no public purpose in allowing such things as the publication of lists of welfare recipients. Yet, the Uniform Code states that eligibility data falls in the area of information in which the individual has a significant privacy interest, while other types of welfare data are not mentioned.

Delegate Kopp pointed out that data regarding nominations for government positions was regarded under Article 3, Section 3-102(b)(4), as information in which the individual has a significant privacy interest. She asked Mr.

Plesser if much discussion was given to this subsection. Mr. Plesser stated that everything in the Code was discussed.

Mr. Clinton noted Article 3, Section 3-102(b)(6), which states that "information in an income or other tax return measured by items of income or gathered by an agency for the purpose of administering the tax" constitutes data in which the individual has a significant privacy interest. He asked if the phrase "other tax return" included such things as gift or sales tax data, or was it meant to be restricted to income tax information. Mr. Plesser felt that the phrase was meant to encompass all types of tax returns.

Mr. Clinton pointed to Article 3, Section 3-102(b)(9), which states that "information comprising a personal recommendation or evaluation" is data in which the individual has a significant privacy interest. Mr. Clinton asked if this statement included unsolicited letters of comment. Mr. Plesser did not directly respond to this question but expressed his own personal feeling that subsection nine should not have been included.

Commission members turned their attention to Article 3, Section 3-103, Disclosure to Agencies of Government. Mr. Plesser pointed in particular to subsection (a)(1)(ii), which permits disclosure of personally identifiable records from one agency to another if disclosure is "compatible with the purpose for which the information in the record was originally collected." Mr. Plesser noted that "compatible with the purpose"was language very similar to that found in the Federal Privacy Act; he did not believe, however, that this was a very strong provision. Mr. Plesser stated that the purpose of this section was to permit the flow of personally identifiable data from one agency to another. In his opinion, the section created a mechanism so that transfers of data could be considered and allowed. Mr. Plesser felt that this was a very broad section.

Mr. Drea asked Mr. Plesser if the Internal Revenue Service (IRS) had taken

a look at this part of the Uniform Code. Mr. Drea commented that the IRS obtains a considerable amount of personally identifiable data from records of the Motor Vehicle Administration. IRS is anxious to continue to receive this information, Mr. Drea noted, but would not be able to qualify under the Uniform Code since disclosure would not be compatible with the purpose for which the information was originally collected. Mr. Plesser responded that IRS would probably qualify under Article 3, Section 3-103 (a)(3)(i), which permits disclosure to federal agencies "for the purpose of a civil or criminal law enforcement investigation." Mr. Plesser also noted that if Motor Vehicle Administration records were disclosable by statute, then examination of those records by IRS would not constitute a clearly unwarranted invasion of privacy.

Mr. Garrett objected to the language appearing in Article 3, Section 3-103(a) (3)(ii) and (iii). Mr. Sweeney also expressed concern regarding Article 3, Section 3-103(b) which places the same restrictions on disclosure on those agencies receiving data as the originating agency. He did not believe that the State had the authority to impose such restrictions of the federal government.

Mr. Plesser then proceeded to discuss Article 3, Section 3-105 and 3-106, which authorize access to records by the record subject and place limitations on individual access. Mr. Plesser noted that these sections recognize that the subject of the record has a greater right to access information pertaining to him than would be the case for third parties. In his opinion, probably the most significant limitation imposed on the subject of the record by the Uniform Code concerned his inability to examine investigatory records. Mr. Hanratty asked if these sections would permit the person in interest to examine psychological records pertaining to him. Mr. Plesser though that this was a moral and ethical issue that the Commission would have to decide for itself, but he also felt that access would be permitted under the Uniform Code.

Mr. Plesser stressed the importance of the disclosure log provision found in Article 3, Section 3-108(a)(2). Mr. Plesser felt that logs are important since they make it possible to amend incorrect data and notify recipients of any inaccuracies. Logs also help, Mr. Plesser stated, as a tool to keep track of the location of sensitive information. In response to a question from Mr. Garrett, Mr. Plesser stated every disclosure had to be logged. Mr. Drea noted that under article 3, Section 3-105(2), the person in interest must be informed upon request "...of all disclosures of the record outside the agency as required in subsection 3-108(a)(2)."

Discussion ensued about the cost of implementing disclosure logs. Mr. Plesser observed that logs could be expensive. Mr. Hanratty asked Mr. Plesser if, in his opinion, disclosure logs represented the most expensive single item in the Code. Mr. Plesser responded that he did not know if this was so. He noted that in the early days of the Federal Privacy Act, agencies were making disclosure log notations for each record that was released. Such a procedure, Mr. Plesser observed, was very expensive. However, he suggested that such an a approach was not really necessary. Any mechanism would suffice, Mr. Plesser noted, as long as it would be possible to go back and determine where a particular record was sent.

Mr. Drea asked a series of questions regarding Article 3, Section 3-106, Limitations on Individual Access. He noted, first of all, that subsection (a)(2), which does not require an agency to disclose "information collected and used solely to evaluate the character and fitness of persons, but only to the extent that disclosure would identify the source of the information", was awkwardly worded. In Mr. Drea's opinion, this subsection did not really address the issue. He also questioned the need for subsection (b) which states: "This section does not abridge any statute that authorizes an agency to withhold information from the parent or legal guardian of a child." In Mr. Drea's view, such a subsection was unnecessary in the light of Article 3, Section 3-104.

Finally, Mr. Drea asked if the word "segregable", as contained in Article 3, Section 3-106(c) was included in other sections of the Uniform Code. Mr. Plesser indicated that it was included.

Mr. Plesser stressed the significance of Article 3, Section 3-107, which permits the person in interest to seek correction and amendment of records pertaining to him. The position of the drafters of the Uniform Code was that if a person can examine his record, he should have the right to seek a correction of that record.

Mr. Plesser indicated that Article 3, Section 3-108 places agencies under certain limitations regarding the types of personally identifiable data to be collected and maintained. Mr. Garrett felt that subsection (a)(1), which requires agencies to "collect or maintain only information about individuals necessary to accomplish its purposes as authorized by federal law or executive order, state statute or executive order, or local ordinance of resolution", would be a difficult standard for agencies to meet. Mr. Hanratty suggested that the language was similar to that which exists in the Public Information Act. Mr. Plesser felt that this section served as a good management tool for agencies.

Brief discussion ensued over Article 3, Section 3-109, Disclosure of Individually Identifiable Records for Research Purposes. Mr. Clinton asked if the agency that is the custodian of the research material, could fulfill its responsibilities under the Uniform Code without disclosure of a person's name. Mr. Plesser thought that data could be released under a coded system.

A number of conerns were raised by members regarding Article 3, Section 3-115 (1) which requires agencies to "issue instructions and guidelines necessary to effectuate this Article...". Senator Hickman noted that each agency would have to issue rules and regulations, to be followed by litigation challenging such rules and regulations. Delegate Koss thought that this subsection gave a considerable amount of discretion to agencies. Mr. Garrett felt that it would be

more preferable to have one body apply standards to some of the statutes. Mr Sweeney commented that no time would be saved if responsibility was given to the agencies before giving it to a board or the courts.

Mr. Plesser briefly discussed the Office Of Information Practices described in Article 4 of the Uniform Code. Again, Mr. Plesser noted that the Office was an optional feature of the Code but that the Office could perform some useful functions, such as monitoring agency compliance, advising agencies about their responsibilities, and informing the public of its rights.

The Commission adjourned, with the next meeting scheduled for October 26, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 30, 1981

OFFICIAL

Minutes of the Governor's Information Practices Commission Meeting of October 26, 1981.

The meeting of the Governor's Information Practices Commission was held on October 26, 1981. The following members were in attendance: Mr. Arthur S. Drea, Jr. Chairman; Mr. John Clinton, Mr. Albert Gardner, Senator Timothy Hickman, Delegate Nancy Kopp, Mr. Donald Tynes, and Mr. Robin Zee.

Mr. Drea began the meeting by informing Commission members of the resignation of Mr. Roy Shawn and Dr. Harriet Trader. Mr. Drea indicated that Mr. Shawn had experienced further medical complications and that Mr. Shawn wished to forward his regrets to the other Commission members. Dr. Trader did not offer an explanation for her resignation.

Mr. Drea indicated that the resignations of Mr. Shawn and Dr. Trader left two vacancies on the Commission; however, he believed that these slots should remain vacant, since it would take too long for replacements to catch up on Commission work. Mr. Zee stated that the Commission was at the point of grappling with major issues. He thought that it would be beneficial to have someone on the Commission who had experience with these issues, and suggested representatives from the National Conference of Commissioners on Uniform State Laws. Mr. Drea responded that it was unrealistic to assume such representatives would be impartial about the Uniform Information Practices Code. Mr. Zee disagreed, stating that these representatives could engage in discussion or debate and provide alternative

points of view. Mr. Gardner supported Mr. Drea's basic position. Senator Hickman felt that it might be useful to have additional members for discussion purposes; at the same time, however, he suggested that it might be difficult for someone to catch up on all of the reading material. Mr. Hanratty suggested that there might be significant time problems to bringing someone at such a late date. If the Commission intended to make certain decisions at its November 2, 1981 meeting, it may simply be too late to submit a name to the Governor's Appointments Officer.

Senator Hickman informed the Commission that he had a meeting regarding toxic substances and the issue arose as to the existence of a cancer registry. Senator Hickman noted that although the Commission was told of the existence of a cancer registry, an official from the Department of Health and Mental Hygiene who had attended the toxic substances meeting indicated that such a registry did not exist. In response to a question from Mr. Clinton, Mr. Hanratty noted that the Department had provided the Commission with data regarding a Cancer Control File. He did not know if this was the same thing as a Cancer Registry. Mr. Gardner indicated that he had obtained information in the past about a Cancer Registry. Mr. Clinton offered to check this issue for the Commission.

The Commission then turned to a discussion of House Bill 112 (1980 session of the General Assembly). Mr. Drea began by noting that personally identifiable data is divided into three categories: 1) confidential, which is information that may not be made public and which cannot be examined by the subject of the record; 2) private, information which cannot be disclosed to the public but which may be examined by the subject of the record; and 3) public, which may be disclosed to the general public.

Mr. Zee indicated that he had notes from the time that the bill was originally considered by the General Assembly. Mr. Zee stated that C and P

Telephone had spoken against House Bill 112 because the bill would have eliminated Article 76A, Section 3(c) (v), which prohibits disclosure of "trade secrets, information privileged by law, and confidential, commercial, financial, geological, or geophysical data furnished by or obtained from any person." Mr. Zee also noted that Mr. William Adkins, State Court Administrator, had opposed the bill because of the broad definition of "public agency" (lines 500-502), which is "...any Maryland office or body created by state or local authority." Delegate Kopp indicated that these objections had been addressed in amendments.

Senator Hickman asked Delegate Kopp if any thought had been given to keeping the current Public Information Act , and making modifications to the Act to address privacy issues. He thought that this approach might appear to be less threatening to some legislators than a wholesale elimination of the Public Information Act. Delegate Kopp indicated that the drafters of House Bill 112 were simply of the opinion that a fresh approach was preferable.

Mr. Drea pointed to lines 554 to 593 of House Bill 112, which delineate the responsibilities of the Government Information Practices Board. He stated that the Commission has already performed some of these duties, such as reviewing the record-keeping practices of public agencies. Mr. Drea noted in particular lines 561 to 563, which require the Board to "determine by rule what personal information may be collected and maintained by a public agency, but only if discretion is not expressly provided by law", and lines 564 to 567, which require the Board to "determine by rule whether the personal information maintained by a public agency shall be classified as public, private or confidential but only if discretion is not expressly provided by law." In subsequent discussion, Mr. Hanratty stated that the Board could neither decide to prohibit inspection of driving records, nor permit inspection of income tax records, since both sets of records were governed by specific statutes. In contrast, the Board could establish rules regarding State Retirement System records, since they are not affected by any particular statute. Mr. Drea felt that these provisions would resolve a number of the issues that the

Commission has already discussed. Mr. Zee noted that althought agencies can set fees for copies of government information (lines 817 to 818), the bill does not give the Board the authority to review such fees.

Mr. Drea felt that the appeals section of the bill (lines 568 to 573) was too vague; the section states as follows: "within 30 days after the filing of an appeal pursuant to Section 5A(B), (the Board shall) determine questions relating to the availability of public records for inspection or the collection, maintenance, classification, dissemination, accuracy, and completeness of personal information or any other issue arising under this Act." Mr. Tynes felt that additional clarification was provided by lines 652 to 657, which states that "any person aggrieved by any action or inaction of a public agency regarding the availability of public records for public inspection or the collection, maintenance, classification, dissemination, accuracy, or completeness of personal information may file an appeal with the Board pursuant to rules promulgated by the Board."

Mr. Clinton noted that individuals may file information practices disputes with the Board under lines 652 to 657, and that actions may be filed in the circuit court under lines 865 to 872. He asked if individuals may chose either of these paths. Mr. Drea stated that the judicial path may only be pursued after the individual had exhausted his administrative remedies.

Mr. Drea reminded members that a Board does not exist to administer the Public Information Act. He also noted that lines 596 to 622 constitute principles which would guide the Board in its decisions. Mr. Drea asked for comments on the principles section from Commission members. Mr. Zee asked if the term data subject included only the living or both the living and deceased. Mr. Drea stated that he believed both categories were included.

Mr. Drea expressed concern that the Board would be given a great amount of authority, and could change the policies of agencies regarding personally identifiable information. Mr. Drea also stated that the enactment of House Bill 112 would result in the repeal of the Public Information Act. Mr. Drea noted that

lines 623 to 644 provide a list of factors that the Board should consider in making its determinations; however, Mr. Drea felt that some of these factors were so general as to be without meaning. He observed, for example, that the term, "accepted custom" could mean almost anything.

Senator Hickman inquired as to why it was necessary to have a board issue rules and regulations. In his opinion, it would be difficult for a group of board members to issue regulations for each agency. Senator Hickman felt that it would be preferable to have the regulations developed by the records custodians with examination of these regulations by the Board. Delegate Kopp commented that the regulations developed by the Board would lead to greater uniformity across agencies. She also noted that the Board included the Secretaries of those Departments with the largest and most sensitive record systems, so the Board would be in touch with the records custodians.

The Commission then considered that section of House Bill 112 pertaining to the subject of a record system. Mr. Drea noted in particular lines 673 to 675, which gives the subject of the record the right, upon request, to "be informed by a public agency whether the individual is the subject of personal information collected, maintained, or disseminated by that agency." Mr. Hanratty asked if an agency would have to examine every record system containing personally identifiable information to determine if it maintained any data about the requester. Delegate Kopp thought that this was correct.

Mr. Drea noted that House Bill 112 permits the subject of the record to file an appeal in order to challenge the accuracy of a record; however, the individual does not have the right to include a contrary statement into the file. Mr. Clinton expressed the view that, in certain occasions, it is very desireable to include conflicting positions in a file and to submit both positions to requesters. Delegate Kopp also thought that this area was an important right that should exist.

Mr. Zee expressed concern over the word "emergencies" appearing in line 702. In his opinion, the word may cause a considerable number of problems unless it is defined. Mr. Clinton felt that it would be very difficult to place limitations on the word.

Mr. Zee identified lines 727 to 729 as potentially troublesome; these lines prohibit disclosure, unless disclosure is required by another law, of "records given to an agency in confidence if the production of these records could not have been compelled by the agency under existing law or regulation." Mr. Zee felt that this subsection could have an impact on commercial and financial data provided by companies seeking bids from the State.

In Mr. Zee's opinion, lines 730 to 734 should be modified to permit the person in interest to examine "...the contents of real estate appraisals made for any public agency, relative to the acquisition of property, or any interest in property for public use..". Mr. Drea felt that a determination as to whether the person in interest should be permitted access to such records should be dealt with on a case by case basis.

Mr. Hanratty suggested to the Commission members that they consider inserting language into a privacy act or into the Public Information Act that would prohibit disclosure of agency security manuals. He felt that this would alleviate situations similar to that faced a few years ago by the Comptroller's Office where a requester sought to obtain sensitive security data under the Public Information Act.

Mr. Drea noted that House Bill 112 does not contain a number of prohibitions found in the Public Information Act, such as restrictions on the disclosure of personnel files, school district data which is personally identifiable, and library circulation records. Mr. Drea stated that he assumed that these records would be classified by the Board as private or confidential, if they were not already covered by an existing law.

Mr. Zee noted the expansive language in lines 744 to 746, which requires an agency to restrict disclosure, unless otherwise provided for by law, of "work-papers, including preliminary drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended." Delegate Kopp suggested that examination of workpapers could have the effect of inhibiting agency decision making. Mr. Zee observed that the language of the bill would restrict workpapers not only prior to the making of a decision but afterwards as well. On a related note, Delegate Kopp and Mr. Drea informed Commission members about the concerns of Mr. Carvel Payne, Director of the State Department of Legislative Reference. Mr. Payne believes that bill drafting materials generated at the request of a legislator should be confidential, unless the legislator subsequently introduced the bill into the General Assembly. In other cases, however, Mr. Payne feels that these materials should be treated as confidential working papers.

Mr. Zee pointed to lines 767 to 769, which states that "in no event may a person remove government information from an agency without written authorization of the agency." Mr. Zee noted that a former Comptroller had taken his papers with him when he left office. Mr. Zee thought that lines 887 to 890 provide for criminal penalties for removing papers from State offices.

Mr. Hanratty stated that House Bill 112 does not make clear whether search fees or other administrative expenses may be passed along to a requester who seeks copies of government information. In response to a question from Mr. Tynes, Mr Drea indicated that Mr. Sweeney was presently drafting language regarding fees for public records, and would present this language to the Commission upon completion.

The Commission noted lines 819 to 821, which states that agencies " shall establish procedures to protect all government information from deterioration, mutilation, tampering, loss and unauthorized destruction", and lines 822 to 824, which indicates that agencies "shall make available to any person on request and to the Board a currect list of categories of personal information collected and maintained by it."

Mr. Hanratty observed that House Bill 112 does not require that agencies maintain logs to record the dissemination of personally identifiable information. In response to a question from Delegate Kopp, Mr. Hanratty cited as an example the requirements of the Criminal Justice Information System (CIJUS). The Central Repository of the Maryland State Police must maintain logs in all cases involving the dissemination of personally identifiable criminal history record information. The purpose of the log is to enable the State Police to inform recipients of data if it is determined that information was incorrect.

Mr. Drea noted lines 873 to 876, which states that "if the court finds that the public agency has acted improperly, the court may award costs, including attorneys' fees, and such damages, compensatory and punitive, as the court may deem appropriate under the circumstances." Mr. Drea questioned the meaning of the work "improperly".

Mr. Drea informed the Commisson members that Mr. Hanratty had examined House Bill 112 and found that a number or requirements of the Uniform Information Practices Code did not appear in House Bill 112. Mr. Drea stated that Mr. Hanratty made the following observations: 1) agencies are not required to use disclosure logs; 2) agencies are not required to compile a catalogue of record systems; 3) the person in interest may contest the accuracy of information pertaining to him, but may not insert a statement of disagreement into the file; 4) the bill permits the person in interest to contest the accuracy of information, but does not state whether he may copy and examine such information; and 5) the bill does not indicate whether fees of varying kinds may be passed along to a requester.

Before adjourning, Mr. Drea indicated that Commission members would be asked to vote on a number of issues at the Commission's November 2nd meeting.

A. Records of the Department of Economic and Community Development Which are considered to contain Sociological Data

1. Maryland Housing Rehabilitation Program

Provides loans to :
1) low-income families generally residing in specified target areas
2) sponsors of residential units to be rented to limited income families
3) sponsors of commercial properties

2. Section 8 Existing and Moderate Rehabilitation Housing Program

Assists low-income families including elderly, disabled and handicapped through rent subsidization.

3. Maryland Home Financing Program

Dispenses direct mortgage loans to low and moderate income residents who have been unsuccessful in obtaining conventional mortgage financing.

4. Homeownership Development Program

Enables moderate income families to obtain long-term mortgage financing at low market interest rates for the purchasing of new homes in approved subdivisions.

5. Mortgage Purchase Program

Has essentially the same goals as the Homeownership Development Program, except that its range of eligible families is somewhat larger and it functions through private lending institutions.

6. Development Finance Program

Provides below market interest rates for construction and permanent financing as an incentive to developers of rental housing market for elderly and low to moderate income housing.

7. Maryland Industrial Development Financing Authority

Assists businesses seeking to establish or expand their operations in the state.

8. Maryland Small Business Development Financing Authority

Enables businesses owned by minorities or others who are socially or economically disadvantaged to borrow funds to fulfill government contracts.

9. Maryland Housing Fund

Attempts to expand the home ownership market through mortgage insurance programs, and also seeks to increase construction and rehabilitation of multi-family rental and cooperative housing.

B. Records of the Division of Parole and Probation Which Are Considered to Contain Sociological Data

1. Probation/Parole Master Name File

Identifies cases supervised by agents within a particular office. Contains various items of personally identifiable data derived from the Case Record Input-Intake form.

2. Fines, Costs, Restitution Records

Enables the Division to monitor court-ordered payments to victims by parollees.

3. Live-In/ Work Out Pay Records

Highly similar to Fines, Costs, Restitution Records

4. Investigations Files and Investigation Reports (Other Than Pre-Sentence Investigative Reports)

5. Probation /Parole Mandatory Release Case File Records

Contains individual files maintained on cases under investigation.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

November 6, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

SUBJECT: Catalogue of Record Systems

As a supplement to questions 28 through 35 on the Commission ballot, I am forwarding the following materials from California which illustrate a catalogue of record systems: 1) Article 4, Sections 1798.9 and 1798.10 of the California Civil Code mandating notification requirements for records maintaining personal or confidential information; 2) instructions given to agencies for reporting personal or confidential records; and 3) an agency reporting sheet to be filed for each record system containing personal or confidential data. The cumulative total of all sheets constitutes California's Catalogue of Record Systems.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

November 5, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

At its October 13th meeting, the Commission asked me to attempt to provide an definition for the term "sociological data." Unfortunately, this has proven to be an exceedingly difficult task. Therefore, in lieu of a firm definition, the enclosed report describes the current problem involving "sociological data", the usage of the term in various State agencies, and alternative approaches that could be considered by the Commission.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

November 5, 1981

CONFIDENTIALITY OF SOCIOLOGICAL DATA UNDER THE PUBLIC INFORMATION ACT

I. The Problem Described

Article 76A, Section 3 (c)(i) requires records custodians to prohibit the disclosure, unless otherwise provided by law, of "medical, psychological and sociological data on individual persons, exclusive of coroners' autopsy reports." As we have seen over the past several months, the term "sociological data" is the source of considerable confusion for State agencies.

It is impossible to determine the meaning of the term by examining the definitions section of the Public Information Act, by identifying the legislative intent of the General Assembly in including the term, by reading court cases or attorney general opinions, or by considering similar federal or state statutes. First of all, "sociological data" is not defined in Article 76A, or, for that matter, anywhere else in the Annotated Code. Second, the Department of Legislative Reference does not maintain committee files earlier than 1975; the Public Information Act was enacted by the General Assembly in 1970. However, even if we assumed that "sociological data" was amended into the Act after 1975, the committee files currently maintained would be virtually worthless in identifying legislative intent. Files rarely contain transcripts or even minutes of committee proceedings. Third, the term is not clarified in any court interpretation or Attorney General opinion of which I am aware. Finally, a search through various state and federal information practices statutes has proved fruitless. As best as can be determined, the expression

is unique to Maryland.

Thus, we are left entirely to our own resources in attempting to come to grips with "sociological data". Given the broad research interests found within the discipline of sociology, virtually every piece of information could qualify as "sociological data". Such an interpretation, of course, would negate the Public Information Act itself as all information would then be nondisclosable. It is also doubtful that the General Assembly intended the expression to prevent the release of all personally identifiable data. If such was the case, there would have been no need for subsequent statements in the Public Information Act preventing the release of library circulation records, personnel files, and adoption records. If, however, one interprets the expression to mean data <u>furnished</u> by a sociologist, then the expression becomes meaningless for all practical purposes. In my examination of every record system in the Executive branch containing personally identifiable data, I did not come across a single file that represented the work of a sociologist.

II. <u>Usage of the Term by State Agencies</u>

Given the fact that one is dealing with a vague term which has never been defined, it should come as no surprise that "sociological data" is used in different ways by different agencies. Probably the most significant aspect of this whole situation is that, in many cases, we are dealing with record systems which are not assigned a confidential status in some part of the Annotated Code. Thus, the determination as to whether or not a record is "sociological" is crucial in deciding if the data should be available for public inspection. To give but one example, the Department of Economic and Community Development considers all of its program-related, personally identifiable data to be sociological and therefore non-disclosable. The Maryland Automobile Insurance Fund does not consider its program data to be sociological; hence, it is subject to disclosure. <u>Yet the two departments</u>

maintain many of the exact same data elements in their files.

The following are examples of data elements that are considered to be sociological by specific departments:

A. Department of Economic and Community Development

-name
-home and business address
-home and business telephone number
-social security number
-age
-marital status
-present and previous employers' names and addresses
-names, relationships and ages of dependents
-present monthly income
-monthly housing expenses
-checking and savings bank account numbers
-names and addresses of all creditors
-credit reports
-sex
-race

B. Office on Aging

-name
-address
-social security number
-date of birth
-religious affiliation
-health insurance policy number
-approximate amount of money in checking and savings accounts
-data pertinent to the functional ability of the elderly person
-needs of the elderly person
-amount of wages
-social security benefits
-burial plans
-stocks, bonds, real estate, bank account numbers

C. Division of Parole and Probation

The Division of Parole and Probation divides personally identifiable data into three categories:

1. Confidential Sociological Data

-individual's personal relationships, beliefs, values, etc.
-identity of dependents and relatives
-description and adequacy of housing facilities
-monthly rent or mortgage payments
-earnings
-address and occupation and school status of family member

-information concerning the support and custody of children
-religious preference and attendance
-name of the church attended
-names of close associates
-evaluations by the agent of adjustment problems and attitudes

2. Nonconfidential Sociological Data

-client's current address
-previous address
-telephone number
-age
-present occupation
-past employment
-marital status
-education

3. Non-sociological Data

-race
-height
-weight
-color of eyes and hair
-social security number

III. Alternative Approaches to Sociological Data

Given the enormous range of data elements which have been considered by State agencies to be sociological in character, it is an extremely difficult task to come up with a definition that will accomodate the concerns of these agencies. One alternative available to the Commission is simply to eliminate the expression "sociological data" from Article 76A, Section 3 (c)(i), so that only medical and psychological information is nondisclosable. This alternative would alleviate the problem of trying to force disparate data elements into the same definition.

Yet while elimination of the term has a certain appeal, I do believe that the term has served a useful purpose in preventing the disclosure of information which should not be released. It is rather difficult for me to believe that the public interest is served by the disclosure of names and addresses of tenants in government-subsidized housing, burial plans of an elderly person for whom the Office on Aging

serves as a public guardian, or a description of a parolee's housing facilities. "Sociological data" is the only term in the Annotated Code, however, enabling records custodians to deny the release of these data elements.

A second approach which could be considered by the Commission is to eliminate the term "sociological data" from the Public Information Act, but at the same time explicitly state that records of the Office on Aging, the Division of Parole and Probation, and so forth, are confidential. This could be done by adding an eleventh exemption to Article 76A, Section 3 (c) to read as follows: "The custodian shall deny the right of inspection of the following records or any portion thereof, unless otherwise provided by law: Program-related, personally identifiable records of the Office on Aging, the Department of Economic and Community Development, the Maryland Automobile Insurance Fund, and the Division of Parole and Probation.

The advantage of this second approach is that the Commission would be assured of the fact that the data in these record systems could not be examined by the public. The obvious disadvantage, of course, is that there may be similar records inadvertently left out or similar records which may be generated in the future. In either case, certain records would probably fall between the cracks.

A third approach that could be considered by the Commission would be to attempt to define "sociological data" by listing the specific data elements, or categories of data elements, contained in the term. Thus, the Public Information Act could be amended to include the following definition, or some comparable variation: "Sociological data means and includes the following personally identifiable information: social security number, financial transactions, religious background, descriptions of housing facilities or living arrangements, educational and occupational background, and physical characteristics. Sociological data does not include information collected for occupational or professional licensing purposes, or data

released in the course of criminal investigations or prosecutions."

I do not presume that the above definition is a satisfactory solution to the absence of a definition of "sociological data". Indeed, the number of exceptions that would probably have to be built into the definition might end up complicating an already confused situation. Nonetheless, if Commission members decide that "sociological data" should be delineated clearly, the definition just provided could serve as a useful first step for discussion purposes.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

November 4, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

A number of Commission members expressed the view at the November 2 meeting that they lacked specific information about the record-keeping practices of the various State licensing boards. Enclosed therefore, is a list of all licensing data elements which are subject to public inspection under the Public Information Act. This list is broken down by name of licensing board. Please examine this list carefully in preparation for the November 9th meeting.

OCCUPATIONAL AND PROFESSIONAL LICENSING DATA
DISCLOSABLE UNDER THE PUBLIC INFORMATION ACT.

1. Department of Licensing and Regulation
Division of Occupational and Professional Licensing
Maryland Home Improvement Commission

-name
-address
-place of birth
-social security number
-height
-weight
-record of previous experience
-details pertinent to any felony convictions
-record of previous license
-references
-photograph
-complaints

2. Department of Licensing and Regulation
Division of Occupational and Professional Licensing
Maryland Real Estate Commission

-name
-principal business address
-age
-sex
-social security number
-telephone number
-details pertinent to any felony convictions
-an indication as to whether a real estate license has ever been denied, suspended or revoked in any state
-credit reports
-certificates of completion of specified courses
-resume of real estate activity (the approximate number of listings obtained, the approximate number of sales completed, the approximate number of rental accounts handled, the approximate number of appraisals conducted, and the estimated total volume of cumulative business during the past three years)
-names and addresses of brokers over the previous three years
-complaints

3. Department of Licensing and Regulation
Division of Occupational and Professional Licensing
Occupational and Professional Licensing Boards (Architectural Registration, Electrical Examiners, Registration For Foresters, Hearing Aid Dealers, Landscape Architects, Motion Picture Machine Operators, Pilot Examiners, Practical Plumbing, Professional Engineers, Professional Land Surveyors, and Public Accounting).

-name
-home address
-business and residence telephone number
-social security number
-race
-sex
-drivers' license number
-date of birth
-place of birth
-citizenship status
-names and addresses of previous employers and period of time at each job
-height
-weight
-name of insurance company and policy number for Workmen's Compensation purposes
-name of college or university and dates of attendance
-names of professional associations or technical organizations to which the licensee belongs
-photograph
-details pertinent to an arrest or conviction of any crime
-details pertinent to any hospitalization for mental illness or disorders
-academic transcripts
-complaints

4. Department of Licensing and Regulation
Division of Occupational and Professional Licensing
State Boards of Cosmetologists and Barber Examiners

-name
-home address
-home telephone number
-social security number
-age
-previous training (licensure information)
-place of employment or school of training
-details pertinent to any criminal convictions
-Workmen's Compensation information
-other data from creditors, complainants, Zoning Boards, local health departments and Board inspectors

5. Department of Licensing and Regulation
Maryland Racing Commission

-name
-present and permanent address
-date of birth
-age
-citizenship status
-social security number
-height
-weight
-color of hair and eyes
-name and address of firm or employer

-nature of business
-title of position
-name of bank and bank account number
-names of trainers and partners
-names and addresses of three personal references
-details regarding any arrests, involvement in bookmaking operations, and racing suspensions
-details pertinent to any license denials
-insurance company and policy number for Workmen's Compensation purposes
-background investigations

6. Department of Licensing and Regulation
Maryland State Athletic Commission

-name
-address
-social security number
-place of birth
-date of birth
-age
-sex
-marital status
-weight
-details pertinent to any license suspensions or revocations, convictions and financial interests in the promotion of boxing and wrestling
-name of insurance company and policy number for Workmen's Compensation purposes
-names and addresses of those with a financial interest in the earnings of a manager
-names and addresses and titles of all officers and stockholders belonging to the promoter's corporation or association
-copies of contractual agreements between managers and fighters
-physical examination forms for boxers
-official physicians' reports
-complaints

7. Department of Licensing and Regulation
Insurance Division

-name
-address
-social security number
-marital status
-place of birth
-details pertinent to educational background
-details pertinent to employment background
-details pertinent to any serious financial difficulties, arrests, convictions, license suspensions and cancellations
-name of insurance company and policy number for Workmen's Compensation purposes
-complaints
-investigative data (police, bank, medical records)

8. Department of Health and Mental Hygiene
Division of Boards and Commissions Excludes Boards of Examiners of Nursing Home Administrators and Board of Examiners of Nurses, but includes Board of Audiologists and Speech Pathologists, State Board of Chiropractic Examiners, Maryland State Board of Dental Examiners, State Board of Electrologists Examiners, State Board of Funeral Directors and Embalmers, Board of Medical Examiners of Maryland, Board of Occupational Therapy Practice, Board of Examiners in Optometry, Maryland Board of Pharmacy, State Board of Physical Therapy Examiners, Board of Podiatry Examiners, State Board of Examiners of Psychologists, Board of Sanitarian Registration, Board of Social Work Examiners, and Maryland State Board of Well Drillers).

-name
-address
-telephone number
-social security number
-date of birth
-sex
-educational background
-dates, names and addresses of former employers
-details pertinent to any criminal convictions, license suspensions and drug or alcohol addictions

9. Department of Health and Mental Hygiene
Division of Boards and Commissions
Board of Examiners of Nursing Home Administrators

-name
-address
-educational experience
-employment experience
-complaints

10. Department of Health and Mental Hygiene
Division of Boards and Commissions
Board of Examiners of Nurses

-name
-address

11. Department of Health and Mental Hygiene
Division of Boards and Commissions
Complaint File

Boards and Commissions will disclose the Final Order or Consent Order for all complaints involving a health professional other than a physician. The Boards do not release any other complaint data; the staff is unsure whether this practice is in conformity with the Public Information Act. Physician complaints which the Commission on Medical Discipline determines to be groundless must be punged.

12. Department of Agriculture
Maryland State Board of Veterinary Medical Examiners

-name
-home address
-primary field of practice interest
-details pertinent to a license suspension or revocation in another state
-complaints
-educational data

13. Department of Agriculture
State Board of Inspection of Horse Riding Stables

-name
-home address
-social security number
-race
-sex
-driver's license number
-date of birth
-details pertinent to any convictions for cruelty to animals
-name of insurance company and policy number for Workmen's Compensation purposes
-complaints

14. Department of Agriculture
Pesticide Applicators Law Section

-name
-permanent home address
-home telephone number
-business address
-business telephone number
-date of birth
-social security number

-driver's license number
-names and addresses of previous employers
-nature of previous positions
-educational background
-details pertinent to any previous pesticide sales and service licenses
-name and business addresses of references
-names, addresses, social security numbers, driver's license numbers and birth dates of all employers (for a pesticide business license)

15. Department of Natural Resources
Licensing and Consumer Services

-name
-address
-telephone number
-social security number
-date of birth
-height
-weight
-sex
-color of eyes and hair
-length of residence in Maryland
-names and addresses of any partners or officers and gross business sales for the previous year (for boat dealers)
-nationality
-data pertinent to any liens held (for boat owners)
-complaints

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 28, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

IMPORTANT COMMISSION MEETING

The Information Practices Commission will hold a very important meeting on November 2, 1981, at 4 P.M., in the House Constitutional and Administrative Law Committee Room. At that time, Commission members will be asked to vote on a number of issues compiled by the Chairman and the staff. (A ballot is enclosed in this mailing). It is crucial to understand that this vote does not commit the Commission to a legislative package.

The basic intent of the vote is to establish specific positions of the Commission. Once these positions have been established, the Commission will then move into a second phase and determine whether these positions can best be achieved by an omnibus statute, modifications to existing statutes, or some other approach.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 23, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed is a revised version of the staff's draft report examining the record-keeping practices of the Department of Licensing and Regulation. This revision contains new sections regarding the licensing boards of the Division of Occupational and Professional Licensing, the Maryland Racing Commission, the Maryland State Athlectic Commission and the Insurance Division. The previous Licensing and Regulation report which you received last month should be discarded.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 21, 1981

TO: Information Practices Commission Members

FROM: Dennis Hanratty

The Information Practices Commission will hold a meeting on October 26, 1981, at 4 p.m. in the House Constitutional and Administrative Law Committee Room. The Commission will conduct a thorough examination of House Bill 112 (1980 session). A copy of the bill was sent to you on October 6, 1981.

If time permits, the Commission will also consider any agency reports which have not been previously examined. The draft report of the State Department of Assessments and Taxation is enclosed, and additional reports will be forwarded in the next few days.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

October 14, 1981

TO: Information Practices Commission Members

FROM: Dennis Hanratty

Enclosed please find a copy of the minutes from the October 5th meeting.

Please remember that the Commission has a very important meeting on October 19th at 4 p.m.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

October 1, 1981

"OFFICIAL"

Minutes-Governor's Information Practices Commission Meeting of September 21, 1981.

The meeting of the Governor's Information Practices Commission was held on September 21, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, and Mr. Albert Gardner.

The Commission approved as official the minutes from the August 17th meeting. The meeting began with Mr. Drea again welcoming Ms. Beatrice Weitzel, Executive Assistant to the Secretary, Department of Health and Mental Hygiene. Ms. Weitzel informed the Commission that over the past week, she had been able to obtain answers to a number of questions raised by Commission members on September 14th.

First of all, she indicated that the licensing boards receive approximately 600 telephone inquiries per month. Because of the volumne of requests, notification of the person in interest is impossible. Ms. Weitzel also observed that she had spoken with Mr. Jack C. Tranter, Deputy Counsel for the Department, regarding the variability of record-keeping practices of the licensing boards. Mr. Tranter had told her that plans do not exist at the present time to reconcile these differences. Concerning the data collected on the back of the licensing renewal cards, Ms. Weitzel stated that this information is collected for the benefit of

research and development of the Comprehensive Health Planning Agency. Thus, this data comes under the protection of Article 43, Section 1-I (a). Regarding the housing of computerized juvenile data, at the Data Center of the Department of Public Safety and Correctional Services, Ms. Weitzel noted that this was simply the most logical site in 1968, the time when the decision was made. However, Maryland Automated Juvenile Information System data is now being handled by the Baltimore Utility. Finally, Ms. Weitzel indicated that she had checked with the administrators of the Division of Vital Records and had found that a father does have access to his child's birth certificate, as long as his name appears on the certificate.

Discussion ensued on the access rights of the person in interest and security pertinent to Laboratories Administration information. Ms. Weitzel stated that the person in interest is permitted access to data, but only on the local level. Thus, access is provided by individual physicians and through local clinics. She noted, furthermore, that physicians do inform patients regarding the purposes behind taking specified tests. Information is not of value to others, Ms. Weitzel maintained, because it is technical in nature. Data housed at the Laboratories Administration is kept in locked files, in rooms that are locked.

In response to a question from Senator Hickman, Ms. Weitzel stated that security of registries records of the Preventive Medicine Administration is not as total as that found in the Laboratories Administration. Although files are kept locked, it is not possible to block off the room housing these files. Senator Hickman inquired as to why there appeared to be more security for some computerized records of the Preventive Medicine Administration than for others. Ms. Weitzel stated that the Baltimore Utility only provides the level of security specified by the user.

Mr. Drea noted that the Preventive Medicine Administration did not permit the person in interest to examine, copy or challenge data appearing in a number of record systems. The position of the Administration, he observed, is that such inquiries should be made at the local level. Mr. Drea stated that he could understand why the Administration would prefer that challenges to this data be directed to the physician or clinic responsible for generating the information. However, he could not foresee any problems to the Administration permitting access and copying of pertinent records. Ms. Weitzel agreed to seek an opinion from the Department regarding this matter.

The Commission then turned to a continuation of the draft report examining the record-keeping practices of the Department of Health and Mental Hygiene. Mr. Dennis Hanratty began discussion of the Mental Hygiene Administration by noting the vast number of sensitive documents appearing in the Central Patient Records file. Of some concern to Mr. Hanratty was the Department's use of a manual to guide custodians in the release of patient data. The manual, "Guide to Release of Information From the Medical Record in Psychiatric Facilities", generally contains guidelines rather than regulations, but Mr. Hanratty noted that it appeared that these guidelines were used widely by records administrators in state psychiatric facilities. This last observation was confirmed by Ms. Weitzel.

In Mr. Hanratty's opinion, the terms "non-confidential information" and "confidential information" were not clearly defined in the manual. It was unclear to him whether patients had a right to restrict the release of all data pertaining to them, or only some items. Mr. Hanratty felt that ambiguities in this section of the manual created a serious problem since it is used to make critical determinations regarding the disclosure of patient data.

Mr. Clinton asked Mr. Hanratty if the manual was in any way related to the information presented to the Commission by Mr. Morgan, Director of the Medical Records Department of Anne Arundel General Hospital. Mr. Hanratty stated that the manual and Mr. Morgan's presentation were related. The manual was the joint product of the Department of Health and Mental Hygiene and the Maryland Medical Records Association. Mr. Morgan was representing that Association during his appearance before the Commission. Ms. Weitzel noted that the Association is attempting to update the manual in the light of the passage of House Bill 1287.

Mr. Drea expressed concern over the fact that guidelines are being used as if they were rules and regulations. Mr. Drea noted that these guidelines are being cited by records custodians as the authority that permits them to make important decisions regarding the release of information. Mr. Drea stated, however, that those guidelines have no legal standing. The Secretary of the Department has the statutory authority, Mr. Drea observed, to adopt the manual verbatim in regulatory form. However, he felt that it was improper to use guidelines in place of regulations. Such an action circumvents an important feature of the regulatory process in that the public has no opportunity to comment about proposed regulations.

In response to a question from Mr. Zee, Ms. Weitzel stated that to the best of her knowledge, no challenges had ever been issued to the manual. Ms. Weitzel noted that, in the event that problems did surface, these could be addressed by the Superintendent of the facility, the Attorney General or the Secretary of the Department. Ms. Weitzel stated that medical records custodians are particularly careful regarding the release of personally identifiable data to the media. Senator Hickman observed that much data was available pertinent to the Arthur Goode case a few years back. Ms. Weitzel

noted, however, that such information did not come from the Department.

Ms. Weitzel expressed the view that disclosure of confidential medical records information needs to be made on a case-by-case basis. Mr. Drea disagreed with this position, maintaining that such a policy would permit too many inconsistencies across hospitals or even by the same custodian. He felt that this problem could be addressed by the adoption of regulations. Senator Hickman mentioned that he had served a few years ago as a member of the Governor's Task Force on Mental Health Support System. The Task Force, which was chaired by Dr. Stanley Platman, Assistant Secretary for Mental Health, Mental Retardation, Addictions, and Developmental Disabilities, had recommended that firm rules and regulations be established.

Discussion ensued regarding the fact that personally identifiable information can be released to Blue Cross and Blue Shield without written authorization of the patient. This is permitted because Blue Cross applicants agree to release necessary information to the company as a precondition to membership. Commission members asked Ms. Weitzel to explain what type of information is provided to Blue Cross. She indicated that she would check this issue for the Commission.

The Commission then turned its attention to an examination of the Mental Retardation and Developmental Disabilities Administration. As in the case of the Mental Hygiene Administration, patient records maintained by the Mental Retardation and Developmental Disabilities Administration are both sensitive and extensive. However, Mr. Hanratty stated that unlike the situation pertaining to psychiatric records, mental retardation records are governed by a section of the Code which gives both broad access rights to the person in interest and places strict restrictions on the disclosure of personally identifiable information. Mr. Hanratty expressed the view that Article 59A, Section 17 is an excellent part of the Code; he furthermore

felt that the protections found in this section should be applied to other types of patient records as well. In response to a Commission request, Ms. Weitzel agreed to find out the experience of the Department in administering this section. Ms. Weitzel also agreed to inquire about the experience of the Department in dealing with disclosure logs as required by the statute.

Mr. Hanratty stated that although some of the responses of the Chronically Ill and Aging Administration were not very detailed, there did not appear to be substantive problems. He noted in passing that the person in interest can examine, but cannot copy, data from the Tuberculosis Case Register.

Mr. Hanratty stated that he did not have complete confidence in his description of the Eligibility Records maintained by the Medical Case Programs. He noted that COMAR 10.09.01 delineates the procedure to be followed in determining eligibility to Medical assistance programs. In the report, Mr. Hanratty had observed that while determination of eligibility requires the collection of a significant amount of personal data, eligibility decisions are made by the local social service offices rather than by the Department of Health and Mental Hygiene. Thus, the Department of Health and Mental Hygiene maintains little more than directory information in this file. Ms. Weitzel stated that these observations were correct.

Mr. Hanratty noted that virtually all of the records of the Post Mortem Examiner's Office are disclosable under the Public Information Act. The only restriction is that records pertinent to cases not yet completed are not disclosed.

Mr. Hanratty asked Ms. Weitzel's assistance in obtaining additional information regarding the Public Hearings records file. Ms. Weitzel stated that she would do so, and would also gather the necessary data to enable

the Commission to discuss the record-keeping practices of the Office of Central Commitment and the Drug Abuse Administration.

The Commission thanked Ms. Weitzel for her excellent job in compiling the data pertinent to the Department's record system. The next meeting was scheduled for September 28, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

September 18, 1981

"OFFICIAL"

Minutes - Governor's Information Practices Commission

The Governor's Information Practices Commission met on September 14, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John Clinton, Mr. Donald Tynes, Mr. Robin Zee, and Senator Timothy Hickman.

Mr. Drea introduced Ms. Beatrice Weitzel, Executive Assistant to the Secretary of the Department of Health and Mental Hygiene.

Mr. Hanratty informed the Commission that Mr. John McCabe, Legislative Director of the National Conference of Commissioners of Uniform State Laws, had expressed the desire to appear before the Commission to discuss the final product of the Conference. Mr. Hanratty distributed copies of this product-the Uniform Information Practices Code. Two possible dates given to Mr. McCabe were October 19th or 26th.

Discussion ensued on whether legislators would lean towards a uniform code. Mr. Drea noted that it often depends on the subject matter. To date, no states have adopted the Uniform Information Practices Code. Mr. Hanratty stated that it had ben introduced in Illinois and Minnesota. Mr. Drea pointed out that page 9 of the Code dealt with the cost of reproducing records, a subject that had been discussed by the Commission.

Mr. Hanratty began discussion of the report on the record-keeping practices of the Department of Health and Mental Hygiene. Beginning with the Division of

Boards and Commissions, Mr. Hanratty noted that most licensure data is disclosable under the Public Information Act (name, address, social security number, phone number, date of birth, etc.). Some data, however, is in a special category. Nurses' records are considered confidential and thus nondisclosable. The Board of Nursing Examiners is required to maintain and disclose lists of licensees, Mr. Hanratty added. It is not clear, however, whether the Board must disclose names and addresses, or only the names of licensees. Mr. Hanratty stated that the Board favors limitations on disclosure.

Mr. Drea stated that he saw a problem with limiting disclosable licensee information to name only. He felt that an individual applying for a license from the state was "going public" in a sense. Mr. Zee pointed out that these individuals aren't going into business for the public; rather, some licensees are going into a profession. Mr. Drea countered that he felt a citizen should be able to check the credentials of a licensed professional. Discussion followed on whether this was done by the Board of Examiners.

Mr. Hanratty pointed out that an individual's name and address can be excluded from a phone directory if he so chooses. He suggested that a licensee should have the same option. Mr. Drea replied that contracting for phone service was different from offering yourself to do a service for the public. Mr. Drea concluded by stating that the only problem with disclosing names and address of licensees was that they received junk mail. He was concerned that in attempting to address that minor inconvenience, the Commission may cut off information necessary to the public.

Mr. Zee noted that only the Nursing Board provides for confidentiality of licensee data and asked if the Commission should point out this inconsistency in the Code. Mr. Drea replied affirmatively.

Mr. Clinton pointed out that the Board of Examiners of Nursing Home Administrators indicated that, prior to disclosure, recipients are requested to maintain the confidentiality of information. Mr. Clinton asked if this was in writing. Mr. Hanratty replied that he was not sure. Since the information is public information

this is not necessary. The Board is merely showing some sensitivity to protecting privacy.

Mr. Hanratty brought up another issue which concerned him. The Boards indicated that when licenses are renewed, information collected on the back of the renewal card is not disclosable to the general public. Mr. Hanratty stated that the Boards claimed that these records were subject to the Public Information Act; they would therefore be disclosable. Mr. Hanratty noted that the Boards' policy of nondisclosure may be correct, but for reasons other than they stated. The card indicates that the information collected is used by the Center for Health Statistics for research and study. This information appears to fall under Article 43, Section 1-I which protects information the Department of Health and Mental Hygiene has assembled for the purpose of research.

Mr. Clinton asked if information collected and then subsequently used in research was covered by this provision. Mr. Hanratty thought not.

Mr. Hanratty noted that transcript files are considered nondisclosable under the Buckley Amendment. He added, however, that the Buckley Amendment protects only transcripts maintained by educational institutions and therefore Department of Health and Mental Hygiene-maintained transcripts were disclosable under the Public Information Act. Mr. Drea added that even the University of Maryland seems to have assumed the Buckley Amendment is broader than is actually the case.

Mr. Hanratty discussed the complaint file maintained for all health professionals other than physicians and the file maintained for physicians. With respect to the first file, the Boards stated that they only disclose the final order. Mr. Hanratty questioned whether this could be done under the Public Information Act.

Mr. Drea suggested the Commission might want to recommend a change in the Public Information Act to protect investigatory records of professional licensing agencies.

Mr. Hanratty stated that physicians investigatory records are disclosable if the Commission on Medical Discipline determines the physician is guilty as charged. The Code states that the records are: 1) confidential until the Commission issues

an order, and 2) if there are found to be no grounds for action, the Commission must dismiss the charge and expunge all records. If the physician is found guilty, then it appears the records are disclosable.

The Commission then examined the Anatomy Board File on Unclaimed Bodies. Most of the data is disclosed under the Public Information Act. The only exception would appear to be medical records and death certificates. Mr. Hanratty questioned, however, whether medical records of the deceased would be regarded as confidential under the Public Information Act.

A final issue in this area, Mr. Hanratty noted, concerns the File of Persons Donating Bodies to the Board. This information is not disclosed, but there seems to be no statutory basis for this practice.

Mr. Hanratty moved on to the issues in the Vital Records area. He noted that a copy of the Vital Records section of the Code had been distributed to members. Mr. Hanratty stated that he found this section to be ambiguous. Although it states that birth, death and marriage certificates can be disclosed to a "properly authorized person", this term is not defined. Birth certificates are further protected and are disclosable only to the person in interest.

Mr. Hanratty pointed out that the Code indicates that a certified copy of a birth certificate contains only data in the certificate and cannot include any confidential medical data also on the certificate. It appears, he explained, that the person in interest is not allowed access to confidential medical data.

Discussion followed on this issue. Ms. Weitzel explained that the Department's practice was to allow only the person in interest or the mother access to birth certificates. The father cannot examine this data. Members questioned the constitutionality of this practice. Ms. Weitzel stated that certain information was confidential to protect the child against any information the mother did not want him to have, such as illegitimacy. It was pointed out that much of the information is used for statistical purposes and is needed to determine objectives of primary health programs.

Mr. Hanratty stated that a second point concerned a COMAR regulation which states that Vital Records are disclosable: 1) if the applicant has a direct and tangible interest in the record, 2) if access is necessary for determination of personal property rights, and 3) information won't be used for solicitation or private gain. Mr. Hanratty added that in 1978, the Attorney General had found this COMAR regulation was not in conformity with the Code. However, Mr. Hanratty noted, the Division is still following this procedure. Ms. Weitzel was asked to check on this point.

In addition, Mr. Hanratty stated, the Division of Vital Records discloses data to the federal government for recruitment and benefit verification. These do not appear to be statistical purposes and thus the information shouldn't be disclosed without the consent of the person in interest.

Mr. Hanratty moved on to discussion of the Juvenile Services Administration. This Administration is noteworthy, he stated, in that records are protected from disclosure by a number of statutes and also for the fact that the Administration has extensive measures to protect computerized records.

Discussion followed. Mr. Clinton pointed out that similar security provisions may exist elsewhere; however, the agencies may not have supplied as detailed information on their security measures. Mr. Clinton noted that the Baltimore Data Center uses an ACF-2 package which can do many of the same things that are done to protect computerized Juvenile Services records.

Mr. Hanratty expressed concern that adminission data and intake records of the Administration are not accessible to the person in interest. Ms. Weitzel indicated that this was because records often contain psychiatric assessments and it was felt that juveniles might not be able to handle these. Mr. Hanratty asked if the records were available to the parents. Ms. Weitzel replied that this was at the discretion of the superintendent. Disclosure was handled on a case by case basis.

Mr. Hanratty brought up an issue pertaining to the Laboratories Administration. The information received on one system was vague. He stated that the staff was not

able to obtain data on access rights of the person in interest or security measures. Ms. Weitzel explained that information submitted to the Laboratories Administration was released back to the physician. The physician could allow access to the person in interest, but the Department does not disclose the information.

Senator Hickman asked if the Laboratories Administration maintained records of the data supplied by physicians. Ms. Weitzel replied affirmatively. Senator Hickman noted that security measures would therefore be relevant and that information could be detrimental if it gets into certain hands. Ms. Weitzel added that information is kept manually and that a study had been done to install data processing capability.

Mr. Hanratty noted that the Administration stated that information is disclosed to a physician by phone or mail. Mr. Hanratty stated that, according to COMAR 10-101, any healing practitioner can examine the tests of any patients, however, he assumed the intent was to allow a healing practitioner to examine only those tests pertaining to his patinets not any patient. Commission members decided that this should be clarified.

The schedule for Commission meetings was decided as follows:

September 21	Continuation of Report on Department of Health and Mental Hygiene
September 28	Comptroller's Office Licensing and Regulation
October 5	Issues Paper

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

September 18, 1981

"OFFICIAL"

Minutes - Governor's Information Practices Commission - Meeting of August 31, 1981

The meeting of the Governor's Information Practices Commission was held on Aug. 31, 1981. Members in attendance were: Arthur S. Drea, Jr., Chairman; Mr. Donald Tynes, Mr. Robin Zee, Mr. John Clinton, The Hon. Nancy Kopp, The Hon. Timothy Hickman.

Commission members discussed the scheduling of the reports which remain to be reviewed. Mr. Hanratty noted that most of the information had been received from the Department of Health and Mental Hygiene. The two other reports which remain are those examining the Department of Licensing and Regulation and the Comptroller's Office.

Mr. Hanratty stated that, at the last meeting, he had indicated that he was not sure if information from the Family Support Demonstration Project and the Public Guardianship Program was disclosable under the Public Information Act. He contacted Deborah Bacharach, Assistant Attorney Gneral with the Office on Aging, and she stated that there is no section of the Code that assigns a confidential status to these records. With regard to the Public Guardianship Program, once a petition for guardianship is filed by the Office on Aging, information is disclosable through the courts. Before the petition filing, the Office would attempt to deny disclosure of the information as sociological data. There are no sections of the Code which

assign a confidential status to records of the Family Support Demonstration Project.

Mr. Hanratty began discussion of the record-keeping practices of the Central Collections Unit (CCU). This unit collects delinquent accounts for the State. Folders are maintained which include the name, address, and social security number of the debtor, a copy of the accident report (if relevant), a copy of the bill and any correspondence between the agency and the debtor.

If the account has been referred to the Attorney General's Office for legal proceeding, Mr. Hanratty explained, information is also collected on debtor's average mortgage payment, bank account numbers, employment information and life insurance.

Mr. Hanratty stated that CCU had indicated information is not released to the general public or other agencies, but that he had no information on the legal basis for this. The Supervising Attorney stated that there is no specific section of the Code which protects this information but indicated that he was confident that disclosures could be prevented.

The Supervising Attorney stated that Article 14, Section 202, Subsection 5 of the Commercial Code states that the collection agents cannot disclose to a third party (other than a spouse) information affecting the debtor's reputation, if the recipient does not have a legitimate business need for the information. Secondly, the medical data section of the Public Information Act would be used to deny requests for medical information on the debtor. Third, with regards to supplementary proceedings, information collected could be considered as an attorney work product and thus nondisclosable. If all else failed, the Supervising Attorney said, he would apply to circuit court to prevent disclosure as contrary to the public interest. Mr. Hanratty added that the Unit had been able to discourage requests so far so this had never been tested.

Mr. Drea stated that he considered it to be appropriate that CCU records are restricted. Since the purpose of CCU having the information is to collect the debt, it was inappropriate for third parties to try to obtain this information from the

Central Collection Unit. The third party should, instead, be required to go to the original source of the information.

Senator Hickman asked if the Central Collection Unit places any disclosure or security restrictions on GC Services, the collection agency that it employs to collect certain accounts. Mr. Hanratty replied that he had been told that CCU monitors the policies of the collection agency. GC Services must insure the confidentiality of information and take appropriate steps to safeguard the information. However, Mr. Hanratty noted that the current contract and the request for proposal published by CCU contain statements prohibiting unfair collection practices, but state nothing regarding confidentiality. The only requirement is that the agency must maintain records that can be inspected by CCU. Discussion followed on whether monitoring was actually being performed, in light of the fact that there are no written information practice requirements imposed on GC Services by CCU.

Mr. Tynes noted that in the report it said that delinquent accounts are referred to an outside collection agency in two instances; one being when the account was between $25 and $250. What, Mr. Tynes asked, happens to accounts over $250? Mr. Hanratty replied that CCU collects those accounts without assistance from the private agency.

Discussion followed on why the number of account folders maintained (27,000) was different from the number of delinquent accounts as listed in the computer printout (122,000). Mr. Hanratty stated that he thought that folders were only maintained for accounts which CCU was collecting itself.

Mr. Clinton asked if Mr. Hanratty knew what the amount collected from debtors was kept by the collection agency. Mr. Hanratty thought that GC Services receives 24% of the amount that it collects.

Delegate Kopp stated that she found it interesting that information furnished to the collection agency is not verified. Discussion followed. It was noted that the debtor has the opportunity to verify information when he receives the bill.

Mr. Hanratty informed Commission members that he had been unable to obtain

copies of the forms that were accessible to GC Service agents operating out of the University Hospital. He was therefore unable to determine the type of personally identifiable information available to agents. Ordinarily, he added, agents do not have access to medical records unless a third party payor questions some item on the accounting form.

Mr. Tynes mentioned that CCU stated that only two persons have access to terminals to submit data. He wondered if any other individuals can use the terminals to retrieve information. Mr. Hanratty replied that this data had not been supplied by the Central Collections Unit.

Senator Hickman asked if the staff had any information regarding what was entailed by the ACF-2 security package. Mr. Clinton said that he would find out this information for the Commission. Discussion followed on the need for redisclosure provisions and the difficulties involved in monitoring redisclosure. Mr. Hanratty indicated that he could contact Mr. Charles Dougherty, Administrator of the CCU, and ask him to identify the specific monitoring measures employed by CCU, or he could contact the University of Maryland Hospital Accounting Department and ask what monitoring measures are used. Mr. Tynes suggested that both avenues be used. Senator Hickman added that it should be recommended that specific redisclosure provisions be included in the contract.

Ms. Cunningham discussed the report on the University of Maryland. Responses from the University indicated that four general record systems exist: Student Related Records, Employee Records, Campus Police Records and Alumni Records.

Student Records, Ms. Cunningham explained, are governed by the Buckley Amendment which requires that procedures be established to allow for access, copying and correction on the part of the sutdent, and which regulates disclosure practices of the University.

The responses received from the University indicated that the student is allowed access to his records (except for one Student Accounts Office), and is allowed to copy or contest data. All offices have adequate security measures and redisclosure

provisions. Ms. Cunningham noted that not all respondents felt that the student is aware of his rights, not all maintain disclosure logs (a requirement of the Buckley Amendment) and that some respondents did not cite the Buckley Amendment as governing their record-keeping practices.

Mr. Drea asked if the respondents allowed the person in interest to see or copy transcripts from other schools. Ms. Cunningham replied that repsondents indicated that the student can not obtain copies of transcripts from other schools which are in his file.

In response to a question from Senator Hickman, Ms. Cunningham explained that a student who waives the right to view confidential letters of recommendation may revoke that waiver. However, he would only be allowed to see any recommendations submitted subsequent to his revocation of the waiver. Any letters submitted during the period when he had waived his right to access would remain confidential.

Mr. Tynes asked if there was a reason why students were not able to access financial records of their parents. Discussion followed on why this might exist.

Ms. Cunningham noted that Student Health records were not governed by the Buckley Amendment. Of five respondents, four stated that the person in interest was allowed access to his records. Two of the five did not allow access to psychological records, one of which also restricted access to gynecological records. No redisclosure provisions are used.

Commission members discussed whether House Bill 1287 would apply to records maintained by University health facilities. Ms. Cunningham noted that the respondents did allow the review of records by another physician.

Ms. Cunningham next examined the issue of Employee Records. She noted that the Public Information Act governs disclosure of these records. The University has issued a policy which states that seven items may be verified and delineates other disclosures and the access and copying rights of the person in interest. Ms. Cunningham stated that it was unclear if all of the seven items were verifiable under the Public Information Act, and if the University could insist on only

verifying salary. Under the Public Information Act, salary is disclosable.

Delegate Kopp asked if the University had one policy that was uniform throughout all campuses. Ms. Cunningham replied that the policy appeared to be standard with one variation occuring in the type of files maintained. Some campuses may not maintain, for example, development and placement files, since they don't have a Placement Office. Another variation occurs in what each campus considers as "directory information". The Buckley Amendment states that certain information is directory in character. From this list, each campus selects the items it will disclose as directory information. This varies between campuses. Delegate Kopp stated that she would like to know if the University knows of these variations or if they think that policy and practice is the same at each campus.

Ms. Cunningham noted that three of the respondents stated that the Privacy Act governed their employee record keeping practices and four cited the Buckley Amendment. However, neither of these statutes would appear to be applicable to employee records. Ms. Cunningham added that few logs are kept.

Faculty Promotion and Tenure Files, Ms. Cunningham explained, are afforded a high degree of confidentiality. Generally, the person in interest is not allowed access to these files.

The Campus Police Records were discussed next. Ms. Cunningham pointed out that these are not governed by the Buckley Amendment. Little information was supplied by respondents concerning the type of information collected. Of four respondents, two stated that they allowed access in some form and two maintained disclosure logs.

The final record category discussed was that of Alumni Records. These also are not governed by the Buckley Amendment, Ms. Cunningham noted.

Ms. Cunningham informed Senator Hickman that the responses received from the Board of Trustees of the State Universities and Colleges indicated that Salisbury State had conducted a security risk analysis.

Mr. Hanratty told Commission members that he had not written a report on the

State Colleges because of the generalized nature of the data the staff had requested. Members discussed this issue. It was suggested that the problems evidenced at the University of Maryland could be presumed to exist at State Colleges. Commission members expressed the opinion that input from these colleges would be beneficial. It was agreed that the Board of Trustees would be sent a copy of the University of Maryland report and asked for its comments on the issues discussed as to whether similar practices were in effect at state colleges.

The next meeting was scheduled for September 14, 1981.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

October 6, 1981

TO: Information Practices Commission Members

FROM: Dennis Hanratty

Enclosed please find a copy of House Bill No. 112, 1979 Session, which was introduced by Delegate Nancy Kopp. Please read this bill as we will be reviewing its contents, in addition to discussing the Uniform Information Practices Code, on October 19, 1981.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

October 6, 1981

TO: Information Practices Commission Members

FROM: Dennis Hanratty

This is to inform you that the Information Practices Commission will hold its next meeting on October 13, 1981, at 4 p.m. The meeting will be held in the Clipper Room, which is located on the 20th floor of the World Trade Center in Baltimore.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

October 5, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

This is to inform you that the Information Practices Commission will hold a special meeting on October 19, 1981, at 4 p.m. in the House Constitutional and Administrative Law Committee Room. The purpose of the meeting is to receive testimony pertinent to the Uniform Information Practices Code drafted by the National Conference of Commissions on Uniform State Laws. A copy of the final version of the Code was distributed to your earlier this month.

Appearing before our Commission on October 19th will be Mr. Ronald L. Plesser, a member of the Code drafting committee and a former Director of the Federal Privacy Commission. I would urge that you make every effort not only to attend this important meeting, but to engage in a thorough study of the Code before Mr. Plesser's appearance.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

October 1, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed is an issues paper designed to assist you in your deliberations on October 5th. Please note that the meeting on October 5th will be very important, so it is important that members attend, if at all possible. The meeting will take place at 4 p.m., in the House Constitutional and Administrative Law Committee Room.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

ARTHUR S. DREA, JR.
CHAIRMAN

September 23, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed are materials provided to the Commission staff by Donald Tynes. As both materials are directly relevant to the Commission's work, I am sending them along for your information.

Mr. Tynes

June 30, 1981

MEMO TO: James F. Truitt
General Counsel

FROM: Donald Tynes
Assistant Secretary for Management Services

RE: Request for Formal Opinion

I am requesting a formal opinion regarding this Department's authority or obligation to deny inspection of certain records pursuant to Article 76A, the Public Information Article.

From time to time this Department collects compensation practices information from public and private sector employers in Maryland and elsewhere. This information may consist of each employer's wage or salary rates for certain job classifications or individual positions, provisions of and expenditures for various benefit programs, conditions of employment such as workweek and shift assignment plans for specific job classifications or positions, and the employer's general policies for management of compensation such as the employer's system for managing its merit pay increase program(s). This information is collected for the purpose of recommending changes to the State's salary rates and compensation program to the Governor and General Assembly. The information collected from the various employers is made available publicly as a compilation of the individual employer's responses in a form which does not permit identification of the specific information provided by any one employer. In providing this information to us, an employer will frequently request that its individual information not be disclosed or otherwise identified.

Section 3.b.(III) of Article 76A permits a custodian of records to deny right of inspection of the detail of specific research projects with certain limitations. Section 3.c. (III) and (V) respectively, require a custodian to deny inspection of personnel files and confidential commercial data. I am requesting a formal opinion as to this Department's authority or obligation:

(1) to deny inspection of information similar to that described above as provided by any specific employer, whether a governmental or private sector entity;

(2) to deny inspection of any compilation of such information when such compilation could be readily used to identify or closely approximate the information provided by any single employer.

I am requesting a formal opinion in this matter to preclude having any uncertainty concerning our ability to provide confidentiality limit the participation of other employers in such studies.

STATE LAW DEPARTMENT

DEPARTMENT OF PERSONNEL
301 W. PRESTON STREET
BALTIMORE, MARYLAND 21201

DATED

August 20, 1981

MEMORANDUM:

TO: Donald Tynes

FROM: Jim Truitt J.E.T. Jr.

SUBJECT: Department's Authority or Obligation to Deny Inspection of Certain Records Pursuant to Art. 76A, the Public Information Article

You have asked whether the Department has either authority or obligation to deny inspection of compensation survey information pursuant to the Public Information Act, Article 76A, §§3(b)(iii), (c)(iii), or (c)(v).

Section 3(b)(iii) provides:

> (b) The custodian may deny the right of inspection or appropriate portions thereof, unless otherwise provided by law, if disclosure to the applicant would be contrary to the public interest:
>
> (iii) The specific details of bona fide research projects being conducted by an institution of the State or a political subdivision, except that the name, title, expenditures, and the time when the final project summary shall be available.

In 58 Opinions of the Attorney General, 53, 59 (1973), a consultant's report evaluating a contractor's performance was found to be a bona fide research project within the meaning of the statute. A compensation survey would constitute research[1] and would be bona fide if initiated by the Department in accordance with its budget. Id. Thus, the custodian may, at his discretion,

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[1] diligent and systematic inquiry or investigation into a subject in order to discover or revise facts, theories, applications, etc. Random House Dictionary, Unabridged.

deny inspection of compensation survey information under this section if he can show that such disclosure would be contrary to the public interest.[2]

However, even stronger support for non-disclosure of compensation survey information is found under §3(c)(v),[3] which provides:

> (c) The custodian shall deny the right of inspection of the following records or any portion thereof, unless otherwise provided by law:
>
> * * *
>
> (v) Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

The question, then, becomes whether compensation survey information is "confidential commercial data." Mere claims or agreements that the information is confidential are insufficient to overcome the underlying policy of the Act favoring liberal disclosure. An objective two-pronged test should be used to determine confidentiality: (1) whether such information is customarily regarded as confidential in the particular trade; and, (2) whether a recognized governmental or private interest is served which is sufficiently compelling to override the general policy of disclosure. 63 OAG 355, 358-62 (1978). Supporting this test, the opinion cited National Parks v. Morton, 498 F.2d 765 (D.C.Cir. 1974), Pacific Architects v. Renegotiation Board, 505 F.2d 383 (D.C.Cir. 1974), and Senate Report No. 813, 89th Cong. 1st Sess. 9 (1965), on the Federal Freedon of Information Act. These sources noted that the Federal Act exemption for confidential commercial data was intended to protect information obtained through questionnaires or other inquiries which would customarily not be released to the public by the person from whom it was obtained. 63 OAG at 361. The Attorney General believed that this reasoning, though not controlling, should be applied to the Maryland Act as well. Id. at 362. In order to determine whether data is confidential in customary practice, advice may be sought from a person familiar with the particular business. Id. at 364.

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[2]For a discussion of what constitutes a public interest, see infra at p. 3.

[3]Section 3(c)(iii) prohibits disclosure of "personnel files," an apparent reference to individual employee files. Thus, compensation survey results would not be the type of information exempted under this section.

In private industry, access to compensation information is usually limited to compensation personnel and high level decision-makers. Such information is not released to the general public, within the company, or shared with other companies. Usually, employees are informed only of their job description and salary grade and have access only to their own personnel files. Compensation survey results may be distributed among participants, but individual companies are not identified with specific responses.[4] Thus, compensation practices and policies are customarily treated as confidential information.[5]

In addition, in order to deny disclosure under §3(c)(v), the custodian must show that a compelling public or private interest is served. Public interests include the efficient operation of government and the continued flow of necessary information to the government. Compensation survey information such as that collected by the Department is essential in order to develop a State compensation program that is competitive with private industry. Furthermore, survey participants have a private interest in maintaining the secrecy of their compensation policies, thereby avoiding substantial harm to their competitive positions. Employers' participation in such surveys is usually voluntary. "Unless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials and the ability of the Government to make intelligent, well-informed decisions will be impaired." National Parks v. Morton, 498 F.2d at 767.

Compensation survey information is customarily confidential and serves the compelling public interest of providing government employees with salaries which are competitive with private industry. Thus, under §3(c)(v), the custodian has not only the authority but the obligation to deny disclosure of compensation survey results if the information could be used to identify individual employer(s), including governmental agencies.[6]

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[4]Unions within a private company would also have access to such anonymous survey results.

[5]Information on compensation survey practices obtained from U.E. Landaner, Vice-President, Frank B. Manley & Associates, Greenwich, CT, a compensation consulting firm.

[6]Section 1(h) provides that for the purposes of Article 76A, a "person" means and includes any natural person, corporation, partnership, firm, association, or governmental agency.

However, Article 76A, §3(d) requires that "any reasonably severable portion of a record shall be provided...after deletion of those portions which may be withheld from disclosure. For example, the Department could provide survey results, including individual employer responses, so long as specific employers or other identifying information were not matched to responses. Quite frequently in compensation surveys, separate lists of participants and responses are maintained. Participants may request information regarding their responses in relation to other employers. This information can be provided anonymously. For example, if 50 employers respond to a survey, the data can be compiled in a numbered table. An employer could be informed that his responses are reported as number 25 so that he can then compare his compensation practices with other employers.

To conclude, we advise that a custodian may, at his discretion, deny inspection of compensation survey information pursuant to §3(b)(iii) if he can show that disclosure would be contrary to the public interest. In addition, under §3(c)(v), a custodian has a duty to deny disclosure of such information because employers' compensation practices are "confidential commercial data" in customary business practice and disclosure would be contrary to the public interest. However, summary data or conclusions may be provided so long as individual employers' responses remain anonymous.

JFT:mlm

cc: Avery Aisenstark

ADVICE OF COUNSEL - NOT AN OPINION OF THE ATTORNEY GENERAL

JAMES B. COULTER
SECRETARY

STATE OF MARYLAND
DEPARTMENT OF NATURAL RESOURCES
TAWES STATE OFFICE BUILDING
ANNAPOLIS 21401

LOUIS N. PHIPPS, JR.
DEPUTY SECRETARY

September 9, 1981

Mr. Donald Tynes
Assistant Secretary
Management Services
Department of Personnel
301 W. Preston Street
Baltimore, MD 21201

Dear Mr. Tynes:

This letter is in response to your correspondence of August 26, 1981 suggesting that the Pre-Employment Questionnaire used by the Natural Resources Police be revised and/or modified to insure that the questions being asked are job related.

Please advise the Commissioners that the questionnaire they expressed concern about has been withdrawn from the system for revision. It is anticipated that a revised questionnaire will be in use by October 1, 1981. A copy of the new Pre-Employment Questionnaire will be sent to the Governor's Commission on Information Practices as soon as it is complete.

Since we do not anticipate screening job applicants prior to that date, the steps being taken should alleviate any potential problems that might surface in regard to this matter.

Sincerely yours,

Herbert Sachs

Herbert M. Sachs
Director of Operations

hms:kh

Telephone: (301) 269-2255

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

TO: Information Practices Commission Members Date: September 23, 1981

FROM: Dennis M. Hanratty

Enclosed is the draft report examining the record-keeping practices of the Department of Licensing and Regulation. The Insurance Division has not been discussed in the report due to time considerations. No data has yet been received from either the Licensing Boards or the Commissioner of Consumer Credit and therefore, the staff cannot present any information relative to these componants of the Department.

As many of you know, Thea Cunningham has resigned to accept a full time position with the federal government. Thea performed many valuable functions for the Commission and will be missed. I am pleased to inform you that Thea's place has been filled by Mrs. Susan Duval. Mrs. Duval brings to the job a considerable amount of experience in many sectors of State government and will be a valuable asset to the 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

September 22, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed are the minutes of Commission meetings from August 31, 1981 and September14, 1981, as well as the draft report of the record-keeping practices of the Comptroller's Office. This report will be discussed at our September 28 meeting. The Commission staff is also preparing a report which will examine the Department of Licensing and Regualtion. The report will be forwarded to you within the next two days and will also be discussed on September 28.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

September 15, 1981

To: Information Practices Commission Members

From: Dennis M. Hanratty

Subject: Scheduling of Commission Meetings

The Information Practices Commission will hold meetings on September 21, September 28, and October 5. All meetings will begin at 4 P.M. and will take place in the House Constitutional and Administrative Law Committee Room.

The meeting on September 21 will be devoted to a continuation of the Health and Mental Hygiene report. The record-keeping practices of the Comptroller's Office and the Department of Licensing and Regulation will be examined on September 28.

On October 5, the Commission will move into a new phase of its work. At that time we will begin a thorough consideration of the issues that have been identified in the various draft reports as well as measures to be taken to address specific problems. It is therefore most important that Commission members make every effort to attend the October 5 meeting as well as meetings subsequent to that date.

Copies of the materials distributed at the meeting on September 14, 1981 are enclosed for those Commission members who did not attend.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

September 14, 1981

OFFICIAL

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

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

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

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

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

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

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

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

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

of the Family Support Demonstration Project but under different control.

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

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

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

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

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

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

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

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

1. Expungement does not necessarily mean the physical destruction, but can mean the removal of records to a secure area with limited access.

2. Expungement is not an automatic process.

3. Nothing in the Code requires a law enforcement agency to inform the individual that he is eligible for expungement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the person in interest is allowed access to these questionnaires.

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

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

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

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

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

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

1) Is the information confidential?

2) Is the information investigatory in nature?

3) Would disclosure cause substantial injury to the public interest?

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

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

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

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

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

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

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

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

September 8, 1981

MEMORANDUM

TO: Information Practices Commission Members

FROM: Thea Cunningham

Enclosed is the draft report on the record-keeping practices of the Department of Health and Mental Hygiene. This report will be discussed at the next meeting of the Commission scheduled for September 14, 1981 at 4 P.M. in the House Constitutional and Administrative Law Committee Room.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

August 26, 1981

TO: Information Practices Commission Members

FROM: Thea Cunningham

The next meeting of the Governor's Information Practices Commission will be held on August 31, 1981 at 4 P.M. in the House Constitutional and Administrative Law Committee Room. The enclosed reports on the record-keeping practices of the University of Maryland and the Central Collection Unit will be discussed.

The minutes from the Commission meetings held July 20 and August 3, 1981 were adopted as official. Please note this on your copies.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

August 19, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed are the reports that will be discussed at the Commission's meeting of August 25. Please accept my personal apologies for forwarding these materials to you at such a late 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

August 5, 1981

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

SUBJECT: Revised Meetings Schedule

The Information Practices Commission will not hold a meeting on August 17, 1981. The dates of the next two meetings are as follows:

August 24, 1981 4 P.M.
August 31, 1981 4 P.M.

Both meetings will be held in the House Constitutional and Administrative Law Committee Room. Reports to be discussed at the August 24th meeting will be mailed to Commission members by the end of next week.

For those members unable to attend the meeting held August 3, 1981, a copy of the materials distributed at that meeting is enclosed.

The minutes from the meeting held on July 6, 1981 were approved as official. Please note this on your copy.

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

July 28, 1981

TO: Governor's Information Practices Commission Members

FROM: Thea Cunningham

Enclosed are the draft minutes from the meeting of July 6, 1981 and a Addendum to the Human Resources Report. This report, along with the reports on the Office of the Public Defender and Natural Resources will be discussed at the meeting on August 3, 1981.

Please note that the minutes from the meetings of June 8 and June 22 were adopted as official.

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STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 22, 1981

MEMORANDUM

TO: GOVERNOR'S INFORMATION PRACTICES COMMISSION MEMBERS

FROM: Thea Cunningham

The next meeting of the Governor's Information Practices Commission will be held on Monday, August 3, 1981 in the House Constitutional and Administrative Law Committee Room at 4 P.M. The enclosed report on the record-keeping practices of the Department of Natural Resources, along with the Public Defender's Office report will be discussed at this meeting. An additional report will be mailed to Commission members early next week.

For those unable to attend the meeting held on July 20, 1981, a copy of the report on the Public Defender's Office is also enclosed.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 20, 1981

noted

To: Information Practices Commission Members

From: Dennis M. Hanratty

Attached are responses received from the Employment Security Administration (ESA) regarding current security procedures in effect. Please add this information to that section of the Department of Human Resources draft report pertaining to ESA.

DHR DEPARTMENT OF HUMAN RESOURCES

MEMO

DATE: June 16, 1981

TO: Mr. Luther Starnes

FROM: Frank O. Heintz, Executive Director, ESA 704

RE: Information for the Governor's Commission on Fair Practices

At your most recent meeting with John Miller on this subject, the Executive Director of the Governor's Commission indicated that he still required resolution to two issues on the questionnaire concerning ESA's policy on the confidentiality of records. These issues centered on questions 19 and 20 of the Commission's questionnaire. ESA's original response was that these concerns could only be answered by the Divisions of General Services and Data Processing.

Since that meeting, Mr. Mueller and Mr. Kirwan have responded to these two questions and their responses are attached.

I trust that these responses will adequately respond to the Commission's remaining questions on ESA's policy concerning the confidentiality of records. If there are, however, any additional questions concerning this matter, please contact John Miller on Extension 5072.

Attachments

DHR DEPARTMENT OF HUMAN RESOURCES
STATE OF MARYLAND 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201

OFFICE OF THE SECRETARY TELEPHONE: 383-5633

TO: Mr. Frank O. Heintz
Executive Director
Employment Security Administration

DATE: June 12, 1981

FROM: Clemens W. Mueller
Director
Division of Data Processing

RE: REQUEST FOR INFORMATION FROM THE GOVERNOR'S COMMISSION ON FAIR PRACTICES

Question 19 - Not applicable to Data Processing.

Question 20 - What security procedures have been developed to protect computerized personal records?

A Password Security Procedure is in effect to safeguard the information available through the terminal network. To access a data file, the terminal operator must "sign-on" using an assigned password which will allow him/her access to files designated by that particular password.

To protect the confidentiality of computerized personal data, the Baltimore Data Center has installed a software package called the ACF-2 Security System. ACF-2 protects all data by default and it shares data only on an explicit action by the data owner or security officer.

CWM:md

DHR DEPARTMENT OF HUMAN RESOURCES

MEMO

DATE: June 10, 1981

TO: Mr. Frank O. Heintz

FROM: Patrick B. Kirwan PBK

RE: Response to Questions 19 and 20 from Governor's Commission on Fair Practices

In response to question 19, "What security measures have been enacted by your Department to protect the confidentiality of personal records?", this is really a two-part response; the first being those records that are entrusted to the Division of General Services and retained at this location or in DHR's warehouse are secured by assignment of these documents to a specific area to which access is limited and where authority to withdraw any document contained therein must be in the form of a formal written request from the supervisor of the section for whom these records are being held. For example, no person but an authorized UI supervisor may withdraw or have access to any UI records, and the same would be true for every other operating unit.

The records are maintained until such time as the disposal schedule permits destruction. Destruction of these records is performed by the Simpkins Industries of Elkridge, Maryland. The records scheduled for destruction are taken from the appropriate location by van to the Simpkins Industries and their destruction into a pulp is observed by the employees of DHR. Thus at no time are these documents out of the hands of authorized General Services' employees.

The second aspect of this question deals with those records that are assigned to the State Warehouse in Jessup. With the recent addition of a new facility, more and more records are being assigned to this warehouse. We were advised by the State Archivist, who supervises the Hall of Records, that no one but an authorized DHR person may retrieve the records once they are delivered into their care - not other State agencies, not individuals, not even the individual whose file it is. A person requesting information on themselves must go through the official State Department, in our case, DHR, and that agency must retrieve the records and make them available to the individual, if appropriate to do so.

The records are disposed of by the Hall of Records in accord with the approved retention/disposal schedules. It is expected that ultimately within two years all DHR inactive records will be housed in the State Record Warehouse and the only records retained will be active records and those few inactive records that require constant availability for court or audit action.

In response to question 20, this is strictly a Division of Data Processing matter and we do not handle or have access to any computerized personal records.

PBK:mpt

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 14, 1981

To: Information Practices Commission Members

From: Dennis M. Hanratty

Enclosed are draft reports pertaining to the Department of Economic and Community Development and the Human Relations Commission. Please add these to the agenda for the meeting on July 20th, along with the Department of Agriculture and the Public Information Act.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 8, 1981

TO: INFORMATION PRACTICES COMMISSION MEMBERS

FROM: Thea Cunningham

The next meeting of the Governor's Information Practices Commission will be held on July 20, 1981 in the House Constitutional and Administrative Law Committee Room at 4 P.M. The draft report on the Public Information Act and the report on record-keeping practices of the Department of Agriculture will be discussed. In addition, reports on Economic and Community Development and the Commission on Human Relations will be mailed to members early next week and will be included on the agenda for the July 20 meeting.

For those members unable to attend the July 6, 1981 meeting, the materials distributed at that meeting are also enclosed. The minutes from the meetings of April 27, May 11, and May 26 were all adopted as official by the members of the Commission. Please annotate this on your copy, revised copies will not be distributed.

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

June 30, 1981

To: Information Practices Commission Members

From: Thea Cunningham

Enclosed is a draft report on the record-keeping practices of the Department of Agriculture. This report will be discussed at the next meeting of the Commission on July 6, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

May 12, 1981

TO : Information Practices Commission Members
Attending May 11 Meeting

FROM : Dennis M. Hanratty

Enclosed are the pages of the MVA Medical Advisory Manual which pertain to the access rights of the person in interest. I am sending them along for your information.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

June 16, 1981

To: Information Practices Commission Members

From: Dennis M. Hanratty

Enclosed is a report examining the record-keeping practices of the Regional Planning Council. Since the report is quite brief, it is being added to the June 22 agenda.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

June 11, 1981

To: Information Practices Commission Members

From: Dennis M. Hanratty

The next meeting of the Information Practices Commission will be held on June 22, 1981 at 4 P.M. in the House Constitutional and Administrative Law Committee Room. The meeting will be devoted to an examination of the record-keeping practices of the Maryland Automobile Insurance Fund and the Department of Human Resources.

The Commission staff will attempt to forward other reports to you in the next few days which could also form the basis of discussions on June 22.

For those members who did not attend the meeting on June 8, a copy of the draft minutes of the May 11 meeting of the Commission is also enclosed.

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

June 25, 1981

To: Information Practices Commission Members

From: Dennis M. Hanratty

The next meeting of the Information Practices Commission will be held on July 6, 1981 at 4 P.M. in the House Constitutional and Administrative Law Committee Room.. The meeting will be devoted to an examination of the record-keeping practices of the Departments of Human Resources and Personnel. It is also anticipated that you will receive other draft reports in the next few days.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

June 16, 1981

To: Information Practices Commission Members

From: Thea Cunningham

Attached are the draft minutes from the May 26, 1981 meeting of the Commission which was held at the Motor Vehicle Administration.

Also enclosed are the responses from the Motor Vehicle Administration to the issues which were discussed at the meeting. Their version of the minutes of the meeting is included.

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

June 16, 1981

TO : Information Practices Commission Members

FROM : Dennis M. Hanratty

Enclosed you will find a newspaper article from the June 16, 1981 edition of The Sun, relating directly to the record-keeping practices of the Department of Human Resources. I am passing it along to you for your information.

Police are denied data in baby's death

By Doug Struck
Anne Arundel County Bureau of The Sun

Annapolis – The autopsy pictures of the infant girls' battered and broken body shook even the veteran policemen, hardened to most violence of their job.

Yet Anne Arundel county police and prosecutors investigating the beating death of an 8-month old baby and the apparent abuse of her older baby sister have been denied information about the children by the county welfare agency, which just two months ago returned the older girl to her mother

The Department of Social Services has refused to comply with two subpoenas from the Anne Arundel county state's attorney's office for information and records about the children and their mother, who is now being held in the county detention center on a charge of first-degree murder

Her boyfriend, Lawrence L. Hensley, 30, is being held there on a charge of child abuse The prosecutor handling the case said he intends to ask the grand jury to summon the information and then go to a judge if the agency still refuses to provide it.

The head of the social services agency, Charlotte Grammar, says the records are confidential, and she is following the usual procedure in refusing the subpoenaes. But county prosecutors say they have never before been denied access to such records with a subpoena. And investigators familiar with the case say the agency's reluctance to cooperate has buttressed suspicions that the agency fumbled its handling of the case.

Their investigation is of the death of Christina Marie Hensley, who was brought into a Clinton Hospital emergency ward dead on arrival last Wednesday

A medical examiner concluded the child had been beaten to death.

Police who questioned the girl's mother, 20-year-old Joy Ann Robey, learned that her other daughter, Mina Louise Chamberlain, who is 2½, also was treated for bruises at the hospital that same day. Mina Louise is now in foster care.

Mina Chamberlain has been a little girl well known to the Anne Arundel county Department of Social Services. Gerald K. Anders, the deputy state's attorney, said he has obtained some reports by social workers that shows "clear evidence of serious abuse of the girl" dating to March, 1979.

Then, Mr. Anders said, county police "wanted to place charges" in the case, but were apparently discouraged by the agency from doing so.

On at least two occasions, according to police and social services officials, the little girl was removed from the custody of her mother She was returned to the mother's home in April.

At that time, her new younger sister was 6 months old. Last week the assistant medical examiner performing the autopsy on the baby Christina Marie Henley found two old broken ribs that were healing, two old skull fractures that had healed, and evidence of past broken legs, as well as the fresher signs of a battering: another broken rib, a split liver, a new skull fracture, wounds to the mouth where the girl's skin had been crushed onto her teeth.

The old wounds suggest the infant had been beaten at the time the older child was returned to the home. Why, investigators wonder, did the social services workers did not know it?

"There certainly is a reluctance on the part of social services to cooperate with our investigation," said Lt. William H. Donoho, who is in charge of the case. "Why? That's a good question."

Ms. Grammar said yesterday her agency "doesn't have any reluctance to turn [records] over to them. In all cases, we ask for a court order " She said she is acting under advice of an assistant county solicitor.

If prosecutors who deal with her office say her department is reacting differently than usual, "I guess you have a discrepancy," she added.

Ms. Grammar said she is "perfectly satisfied" with her agency's actions in the case, although she refused to detail those actions to a reporter or to the state's attorney's office.

The determination of who was responsible for checking on Mina Louise's welfare was apparently complicated by the family's occasional moves from Anne Arundel county to Prince Georges county and back again, causing a transfer of the file between the counties'

See CHILD, C5, Col. 3

Office mut on death of child

CHILD, from C1

agencies.

"I don't know who was responsi for aftercare," said Mr Anders. "I d know if anybody went to the home from what agency, or how often went there or whether the mother fused to let them in, or what."

Mr. Anders said his office is not vestigating the welfare department, needs the information to prepare criminal prosecution.

The director of the state's child fare service, Wendy Sherman, said when a battered child is removed fro home and then returned, "we would e pect home visits to be made on a regul basis."

She said the frequency of those v could vary, but "it would not be unu for a visit once a week, two or t times a week, or in some very se cases, daily contact with the mother

She acknowledged that before a b tered child is returned to a home, Mina was, the local social services d partment should thoroughly investi the family, an investigation that sh include a check on the welfare of o children.

Ms. Sherman said she could not if, or when the local department of cial services visited Mina's family b fore or after returning the little girl the home, or if any observation w made of Christina's welfare.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

May 27, 1981

MEMORANDUM

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The next meeting of the Information Practices Commission will be held on June 8, 1981 at 4 P.M. in the House Constitutional and Administrative Law Committee Room, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland.

Enclosed is a sample of the Mileage Reimbursement Form which illustrates how it should be completed. A list is provided indicating the attendees at the meetings for the past nine months. In addition, a draft report on the record-keeping practices of the Maryland Automobile Insurance Fund is attached.

For those members who were unable to attend the meeting held on May 26th, the materials distributed are also enclosed. These materials include: report on the record-keeping practices of the Workmen's Compensation Commission, Addendum to the Health Facilities Report, Summary of House Bill 1287, Copy and Summary of Senate Bill 1044.

Reports that will be discussed at the June 8 meeting are: Health Facilities, Maryland Automobile Insurance Fund, Workmen's Compensation, the State Ethics Commission, and the Department of Education. All completed Mileage Reimbursement Forms should be submitted at this meeting.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

May 15, 1981

MEMORANDUM

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The next meeting of the Information Practices Commission will be held on Tuesday, May 26 at 3 P.M. As was discussed at our last meeting, the meeting on May 26th will take place at the Motor Vehicle Administration (MVA), 6601 Ritchie Highway, N.E., Glen Burnie, Maryland 21062.

The purpose of the meeting is to discuss the report previously distributed to you in which the record-keeping practices of MVA were examined. Therefore, please review that report to identify any areas of concern that you might have regarding the responses of MVA to the Commission's questions.

When you arrive at MVA, please inform the staff at the Information Desk that you are a member of the Information Practices Commission party to meet with Ms. Agnes Stoicos, Associate Administrator.

Enclosed you will find a copy of the draft minutes from the Commission's April 27th meeting. Please review them for any corrections that should be made. At the May 11th meeting of the Commission, members approved the minutes from January 19, February 23, and March 16. Therefore, the draft minutes from these meetings that were previously distributed to you should now be regarded as official minutes.

Also enclosed are copies of the Commission's medical records survey and a report on the State Ethics Commission which were distributed at the meeting on May 11, 1981.

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

May 4, 1981

MEMORANDUM

TO: INFORMATION PRACTICES COMMISSION MEMBERS

FROM: THEA CUNNINGHAM

The next meeting of the Governor's Information Practices Commission will be held on May 11 at 4 P.M. in the House Constitutional and Administrative Law Committee Room, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland.

Enclosed is a list of the materials which are available in the Information Practices Commission Office, Room H-4 in the State House. If any member of the Commission would like a copy of a reference, please call the office (269-2810).

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

May 4, 1981

MEMORANDUM

TO: INFORMATION PRACTICES COMMISSION MEMBERS

FROM: THEA CUNNINGHAM

The next meeting of the Governor's Information Practices Commission will be held on May 11 at 4 P.M. in the House Constitutional and Administrative Law Committee Room, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland.

Enclosed is a list of the materials which are available in the Information Practices Commission Office, Room H-4 in the State House. If any member of the Commission would like a copy of a reference, please call the office (269-2810).

LIST OF MATERIALS/REFERENCES AVAILABLE IN THE INFORMATION PRACTICES COMMISSION OFFICE

A. AGENCY REFERENCES

1. Department of State Planning

a. Citizen Response Plan (Draft, Jul 80, 7 pgs.)
b. Procedures on Personnel Files (1 pg.)

2. State Lottery Agency

a. Forms on inquiries on employees
b. Rules for Agency Procedures under the Public Information Act (7 pgs.)
c. Citizen Response Plan-basic minimum guidelines for state agency responses to citizen inquiries and complaints (4 pgs.)
d. MEMO-Citizens Response Plan Procedures (Aug 80, 10 pgs.)
e. Affidavit
f. Reference Request-Previous Employer
g. Release from Applicant for previous employer reference

3. State Department of Assessments and Taxation

a. Citizen Response Plan (Dec 80, 3 pgs.)

4. Food Center

a. Application for Employment

5. MD Center for Public Broadcasting

a. Records Retention and Disposal Schedule (79, 1 pg.)

6. Department of Agriculture

a. Public Information Act Requests (8 pgs.)

7. MD State Scholarship Board

a. Announcement of award to student (1 pg.)
b. MD State Scholarship Programs -Prog 1 (2 pgs.)
c. MD State Scholarship Programs -Prog 2 (2 pgs.)
d. List of Computer Services for 80-81 State Scholarship Awards
e. Financial Aid Packet 81-82 (15 pgs.)

8. Department of Personnel

a. Maintenance and Inspection of Records, Subtitle VI, MD Reg-Vol 7, Issue 13 (Jun 80, 3 pgs.)

9. Comptroller's Office

a. Annual Safeguard Review of Comptroller's Office (Oct 80, 10 pgs.)
b. Citizens Response Plan (4 pgs.)
c. Memorandum of Agreement on Transfer of Tax Information (Oct 77, 2 pgs.)
d. Agreement on Coordination of Tax Administration, Fed Reg-Tax Records (Dec 76, 17pgs.)
e. Certificate of Secrecy Incidental to Acceptance of Employment in Office of Comptroller of Treasury of the State of Maryland (2 pgs.)

10. MD State Department of Education

a. Policy #01.300.01, Citizen Response Plan (Jul 80, 5 pgs.)
b. Monetary and Evaluation Activities -Special Education-Records and Confidentiality (Apr 81, 17 pgs.)
c. Access to Medical Records of the Vocational Rehabilitation Program (Apr 81, 2 pgs.)
d. Bylaw on Student Records (Jun 78, 20 pgs.)
e. MD Pupil Data System - Manual of Instructions (Aug 69, 60 pgs.)
f. Medical Evaluation of Student for Participation in Interschool Sports (2 pgs.)
g. Records Retention and Disposition Manual for Public School System (73, 76 pages)
h. MD School for the Deaf-Policy Concerning Confidentiality of Student Records (3 pgs.)
i. MD School for the Deaf-Columbia Campus-Parental Permission for the Release of Records
j. Staff Questionnaire (79, 4 pgs.)
k. Copies of Sections on confidentiality within the Monitoring and Evaluation Instrument used by the Div. of Special Education (Oct 80, 7 pgs.)
l. Summary of Parental Rights and Responsibility Brochure (1 pg.)
m. Draft of paper on Confidentiality of Information being developed by the Division of Special Education (Oct 80, 7 pgs.)
n. Sample agendas of regional meetings with local Directors of Special Education with confidentiality as a topic on the agenda (2 pgs.)
o. Response to LEA Director of Special Education requesting advice regarding the handling of personally identifiable materials (Sep 80, 13 pgs.)
p. Confidentiality and Procedural Safeguards sent to all public agencies in September 1979 (10 pgs.)
q. Portion of State Plan for Part B of the Education of the Handicapped Act dealing with confidentiality (81-83, 9 pgs.)
r. Applications for certification (public schools, nonpublic non approved schools, state institutions, nonpublic approved schools, librarian's, and GED) (26 pgs.)
s. High School Graduate Follow-Up Questionnaire (4 pgs.)
t. Computer Cards:

Vocational-Technical College Faculty Record
" Student Record
Vocational-Technical Adult Student Record
" Teacher Record
Vocational-Technical Secondary Student Record
" Teacher Record
Consumer Homemaking Student
Industrial Arts Teacher and Class Card

u. Referral for Vocational Rehabilitation (R-2)
General Health Evaluation Record (R-3)
Medical Report-Visual Disability (R-3c)

Medical Report-Hearing Disability (R-3d)
Medical Consultant-Case Referral (R-3e)
Survey Interview (R-4)
Financial Need/Similar Benefit (R-4g)
Financial Aid Form (R-4k)
IWRP-Eligibility and Responsibilities (R-5a)
IWRP-Plan of Service (R-5b)
IWRP-Amendments (R-5c)
IWRP-Closures (R-5d)
Certification of Federal Employability (R-19)
Request for and Consent to Release Information (R-20)
Client Consent Forms (R-24a)

v. Chapter 16 of the Vocational Rehabilitation Administrative Manual on Confidentiality
w. Application submitted by LEAs for non-public tuition assistance for handicapped children being placed in approved special education programs in non public schools in MD or out of state (requiring state money) (32 pgs.)
x. PL 94-142 regarding confidentiality (Aug 77, 32 pgs.)
y. Copies of forms used to collect information on handicapped children and manual of instructions (43 pgs.)
z. Legal Rights Publication by Division of Special Education disseminated to all LEA's and parent groups (and citizens upon request) (22 pgs.)

11. Department of Human Resources

a. COMAR References to the Department of Human Resources records (6 pgs.)
b. Depart of Human Resources Record-Keeping Policies-Department Administrative Manual (Sep 77, 10 pgs.)
c. Guidelines for Storage and Disposal of Record Material (Aug 78, 10 pgs.)
d. Title 7, Department of Human Resources (4 pgs.)

12. Department of Budget and Fiscal Planning

a. Contract for Collection Services between Central Collection Unit and G.C. Services (Feb 79, 13 pgs)
b. Request for Proposals-Performance of Collection Services on Delinquent Debts and Accounts Owed the State of Maryland (Mar 81, 25 pgs.)

13. MD Commission on Human Relations

a. Master Register-Central Case Control Form
b. Form-Complaint of Discrimination in Public Accomodation
c. " in Housing
d. " in Employment

14. Motor Vehicle Administration

a. Agreement for Purchase of Information in the Motor Vehicle Administration Records (2 pgs.)
b. Procedure for Certified Copy of Driver Control Documents (Feb 81, 11 pgs.)
c. Procedure for Certified Copy of Consumer Service Documents (Feb 81, 14 pgs.)
d. Procedure for Certified Copy of Driver's Record (Jan 81, 38 pgs.)
e. Procedure for Financial Responsibility-Certified Copy of Documents (Feb 81, 10 pgs.)

f. Systems Planning and Implementation-Certified Copy Procedure (Feb 81, 4 pgs.)
g. Vehicle Registration - Certified Copy (50 pgs.)

15. Insurance Division-Department of Licensing and Regulation

a. Forms Management Register (18 pgs.)
b. Rules for Agency Procedures under the Public Information Act (10 pgs.)
c. Records Retention Schedule (75, 20 pgs.)

16. State Ethics Commission

a. Second Annual Report (80, 16 pgs.)
b. Financial Disclosure Inspection Form (1 pg.)
c. Financial Disclosure Statement (till Mar 81, 10 pgs.)
d. Financial Disclosure Statement (after Mar 81, 7 pgs.)
e. Financial Disclosure Statement Instructions and Definitions (10 pgs.)
f. Financial Disclosure Statement for Board and Commission Members (6 pgs.)
g. Lobbying Registration and Authority Form and Directions (5 pgs.)
h. Lobbying Activity Report (1 pg.)
i. Attorney General's Opinion on Applicability of the Governor's Executive Order in Open Meetings to those proceedings of the State Ethics Commission that involve the issuance of advisory opinions (6 pgs.)

17. Department of Health and Mental Hygiene

a. Title 10, Subtitle 03-Health Statistics, Chapter 2-Release of Confidential Information in the Maternal and Child Health and Crippled Children's Programs (2 pgs.)
b. Title 10, Subtitle 03-Health Statistics, Chapter 1-Vital Records (8 pgs.)
c. Attorney General's Opinion-Disclosure of Identifiable Information from Vital Records for Research (Jun 78, 9 pgs.)

B. ADDITIONAL REFERENCES BY SUBJECT MATTER

Privacy Act/Federal/Freedom of Information Act

1. Costs of Implementing the Privacy Act of 1974, Public Law 93-579, 5 U.S.C., 552a, OMB (Mar 77, 21 pgs.)

2. Public Access to Legislative Papers and Committee Files of the U.S. Congress (1 pg.)

3. Title 45-Public Welfare, Part 205-General Administration-Public Assistance Programs (7 pgs.)

4. The Federal Employee and His Rights and Responsibilities Under the Privacy Act (Memo-Health and Human Services) (Aug 80, 6 pgs.)

5. Title 20, Part 401-Disclosure of Official Records and Information (2 pgs.)

6. Title 45, Part 231-Child Abuse and Neglect: Provisions Applicable Under Titles IV-A and IV-B of The Social Security Act (1 Pg.)

7. Title , Part 430 and 431-Medical Assistance Programs (4 pages)

8. Title , Part 301 and 302-State Plan Approval and Grant Procedures (4 pgs.)

9. Administration of the Privacy Act of 1974, OMB (Jan 80, 18 pgs.)

10. Federal Personal Data Systems Subject to the Privacy Act of 1974
    a. First Annual Report of the President for 1975 Vol 1 and 2 (418 pgs.)
    b. Second " " " 1976 (260 pgs.)
    c. Third " " " 1977 (370 pgs.)
    d. Fourth " " " 1978 (235 pgs.)
    e. Fifth " " " 1979 (36 pgs.)

11. Privacy Act Guidelines (Jul 75, 112 pgs.)

12. Guidelines for the Conduct of Matching Programs, OMB (Mar 79, 14 pgs.)

13. Responsibilities for the Maintenance of Records about Individuals by Federal Agencies, Cir #A-108 (Jul 75, 8 pgs.)

14. Responsibilities for the Maintenance of Records about Individuals by Federal Agencies, Cir #A-108, Transmittal Memorandum No. 1 (Sep 75, 6 pgs.)

15. Privacy Act Implementation and Revised Guidance on New Systems Report-Cir #A-108, Transmittal Memorandum No. 3 (May 76, 2 pgs.)

16. Reporting Instructions for the Annual Report to the Congress Under the Privacy Act of 1974, Cir #A-108, Transmittal Memorandum No. 4 (Jan 78, 7 pgs.)

17. Public Law 93-579, 93rd Congress, S.3418, Privacy Act of 1974 (17 pgs.)

18. Recommendations of the Privacy Protection Study Commission on Federal Tax Return Confidentiality, Report of Privacy Protection Study Commission (Jun 76, 8 pgs.)

19. Attorney General's Opinion-Freedom of Information Act-Trade Secrets and Confidential Commercial or Financial Data Exceptions (Oct 78, 15 pgs.)

20. List of Federal Statutes Relating to Informational Privacy (2 pgs.)

21. Using the Freedom of Information Act: A Step by Step Guide (Published by the Center for National Security Studies (18 pgs.)

Data Processing/Computerized Records

1. Electronic Data Processing Questionnaire, Audit Reports (76-80) and Reports of the Joint Budget and Audit Committee of the General Assembly - Division of Audits (74 pgs.)

2. Physical Security Forms-State Computer Centers (Dept. of Budget and Fiscal Planning (Jul 80, 8 pgs.)

3. Big Brother's Got Your Number (Magazine article on privacy and computers by Tim Ponder) (Jan 81, 3 pgs.)

4. Letter-Dear Depositor, concerning Electronic Fund Transfers (3 pgs.)

5. House Bill #609-Data Processing and Records Systems-Requirements (Requested Oct 77, Introduced Jan 78, 4 pgs.)

Education

1. Colleges Ask Student to Forgo Right to See Files, (Magazine article by Edward Fiske, Dec 80, 2 pgs.)

2. Letter to Parents and Guardians-Notice on Privacy Rights from the Office of the principal of Redland Middle School (Oct 80, 1 pg.)

3. Attorney General's Opinion - Public Board of Examiners of Nurses-Release of Pass/Fail ration of graduated on State nursing exam and school's ranking (Aug 76, 3 pgs.)

4. Attorney General's Opinion - Clarification of role of State College System under the Buckley Amendment and Applicable state law (Aug 75, 7 pgs.)

5. Attorney General's Opinion - Release of student information and confidentiality laws, teacher confidentiality (Jan 75, 4 pgs.)

Health/Medical

1. Patient Access to Medical Records in the State of Maryland, Consumer Council of Maryland (Revised-Jan 81, 40 pgs.)

2. Getting Yours: A Consumer's Guide to Obtaining your Medical Record-Health Research Group (Nov 76, 36 pgs.)

3. Medical Records: Problems of Confidentiality and Privacy, Issue Brief #78014, by Louise Becker and Jane Bortneck (Updated Sep 80, 11 pgs.)

4. Letter to the Hon. William H. Amoss, Chairman, Public Information Subcommittee, from the MD Association for Retarded Citizens, concerning amendment of Article 76A, Section 3 (Nov 76, 3 pgs.)

5. A Snapshot of 1979 State Legislative Enactments Relating to the Confidentiality of Medical Records by Judith Regner (19 pgs.)

6. Attorney General's Opinion - Release of Medical Information (non-profit health service plans and insurance companies (Nov 78, 6 pgs.)

7. House Bill#658-Mentally Retarded Persons-Bill of Rights (Introduced Jan 81, 8 pgs.)

8. House Bill #1401 - Mental Health Information (Introduced Feb 79, 6 pgs.)

9. House Bill #1402 - Mental Health Information (Introduced Feb 79, 10 pgs.)

Other States

1. Package of Materials on Privacy from the State of California:
   a. Your Right to Know-Information Booklet for citizens (8 pgs.)
   b. Report on Allocation of Funds to implement Public Access to Records (Aug 77, 2 pgs.)
   c. Report on Implementation of Information Practices Act, Chap 709, Statutes of 1977 (Jan 80, 97 pgs.)
   d. Guidelines to the Information Practices Act and Revisions since July 78 (80 pgs.)

2. State Information Practices Code, Drafted by the National Conference of Commissioners on Uniform State Laws (Aug 80, 68 pgs.)

3. Report on the Status of Privacy Legislation in the States. Prepared by CBEMA (77-78, 52 pgs.)

4. A Summary of State Privacy Legislation (10 pgs.)

5. Offical Records-Collection, Security and Dissemination of Data, Minnesota County Attorney's Council (Apr 76, 10 pgs.)

6. Suggested Guidelines for a State Information Practices Act, National Association for State Information Systems (9 pgs.)

7. Summary of Statutes Relating to the Confidentiality of Personal Records or Information-Kentucky (5 pgs.)

8. Legislation relating to the Privacy of Personal Records, Wisconsin Legislative Council Report No. 14 (Apr 79, 15 pgs.)

9. Proposed Tennessee Bill, Tennessee Commission on Confidentiality in Human Services (Dec 76, 24 pgs.)

10. The Freedom of Information Act, the Personal Data Act, and the "Erasure Laws", Connecticut General Statutes (28 pgs.)

Public Information Act

1. Public Information Act-List of Opinions (3 pgs.)

2. Attorney General's Opinion - Are arrest logs public records, available under the Public Information Act (Jun 78, 7 pgs.)

3. Attorney General's Opinion - Property Tax Assessment Appeal Boards (Feb 77, 3 pgs.)

4. Attorney General's Opinion - Personnel Records and Access (Jun 80, 7 pgs.)

5. Public Information Act Manual, Offices of the MD Attorney General (Apr 80, 69 pgs.

General/Miscellaneous

1. House Bill #339 - Public Assistance-Confidentiality (Requested Nov 79, Introduced Jan 80, 2 pgs.)

2. A Research Survey of Privacy and Big Business, University of Illinois at Urbana-Champaign (Jul 79, 30 pgs.)

3. Attorney General's Opinion-Confidentiality of Executive Sessions of the County Board of Education (Nov 80, 6 pgs.)

4. Computer Search-Disclosure References (Nov 80, 30 pgs.)

5. House Bill #668 - Tax Returns-Confidentiality (Introduced Feb 79, 4 pgs.)

6. Public Law 96-440, Title 1-First Amendment Privacy Protection (Oct 80, 3 pgs.)

7. Division of State Documents, Code of Maryland Regulations, MD Register, (Apr 80, 112 pgs.)

8. Remarks on Privacy by Professor David F. Lenowes, Boeschenstein Professor of Political Economy and Public Policy, University of Illinois, Former Chairman of the U.S. Privacy Protection Commission (Jul 79, 11 pgs.)

9. Privacy: Concepts & Problems, Issue Brief #74123, Sarah P. Collins (Aug 80)

10. Employee Privacy, Article in Small Business Report (Oct 81, 3 pgs.)

11. IBM's Guidelines to Employee Privacy, Article by Frank T. Carey in Harvard Business Review (Oct 76, 9 pgs.)

12. Suggested Reading List prepared for Seminar Participants-Seminar on Privacy in Washington, D.C. (Dec 74, 9 pgs.)

13. The Cost of Privacy, Datamation article by Robert Goldstein (Oct 75, 5 pgs.)

14. Legal Recourses to Protect the Individual's Privacy, The Daily Record (May 80, 2 pgs.)

15. Suburban Trust Co. vs Maurice Waller, The Daily Record (Apr 80, 4 pgs.)

16. The Politics of Privacy, William T. Bagley, California Assemblyman 60-74 (4 pgs.)

17. Package of materials received by the Information Practices Commission from Mr. Hoshall (Mar 81)
    a. Correspondence between Mr. Hoshall and the Community Relations Commission (8 pgs.)
    b. Correspondence between Mr. Hoshall and the City Solicitor's Office (26 pgs.)
    c. Newspaper articles on Mr. Hoshall's case.

18. Package of materials received by the Information Practices Commission from Mr. Caplan, Chief City Solicitor (Mar 81)
    a. Correspondence between Mr. Caplan and other members of the City Solicitor's Office and Mr. Hoshall.

Administrative Issues-May 11, 1981 Meeting

1. Ask members if the minutes from the meeting of Jan 19, 1981 and from the February 23 and March 16, 1981 Public Hearings can be adopted as official.

2. Do members want MVA at next meeting? This can probably be arranged.

3. What path should be followed regarding bills that were deferred for the Commission's consideration?

HB 1366	Public Information-Persons Licensed by Motor Vehicle Administration
HB 1368	Public Information-State-Licensed Individuals
SB 1044	Mental Health Information

We have received statements of support and criticism regarding HB 1368.

4. Inform members of direction of next few meetings and ask about vacation schedules.

5. Status of ACLU position on the Commission.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 29, 1981

MEMORANDUM

The Governor's Information Practices Commission will hold its next meeting at 4 P.M. on May 11, 1981. The meeting will be held in the House Constitutional and Administrative Law Committee Room. The record-keeping practices of several state agencies will be discussed.

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 29, 1981

MEMORANDUM

TO: John E. Donahue
Wayne Heckrotte
The Hon. Nancy Kopp
Dennis M. Sweeney
Harriet Trader

FROM: Dennis M. Hanratty

SUBJECT: Information Practices Commission Meeting

Enclosed are the materials which were distributed at the April 27th meeting of the Information Practices Commission.

Please examine the minutes from the two public hearings and note any changes that you would like made. The copies of testimony attached to the minutes will not be reissued with the final version of the minutes.

The reports on record-keeping practices at the State Scholarship Board, the MD Department of Education, the Motor Vehicle Administration and at State and Local Election Boards will form the basis for discussion at the next meeting of the Commission.

The next meeting will be held May 11, 1981 in the House Constitutional and Administrative Law Committee Room in the Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland, at 4 P.M.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

April 13, 1981

M E M O R A N D U M

TO: INFORMATION PRACTICES COMMISSION MEMBERS

FROM: DENNIS M. HANRATTY

The next meeting of the Information Practices Commission will be held on April 27, 1981 at 4 P.M. in the House Constitutional and Administrative Law Committee Room, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. Please note that the Commission will not be meeting on April 20, 1981 as indicated at the end of the Public Hearing in Baltimore.

At the meeting on April 27th, Ms. Cecelia Wirtz from the Office of Management and Budget, will address the experiences of the Federal Government with respect to implementation of the Federal Privacy Act. Attached is a copy of the letter sent to Ms. Wirtz which indicates the areas that will be discussed.

Also enclosed is a copy of the Federal Privacy Act for your reference.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

March 9, 1981

M E M O R A N D U M

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

The Commission will hold a public hearing on March 16, 1981 at 10 A.M. in the O'Conor Building, Room L-3, 201 W. Preston Street, Baltimore, Maryland, 21201. I have requested the appearance of representatives from the following departments: Public Safety, Health and Mental Hygiene, Human Resources, Transportation and Education. In addition, Mr. Donald Tynes is scheduling testimony from officials of the Department of Personnel. It is also anticipated that the State Archivist will testify. I have received a firm commitment to testify from an individual who has experienced significant difficulties in using the Public Information Act. Finally, notice of the hearing has been spread liberally throughout the Baltimore area. Therefore, I expect that the hearing will take the entire day.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404
Governor's Information Practices Commission
State House - Room H-4
(301) 269-2810

January 29, 1981

M E M O R A N D U M

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed is a copy of the cover letter to the Interim Report sent by Mr. Drea to Governor Hughes. In addition, you will find a corrected copy of the minutes of the December 15th meeting of the Commission and the draft minutes of the January 19th meeting. Please note that the location of the February 23rd public hearing has been changed. Rather than convening in the House Constitutional and Administrative Law Committee Room, as originally planned, the meeting will take place in the Hearing Room of the Montgomery County Delegation, Second Floor, Lowe House Office Building, Annapolis. The date (February 23rd) and the time (10 A.M. to 6 P.M.) remain the same.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404
Governor's Information Practices Commission
State House - Room H-4
(301) 269-2810

January 26, 1981

M E M O R A N D U M

TO: Information Practices Commission Members

FROM: Arthur S. Drea, Jr., Chairman

Enclosed you will find a copy of the Interim Report of the Information Practices Commission. Please note that the Commission will hold a public hearing on February 23, 1981, from 10 A.M. to 6 P.M., in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. Though agency officials are certainly welcome to testify before the Commission at this meeting, we anticipate that this first hearing will be primarily devoted to eliciting comments from the general public. It should be obvious to all that the public's perception of the Commission will be influenced, to a large extent, by the number of Commission members attending this hearing. Therefore, it is expected that members will make every effort to attend this most important session.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404
Governor's Information Practices Commission
State House - Room H-4
(301) 269-2810

December 18, 1980

M E M O R A N D U M

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed you will find a list of questions pertaining to tax records which was discussed at the December 15 meeting of the Information Practices Commission. In addition, I have sent along a copy of the minutes of that meeting. The next meeting of the Commission will be held on January 19, 1981 at 4 P.M. in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. You will receive a copy of the proposed Interim Report prior to that date.

I. TAX RECORDS

53. What information from individual tax records is disclosed by the Treasury Department to other government agencies?
54. Why is such information disclosed?
55. What security safeguards are demanded by the Treasury Department before information from tax records is disclosed to other agencies?
56. Should restrictions be placed on the disclosure of tax information to other government agencies for purposes unrelated to tax collection?
57. Should any restrictions be placed on the dissemination of tax information to law enforcement officials?
58. Should law enforcement officials be required to convince a court that the information is directly relevant to an investigation?
59. Should taxpayers be notified that information is being turned over to law enforcement officials?
60. Should taxpayers have the opportunity to contest the accuracy of tax records before they are released to law enforcement officials?
61. What restrictions should be placed on the redisclosure of tax informantion by third parties who have received such information from the Treasury Department?
62. Should the Treasury Department make distinctions between information that is collected directly from the taxpayer and information that is obtained from other third-party sources?

There are few, if any, statutes in the Maryland Annotated Code that address the issues presented above. Instead, one finds fairly vague language regulating the transfer of tax records from the Treasury Department to other government agencies.

Article 81, Section 5A deals with the subject of confidentiality of property tax records. It states the following:

"a) Divulging amounts and particulars unlawful.- Except in accordance with proper judicial or legislative order and except to an officer of the State having a right thereto in his official capacity, any officer or employee or former officer or employee of the State or any political subdivision may not divulge or make known in any manner:

1) The amount of income or any particulars set forth or disclosed in any return required under any provision of Maryland law if the return contains federal return information; or

2) Any federal return, federal return information, or copies of a federal return or return information required by State law to be attached to or included in any State return."

Article 81, Section 300 regulates the confidentiality of income tax records, stating the following:
" Divulging amounts and particulars unlawful. - Except in accordance with proper judicial or legislative order and except to an officer of the State having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the State or any political subdivision to divulge or make known in any manner:
1) The amount of income or any particulars set forth or disclosed in any return under this subtitle; or
2) Any federal return, federal return information, or copies of a federal return or return information required by State law to be attached to or included in the State return.
b) Reciprocity between Maryland and other officials.- In the event the United States government or any other state allows the State's official to examine its income tax returns or any class thereof, or to receive tax return information, then this State upon application by the proper authorities of the United States or such other state to the Comptroller, shall allow the proper officials of the United States government or of such other state, whose official duties require them to make such inspection, to inspect the income tax returns of such corresponding class of such income tax returns filed hereunder or to receive tax return information. Disclosure to the proper officials of such other state may be made only in those instances where the laws of such other state provide confidentiality for such exchanged tax returns or tax return information."

On February 5, 1973, an Opinion of the Attorney General was released which prohibited the disclosure of income tax records by the Comptroller to county governments for the purposes of conducting local studies.

Article 81, Section 302A places restrictions on the disclosure of income tax returns by those who have assited in the preparation of such returns:
"a) It is a misdemeanor, punishable upon conviction by a fine of not less than five hundred dollars nor more than ten thousand dollars, for any person to disclose anyinformation related to a specific client obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns, unless such disclosure is within any of the following categories:
1) When requested in writing by the taxpayer.
2) When expressly authorized by State or federal law.
3) When necessary to the preparation of the return.
4) When pursuant to court order.

Finally, Article 81, Section 366 regulates disclosure of retail sales tax information:
" Except in accordance with proper judicial order, or as otherise provided by law, it shall be unlawful for the Comptroller or any deputy, agent, auditor or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid or any particulars set forth or disclosed in any return required

by this subtitle. Nothing herein contained shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representatives of the State of the report or return of any taxpayer who shall apply for a review or appeal from any determination or against whom an action or proceeding is about to be instituted or has been instituted to recover any tax or penalty imposed by this subtitle. Reports and returns shall be preserved for two years and thereafter until the Comptroller orders them to be destroyed."

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

Governor's Information Practices Commission
State House - Room H-4
(301) 269-2810

December 18, 1980

M e m o r a n d u m

TO: Information Practices Commission Members

FROM: Dennis M. Hanratty

Enclosed you will find a copy of the minutes of the Information Practices Commission meeting of December 15, 1980. Please note that the next meeting of the Commission has been changed to January 19, 1981 at 4 P.M., in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. You will receive a copy of the proposed Interim Report prior to the meeting of January 19.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

Governor's Information Practices Commission
Room H-4 State House
301-269-2810

December 5, 1980

M e m o r a n d u m

To: Information Practices Commission Members

From: Arthur S. Drea, Jr., Chairman

This is to inform you that the Information Practices Commission will hold a most important meeting on December 15, 1980 at 4 P.M. During this meeting, hard choices will be made on the issues to be considered by the Commission. Such decisions are necessary at this time so that the staff can formulate a tentative interim report. The meeting could be quite lengthy. Please make every effort to attend this session. Your cooperation is greatly appreciated.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

Governor's Information Practices Commission
State House Room H-4
301-269-2810

December 3, 1980

M e m o r a n d u m

To: Information Practices Commission Members

From: Dennis M. Hanratty

Enclosed you will find a copy of the minutes of the Information Practices Commission meetings of September 8, September 22, October 6, and December 1, 1980. In addition, I have sent along a report that was presented to the Commission at its December 1 meeting. The next meeting of the Commission will be on December 15, 1980 at 4:00 P.M., in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. We will continue at that time with a discussion of the issues found in the enclosed report.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

Governor's Information Practices Commission
State House Room H-4
301-269-2810

December 3, 1980

M e m o r a n d u m

To: Information Practices Commission Members

From: Dennis M. Hanratty

Enclosed you will find a copy of the minutes of the Information Practices Commission meetings of September 8, September 22, October 6, and December 1, 1980. The next meeting of the Commission will be on December 15, 1980 at 4:00 P. M., in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. We will continue at that time with a discussion of the issues found in the report mailed to you earlier in the week.

HARRY HUGHES
GOVERNOR

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

Governor's Information Practices Commission
Room H- 4 State House
301-269-2810

December 3, 1980

M e m o r a n d u m

To: Information Practices Commission Members

From: Dennis M. Hanratty

Enclosed you will find a copy of the minutes of the Information Practices Commission meeting of December 1, 1980. The next meeting of the Commission will be on December 15, 1980 at 4:00 P.M., in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. We will continue at that time with a discussion of the issues to be examined by the Commission.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20907

November 10, 1980

M e m o r a n d u m

To: Information Practices Commission Members

From: Arthur S. Drea, Jr., Chairman

Subject: Rescheduled Meeting

The next meeting of the Information Practices Commission will be on November 17, 1980, at 4:00 p.m., in the Committee Room of the House Constitutional and Administrative Law Committee, Lowe House Office Building, 6 Bladen Boulevard, Annapolis, Maryland. Mr. Dennis M. Hanratty, our new Staff Assistant, will be in attendance.

HOUSE OF DELEGATES

ANNAPOLIS, MARYLAND 21401

HELEN L. KOSS
CHAIRMAN
CONSTITUTIONAL AND ADMINISTRATIVE LAW

HOME ADDRESS:
3416 HIGHVIEW COURT
WHEATON, MARYLAND 20902

September 16, 1980

Mr. John F. Sikorski
Superintendent
Public Buildings & Grounds
29 St. Johns Street
Annapolis, Maryland 21401

Dear Mr. Sikorski:

Mr. Arthur Drea, Chairman of the Governor's Study Committee on Privacy, would like to reserve our Committee Room (Room 140 in the House of Delegates Building) from 4 p.m. to 6:30 p.m. every other Monday beginning September 22nd. This will be for an indefinite period of time and I will notify you when they no longer need to use the room.

I would appreciate it if you would see that the Committee Room doors are unlocked during those dates.

Sincerely,

Helen L. Koss

HLK/ss

cc: Arthur Drea

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

August 3, 1981

OFFICIAL

Minutes-Governor's Information Practices Commission Meeting-July 20, 1981

The meeting of the Governor's Information Practices Commission was held on July 20, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. Robin J. Zee, Mr. Donald Tynes, Sr., Mr. John A. Clinton, Delegate Nancy Kopp, Mr. Albert J. Gardner, Mr. Wayne Heckrotte, Mr. Judson P. Garrett, and Mr. E. Roy Shawn.

The minutes from the June 8 and June 22 meetings were adopted by Commission members as final.

Mr. Dennis Hanratty brought Commission members up to date on the responses received by the staff. Agencies which still remain to be discussed include: Licensing and Regulation, Health and Mental Hygiene, the Central Collection Unit and the Office on Aging. Mr. Hanratty noted that 85% of the necessary data had been received from the Department of Public Safety and Correctional Services and that the response to an additional request for information from the State Police was the only item lacking.

Discussion followed on how to obtain cooperation from the Department of Health and Mental Hygiene, the largest agency which has not yet responded to the inquiries of the Commission. Commission members decided that, since the Secretary had been contacted by several Commission members concerning this problem, a letter would be sent to the Governor. This letter would state that the Commission would be unable to complete its work due to the lack of cooperation from Health and Mental Hygiene. A copy of the letter would also be sent to the Secretary.

The first report discussed concerned the Department of Agriculture. Ms. Thea Cunningham listed the general observations of the staff which were discussed in the report:

1. The amount of personal information collected by various sections of the Department varies considerably (i.e., some collect only name and address, while others collect more extensive personal information).

2. All sections of the Department permit the person in interest to access his records but he is not informed in any formal manner of this fact nor of the fact that information that he supplies is considered to be public information.

3. The records of the Department are disclosable under the Public Information Act. However, the Pesticide Applicator's Law Section stated that investigative reports are not disclosed. It is questionable whether this is a legitimate non-disclosure.

4. Should all other personally identifiable information collected by the Department continue to be considered disclosable under the Public Information Act?

Delegate Kopp questioned whether inquiries had been directed to the Secretary about the variety of information collected by the different sections. Ms. Cunningham replied negatively.

Mr. Garrett asked if there were copies of any divisional policies on disclosure. Ms. Cunningham replied that, although several sections had indicated that they adhered to departmental policy regarding disclosure, the liaison in the department stated that such a policy did not exist.

Mr. Tynes inquired as to whether the sections had indicated the typical recipients of disseminated information. Ms. Cunningham stated that most of the sections had said that they received few requests for information.

The second report discussed concerned the Public Information Act (PIA). Mr. Hanratty explained that he had based the report on:

1. Testimony from witnesses at the Commission's March 16 Public Hearing.
2. Supporting documents submitted to the Commission staff by these witnesses.
3. Responses from State executive branch agencies to questions regarding measures developed to respond to requests under the PIA.

Mr. Hanratty stated that he had found that the PIA works well. Although he found no evidence that State agencies were not complying with the provisions of the Act, he had encountered several problems with the Act.

The first problem, Mr. Hanratty explained, is that there is no definite time period by which the agency has to respond to a request for information under the PIA. Mr. Hanratty referred to the case of Mr. Lee David Hoshall. Mr. Hoshall had testified before the Commission that a records request he had submitted to the Baltimore City Government had been ignored for seven months. However, Mr. Hanratty stated, he found no evidence to suggest that State agencies are failing to comply in a timely fashion. He suggested that this may be a consequence of the fact that, unlike municipalities and counties, State agencies also operate under a Citizens Response Plan.

A second issue which Mr. Hanratty discussed was the cost charged the requestor to obtain copies of documents under the PIA. Mr. Hanratty explained that the Act is unclear as to what should be included in the charges: the copying fee, administrative costs to search for the material, costs involved in separating disclosable from non-disclosable information, and so forth. Mr. Hanratty cited an Attorney General's Opinion of 1974 which suggested that fees of various kinds involved in responding to requests under the PIA may be passed along to the requestor.

Mr. Hanratty stated he had found that most state agencies do not seem to typically pass along administrative fees to the requestor.

Mr. Hanratty noted three current agency practices which appeared to be inconsistent with the Public Information Act:

1. Requiring the requestor to justify a reason for the request.
2. Denying requests due to a lack of personnel.
3. Requiring the individual to produce information that was beyond his capacity to produce.

Another issue which needs clarification, Mr. Hanratty explained, is the expression "letter of reference". Letters of reference are not disclosable under the PIA. There is no definition of this term in the PIA but evidence had been submitted to the Commission indicating that some records custodians may deny unsolicited letters or comments.

In addition, Mr. Hanratty noted, the term "sociological data" needs clarification. Sociological data is prohibited from disclosure in the PIA along with medical and psychological data. Mr. Hanratty referred to a sheet from the Division of Parole and Probation which had been issued to the Commission members. On the sheet, sociological information was divided into that which is non-confidential and sociological data which is confidential. Mr. Hanratty felt that this was inconsistant with the PIA. He also felt that, ultimately, sociological data could encompass everything and theoretically invalidate the Public Information Act.

Mr. Garrett suggested that the same kind of problem exists with psychological data. He thought that unless psychological data is gathered by a psychologist, it is not psychological data for the purposes of the Act. Mr. Garrett asked how the Federal Privacy Act interpreted this term. Mr. Hanratty replied that he did not know

but would find out. Discussion followed and several Commission members expressed surprise that the Attorney General's Office had not been asked for clarification on this issue.

A final point brought up by Mr. Hanratty was the Open Meetings Act. Mr. Robert Colborn, Administrator of the Division of State Documents, had suggested to Mr. Hanratty that there were problems in this area. Under the Open Meetings Act, the agency is required to publish the date, time and place of any meeting. Mr. Colborn felt that this information should also include the subject matter with some specificity. Secondly, Mr. Colborn felt that the requirement that notification be given to the news media or that notice be posted at a convenient public location was not necessarily effective.

Mr. Drea replied that he felt this issue was not really within the scope of the Commission because it did not deal with Information Practices. Mr. Drea observed that this issue was extremely controversial when passed, and the requirement was essentially a compromise.

Delegate Kopp noted that the report on the PIA related to the adequacy of the Act in achieving the purposes of public information. She felt that another important issue involved was that of integrating privacy concerns with public information. Delegate Kopp noted that the Commission was concerned with the question of what is personal versus what is public and that this might affect the Act.

Mr. Hanratty noted that a number of agencies perceived that they had been adversely affected by the Act because there are no sections excluding personal data maintained by some programs from disclosure. Mr. Garrett added that in the process of identifying the information which an agency feels should be confidential, the agency should also consider whether the information should even be collected.

Another area where problems are developing, he noted, is "commercial espionage". Corporate clients access public files to get information on how a competitor does business. Mr. Sweeney, Mr. Garrett stated, was finding that the State is being sued for allegedly disclosing confidential information under the PIA.

Mr. Drea added Mr. William J. Rubin, Chairman of the State Bar Administrative Law Section, had pointed out that, presently in Maryland, the tax court can require people to leave the courtroom at the request of the taxpayer. The reason is that the information is of such a technically sensitive nature that the person does not want potential competitors to be aware of it.

Discussion then focused on the fees charged by agencies to copy documents requested under the PIA. Mr. Gardner suggested that agencies consider the principal purpose behind the record request. If the request is to serve a private rather than public purpose, appropriate fees should be charged. Mr. Drea added that another way would be to establish one charge structure for the person in interest and another for third parties. Mr. Zee noted that the Archives charge ancestor hunters but researchers are not charged because research is the purpose for which the Archives exist.

Mr. Zee asked if Mr. Hanratty felt that high fees were being used by agencies to discourage requests. Mr. Hanratty replied that he found that State agencies are trying to comply with the Act and in fact, most charge minimal fees to copy documents.

Delegate Kopp asked if the law provides for an appeal of the agency decision not to release a document under PIA. Mr. Hanratty replied that the only option available to the requestor would be to seek relief in court.

Discussion followed on the need for a time limit for the initial reply when a request is received. Mr. Garrett suggested that what other states have done could be reviewed. Delegate Kopp felt that a mediation board to handle extreme situations might be beneficial. Mr. Hanratty agreed. Mr. Garrett noted that there are punitive damages now except when the Attorney General's Office has advised the agency that the information is not disclosable. Mr. Drea suggested that the Commission might consider a decision time period of thirty days with the right to extend for an additional thirty days, with the permission of the requestor or for a valid reason.

The next report discussed was that concerning the Human Relations Commission. Mr. Drea indicated that responses were of such a high quality that Mr. Hanratty felt it would be sufficient to merely copy the reply of the Human Relations Commission. Mr. Garrett suggested that the quality of this response should be noted as an example in the letter to the Governor concerning the Department of Health and Mental Hygiene. Mr. Drea agreed.

The final report discussed was the Department of Economic and Community Development Report. Mr. Hanratty delineated the issues of concern to him. He noted that a common thread running through the report is the fact that the Department collects a great deal of financial data. Most components of the Department, Mr. Hanratty said, do not disclose financial and commercial data. Mr. Hanratty questioned, however, whether there is a statutory basis for such a policy. The position of the Department's counsel is that records of the Department are generally disclosable under the Public Information Act.

Mr. Hanratty cited Section 3(c)(v) which prevents the disclosure of confidential commercial or financial data. The custodian must decide: 1) Is the data commercial or financial? and 2) Is it confidential? He noted that though the Commission may be

able to benefit by examining the federal experience in this regard, as the financial and commercial section of the Federal Freedom of Information Act (FOIA) is quite similar to the PIA. Federal courts have interpreted commercial data to include rates and skills of supervisory personnel. Mr. Hanratty suggested that the most difficult issue involves determining what type of commercial and financial data is confidential. It would appear the records custodians must ask the following questions in determining whether or not to disclose such data: 1) Will disclosure adversely affect the Government's ability to collect similar information in the future? 2) Will disclosure cause substantial harm to the competitive position of the firm? and 3) What are the customary industry-wide practices regarding the handling of this type of data?

Mr. Hanratty stated that it is clear that some of the data in the Department, such as directory information about individuals participating in various programs, is disclosable. He noted, however, that even the Department is unclear about whether the commercial or financial data maintained by its various programs is confidential. Departmental officials are leaning towards adopting a policy that would distinguish between information pertaining to borrowers and that provided by lenders. Under this plan, lender information would be confidential, while borrower information would be disclosable.

Mr. Zee brought up the example of a small business trying to get established versus a large business which the state is trying to attract to Maryland. The State wants the latter and the firm may decide to relocate elsewhere if the State has a policy of disclosing commercial and financial data. Delegate Kopp noted that the same might apply to a small business.

Mr. Garrett stated that he felt that the Commission was getting too specific for a Public Information Act. He added that the Commission could not get so specific with the large number of agencies involved. The most that can be done in a

Public Information Act that applies to everyone, he asserted, would be develop certain general standards.

Discussion ensued on whether issues could be covered through legislation or rules and regulations. It was noted that the Commission had the option to decide whether to recommend an omnibus act or specific legislation. The point was made that if legislation was too specific, opposition might be greater.

Mr. Garrett noted that there is a provision in the PIA restricting the collection of information. Mr. Heckrotte added that the Legislative Auditors could examine the issue of data collection. Commission members discussed this issue. Mr. Drea stated that it could be tied in with the security risk analysis that the Commission would like to see done statewide. Mr. Hanratty felt, however, that every agency presently insists that all information it collects is relevant and necessary to perform assigned tasks. He was not sure what would be accomplished without explicit guidelines. It is difficult, he asserted, for the auditors to overrule psychologists, psychiatrists, etc., who might insist that certain pieces of sensitive data needed to be collected from recipients of government programs.

The meeting concluded and the next meeting was scheduled for August 3, 1981.

STATE OF MARYLAND

EXECUTIVE DEPARTMENT

GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

August 6, 1981

OFFICIAL

Minutes - Governor's Information Practices Commission - Meeting of August 3, 1981

The meeting of the Governor's Information Practices Commission was held August 3, 1981 in the House Constitutional and Administrative Law Committee Room. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. Robin J. Zee, Mr. Wayne Heckrotte, Mr. Albert J. Gardner, Jr., Mr. Donald Tynes, Sr., Mr. John A. Clinton, and Senator Timothy R. Hickman.

The minutes from the meeting of July 6, 1981 were approved as official and the minutes of the meeting held on July 20, 1981 were distributed to Commission members.

Mr. Drea read a copy of the letter that was sent to Governor Hughes concerning the lack of cooperation the Commission has received from the Department of Health and Mental Hygiene. A copy of the letter was also sent to Mr. Charles R. Buck, Jr., Secretary of the Department. Mr. Drea noted that Ms. Beatrice Weitzel, the Department's liaison with the Commission, had indicated that a partial response would be sent to the Commission staff on Friday, July 31, but as of Monday, August 3, nothing had been received.

Mr. Drea discussed the problem that the staff had encountered with the University of Maryland. A survey was distributed to the University, he explained, requesting information on record-keeping practices. The replies were consolidated by the University and sent to the Commission. A sample reply was distributed to Commission members showing how responses had been grouped together. Mr. Drea pointed out that the consolidated replies were useless to the Commission staff. When the original responses were requested from the University, Mr. Drea added, the University replied that too much copying would be involved and that, in addition, some of the respondees were more candid than the University would have liked. A letter was sent to Dr. Brandt on July 13, 1981, requesting that the original responses be supplied to the Commission staff. As of August 3, 1981, no response had been received.

Discussion ensued on this issue. Mr. Zee and Mr. Tynes were asked to contact Dr. Brandt and bring this problem to his attention. (The materials requested have since been received by the Commission staff.)

Mr. Drea indicated that the schedule of the Commission needed to be reorganized. Seven reports remain to be discussed, Mr. Dennis Hanratty noted. Due to a lack of total responses from several agencies, completion of many of the reports had to be postponed. Because of this situation, it was decided that there would not be a meeting on August 17, 1981. The next meetings were scheduled for August 24, and August 31, 1981. There would not be a meeting on September 7, 1981.

The Addendum to the Human Resources Report was discussed by the Commission. Ms. Thea Cunningham explained that the Addendum concerned the record-keeping practices of the Maryland Energy Assistance Program, the Weatherization Program, the Training and Employment Office and the Bureau of Support Enforcement. All of these offices stated that the individual is allowed access to his records. The primary point of interest, Ms. Cunningham noted, is that several of the programs cited the Federal

Privacy Act as the governing authority for their collection or disclosure practices. As the Commission staff interpreted the Privacy Act, Ms. Cunningham added, it governs only records maintained by Federal agencies. A spokesman for the Department of Human Resources indicated that they had assumed that they were required to follow the provisions of the Privacy Act, since the program is federally funded. Ms. Cunningham stated that she had contacted the U.S. Department of Energy in Washington, D.C. which supplied the form used by the Weatherization Program. A spokesman for the Department of Energy stated that they had assumed that the Privacy Act governed the information practices of the states since the information was requested by a federal agency. The spokesman did not know where this requirement could be found in writing. Ms. Cunningham stated that she was unable to find anything in the Code of Federal Regulations concerning this requirement. These programs are covered, she added, by other federal requirements in the Code, as is the rest of the Department.

Mr. Drea suggested that the staff contact Mr. Dennis Sweeney and ask his advice on this issue. Mr. Hanratty noted that it seems as if the Department of Energy is requiring states to comply with the Federal Privacy Act when in fact they have no authority to do so. Mr. Heckrotte stated that perhaps the state is considered to be an agent of the federal agency. Mr. Hanratty responded that he found it curious that no other components of the Department of Human Resources, which are also funded by the federal government, cited the Privacy Act as regulating their activities.

The Commission then discussed the report examining the record-keeping practices of the Public Defender's Office. Ms. Cunningham explained that a great deal of personal information is collected on the applicant for appointed counsel. The Public Defender's Office stated that the client is allowed access to his file with the exception of psychiatric records. Mr. Drea asked how the passage of House Bill 1287 would affect this practice. Since hospitals are now required to supply the

individual with a summary of his psychiatric record, Mr. Drea noted, wouldn't this change the practice of the Public Defender's Office? The patient may not be able to obtain access to his psychiatric record in the Public Defender's Office, but he could then go the the facility and obtain a summary. Mr. Hanratty noted that the Public Defender's Office could send the individual directly to the facility. Mr. Drea suggested that it would be beneficial to find out if the Public Defender's Office was aware of the bill and its potential ramifications.

The final report discussed concerned the Department of Natural Resources. Mr. Hanratty noted that there were two areas that should be considered by the Commission: 1) the records of the Licensing and Consumer Services Section and 2) the personnel practices of the Natural Resources Police. The Licensing and Consumer Services Section, Mr. Hanratty explained, maintains approximately 900,000 records. The information contained in these records is, in many cases, confined to name, address and phone number. Other records, however, hold more extensive information such as birth date, age, height and eye color, length of residence in Maryland, and so forth. All of this information is disclosable under the Public Information Act, Mr. Hanratty noted. Licensees have no rights to prevent the dissemination of personal information and they are not notified concerning disclosures. The staff was informed by the Licensing and Consumer Services section that advertisers constitute the principal market for licensee computer lists. Advertisers are charged for computer time, paper, tapes and storage and 1¢ per page to cover expenses.

Mr. Hanratty compared the computer list contract used by the Department of Natural Resources with that used by the Motor Vehicle Administration (MVA). He noted that MVA's contract is much more restrictive. The purchaser must indicate the intended use of the information, restrictions are imposed on the reselling of information, recipients are prohibited from using the information for any mailing promoting the sale of real estate, insurance, involving sweepstakes or giveaways, and MVA can

prevent objectionable mailings. In addition, the individual may contact MVA and request that his name be deleted from the mailing list. These points are all absent in the Licensing and Consumer Services Contract.

Mr. Hanratty also pointed out that MVA may only sell lists if it approves of the purpose for which the list is to be used. There is no such statement in the regulations governing the Natural Resources Department. However, the legislature did impose a great amount of specificity in terms of information to be collected from licensees by the Licensing and Consumer Services Section.

Mr. Zee thought that both contracts were subject to the Attorney General's Office review and coordination. He noted that Mr. Hanratty would find similar variations between contracts when he examined the Department of Licensing and Regulation. Discussion ensued. The point was made that the Attorney General's Office determines the legal sufficiancy of contracts and is not concerned with the content of the contract.

Senator Hickman stated that it had occurred to him that the Commission could make recommendations to the Governor that he deem certain things be done by his cabinet agencies. Also, some of these changes could be accomplished by Executive Order or gubernatorial policy. Mr. Drea added that he had envisioned that most of the Commission's recommendations would take the form of suggested adoption of regulations by departments. The minority of the recommendations would involve legislation. Senator Hickman noted that there could be an Executive Order for Privacy and then a law could be passed a couple of years later.

Mr. Hanratty brought up the issue of standardization on personnel forms. He felt that a need existed to standardize personnel forms used throughout the state. Mr. Zee indicated that he had written to the State Records Administrator and will

transmit a copy of the minutes highlighting this point.

Discussion turned to the personnel practices of the Natural Resources Police Force. Mr. Hanratty noted that some of the information requested from applicants by the Force was quite detailed:

a. Marital Status: date of marriage/information on fiancee, who officiated, any separation/annulment/divorce and the reason

b. Financial Status: property owned, insurance premiums, mortgage payments, amount owed to creditors

c. Arrests: any detentions, tickets/parking violations of applicant or spouse

d. Medical Data: anyone in the family tested for nervous or mental disorder.

Mr. Hanratty added that this information is verified through the use of a polygraph. He stated that this seemed to be in direct violation of Article 100, Section 95-B which states that agencies cannot require the applicant or employee to submit to a polygraph as a condition of employment or continued employment.

In discussion of this application form, it was noted that it seemed to be an attempt to outdo the Maryland State Police. Mr. Heckrotte noted that the National Security Agency background investigation form was not as detailed as the form used by the Natural Resources Police.

Mr. Tynes stated that the Department of Personnel had reviewed the form and found it unacceptable. Many of the questions asked were not felt to be job related. Furthermore, Mr. Tynes added, statistics on minorities and females in the Natural Resources Police Force suggest that the form may discriminate against women and minorities. Senator Hickman noted that a constitutent had complained to him that he was told that one had to know someone in politics to be a Park Ranger.

Mr. Hanratty stated that he believed the application form to be internal to the Police Force and not a standard Departmental form.

Mr. Drea suggested that this form be discussed with the Department. Mr. Tynes was designated to contact the appropriate individual in the Department and inform him that this situation exists. In the discussion that followed, the point was made that the Commission would then have the option at the time of the final report of including or deleting the form. Mr. Hanratty felt that the form should be included in the final report and wondered how many applicants had been screened out in the past by the use of the form. Members expressed the feeling that 95% of the report would be ignored because of one sensational item. It was concluded that Mr. Tynes would contact Mr. Herbert Sachs, Director of Operations for the Department of Natural Resources, and that the Commission would decide whether to include this issue in the final report at a later date. Mr. Gardner noted that the objective should be to achieve a correction.

Mr. Drea noted that in his agency, Park Police applicants are informed that an FBI check will be done and fingerprints are taken. But detailed information to the extent requested by the Natural Resources Police Force was not required. Several Commission members expressed curiosity as to the types of information requested on the Maryland State Police Application Form.

Mr. Hanratty stated that another issue before the Commission concerned the directory type information (i.e. name, address, telephone number) collected by the various other sections of the Department of Natural Resources. Should this information continue to be disclosable under the Public Information Act or should restrictions be imposed on its dissemination? Mr. Hanratty thought that the Commission might consider the practice of local education agencies (LEAs) regarding directory information. Before releasing directory information, LEAs must inform parents at the

beginning of the school year of the categories of information considered to be directory in character. Parents then have a specified period of time by which to inform the schools that they object to the dissemination of directory information concerning their children. Mr. Heckrotte agreed with the principle behind this system, but expressed concern that it could be applied to other government agencies without incurring significant expenditures.

Senator Hickman informed Commission members that he was serving on a Joint Committee of the Legislature which was examining Senate Bill 1044 (Mental Health Information) from the previous session. He thought this issue might be of interest to the Commission. Mr. Drea noted that the Commission had thought the Bill had a number of worthwhile provisions which were not included in House Bill 1287. He asked Senator Hickman to keep the Commission informed, and stated that the issue could be discussed in the next month to six weeks. Mr. Hanratty added that Mr. Zee had notified the Commission that there would be a meeting of Senator Clark's Committee on Pensions August 12th dealing with Public Information Regulations.

The next meeting of the Commission was scheduled for August 24, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 28, 1981

OFFICIAL

MINUTES-Meeting of the Governor's Information Practices Commission of July 6, 1981.

The Governor's Information Practices Commission meeting was held on July 6, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman; Mr. John A. Clinton; Mr. Robin J. Zee; Mr. Donald Tynes, Sr.; Delegate Nancy Kopp; Senator Timothy R. Hickman; and Mr. Albert J. Gardner, Jr.

A tentative schedule of reports to be discussed at the next meetings was disseminated along with minutes from the meetings of June 8 and June 22, 1981, and a report on the Public Information Act. The minutes from the meeting of May 26th were adopted as official by Commission members.

Mr. Drea noted that two large departments remained to be covered: Health and Mental Hygiene and Public Safety and Correctional Services. He enlisted the assistance of Commission members in getting the input required from these agencies. Delegate Kopp replied that both she and Mr. Judson P. Garrett had spoken with the Secretary of the Department of Health and Mental Hygiene, Mr. Charles R. Buck, and that Mr. Buck professed to have no knowledge of the situation.

The first report discussed examined on the Department of Human Resources. Mr. Dennis Hanratty stated that the report was provided according to the responses from

three principal divisions of the Department of Human Resources. He noted that information had just been received for several smaller programs not included in the report and that this would be added later.

Mr. Hanratty informed Commission members that he had become convinced that the most important factor influencing the record-keeping practices of state agencies, particularly the larger agencies, is the nature of relevant federal regulations. If the federal information practices regulations are fairly general in character, he explained, the state policies generally follow suit. As an example, Mr. Hanratty noted the Department of Education-Division of Special Education, which operates under extensive federal information practices requirements. As a consequence, the division at the state level is quite aware of information practices at the local level. In contrast, the Department of Human Resources does not need to comply with as strict a set of federal information practices regulations. In particular, the Department is not required to monitor the record-keeping practices at the local level.

For example, Mr. Hanratty elaborated, representatives at the state level indicated that local social service agencies are responsible for determining appropriate levels of security. However, state representatives seemed unaware of what specific security measures had been adopted.

Discussion followed on the confusion which has always existed as to whether the local social service agency belongs to the county or to the state. The Montgomery County offices, Delegate Kopp stated, are the only ones being funded by both the county and state.

Senator Hickman related a conversation he had concerning security with a supervisor in a local branch office. Senator Hickman was told that the terminal used to

obtain Unemployment Insurance information was located in the waiting room but was turned away from the client. He also discovered that the password had not been changed in two years.

Mr. Drea stated that even though some confusion exists as to whether authority rests with the state or county, the Commission could certainly recommend that a uniform security policy be adopted. Delegate Kopp indicated that she would like to hear any objections from the local officials regarding issues raised in the draft report. Discussion ensued on whether the draft report should be sent to local agency heads to obtain their reactions.

Mr. Hanratty interjected that it was his impression that the Department of Human Resources believed that it has a state-wide privacy regulation. The problem was that when compared to the information practices of the Division of Special Education, those of Human Resources appeared insufficient. Although the Department of Human Resources' regulations in the area of restricting access of data to third persons are extensive, there was nothing regarding access to the person in interest. Mr. Hanratty added that it seemed that the department is unaware of information practices at the local offices.

Senator Hickman suggested that, ultimately, responsibility for security should rest with the custodian of the data base. Mr. Drea added that the Public Information Act requires that every agency name a records custodian and wondered how this has been handled by Human Resources.

The Commission should also be cognizant, Mr. Hanratty stated, that current Congressional activity could affect the record-keeping practices of State agencies. If programs are eliminated and put into a block grant fashion, then corresponding regulations of those programs would also be eliminated. In some areas, he elaborated,

the State hasn't promulgated as detailed regulations as the federal regulations. Mr. Clinton wondered if the role of the Commission would change if this happened, and asked if there would be a greater responsibility on the Commission to fill the gap. Mr. Zee noted that the loss of federal funding may result in looser control because the individuals who used to perform monitoring responsibilities can no longer be hired. When money is limited, priorities often shift, he concluded.

In the discussion that followed it was suggested that the Commission could issue general guidelines requiring each agency to establish policies in specified areas. Compliance could be monitored by the legislative auditors. It was decided that the Governor's Office in Washington, D.C. would be contacted and asked to keep the Commission staff informed on the status of federally funded programs. In this manner, the Commission could evaluate the extent to which it may need to recommend measures to fill any gaps.

Discussion then ensued regarding the various components of the Department of Human Resources. Mr. Hanratty noted that the Social Services Administration collects sensitive information, frequently from sources other than the subject of the record. Although the Social Services Administration operates under explicit COMAR regulations in the area of disclosure of information, no similar regulations are in effect regarding the issue of the access rights of the person in interest.

A second major issue, Mr. Hanratty explained, is the lack of awareness on the part of state officials with respect to security procedures at the local level.

In comparison to the situation found in the Social Services Administration, the Income Maintenance Administration does have a policy concerning access to records by the person in interest. First of all, the person in interest must have a specific reason for desiring to examine his file. Second, the Income Maintenance

Administration will permit the person in interest to examine only those parts of his file pertaining to his request. Finally, medical and psychological data will not be released.

Mr. Hanratty stated that officials in the Income Maintenance Administration were unaware of security measures enacted at the local level and agreed to obtain this information for the Commission.

Mr. Hanratty indicated that the record-keeping practices of the Employment Security Administration presented far fewer concerns to the Commission staff than was the case of either the Social Services or Income Maintenance Administrations. However, he suggested that clarification is needed from the Employment Security Administration regarding the access rights of the person in interest to medical and psychological information.

Mr. Clinton inquired as to who was responsible for gathering information on the Project Home form and also to what degree the information is available to the person in interest. Mr. Hanratty replied that he could not provide answers to either question, as representatives from the Social Services Administration did not attend his meeting with officials at the Department of Human Resources.

Mr. Hanratty summarized his findings that security of information and access to the person in interest were the major problem areas regarding the record-keeping practices of the Department. Third party disclosure restrictions were adequately covered. Delegate Kopp expressed the opinion that if security was weak, stringent disclosure measures became less meaningful.

Discussion followed on whether a meeting with Department officials would be beneficial. Mr. Hanratty did not feel that there was anyone at the Department who

could present the Commission with a comprehensive overview of current practices. Senator Hickman felt that the agency officials need to be involved and that their support would have to be enlisted if an omnibus privacy bill was to be recommended by the Commission. Mr. Zee agreed with this point. Commission members decided to send a copy of the report to Mr. Luther Starnes, to the Secretary of the Department, and to other pertinent officials, highlighting the concerns of the Commission. A request for a response within two weeks would be included. Then, Mr. Drea suggested, if a meeting was felt to be useful, one could be arranged. Delegate Kopp asked that the letter be quite explicit.and that Mr. Hanratty reiterate his concerns about questions that were not answered at his meeting with the Department.

Discussion ensued on the need to review all reports on the record-keeping practices of state agencies by October in order to have time to prepare an omnibus bill, amendments, or changes in regulations. Mr. Drea felt that the best contribution of the Commission might be a thorough review of existing practices and a comprehensive report with specific recommendations. Senator Hickman disagreed, stating that this would be only a halfway measure. He felt that at the very least, general legal requirements should be established.

Mr. Hanratty next discussed the report concerning the Department of Personnel. He explained that personnel files were maintained both at the Department of Personnel and also at individual agencies. Indeed, several personnel files may exist within one department.

Mr. Hanratty stated that requirements of the Equal Employment Opportunity Commission (EEOC) affect what information is collected by the Department of Personnel. Basically, EEOC guidelines state that unless some item is directly related to an occupational purpose, then it should not be collected in a form visible to the screening officer. Mr. Hanratty expressed a concern that all applicants were required to supply

a driver's license number on the State personnel application form. If a personnel officer obtained a driving record, he would have much the same information that was restricted under EEOC guidelines (e.g. race, sex, date of birth, etc.)

Mr. Tynes added that although the application form was not sent to the hiring agency, many agencies use the same form in their interview process.

Discussion focused on whether the request for a driver's license number was necessary and who should be required to supply it. Mr. Tynes stated that the Department of Personnel had been considering changing this to ask-"do you have a driver's license?" Then, if the qualifications standard required a license, it could be checked in these circumstances.

Mr. Hanratty noted that though he did not check every personnel office in State government, he had come across some application forms that appeared to conflict with EEOC guidelines. Mr. Zee suggested that the Forms Committee might be informed of the Commission's concern over the lack of a standardized application form.

Mr. Hanratty took up discussion of the Data Processing Division of the Department of Personnel. This division includes the legislature in the category of "duly elected and appointed officials who supervise the work of executive branch employees"; as a consequence, therefore, information is released to members of the legislature upon request. Mr. Hanratty noted, however, that the Administrative Services Division does not include legislators in this category and thus routinely denies access. Mr. Drea stated that he did not think that members of the legislature were meant to be included in this language. Mr. Hanratty noted that this issue had never been formally addressed by the Attorney General's Office. Mr. Hanratty added that a prior opinion of the Attorney General indicated that legislative auditors could be permitted access to personnel files if access was necessary in order to perform a statutory duty. Thus, it could

be that members of a legislative committee charged with departmental oversight responsibilities might argue that access to specified personnel files was a necessary aspect of their oversight function.

Delegate Kopp said that it was difficult to imagine when a member of the legislature would need access to an individual state employee's personnel file. Mr. Tynes noted that the Department of Personnel had received several inquiries for specific information from legislators concerning an employee and that the Department indicated that information would be supplied if the employee signed a release. Mr. Drea did not see how anyone could get around the requirement "duly elected and appointed officials who supervise" the work of executive branch employees. This, he felt, would restrict it to the legislator's personal staff.

In response to Mr. Zee, Mr. Tynes explained that files maintained at the Department of Personnel contained the original appointment and any promotion actions. Agency files were usually more extensive and would include such items as disciplinary actions. A file within a division may contain even more information, such as documentation of sick leave abuses. Discussion followed on the manual being prepared by the Department of Personnel that will discuss the type of information that should be in the file, what can be removed, and so forth.

Mr. Drea inquired as to the custodian of personnel records that were maintained in agencies or divisions rather than the Department of Personnel. Mr. Tynes thought that the appointed authority or the personnel chief of the agency would be the official custodian.

The Commission discussed the fact that letters of reference are removed from the employee's file before he is provided access to it. It was noted that an employee is not told that letters of reference are removed before he examines his file; the

employee is only informed of this fact if he inquires. It was suggested that a log could be kept indicating what, if anything, had been removed and why it was removed. Commission members discussed the pros and cons of confidentiality of letters of reference.

Delegate Kopp stated that she would like to know what information is in personnel files and to determine whether there should be a clear rationale and written directives governing such information. She whould also like to know the basis on which information is kept in the Department of Personnel. Mr. Drea asked Mr. Tynes to check into this.

Mr. Clinton reminded the Commission that a security risk analysis had been conducted at the Annapolis and Baltimore Data Centers. The data collected by the Data Processing Division of the Department of Personnel was maintained at these facilities. Mr. Clinton asked that this fact be noted in the final report.

Mr. Hanratty moved on to discuss the State Retirement System. He identified two existent problems: 1) medical data provided by physicians was not available to the person in interest; and 2) most of the sensitive data maintained by the system is disclosable under Article 76-A. He noted that the public character of retirement data was of considerable concern to the Retirement System itself.

Mr. Hanratty explained that Senate Bill 52 (introduced in the 1981 General Assembly) would have limited the amount of information available to the public. Data would be restricted during the lifetime of the member or retiree to the person in interest or his supervisor. After the death of the member, it would be available to beneficiaries and claimants and representatives of the beneficiaries' estates.

Delegate Kopp asked if Senate Bill 52 would permit information to be available

to an individual who had been formerly married to the member or retiree. Mr. Hanratty thought not. Mr. Drea added that it could be obtained through a court order in this situation.

Mr. Drea expressed his belief that an argument could be made that no retirement information should be disclosable. Discussion followed on the respective amount of contributions provided by the State and the employee.

Mr. Hanratty introduced the final section to be discussed concerning the State Accident Fund. The major problem with the Fund, he stated, is that it has routinely been denying requests for data without apparent statutory authority to do so. Mr. Hanratty added that the supervising attorney to the Fund stated that information maintained was accessible to the best of his knowledge. Discussion focused on the difficulty that State agencies encountered when trying to obtain information from the State Accident Fund. Mr. Zee recounted an incident involving a former employee of his department. After being denied access to the information, he had requested to see the regulation or statute allowing the denial and has yet to receive a response.

The meeting concluded with a discussion of House Bill 1287. It was noted that medical records in facilities other than hospitals were not covered by this bill.

The next meeting was scheduled for July 20, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 1, 1981

OFFICIAL AND FINAL COPY

MINUTES OF THE GOVERNOR'S INFORMATION PRACTICES COMMISSION MEETING OF June 8, 1981

The meeting of the Governor's Information Practices Commission was held on June 8, 1981. Members in attendance were: Mr. Arthur S. Drea, Jr., Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, Mr. E. Roy Shawn, and Mr. Albert Gardner, Jr.

The minutes from the meeting of April 27th were approved pending any changes by Ms. Cecilia Wirtz and Mr. Robert Veeder, representatives from the Office of Management and Budget who had testified at the meeting. If there were no changes made, the minutes would be adopted as final. In addition, the minutes of May 11th were distributed.

Mr. Drea noted that he and Mr. Hanratty would be appearing before the House Constitutional and Administrative Law Committee to brief them on the Commission's activities, findings and direction. The members of the Commission were invited to attend.

Senator Hickman suggested that a briefing should also be held in the fall with the Senate Constitutional and Public Law Committee. Mr. Drea said that a joint session of both House and Senate Committees would be the ideal, but that the Information Practices Commission would accommodate the wishes of the committees.

It was pointed out that mileage reimbursement forms should be turned in by the end of June so that reimbursement could be made from the 1980 fiscal year budget.

The Commission then discussed the report examining the record-keeping practices of health facilities. Ms. Thea Cunningham referred to the Addendum which had been

distributed to members. She enumerated the findings of the survey that were listed in the Addendum:

1) A lack of guidelines governing the collection of information.

2) Variable policies on the issue of access to the person in interest (now provided by House Bill 1287).

3) Lack of correction procedures (now provided in House Bill 1287).

4) Lack of redisclosure provisions.

5) Uneven security measures.

6) Lack of a written policy on the Public Information Act.

7) Inadequate notification of rights to the person in interest.

Senator Hickman asked if there were notable differences in operations and policies between like facilities. Ms. Cunningham responded affirmatively. Senator Hickman added that a task force had recommended three years ago that comprehensive rules be adopted across health facilities in the areas of records and disclosure and noted that apparently this had not been done.

Mr. Drea added that since House Bill 1287 had passed, the responses of the facilities to several of these questions may have changed. Since they would be involved in developing new access policies, perhaps patient information and other issues would be addressed.

Ms. Cunningham introduced a representative from the Maryland Medical Records Association, Mr. Morgan, to the Commission. Mr. Morgan is also the Director of Medical Records Department for Anne Arundel General Hospital.

Mr. Morgan stated that the Association had supported House Bill 1287 and has developed a set of interpretive procedures which are currently being printed. He offered to send a copy to the Commission. Mr. Morgan explained that the Association has attempted to define such terms as "reasonable time", "psychiatric record" and "medial record", items critical to the implementation of House Bill 1287. The Maryland Hospital Association, he added, has endorsed these procedures and they will be sent to hospitals throughout the state. Mr. Morgan noted that a copy had been sent to

the Licensing and Certification Section of the Department of Health and Mental Hygiene but that a reply had not been received. A copy was also sent to the Medical Chirurgical Faculty of Maryland who also have not responded as of yet.

Mr. Morgan stated that the Association had also sent out a survey on access rights of the person in interest. The responses which they received will be made available to the Commission.

Mr. Clinton referred to the section in House Bill 1287 excluding "legally disabled" persons from the right of access and asked if the Association had defined this term. Mr. Morgan replied that his understanding of the term was that it pertained to physically or mentally impaired individuals as deemed by a court of law. Discussion ensued as to whether a physical impairment should render an individual incapable of accessing his own records.

Mr. Zee asked Mr. Morgan if the guidelines of the Medical Records Association addressed the categories of people who can access their records. Mr. Morgan replied that the Association feels that the law is fairly clear and they have tried to amplify the law. They have focused on defining terms and clarifying the issues relating to minors who can consent to treatment of certain specified conditions. He added that suggested forms were also being included.

Mr. Zee asked if there would be acceptance of the guidelines put out by the Association. Mr. Morgan replied affirmatively, noting that Association guidelines in other areas had been well accepted in the past.

In response to Senator Hickman, Mr. Morgan explained that the Association exists on both the state and national levels. It is comprised of Registered Record Administrators (RRAs) and Accredited Records Technicians (ARTs); there is also an associate membership for non-accredited workers. Every hospital medical record department, Mr. Morgan added, must have someone who is an ART or RRA by virtue of the Joint Commission on Accreditation Guidelines and Federal Medicare and Medicaid program requirements.

Senator Hickman asked if the four state psychiatric hospitals have staff members who belong to the Association. Mr. Morgan replied that they should have at least one

member. He noted that Ms. Ruth Gilmer, a state medical record consultant to all state facilities, is a member of the Association.

Mr. E. Roy Shawn asked Mr. Morgan if Anne Arundel General Hospital had responded to the survey sent out by the Information Practices Commission. Mr. Morgan replied that it had not, and explained that the Maryland Hospital Association had asked private hospitals to defer responding to the survey. Mr. Dennis Hanratty explained that the Maryland Hospital Association had expressed concerns about the workload that the survey would impose on non-state institutions.

Mr. Hanratty asked if Mr. Morgan was satisfied with existing current provisions regarding mental health records. Mr. Morgan replied that he could not speak for the Association, but felt that based on his experience at Anne Arundel General Hospital, current law was satisfactory. He had found that the biggest area of concern regarding psychological records involved patient access to qualitative statements about his condition. Personally, Mr. Morgan stated, there existed a need for a provision for non-interference in psychiatric information.

Mr. Drea stated that if the Commission liked the guidelines put out by the Association, it might decide to recommend their adoption as regulations by the Department of Health and Mental Hygiene. Mr. Morgan thought that the Association would view this possibility in a favorable manner. As far as he knew, the Department of Health and Mental Hygiene had decided not to promulgate regulations but instead would wait and see how the law was implemented by individual hospitals.

Mr. Drea referred to Senate Bill 1044 which states that the clinician can deny access only where there exists substantial risk of imminent psychological impairment or serious physical injury to the client. Mr. Drea observed that from a legal perspective, there existed a significant difference between House Bill 1287 and Senate Bill 1044 in the area of psychological records. House Bill 1287 places the specialist under no burden to permit access to psychological records to the person in interest. In contrast, Senate Bill 1044 would require the specialist to justify a decision to prevent disclosure. Mr. Drea asked Mr. Morgan for his opinion on this issue. Mr. Morgan

replied that in either case the in-between step exists and that the decision rests with the specialist himself; therefore, he would presumably be able to deny access.

Mr. Drea referred to the issue of redisclosure of information by recipients of data. This point is discussed in Senate Bill 1044 but omitted in House Bill 1287. He asked Mr. Morgan if he thought that this was a major gap in House Bill 1287. Mr. Morgan replied that he did and that he felt that he could speak for the Association on this point. The Association is very interested in this issue and would consider any appropriate legislation.. Mr. Morgan added that the issue of redisclosure and its ramifications is rarely considered by hospitals. He pointed out that the survey results illustrated the need to educate hospitals regarding guidelines that should be issued to recipients of data.

Mr. Clinton pointed out that Senate Bill 1044 would have allowed the client to inspect his record within 30 days of receipt of the request while House Bill 1287 states that inspection is to be allowed within a "reasonable time". He asked if the Medical Records Association had arrived at a specified time period. Mr. Morgan believed that the Association had decided on a maximum of 10 days (perhaps 15 days in exceptional cases) and that the Association had also distinguished between the in-house patient and the post-discharge requests.

Senator Hickman referred to the fact that while House Bill 1287 allows the patient to designate a third party to look at his psychological record, the bill does not prevent a patient to designate a third party to look at his records. Senator Hickman cited the case of the individual who is committed to an institution but does not belong there. Such a person both cannot see his own file or designate a third party to see it. Mr. Morgan replied that he did not think that there was anything prohibiting a patient from getting another medical opinion. This is the major safeguard insuring that a same person is not committed without cause or due to error.

Mr. Hanratty pointed out that in Senate Bill 1044, if the person in interest is not allowed direct access to his records, he is allowed to designate an independent

health professional to review the record. This right is not allowed in House Bill 1287. Mr. Morgan stated that it might be appropriate to amend House Bill 1287 to include such a statement.

Mr. Drea brought up the fact that some hospitals disclose personal information (name, address, medical history) to collection agencies and asked Mr. Morgan if he felt that this was necessary. He replied that insurance companies may have a need to know but added that a collection agency would presumably not need this information. Mr. Drea mentioned that if the patient was sued for nonpayment, some information would be needed to prove that the medical care had been provided. Mr. Morgan added that he could see where some people might need to be reminded about specific information regarding their hospital stay. In any event, Mr. Morgan concluded, any medical information revealed should only be general data.

There were no further questions for Mr. Morgan. Mr. Drea thanked him for coming and providing the Commission with additional information on the implementation of House Bill 1287.

The next report discussed concerned the record-keeping practices of the State Ethics Commission. Mr. Hanratty stated that examination of the State Ethics Commission might allow the Information Practices Commission to develop a standard by which to decide what data should be public information and what should be confidential. He explained that the Ethics Commission requires substantial financial disclosure. Those individuals defined as public officials are required to file a disclosure statement which is a public record. Anyone requesting to see a statement must sign a sheet providing his name and address, date of examination, name of subject, and whether the file was copied or examined. The subject of the record can be notified, upon request, regarding the names of all requestors of his file.

Mr. Clinton asked if members of the Governor's Information Practices Commission should file financial disclosure statements. Discussion ensued on this subject. Mr. Hanratty agreed to check on this issue.

Mr. Hanratty pointed out that the practices of the Ethics Commission might set an example for others. Individuals required to file disclosure statements are informed, when they file, that their records are public information. In response to Mr. Gardner, Mr. Hanratty stated that they are not informed on the form that they can request to be notified if someone inspects their record.

Mr. Hanratty stated that the major question regarding the State Ethics Commission revolved around whether or not this information should be public information. Mr. Heckrotte, who was unable to attend the meeting, had asked Mr. Hanratty to express his opinion that the information should not be collected at all and, if collected, should be accorded a confidential status. Discussion followed on this issue. Commission members in attendence generally felt that there was a definite need for disclosure requirements and that this data should be open for public inspection. Mr. Drea concluded that the issue had really already been decided by the General Assembly.

Mr. Hanratty noted that the draft report suggests that agencies might ask two questions in determining their record-keeping practices: 1) Is there a public interest to be served by the collection or disclosure of the information? and 2) Are the collection or disclosure requirements reasonable? Mr. Hanratty felt that the State Ethics Commission met these guidelines. He expressed the view that these questions could also be used to evaluate other agencies.

The Commission then examined the Workmen's Compensation Commission Report. Mr. Hanratty stated that a considerable amount of sensitive data is collected by Workmen's Compensation Commission. He directed the attention of the members to Page 3 of the report, indicating that the existing statute is rather ambiguous concerning the disclosure of information to third parties. The general practice of the Commission is to allow individuals to examine Commission files. The requestor need not justify his right of access; the requestor also is permitted to peruse the entire file. However, Mr. Hanratty noted, if Workmen's Compensation Commission receives a call from an organization requesting information on several people, the information will not be provided. He added that he did not know what would happen if the organization sent a representative

to the Workmen's Compensation office to examine the files. He felt that they would probably be denied but was not sure upon what basis the denial would be made.

Mr. Hanratty stated that he had two major problems with the Workmen's Compensation Commission. First of all, given the sensitive character of the data collected by the Commission, a good case could be made for assigning such information a confidential status. Second, there did not appear to be a uniform standard used by the Commission to determine who shall be granted access to data. Mr. Hanratty suggested that InformationPractices Commission members consider recommending adjustments in the governing statute. He also felt that as an interim and more immediate measure, the Workmen's Compensation Commission should contact the Attorney General's office requesting an explanation of the statute and then develop appropriate regulations. Mr. Gardner stated that he felt that the need to disclose Workmen's Compensation information should be well defined and relatively narrow. Mr. Hanratty agreed.

Mr. Drea pointed out that the ambiguity of the statute was most probably the cause of this problem. The Public Information Act, he added, didn't exempt the type of records held by Workmen's Compensation. Mr. Hanratty explained that the statute governing the records of the Workmen's Compensation Committee had been in effect since the 1950's but the Commission has not yet requested clarification.from the Attorney General. Mr. Tynes pointed out that the State Accident Fund collects data similar to that of the Workmen's Compensation Commission but noted that the data of the Fund is considered to be confidential.

Mr. Hanratty added that it was his impression that the Secretary-Director of Administration of the Workmen's Compensation Commission would have no objection to a statute restricting the availability of Commission information. Mr. Drea suggested that such a statute could be written to allow appropriate access to insurance companies and employers. Senator Hickman felt that any person authorized by the claimant should also be granted the right to examine the record.

Mr. Zee brought up the point that the Workmen's COmpensation Commission operates very much like a court. Court records are public records and he suggested that

perhaps Commission records should not be treated any differently. Mr. Hanratty replied that a differentiation could be made between information such as name and amount awarded, and detailed medical information which may not come out in court. The first type of information could be released while the second type could be maintained as confidential.

The next meeting was scheduled for June 22, 1981. Mr. Drea stated that he would be unable to attend and that Mr. Clinton would be Acting Chairman. Mr. Hanratty asked if there were any objections to sending the reports that had been discussed to the departmental liaisons. The members has no objections.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
GOVERNOR

ARTHUR S. DREA, JR.
CHAIRMAN

July 1, 1981

OFFICIAL AND FINAL COPY

MINUTES OF THE GOVERNOR'S INFORMATION PRACTICES COMMISSION-JUNE 22, 1981

The meeting of the Governor's Information Practices Commission was held on June 22, 1981. Members in attendence were: Mr. John Clinton, Acting Chairman, Mr. Judson P. Garrett, Senator Timothy Hickman, and Delegate Nancy Kopp.

The first part of the meeting was devoted to bringing Mr. Garrett, newly appointed to the Commission, up to date on recent activities.

The meeting of the Commission held at the Motor Vehicle Administration (MVA) in Glen Burnie was reviewed. Mr. Dennis Hanratty noted that a copy of the minutes provided by MVA and a copy of the minutes taken by the Commission staff had been sent to Commission members. After discussion, it was decided that a letter would be sent to MVA summarizing the points that were made in the meeting along with a copy of the Commission's version of the minutes.

Mr. Hanratty explained that after draft reports had been discussed among Commission members, they were being sent to the appropriate state agency. The reports have been accompanied by a letter requesting that any inaccuracies be corrected. Mr. Hanratty stated that to date he has received a response only from the Department of Education. Commission members decided that a more explicit letter should accompany the reports, stating that the Commission assumes there are no inaccuracies unless a response is received by a specified date.

Mr. Hanratty returned to the discussion of the meeting with MVA and expressed his

feeling that MVA had virtually conceded all of the points made in the report. In addition, he thought that a few other issues came to light that had not been discussed in the report. One of these, Mr. Hanratty noted, was the fact that Medical Advisory Board records turned over to the courts became the temporary property of the courts and are treated as public information. Discussion followed on other aspects of the meeting, including the following:

1) The expungement policy of MVA.

2) The practice of MVA in selling lists.

3) The lack of notification to individuals regarding the right to be removed from such lists.

4) The absence of a security risk analysis.

5) The lack of security at court terminals handling MVA records.

Delegate Kopp asked if any of the draft reports had been adjusted. Mr. Hanratty stated that they had not. He explained the process that he has used to gather information and compile it into reports. Any changes, he stated, will be incorporated into the final report.

Mr. Hanratty noted that he had found that federal information practices requirements imposed on state agencies are quite varied. For example, the Department of Human Resources operates under strict federal requirements prohibiting disclosure but limited regulations governing access to the person in interest. The Department of Education, on the other hand, is affected by detailed federal regulations pertaining to access. Discussion followed regarding whether federal regulations relating to state human services record-keeping practices were intended to limit access to the person in interest or whether they were just silent on the subject. The question was raised whether the Commission had the authority to expand upon federal regulations. Mr. Garrett thought the original intention of the federal government was to limit the ability of the person in interest to examine human service records. Mr. Hanratty concluded that unless a specific information practice issue is covered by federal regulation, the larger state agencies do not seem to have a policy one way or the

other.

Mr. Garrett asked about the stamp, "Working Papers-Not for Public Dissemination", used to mark draft reports. He felt that such a practice was not in keeping with the Public Information Act and that it would be difficult to deny access if someone requested a copy of a report. In discussion, it became evident that the meaning of the stamp was not to deny access to any reports but to insure that the reports were not disseminated to the public until they were determined to be factually accurate. Commission members agreed that this stamp should be modified to read "Working Papers-Subject to Revision."

Senator Hickman expressed the concern that the Commission has not yet asked agencies for a catalog of information systems or shown them a model draft of a privacy act. He felt that agency reactions would be essential before the Commission considers drafting an omnibus act. He also felt that their reactions would be vital is assisting the decision of the Commission in deciding whether to recommend an omnibus act or to suggest legislation in specific areas. Mr. Hanratty replied that in his informal discussions with agency officials, he had encountered objections to only two of the "Issues Regarding Privacy" contained in the Commission's Interim Report: disclosure logs and the catalog of record systems. The fear of most agencies, he explained, is that such measures would cause enormous paperwork requirements without producing concomitant benefits. Mr. Garrett suggested that part of the burden that agencies may anticipate is really already there, since by statute, records retention schedules are presently required from each agency. Mr. Hanratty observed however, that the information contained in these schedules is limited and not as extensive as would be required for a catalog of record systems.

Mr. Clinton asked Mr. Hanratty for his thoughts regarding the usefulness of a catalog of record systems. Mr. Hanratty stated that he had not yet formed a definite opinion on the subject. Recalling the testimony of the two representatives of the Office of Management and Budget at the Commission's April 27, 1981 meeting, he noted that the federal experience indicated that few members of the public referred to the

records system catalogs found in the Federal Register when requesting materials. Thus, it might be possible to dispense with the publication requirement. He felt that the catalog itself is a good practice for agencies as a management tool in making officials sit down and acknowledge records that they are keeping. The catalog would also be helpful, Mr. Hanratty suggested, if there were an overseeing body in charge of information practices.

Regarding Senator Hickman's point about the Commission obtaining a catalog of record systems from the various agencies, Mr. Hanratty noted that to a certain extent the draft reports themselves provide such a catalog. He added, however, that there have been significant variations in agency responses. Some agencies have provided an extensive breakdown of their record systems, while others have lumped various systems together by division.

Discussion followed concerning those agencies that have not been reviewed by the Commission. The lack of response of the Department of Health and Mental Hygiene was brought up. Delegate Kopp and Mr. Garrett offered to speak with Secretary Charles Buck about the overdue input from the Department. Mr. Hanratty explained that considerable difficulty had also been encountered in obtaining copies of forms available to private collection agents at the University of Maryland Hospital.

Mr. Clinton opened discussion of the Regional Planning Council Report. Mr. Hanratty said that the Regional Planning Council has only one program-related record system-that pertaining to participants in the Section 8 housing program. Data pertaining to this program is forwarded to the Council from the individual counties. The Council noted that any requests for access or disclosure are referred to the county where the original form is kept. Mr. Garrett asked if such a practice was compatible with the Public Information Act. Mr. Hanratty replied that that was probably not the case, since the Council becomes a de facto custodian of the information. The Regional Planning Council told Mr. Hanratty that they have never had any requests from third parties not authorized to examine the data.

Discussion then turned to the subject of the Public Information Act. Mr. Garrett asked if the Commission was asking for procedures or policies that agencies have drawn up to implement the Public Information Act. Mr. Hanratty replied that a model regulation had been designed by the Attorney General's Office and was being used by many agencies. Mr. Hanratty noted, however, that few agencies provided any specificity in these regulations in identifying how particular record systems are handled. Mr. Garrett felt that such practices do not constitute compliance with the requirements of the Act. Another issue mentioned by Mr. Garrett was the cost of copying charged under the Public Information Act. He stated that fees are often used to discourage applicants from obtaining public information. Mr. Hanratty recounted the case of Mr. Lee Hoshall who was quoted a fee by the Baltimore City Police Department of $1,787 for 600 pages.

Returning to the Regional Planning Council report, Mr. Hanratty stated that the Section 8 regulations promulgated by the federal government appeared to contain no references to information practices. Thus, he thought that state and local agencies were free to develop appropriate procedures on their own. Mr. Garrett expressed the opinion that it was too much to expect Mr. Hanratty to find all federal regulations governing each agency. He suggested that the legal counsel for each agency be contacted and asked to provide these in writing. Delegate Kopp added that this should be done even if Mr. Hanratty researches the regulations himself.

The Commission then turned its attention to the draft report examining the record-keeping practices of the Maryland Automobile Insurance Fund (MAIF). Mr. Hanratty explained that the situation at MAIF illustrates a generic problem. Unless there is a section of the Code or a federal regulation stating that records are confidential or unless records are specifically excepted in the Public Information Act, then the data held by a state agency is public information. There are a number of systems, Mr. Hanratty asserted, that consequently fall between the cracks. In Mr. Hanratty's opinion, the Public Information Act mandates the disclosure of a considerable amount of personally identifiable data that is sensitive and should be confidential.

Mr. Garrett proposed that the most that could be done now would be to identify the systems that concern the Commission and see if they lend themselves to general classification. The Commission could then determine the most appropriate means to address this problem.

Discussion ensued on the type of data collected by MAIF and possible reasons justifying the public character of the data. Mr. Garrett suggested that perhaps MAIF data should be public to ensure that the agency is performing its functions in an appropriate manner. Mr. Hanratty disagreed, asserting that such an approach could also be used to require public inspection of other types of records, such as human services data.

Mr. Clinton asked about the security of the claims systems records. Mr. Hanratty replied that the response of MAIF indicated that there did not exist any general security provisions in the manual portion of the claims record system, where the most sensitive data is maintained.

Mr. Clinton referred to the statement in the report that the MAIF applicant is not aware of the public status of his records. Mr. Hanratty asserted that this is a problem in many agencies. Discussion followed on the right of a citizen to be informed about both the uses of the data he provides to the government and the confidential or non-confidential status assigned to that data.

The next meeting was scheduled for July 6, 1981.

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 - May 26, 1981

The meeting of the Governor's Information Practices Commission on May 26, 1981 was held at the Motor Vehicle Administration in Glen Burnie. Members of the Commission in attendance were: Mr. Arthur S. Drea, Jr., Mr. John Clinton, Mr. Robin Zee, Mr. Donald Tynes, Senator Timothy Hickman, Mr. Wayne Heckrotte, Mr. Albert Gardner and Mr. E. Roy Shawn.

Mr. Drea opened the meeting by thanking Motor Vehicle Administration (MVA) officials for scheduling the meeting and reiterated the Commission's desire to discuss the issues outlined in the report which had been completed by the Commission staff on MVA's record-keeping practices.

Mr. Hanratty referred to the list of questions that he had sent to Mr. Bertak, MVA's liaison with the Commission, and the list of responses from MVA, both of which were attached to the report. Mr. Hanratty referred to the first question, asking what type of personal information is collected. He stated that MVA's response had indicated that the only personal information maintained by the administration was that collected by the Medical Advisory Board. Discussion followed on the need for a definition of "personal information". After the term was defined, Ms. Agnes Stoicos, Associate Administrator, indicated that MVA's response to this question was erroneous. Because MVA records are public information, this data had not been considered to be personal information.

The second issue brought up by Mr. Hanratty was the question concerning the access rights of the person in interest. MVA had responded that the individual has this right. However, Mr. Hanratty added, the manual of the Medical Advisory Board indicates that the person in interest only has a limited right of access. His lawyer is allowed to see "confidential" material but cannot reveal it to his client. MVA officials pointed out that often the information in Medical Advisory Board files may be detrimental to the person in interest. The papers which are confidential have been stamped as such by the doctor himself.

Discussion followed on the legal basis for restricting access. It was pointed out that this was the result of the settlement of a court case. Mr. William Long, Assistant Director, Division of Systems Planning and Implementation, pointed out that the records of the Medical Advisory Board are confidential by statute; however, the statute does not specify issues related to the person in interest.

Mr. Hanratty moved on to a third question directed to MVA: Are individuals made aware of their access rights? Although MVA had responded affirmatively, Mr. Hanratty questioned whether most citizens are aware of this right. Ms. Stoicos explained that MVA was in the process of revising the drivers' handbook and that a statement was to be included in the new handbook indicating the public character of driving records. It was suggested in the discussion that ensued that currently licensed drivers could be informed of their rights through their license renewal packets. Mr. Long added that expungement requirements might also be made known to the public in this fashion.

The subject of disclosure logs was introduced. MVA officials stated that such logs are kept and that an individual can request to see them. Mr. Hanratty noted that although MVA had indicated that the reason for the request was listed in the disclosure log, no reason was required when a Commission staff member visited MVA and requested to view a record. Mr. Long stated that this was required when a list was requested

or when a lawyer wanted a driving history in excess of three years.

MVA representatives pointed out that state, local and federal governmental agencies can obtain a total record. Mr. Hanratty noted that this was not indicated in MVA's reply to his questions.

In addition, the lack of verification of the identity of the requestor was discussed. MVA representatives indicated that procedures in this area were being developed and agreed that maintenance of disclosure logs was pointless without verification of the identity of the requestor.

Mr. Hanratty also discussed the response of MVA to the question regarding whether a security risk analysis had been conducted. MVA officials stated that they had not understood exactly what was entailed by the term "risk analysis." Mr. Heckrotte and Senator Hickman discussed the various aspects of a risk analysis. MVA representatives noted that, to their knowledge, no such analysis had been conducted. The officials stressed that physical security was good and indicated that they had focused on security measures aimed at preventing the altering of data rather than measures preventing access to data since driving records are public documents. It was also noted that a security officer had recently been appointed. Mr. Drea suggested that the Commission might recommend that a risk analysis be performed across the state for every agency.

Discussion ensued concerning the accessibility of MVA records through the judicial system. Mr. Robert Smith, Assistant Attorney General, brought up the point that once Medical Advisory Board records are turned over to a court on appeals, they become court records and are available for public inspection. Mr. Drea inquired as to who was responsible for the security of computer terminals in the courts. MVA officials indicated that responsibility fell within the jurisdiction of the courts. Mr. Drea

cited an incident illustrating the need for a closer examination of the security of these terminals. Senator Hickman added that security should be the responsibility of the agency that generates the information.

The issue of expungement was again discussed. Expungement is not an automatic process, but instead is only performed upon the request of the driver. MVA representatives explained that when the driver meets the criteria for expungement, he must sign a statement indicating that there are no outstanding citations that have not been adjudicated. If expungement were automatic, it would be difficult to verify whether any outstanding citations existed.

Mr. Hanratty noted that the Commission had received a complaint from a driver who stated that he was denied access to his complete record and was only able to obtain it after signing a statement indicating that it was for his own personal use. MVA representatives felt that this was probably due to a clerical error. Mr. Hanratty asked that MVA officials check with the Gaithersburg office to find out what happened.

Mr. Hanratty asked if MVA representatives felt there should be any restrictions on the information disseminated by MVA or whether the individual driver had any right to restrict the use of information. MVA officials indicated that they would provide written comments to these issues to the Commission.

Senator Hickman stated that the Commission had delinated several "principles of privacy" in the Interim Report and asked if MVA representatives had any disagrement with any of the principles. Mr. Hanratty added that he had sent the Interim Report to Mr. Bertak. MVA officials indicated that written comments would be forwarded to the Commission.

The next meeting of the Information Practices Commission was scheduled for June 8, 1981.

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
GOVERNOR'S INFORMATION PRACTICES COMMISSION

HARRY HUGHES
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ARTHUR S. DREA, JR.
CHAIRMAN

June 3, 1981

OFFICIAL -MINUTES OF GOVERNOR'S INFORMATION PRACTICES COMMISSION-May 11, 1981

Members in attendance at the May 11th meeting of the Information Practices Commission included: Mr. Arthur S. Drea, Jr., Senator Timothy Hickman, Mr. Dennis Sweeney, Mr. Wayne Heckrotte, Mr. Donald Tynes, Mr. Robin Zee and Mr. John Clinton.

The minutes from the January 19, 1981 meeting and the two public hearings were approved and adopted as official.

The focus of the meeting was the discussion of four reports which had been previously distributed to Commission members on the Motor Vehicle Administration (MVA), the State Scholarship Board, the Elections Board, and the State Department of Education.

Mr. Hanratty opened discussion of the MVA report by noting that a copy had been sent to Mr. Bertak, liaison with the Department of Transportation, with a request for comments from MVA officials. In addition, Commission members expressed a desire to meet with MVA representatives. After discussion, Commission members agreed to schedule this meeting tentatively for May 26 at 3 P.M. and to determine if it would be more convenient to hold the meeting at MVA.

Mr. Drea informed the Commission members that House Bill 1287 had passed in spite of the Commission's request that it be deferred. He noted that it had not yet been signed by the Governor. (House Bill 1287 was signed by the Governor on May 12, 1981.) Mr. Hanratty added that the bill is discussed in

the report on health facilities and that a copy of the bill is attached to the report. The Commission decided that it would not express an opinion on the bill to the Governor.

Mr. Hanratty reviewed the pertinent issues brought out in the MVA report. He noted that Appendix A contains a list of questions on record-keeping practices which was sent to MVA and that Appendix B consists of the responses of MVA. Mr. Hanratty stated that he has some disagreement with specific responses.

First, in response to a question concerning what type of personal information is collected, MVA replied that the Medical Advisory Board is the only area that collects personal information. Mr. Hanratty felt that the term "personal information" had been misinterpreted.

Second, when asked whether individuals have access to information pertaining to them, MVA replied affirmatively. Mr. Hanratty explained that this is true with the exception of the Medical Advisory Board files. These are in a special category which allows only limited access. Mr. Hanratty stated that the Procedures Manual that governs the policies of the Medical Advisory Board allowed access to "general" records to the person in interest. A lawyer is allowed access to "confidential" records but may not reveal information in those records to his client.

Mr. Sweeney added that, in his experience, no one was allowed to see the record held by the Medical Advisory Board. He suggested that this access to a lawyer may have come about as a result of a compromise settlement of a lawsuit. It was noted that quite a few cases referred to the Medical Advisory Board dealt with alcoholism, psychiatric problems, senility, etc., which are situations where personal information (if available to the person in interest) might be detrimental.

Senator Hickman added that at the White House Conference on Privacy held a few years ago, there was a notable disparity between states in their definitions of what information is personal, what is public, and what is confidential.

At this point, Mr. Drea interjected a procedural note. He suggested that the Commission members discuss all of the reports and then, when finished, return and summarize the issues which they feel should be addressed. The members agreed to this.

Mr. Hanratty mentioned a third area of disagreement with the responses of MVA. When asked if an individual is made aware of his access rights, MVA replied that access is provided in law. Currently, Mr. Hanratty suggested, the public is not told of their access rights in any of the materials issued by MVA. He felt that MVA should institute policies to educate the public of its rights.

A fourth problem identified by Mr. Hanratty involved the degree of awareness of individuals to the uses of information pertaining to them. Although MVA responded affirmatively, Mr. Hanratty suspected that many people do not know that anyone can obtain a copy of their driving records. In light of the fact that an individual is not informed through MVA materials that driving records are public information, it seemed unlikely to Mr. Hanratty that individuals are aware of the uses to which the information can be put.

Mr. Hanratty discussed the issue of disclosure logs as a fifth area of disagreement with the MVA report. The Administration indicated that such logs are maintained and that, for all records, name and address of subject, reason for request, and name and address of requestor are recorded. Mr. Hanratty noted that the forms used to view a driving record and to purchase a certified copy of such a record do not provide a space to record the reason for the request. Mr. Hanratty also stated that a staff member of the Commission had visited the MVA headquarters and asked to examine and obtain a driving record. The clerk did not ask the staff member to provide a reason for the request, nor did any verification of identity occur.

Mr. Zee asked about the purpose of verifying the identity of the requestor. Mr. Hanratty replied that this would allow the person in interest to examine the logs to determine who has been looking at his record; without verification of

identification, the logs could easily contain fictitious names.

Discussion ensued over the appropriateness of permitting public access to driving records. Mr. Sweeney questioned the justification of the public character of such records. Discussion among members centered on the many uses that agencies make of driving records and how information contained in a record can be detrimental to an individual seeking employment, even when driving is not required in his job. Members generally agreed that when an individual applies for a license, he should be informed of the uses to which the information can be put. Limited access (except for justifiable exceptions-law enforcement) was suggested. An individual could then authorize access to his record to whomever else he wanted, such as an insurance company.

The Medical Advisory Board was mentioned again by Senator Hickman. He cited the example of an individual over 70 who is required to appear before the board for review. Senator Hickman questioned whether an attorney can obtain the name of a person who files a complaint against another. Mr. Hanratty replied that, according to his interpretation, the attorney could find out but could not disseminate that information to his client. Senator Hickman suggested that in the case of malicious complaint, the attorney could ascertain who filed a complaint but the individual would not be able to sue.

Mr. Hanratty noted that the sixth response of MVA which appeared problematic involved the issue of risk analysis. MVA indicated that a risk analysis had been conducted, observing that authorized personnel only access certain information. Mr. Hanratty felt that this answer gave the impression that a risk analysis had not been performed. Commission members discussed what is entailed by a risk analysis. Mr. Heckrotte described it as a procedure to determine the worth of the information, the likelihood of there occurring unauthorized access to the information, and the potential loss if the structure housing the information was damaged. Senator Hickman noted that the Comptroller's Office appeared to have been the only state agency to have conducted a risk analysis.

Mr. Hanratty mentioned that he had received a complaint from a Montgomery County bus driver. The bus driver alleged that he had been charged with the unauthorized use of a vehicle while a minor, and that the matter had been handled through the juvenile justice system. When he happened to examine a copy of his complete driving record, he discovered that the juvenile conviction was included.

Senator Hickman explained that Montgomery County was the only county that informed the MVA of juvenile driving cases that were alcohol related. He noted that the 1981 General Assembly had passed a bill that would require the other counties to conform to the practice of Montgomery County.

With regard to the case of the Montgomery County bus driver, Mr. Drea observed that another area of concern was the fact that his employer had obtained a copy of the complete record, not merely the last three years. Mr. Drea noted that according to the responses received by MVA, the employer, Montgomery County government, should not have been provided with a copy of the complete record. However, if the request had been made by the Montgomery County police, the entire record would be provided. Mr. Hanratty noted that the bus driver also alleged that he had experienced considerable difficulties in obtaining a copy of a complete record for himself.

The final issue raised by the case of the bus driver involved that of expungement. Mr. Hanratty noted that MVA is required to expunge driving records if certain criteria are met. However, expungement is not an automatic process; the individual driver must request expungement. In Mr. Hanratty's opinion, this procedure only rewards those drivers who are knowledgeable about the expungement process. The Montgomery County bus driver asserted that he could have had his conviction expunged, but he was not aware of the fact that this could be done.

The Commission briefly examined the report dealing with Voter Registration Records. Mr. Drea noted that the report indicated that there were some variations in the type of information collected from individuals by the different

county boards of election. Mr. Drea observed, for example, that Prince George's County requires applicants to state whether they are military or civilian, while two counties require marital status. Mr. Heckrotte felt that the only types of information that should be collected were name, address and party affiliation. Mr. Hanratty noted that the report also indicated that there exist significant variations in the type of information disseminated by the boards. The Commission also discussed the appropriateness of using voter registration lists for other purposes, such as jury selection.

The third report discussed by the Commission was the State Scholarship Board. Mr. Hanratty expressed concern that there were no procedures governing the dissemination of information for the Senatorial Scholarships. Once financial data is sent to the 43 Senators, there is no one really responsible for the information and no regulations governing its protection. Discussion focused on whether the State Scholarship Board has the legal authority to issue regulations requiring Senators to safeguard the information. While this point was not resolved, it was agreed that the Senate itself could develop "in-house" regulations.

The final report examined the Department of Education. Mr. Hanratty noted that the record-keeping practices of the Department were impressive. Because the Department operates under fairly strict federal regulations, the Department of Education has developed a number of procedures such as disclosure logs and access to the person in interest, which might be considered state-wide by the Commission. Mr. Hanratty visited the Anne Arundel County Board of Education and found that the County had developed very strict standards regarding the dissemination of personally identifiable data. In general, the County Education Officials felt that the county has found that the federal privacy legislation had been quite beneficial in terms of protecting students' records.

Mr. Sweeney questioned whether the Department of Education would be a good comparison to all agencies. He felt that the personnel are highly sensitized

to these issues due to the nature of their training.

Returning to the main Education Report, Mr. Hanratty noted that Vocational Rehabilitation Records are less regulated than others, and directed the Commission's attention to a chart comparing these records with those of Special Education. Mr. Sweeney asked if there wasn't a state statute prohibiting the release of vocational rehabilitation records except by court order. Mr. Hanratty replied that he was not sure.

Mr. Hanratty noted that in his visit to the Anne Arundel County Board of Education, he discovered that the development by that board of a catalogue of record systems had not resulted in a reduction of the number of records or in a reduction of personal data collected. This point coincided with a concern expressed by Mr. Hanratty over the amount of information collected from individuals by education agencies. In the report examining the record-keeping practices of the Department of Education, a concern was expressed about the amount of personal data required by the Pupil Data System.

Mr. Zee asked about the jurisdiction of the Commission over the collection of data. Mr. Drea replied that the Commission can made recommendations in this area. Senator Hickman added that some states have a statute saying the individual is not required to answer any questions unless the agency has the statutory authority for asking the question.

Mr. Hanratty concluded the analysis of the Department of Education by referring to a list of questions that could be asked about the record-keeping practices of the Division of Vocational Rehabilitation.

In the discussion that followed, it was agreed that reports would be sent to the agencies after they had been reviewed by the Commission. A cover letter would highlight issues of interest to the Commission and request comments and feedback.

The meeting was concluded with the staff being instructed by the members to attempt to schedule a meeting with MVA officials on May 26th.

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 APRIL 27, 1981

The April 27, 1981 meeting of the Governor's Information Practices Commission was devoted to an examination of the federal Privacy Act of 1974 (Public Law 93-579). Members of the Commission in attendance were: Mr. Arthur S. Drea, Jr., Mr. Albert J. Gardner, Jr., The Hon. Timothy R. Hickman, Mr. Donald Tynes, Sr., Mr. Robin Zee, Mr. E. Roy Shawn, and Mr. John Clinton.

It should be noted that PL 93-579 is much more explicit than current Maryland statutes in the area of confidentiality of personal records in the possession of government agencies. As a consequence, the Commission was anxious to assess the effectiveness of the Privacy Act. With this in mind, the Commission heard testimony from Ms. Cecilia Wirtz, Assistant General Counsel for the Office of Management and Budget (OMB) and Mr. Robert Veeder, Office of Information and Regulatory Affairs, OMB.

Ms. Wirtz began by outlining some of the materials which OMB had submitted to the Commission staff. She then explained that OMB has the responsibility to give oversight and guidance in the area of privacy and has the authority to issue regulations and guidelines. Mr. Veeder stated that an OMB Guideline (dated July 1, 1975) goes through the act point by point, attempting to describe the kinds of situations that were anticipated to occur under each section. OMB Circular A-108, he added, delineates the responsibilities of federal agencies in complying

with PL 93-579.

Ms. Wirtz and Mr. Veeder explained that the Privacy Act defines a record as a single item of information. They defined a system of records as a collection of these records - retrieved by reference to a personal identifier. Records not retrieved in this manner, they noted, are not covered by the Act. Before an agency can collect and use information, notice must be published in the Federal Register describing systems of records, giving uses of information, safeguards, and so forth. Agencies are also required to submit a report to OMB and Congress on other aspects of information collection.

Ms. Wirtz added that publication in the Federal Register is public notice, and that there is nothing in the Privacy Act giving an individual a legal right to stop an agency action. Ms. Wirtz cited a case two years ago involving the Department of Health, Education, and Welfare (HEW) when it ran a program on welfare recipients on the federal payroll-both civilian and military-to see who was defrauding the government. The American Civil Liberties Union objected and the Department of Defense (DOD) stopped the process. However, OMB maintained that the process was legal so long as DOD published a notice in the Federal Register identifying the fact that it was going to release this information to another agency for this purpose.

Ms. Wirtz observed that an agency must notify an individual when information is collected (through a Privacy Act notice on every form) of the purpose of collection, routine uses of the information, and whether disclosure of the information is mandatory or voluntary. If a use of the information falls within the category of "routine use"-defined as a use compatible with the purpose for which the information was originally obtained-the agency can create routine uses subsequent to collecting the information. As long as this is published in the Federal Register, it permits dissemination both within and outside of the Federal government. Ms. Wirtz stated that this is the main tool for disseminating information without the individual's permission. In addition, she noted that Subsection B of the Privacy

Act governs third party access and lists 11 circumstances where the agency does not need the permission of the individual. In these cases, disclosure is at the discretion of the custodian of the record.

Ms. Wirtz explained further that the agency head determines whether a subsequent use is a "compatible use" and there has been no case where the compatibility standard had been challenged in federal courts. She asserted that the Privacy Protection Study Commission had identified the "routine use" section as one of the most abused sections of the Privacy Act. Ms. Wirtz added that the Act also allows the individual the right of access and provides for quality control (in terms of records management-what agencies should keep, how long, accuracy, etc.).

There has been some conflict, Ms. Wirtz stated, over the fact that the Privacy Act only deals with information pertaining to an individual (defined to be a citizen or legal alien). It deals neither with businesses nor to an individual operating in his business capacity. Mr. Veeder added that correspondence filed by date (if an agency is only interested in when someone wrote, not who wrote), is not considered a record system unless it is changed and information is retrieved by a personal identifier.

Senator Hickman asked if information that is not considered to be in a record system under the Privacy Act could be disseminated to someone who then established and maintained the information in a retrievable system. Ms. Wirtz replied that the second person would create a record system if he used a name or identifier to retrieve the information. It became apparent in further discussion, that a system of records covered by the Privacy Act could be excluded from the provisions of the Act if the system were no longer retrieved by name or personal identifier. The agency would then be able to disclose the information to someone outside the federal agency who could reestablish the system using identifiers.

Another point brought up by Ms. Wirtz was the fact that OMB rarely receives questions regarding individual access. Most inquiries concern such things as whether or not systems exist and whether information can be disseminated.

In response to a question from Mr. Drea, Ms. Wirtz discussed the meshing of the Privacy Act and the Freedom of Information Act (FOIA). She said that the Privacy Act has its own definition of a record while FOIA does not. In addition, Ms. Wirtz asserted that the Privacy Act has two provisions referring to FOIA. One (the B2 provision) states that an agency may release information without the individual's permission if it would be required to be released under FOIA as public information. The second provision (Subsection Q) states that an agency may not use the specified exemptions of FOIA to deny records to an individual which he would otherwise be able to receive.

Under FOIA, Ms. Wirtz explained, a typical B-5 denial is the intra-agency memorandum exemption. Agency memos in an individual's file (if the file is in a record system) cannot be witheld if he requests access under the Privacy Act because there is no comparable exemption under the Privacy Act. If he requested access under the FOIA, however, these memos could be witheld.

Under the Privacy Act, the individual has the right to obtain all of his records with three exceptions:

1) D5-records compiled in reasonable anticipation of civil action or proceeding

2) J exemptions-CIA/law enforcement records

3) K exemptions-general exemptions covering the rest of the agencies

Under a J and K exemption, the individual gets everything except information which would give or lead to the identity of a confidential source.

The problem, Ms. Wirtz stated, is that there exists a large area that is unclear. For example, what does the agency do if the individual requests records under the Privacy Act versus FOIA or FOIA versus the Privacy Act since they have different provisions and treatment? A request under one Act may be denied while under the other, the information could be released.

Ms. Wirtz added that there is a provision under FOIA-the B3 exemption-that states that if there is another federal statute that limits access to certain records-the agency can deny access to those records. Based on this, there are three

circuit court opinions asserting that an agency may withold information if the request was made under FOIA and if under the Privacy Act the agency would have been able to deny access. This has led, Ms. Wirtz explained, to controversy over the fact that an agency can deny a request from an individual under FOIA by reading the Privacy Act into the situation but at the same time can't deny the information to a third party. Ms. Wirtz offered to send copies of these court opinions to the Commission.

Mr. Drea asked if there had been much litigation on the issue of routine use. Ms. Wirtz responded negatively.

Mr. Zee asked if the National Archives and Records Service had a different definition of a record. Mr. Veeder responded that the Records Service was more concerned with a record as a physical entity while the Privacy Act focused on the informational content of a record.

In response to a question from Mr. Zee, Mr. Veeder replied that the National Archives and the Records Service has record schedules for disposition. He noted that under the Paper Reduction Act, OMB was charged with records management and was attempting to mesh the different concepts.

Ms. Wirtz added that there is only one provision of the Privacy Act that deals with the length of time a record should be kept, and it deals with the accounting of disclosures, not the record itself. This accounting is kept for the life of the record or five years, whichever is longer.

Mr. Veeder stressed two provisions of the Privacy Act:

1) the requirement to give public notice of a system of records

2) an accounting of what was done with the information

Mr. Veeder said that 6-7,000 notices are published each year with an approximate cost of over one million dollars. In six years of overseeing the Act, OMB averaged only 7 comments a year. No one ever asks to see the accounting logs, he added, which also cost a great deal to set up and operate. Mr. Veeder noted that the Reagan administration is looking for ways to cut back and new ways to accomplish the goals

of the Privacy Act. In addition, Ms. Wirtz stated, there are provisions for correction of records. The agency is required to go back and inform previous recipients of records of any corrections that have been made.

In response to a question from Mr. Zee as to whether there had been any thought of combining FOIA and the Privacy Act, Ms. Wirtz discussed the history of the two Acts. Mr. Veeder mentioned that there had been some talk about taking the access provisions out of the Privacy Act and putting them into FOIA.

Ms. Wirtz added that the Privacy Act will be amended by the Debt Collection Act of 1981. Discussion ensued on the differences between the last administration and the present. She noted that this administration is emphasizing efficiency-meaning data and data sharing. The pending amendment creates a new exemption to permit the release of bad debt information to credit reporting bureaus.

Senator Hickman asked about the status of guidelines issued by the Federal Privacy Protection Commission for state and local governments and the private sector. Ms. Wirtz replied that the Commission made recommendations in such areas as Medical Records and that these recommendations were adopted as legislative proposals by the Carter administration. She noted that these proposals did not get very far.

Mr. Hanratty asked if there was a section of the Privacy Act that could be eliminated in order to minimize costs without jeopardizing the spirit of the Act. Mr. Veeder and Ms. Wirtz mentioned the publication requirement of the systems of records as being one area where savings could be made.

Discussion followed on the need for training of federal employees in the Privacy Act. Ms. Wirtz stated there is not enough awareness of the mechanisms of the Act. Ms. Wirtz said that a number of legislative proposals in the last two months advocate things that are already permitted by the Privacy Act; however, many people are not aware of the various provisions of the Act.

Ms. Wirtz and Mr. Veeder added that some agencies which receive more requests are more familiar with the Act and that larger agencies often have one individual handling privacy issues. They also noted that gathering record systems has led to identification of duplication, which has been beneficial.

In response to a question from Senator Hickman as to whether there had been any documentation of the savings caused by the Privacy Act, Mr. Veeder responded negatively. The cost estimates have been done only on start up and operating costs; however, he noted that these are very hard to isolate.

Senator Hickman asked if actual publishing and dissemination costs could be distinguished from the cost of putting information into a certain form. Mr. Veeder replied that the million dollar figure referred to earlier only covers the cost of publication in the Federal Register.

In the discussion that followed, Mr. Veeder stated that (before the Privacy Act required it) most agencies did not have a listing of their record systems. The agencies with good records management programs had files identified for disposition purposes and could translate that into a record system.

Mr. Veeder noted that most individuals making Privacy Act requests ask for all information pertaining to them and do not ask for access to a specific record system. Thus, it would appear that the record systems statements appearing in the Federal Register are not extensively used by individuals.

Ms. Wirtz mentioned that some agencies have tried to deny access because the individual cannot identify the exact system of records. She also noted that under FOIA, the agency can collect search and reproduction costs but that agencies can only collect reproduction costs under the Privacy Act. The assumption is that agencies are aware of the personal record systems in their possession.

Senator Hickman asked about the number of persons requesting to examine personnel documents. Ms. Wirtz replied that most requests are in the personnel area with the number depending on the agency. She noted that these requests are not on the volume of FOIA requests.

In response to Senator Hickman, Ms. Wirtz stated that FOIA provides the right of access to government records in general, there being no requirement to identify systems. Senator Hickman wondered how an agency can disseminate information under FOIA if it doesn't have a catalog of records. Ms. Wirtz replied that FOIA deals with everything and not just information concerning individuals.

Mr. Gardner asked if there were any figures on the number of agencies that identify one or more individuals specifically charged with privacy functions. Mr. Veeder replied that 15 agencies had at least one person in this area and that perhaps a total of 30 persons spend most of their time on privacy. He noted that there are simply not that many requests for information. Mr. Veeder added that it is difficult to determine what are actual privacy requests. Many Privacy Act requests are actually information requests that would have been honored previous to PL 93-579.

Mr. Clinton asked if any agencies had resisted complying with the requirements of the Privacy Act. Ms. Wirtz and Mr. Veeder replied that this was not the case although some agencies have taken a long time to publish their systems of records. However, both felt that this was an internal administrative problem rather than an effort to resist the mandates of the Act.

Ms. Wirtz described another area which had been a source of problems: Subsection M (The Contractor Provision). This is the only provision that goes into the private sector. (Subsection M reads as follows: "When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.")

Ms. Wirtz illustrated the complexity of this section by pointing to the case of a private company conducting survey research for the federal government. Even if the company only releases non-identifiable statistics to the government, it might

have collected personally identifiable information in the course of conducting its research. The question then becomes: does the Privacy Act still apply if the agency had access rights to personally identifiable data but only asks for the non-identifiable data? The interpretation of OMB was that the provisions of the Act still applied.

However, in a similar case, the Supreme Court ruled that the provisions of FOIA did not apply if an agency had access rights to information developed by a contractor but did not request the data.

Mr. Drea asked why the definition of records under the Privacy Act didn't preclude the information itself since it was not identifiable information. Ms. Wirtz replied that if the agency caused the contractor to collect the information, then the provisions of the Act applied. Mr. Veeder added that the agency is responsible for the information collected and it cannot escape this requirement just by contracting it away.

However, Mr. Veeder explained that if the contractor opted on his own to collect personally identifiable information (i.e. there were other ways in which the terms of the contract could have been fulfilled), then the Privacy Act did not apply. If the government agency left the decision to the contractor as to whether or not personally identifiable data would be collected, then the information does not fall within the context of the Privacy Act. If, however, the contractor had to collect identifiable data as the only way to fulfill the contract, then the agency is not released from the provisions of the Act.

Ms. Wirtz highlighted another section of the Act-The Remedies Provision. Under the Privacy Act, the individual has causes of action to enforce his right of access, right of correction and to force agencies to comply with the statute. There is, however, no injunctive relief to prevent the agency from releasing information in violation of this law.

Mr. Drea asked if injunctive relief was not inherent in the courts. Ms. Wirtz responded that it was not, in the view of the 9th Circuit Court. In contrast, under

FOIA, injunctive relief has always existed.

In response to Mr. Zee, Ms. Wirtz and Mr. Veeder replied that some legislators had originally objected to the Privacy Act because of fear of curtailment of law enforcement activities and investigatory agencies. They noted that legitimate access to law enforcement is provided in the Act. In addition, use of social security numbers and fear of increased computerization were issues that surfaced at the time that the Act was being considered by the Congress.

Ms. Wirtz mentioned that use of the Social Security number is not forbidden; an agency just may not preface a right, benefit or privelege upon the supplying of that number. In addition, the courts have concluded that a subpoena is not an order of a court of competent jurisdiction.

Mr. Clinton noticed that according to the Privacy Act, mailing lists cannot be sold or rented unless such action is specifically authorized by law. Ms. Wirtz noted that under FOIA an individual can ask for all kinds of information and construct a list. One problem is that there is no definition of "sale or rent".

Ms. Wirtz described a case that involved an individual who obtained information from personnel files regarding who had not bought savings bonds. He then contacted the persons and urged them to buy bonds. The courts ruled that the persons contacted had a right to sue and that emotional harm can be recovered under the Privacy Act.

Ms. Wirtz provided an example of another case where the Courts found the Privacy Act to be inapplicable. There is a provision in the Act dealing with information relating to an individual's qualifications for federal employment. It states that the agency can withold information on the identity of a confidential source. One person wanted to challenge information that turned up in a review of her qualifications. The agency wouldn't release the name of the source and the source would not volunteer his name. The person sued and the court held that the constitutional right to confront witnesses prevailed unless the agency wanted to change the information. Ms. Wirtz maintained that these cases place a standard on the agencies in

terms of their records management.

Mr. Hanratty described three types of oversight of privacy legislation which he has encountered in other states: 1) no oversight established by statute; 2) oversight placed with an existing agency; 3) an independent entity is established to provide oversight. Mr. Hanratty asked Ms. Wirtz or Mr. Veeder for recommendations regarding which path should be followed by the Information Practices Commission, if the Commission determines the need for such legislation.

In the discussion that followed, Ms. Wirtz and Mr. Veeder stated that they had found the greatest need for oversight in the area of formulating major policy issues. Ms. Wirtz said that if there is a state body already performing this function, it might work out. However, she prefered oversight of privacy legislation not going to an agency with other responsibilities. Mr. Veeder added that if an independent agency were established, it was important to staff it sufficiently, with enough breadth and with enough authority.

Mr. Drea asked if Ms. Wirtz or Mr. Veeder saw any problems with the Attorney General's Office overseeing any privacy legislation in addition to the Public Information Statute. Ms. Wirtz responded negatively.

Mr. Drea asked if Ms. Wirtz or Mr. Veeder were to draft a state privacy act, would they limit it to records dealing with personal information, or broaden its scope? Ms. Wirtz replied that she would maintain the distinction. Mr. Veeder added that he would make any Act as simple as possible.

Mr. Drea asked a final question as to the meaning of exemption D5-reasonable anticipation of civil action. Ms. Wirtz replied that usually an agency has a procedure where it eventually gets into court or can have the right to go to court. Ms. Wirtz added that this exemption is infrequently used.

The meeting adjourned at that point with the next meeting being scheduled for May 11, 1981.

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MINUTES OF THE PUBLIC HEARING HELD MARCH 16, 1981

The second Public Hearing of the Governor's Information Practices Commission was held March 16, 1981 in Room L-3, 201 West Preston Street, Baltimore, Maryland. Members in attendance were: Mr. Arthur S. Drea, Jr., Chairman, Mr. John Clinton, Mr. Donald Tynes, Mr. Robin Zee, Dr. Harriet Trader, Senator Timothy Hickman, Mr. Albert Gardner, Mr. Dennis Sweeney and Mr. Wayne Heckrotte. Mr. Drea opened the Public Hearing with an explanation of the purpose and goals of the Information Practices Commission.

The first witness to testify was Mr. John Bertak, Public Affairs Officer for the Department of Transportation (testimony attached). He was followed by Mr. William Long of the Motor Vehicle Administration (MVA) (testimony attached).

After Mr. Bertak presented his testimony, discussion followed on the Interim Report. Mr. Bertak objected to issue number 7 in the report. This issue dealt with the proposal that an agency publish annually a report of all record systems maintained by that agency. Mr. Bertak felt that this would be a significant administrative burden requiring the Department to hire at least two additional personnel.

In response to a question of the Commission, Mr. Long stated that certified copies of driver records are given to the police/law enforcement free of charge. Members of the public and insurance companies are charged $1 per copy.

Mr. Long stated that any individual can request a copy of another individual's record. In order to illustrate the range of information available on an individual's record, Mr. Long and Ms. Carol Shipley, another Motor Vehicle Admistration representative, called the Commission's attention to a sample record. Contained in that

record were the following items: soundex number, full name, address, personal description, class license, expiration date, convictions and address changes, etc. On the back of the form is an explanation of the abbreviations. Mr. Long added that MVA also has computerized vehicle registration records which include name, soundex number, and street address of the registrant, as well as tag number, title number, ID number and other vehicle information. Insurance records are not maintained on computer and thus require a manual search; the information is available for a $1 fee. Mr. Long explained that Maryland does not have the equipment that would allow the Department to give accessibility to insurance companies. This would require over $100,000 in modifications to existing equipment (not inclusive of costs of security measures).

Mr. Drea asked if this was the same information that a district court could pull up on a computer. Mr. Long replied that a district court can pull up a complete history. In the discussion that followed, the point was made that the record was not limited to three years unless the record had been expunged.

In response to a question from Mr. Tynes, Mr. Long explained that it is not necessary to have a driver's license number to get a copy of someone's record. The Department has search capability using the full name via the soundex system. Such a capability is primarily for law enforcement purposes.

Mr. Zee requested the conditions governing the written agreement used in the sale of certain computer tapes. Mr. Long responded that when a request for tapes is received by the MVA, the Administration sends a contract specifying the following: 1) the reason why the tape is being requested; 2) restrictions against resale; 3) requirement that the Administration be sent a copy of the material mailed; 5) requirement that names and addresses of any individuals be deleted upon request.

Mr. Long was then asked if MVA conducts follow-ups to make sure that tapes are being used in an appropriate manner. Although no specific procedure is followed requiring spot checks, Mr. Long stated that the Administration does receive copies of the mailings; furthermore, he noted that in the three years he has worked at MVA no request had ever been denied and no contract had ever been breached. The point was also made that lists are not often sold because of the cost (a complete copy of the registration list runs $20,000).

Mr. Bertak added that many companies could do better by obtaining lists from mailing houses. He also pointed out that the accessibility of information on drivers records has a beneficial side-recall notices on defective automobiles being one example. Mr. Drea asked if the title registration would contain information on a specific automobile where drivers license lists would not. Mr. Bertak responded affirmatively.

In the case of an automobile recall, Mr. Long explained that automobile manufacturers can supply to the MVA a tape input listing of the soundex numbers of the individuals whose records are requested. The Department can process this and return to the manufacturers the requested records on a computer tape. It is a print tape and in this sense allows a degree of security. The recipient of this tape cannot maintain this information by loading it into his own data base. In order to put this information into his own system, the recipient would have to print the tape and then key punch the information again. It would be feasible to do but the work involved serves as more of a deterrent.

Mr. Drea asked if specific information could be supplied upon request (e.g. a list of all drivers between 30 and 40 years of age). Mr. Long responded that such information could be provided but that such a request would require more time and therefore be more expensive.

Mr. Dennis Hanratty asked if an individual can request permanent deletion of his name. This could be done, Mr. Long said, as the names of the individuals requesting deletion would be placed on a separate list. However, in the case of a recall, the individual would be included on the list.

Mr. Sweeney asked whether there were other good reasons (besides recall notices) for allowing access to drivers records. Mr. Long cited the case of an accident where a need to obtain insurance information on the other vehicle involved exists or the case where an employer (e. g. a trucking company) needed to check the driving record of its drivers.

Mr. Hanratty asked for clarification of the "#9-Alcohol" designation on the back of the Maryland Drivers license. Ms. Shipley explained that it was used if an individual's driving privilege was revoked and that it was seldom used anymore. When licenses are renewed now, individuals must sign a consent statement on their application. In the past, the person being reinstated signed at that time that he was willing to take an alcohol test. The information would appear on an individual's record as a Number 9 restriction and the reason behind it would not show.

Mr. Drea referred to Section 16-119 which states that all medical information submitted is confidential and cannot be released in the absence of a court order. He asked if there were any exceptions to this provision. Mr. Long replied that this information was not included as part of the computerized record. Instead, a case file was maintained at the Medical Advisory Board. An individual can see his own file and can grant permission to an attorney representing him to view it. A law enforcement agency would need a court order.

It was observed that while criminal records are available for public access, medical records were regarded as confidential. Mr. Drea felt that both records could

contain damaging information. Mr. Bertak stated that convictions were a necessary part of the driving record. Medical information, in his opinion, was a more personal matter and there was no necessity that it be available at all. Mr. Bertak noted that conviction information was not arbitrary information put on the record by the MVA, the State Police or the Department of Transportation, but was added by the courts. The point was also made that a conviction record was required in order to assess points.

In response to a question from Mr. Drea citing the Public Information Act, 76-A, which requires that there be a designated custodian of the records, Mr. Long indicated that he thought at MVA Mr. William T.S. Bricker was official custodian; Mr. Bertak stated that Mr. Rhett Barkley was the records custodian for the Department of Transportation.

Mr. Sweeney asked if the driving record would show that a case was referred to the Medical Advisory Board. Ms. Shipley said that this would only be shown if the individual was suspended.

There were no further questions and the next witness, Mr. Lee D. Hoshall, was introduced. (Testimony attached)

Following Mr. Hoshall's testimony, Mr. Drea proposed that the State Archivist be heard out of order so that he could attend a hearing in Annapolis. Mr. Papenfuse, State Archivist, presented his testimony (attached).

Discussion followed on the ideal guidelines for striking a balance between personal privacy and the historical preservation of records. At what point would publication of records not be an embarassment or invasion of privacy? Mr. Papenfuse explained that by the time records are turned over to the Archives (usually 20 years

after the generation of the record), there should be very little that could not be opened immediately. If something was sensitive beyond the 20 years, Mr. Papenfuse indicated, then restrictions could be placed on it. Mr. Papenfuse added that under Maryland statute there are no restrictions unless they are legally mandated restrictions with respect to certain kinds of records. Decisions were developed through the scheduling process in relationship to the agency and in relationship to existing law. Mr. Papenfuse felt that it was more preferable to have a review panel to help promulgate rules and regulations rather than to set arbitrary time limits for certain categories of records. There are records, he believes, that should not be disclosed.

Mr. Papenfuse stated that the Archives operate under the Hall of Records Commission umbrella and has established guidelines to the records in its control. If an individual requests a sensitive record, the Archives has statutory authority under Article 54 to refuse disclosure.

Mr. Papenfuse noted divorce records before 1960 are located in the Archives, while after 1960, access is obtained through the courts. Senator Hickman wondered if statutory bases on which decisions were made could be defended in court. Mr. Papenfuse responded that if the scheduling process is done properly and records are assessed properly the Archives knows what restrictions are placed on them. He explained that the Hall of Records Commission-set up to represent all three branches of the government-has the discretion to open or close records turned over to the Archivist.

Senator Hickman asked if Mr. Papenfuse had a list of record systems. Mr. Papenfuse responded that the list would probably not be as complete as Senator Hickman would want, but that most departments have schedules.

Mr. Sweeney asked if Mr. Papenfuse or the Assistant Attorney General review requests under the Public Information Act as to whether access should be allowed. Mr. Papenfuse responded that this was not done routinely and that the issue had not arisen. Mr. Papenfuse noted that eleven thousand people use the Archives each year and 8,000 letters are answered. All deal with personal information. To date, he has not received a single complaint about invasion of privacy. Mr. Papenfuse said that records should be looked at series by series to determine at what point information should be available to the public if at all.

After Mr. Papenfuse completed his testimony, the Commission recessed for a short break.

Mr. Jay Kaplan, Chief Solicitor and Mr. David Young, Assistant City Solicitor, of the Baltimore City Solicitor's Office next appeared to respond to remarks made by Mr. Hoshall. They indicated that copies of the opinions sent to Mr. Hoshall would be forwarded to Mr. Hanratty. Mr. Kaplan thanked the Commission for stating its intention not to act as arbitrator. Mr. Hoshall, Mr. Kaplan stated, has a recourse under the law if he felt he was denied information. Mr. Kaplan emphasized that the City Solicitor has complied with the law in responding to Mr. Hoshall's requests. Mr. Kaplan referred to the estimate of costs which was sent to Mr. Hoshall (costs to provide the material Mr. Hosall had requested from the Police Department). Mr. Kaplan stated that the custodian of the records is allowed to set costs and that the City Solicitor's Office had no idea that an estimate had been quoted by the City Solicitor representing the Police Department.

Mr. Kaplan set forth the following dates concerning Mr. Hoshall's case:

May 8, 1980 Date of initial request to the Head of the Community Relations Commission.

May 13, 1980 Request referred to the City Solicitor's Office for response.

Oct 10, 1980	Mr. Benjamin Brown, City Solicitor, wrote to Mr. Hoshall apologizing for the delay and stating that Mr. Hoshall would have an opinion on the 14th.
Oct 14, 1980	The Opinion was delivered to Mr. Hoshall.
Nov 15, 1980	Letter from Mr. Hoshall addressed to Mr. Brown.
Dec 9, 1980	Response from the Deputy City Solicitor's office to Mr. Hoshall.
Dec 12, 1980	Follow-up letter by Mr. Young.

Mr. Young added that a letter was also sent January 7, 1981 in response to one from Mr. Hoshall dated December 24, 1980.

Mr. Young stated that the response of the City Solicitor's Office was based on an interpretation of the law and that there was no intent to deny Mr. Hoshall the information. Mr. Young stated that Section 3A of the Public Information Act sets forth certain exemptions to the availability of public records. Their office issued the opinion letter under 3A-4 which provides an exemption from disclosure where such public records are privileged or confidential by law. The opinion was also based on Mr. Young's reading of the Code of Baltimore City-Article 4, Section 18-E, which applies to complaints filed with the Baltimore City Community Relations Commission. Mr. Young stated that Mr. Hoshall had asserted that this article applied only to the investigation of acts of discrimination filed with the City Commission. In response, Mr. Young explained to the Information Practices Commission that the article was first adopted in 1966 and provisions of the code setting up the Police Complaint Evaluation Board were not adopted until 1975.

Mr. Young stated that it was his belief that the jurisdiction of the Community Relations Commission was expanded in 1975 to include investigation of alleged police brutality; furthermore, he felt that there is no such indication from the Code that Section 18 was intended to apply only to the investigation of acts of discrimination.

Mr. Young cited Section 18-E of the Baltimore City Code: "neither the Commission nor its staff shall disclose what has transpired during the course of any investigation nor shall the publicity be given to any negotiations or to the fact that complaints have been filed". Based on this, the City Solicitor's Office felt that the information Mr. Hoshall sought was exempted from disclosure.

Mr. Young added that Section 3B-1 of Article 76-A (Annotated Code of Maryland) provides for a right of denial to inspection by the record custodian if he believed that disclosure to the applicant would be contrary to the public interest. The City Solicitor's Office, Mr. Young maintained, held that disclosure of the Community Relations Commission records would be contrary to the public interst and would have a "chilling" effect on persons who might want to come forward and file a complaint alleging acts of police brutality.

Since the Commission had not had the opportunity to ask questions of Mr. Hoshall, Mr. Drea recalled Mr. Hoshall to respond to questions.

In response to Mr. Clinton's question concerning the topic of the research, Mr. Hoshall explained that it covered two levels. The first involved the interactions on the street between officers and citizens. More specifically, Mr. Hoshall indicated that he was interested in discovering the factors leading to the filing of complaints. The second level dealt with understanding the factors used by the Baltimore City Police Department to determine the outcome of the investigation. Mr. Hoshall indicated an interest in discovering the evidentiary factors that seemed to determine the outcomes of investigations 95% of the time in favor of the police. Mr. Hoshall stated that he had requested records disclosed not contain names, addresses and identifying information regarding the persons involved. Mr. Hoshall added that the argument used by Mr. Young citing the chilling effect resulting from

disclosure was an old and fallacious technique and that its only relevance was prior to a trial when leakages of information could prejudice an investigation. He added that the cases he had requested were all closed.

Mr. Drea and Mr. Hoshall discussed the time period which elapsed between Mr. Hoshall's initial request for information and the date he received a definitive response. Mr. Drea referred to the Proposal #1 in Mr. Hoshall's written testimony pertaing to a definite time limit in which agencies should respond to requests for information under the Public Information Act. Mr. Drea asked if Mr. Hoshall would agree with a proposal requiring an acknowledgement to a request for information in a brief period(5-7 days) followed by a definitive response (30-60 days). Mr. Hoshall agreed that that would be satisfactory.

Mr. Drea referred to Mr. Hoshall's testimony and the statement that the city had told him he would have to pay the hourly services (as part of the costs) of a sergeant to cull out personal information. Mr. Hoshall asserted that the Police Department is represented by the Baltimore City Solicitor's Office but that the person representing the Department does not appear to communicate with the rest of the City Solicitor's Office. He felt that the representatives present at the hearing probably didn't know that this was occuring. He agreed to furnish a copy of the letter from the Baltimore City Solicitor's Office delineating costs to the Commission. Mr. Hoshall added that there is obviously no uniform application of charges since other data requiring indirect cost to the department is often given to citizens free of charge.

In response to a final question from Mr. Drea, Mr. Hoshall affirmed that he had informed the City Solicitor's Office that his interest in obtaining the material was for a bona fide research project and added that the project was approved by the Graduate School of Criminal Justice at the University of Baltimore. The study

was to be conducted under the supervision of the department.

Mr. Kaplan and Mr. Young were asked to return to respond to questions from the Commission.

In response to Mr. Clinton, Mr. Kaplan remarked that he had no knowledge regarding who sent the estimate of costs out to Mr. Hoshall. Costs, he indicated, were left up to the individual departments. He acknowledged that some information was probably given out at no cost. Mr. Kaplan added that the "chilling" effect Mr. Hoshall had referred to was language taken from a decision by a United States Federal district judge. Mr. Drea asked Mr. Kaplan's opinion of the proposal he had made earlier that an acknowledgment to a Public Information Act request be sent out within 5 to 7 days and a definite response be issued within 30 to 60 days. Mr. Kaplan stated that he had no disagreement with such a proposal. If the proposal was part of the law, Mr. Kaplan stated that the city would comply.

Mr. Drea maintained that as he understood the legal position of the City Solicitor, the denial had been made on two bases: 1) as a requried denial because of a Baltimore statute holding the record to be confidential by law; 2) as a discretionary denial because the record fell under the adverse public interest section with regard to police investigations. Mr. Drea then asked Mr. YQung the following hypothetical question: if he was only bound by the discretionary denial provision and the request was clearly for a bonifide research project, would his decision have been the same? Mr. Young answered that there was a good probability that his decision would have been the same.

Mr. Sweeney asked where the chilling effect entered if all identifying characteristics were eliminated from the records. Mr. Kaplan responded that even if an individual knew that his name and address would be deleted from a record, he would

be reluctant to testify if such records were made public.

Mr. Sweeney questioned whether reports were available to the officers who were the subjects of the investigations. Mr. Kaplan responded that he did not know.

In response to a question from Dr. Trader concerning where the responsibility of the City Solicitor's Office ended and the researcher's responsibility began in terms of protecting the public and confidentiality, Mr. Kaplan stated that the city's responsibility ended where the law tells it.

Mr. Young made the final point that Mr. Hoshall has a remedy under the law. The function of the City Solicitor's office was only to interpret the law.

The next witness was Mr. Luther Starnes, Executive Assistant to the Secretary, Department of Human Resources. He presented a package of materials on issues of relevance to the hearing (attached). In addition to Mr. Starnes, Mr. Joe Farkas, Division of Data Processing; Ms. Lois Lapidus, Assistant Attorney General; and Mr. Ed McGarry, Division of General Services, attended from the Department of Human Resources.

Mr. Starnes explained that the Department provides benefits and services to low income persons. As a rough estimate, Mr. Starnes stated that the Department has between 350,000 and 400,000 case records containing personal information.

Senator Hickman asked if the Department had a catalog of record systems including information on the nature of the subjects, security, etc. Mr. Starnes replied that this question was among a list of 27 questions sent by Mr. Hanratty and indicated that answers would be ready by April 15th. He added that the department is in the process of computerizing the Welfare Eligibility Process State-wide. Mr. Starnes

indicated that eighteen of the Department's records were now computerized. He noted that there are several forms within each program which contain some personal information. They are being compiled and a catalog of the forms will be provided to the Commission.

In response to Mr. Heckrotte's inquiry as to whether the welfare system is locally administered, Mr. Starnes explained that while there are local departments of social services, the employees are all state employees. Mr. Starnes stated that there is a local Social Service Board which appoints a director, and that, in most cases, there is no local money involved. The state, he indicated, is responsible for regulations and guidelines on records; each local unit may have its own variation of a record system but it must meet the guidelines of the state.

Discussion followed on the subject of automation and whether this would cut down on repetition and inconsistencies in data. Mr. Starnes cited the Automated Income Maintenance System (AIMS). Using Social Security numbers of an applicant, the department can now access employment security wage records and verify information right in the computer terminal. He felt that automation would cut down on the duplication of forms but would provide additional information to the Commission.

Senator Hickman inquired about security measures at individual terminals and the number of these terminals. Mr. Farkas could not supply a specific number. He explained that the security system now requires two things: a password and (unintelligible). There are currently two password systems, only one of which is changed. Mr. Farkas was sure that a user ID was also required. Mr. Starnes added that the legislative auditor had just finished an audit of the department that addressed security questions, and that this audit was available.

Senator Hickman asked if the Secretary's Office had received complaints about

the misuse of information. Mr. Starnes responded that it had not and he then explained that the department is steadfast in not sharing particular information on welfare recipients. Mr. Starnes stated that many people believe that large numbers of recipients cheat and that therefore the Department gets welfare fraud allegations on a regular basis. He indicated that the allegations are investigated, but that the results were not shared with anyone. Indeed, he said, the Department does not even state no fraud occurred because that would indicate that a person was a welfare recipient.

Senator Hickman explained that constituents often come into his office disagreeing with the Social Services rulings. Senator Hickman asked if the Department has guidelines governing the release of information to elected representatives. Mr. Starnes responded that if a client goes to an elected representative and lays out the facts of his case, the Social Services Office will discuss the case with the representative. Anyone who goes to a public official, Mr. Starnes maintained, has for that specific purpose waived his desire for confidentiality. Mr. Starnes added there was no written opinion covering this scenario.

In response to a question from Mr. Sweeney, Mr. Starnes stated that he did not think that a state police officer with appropriate identification could examine welfare records. Ms. Lapidus added that under Federal regulations, the Department could only disclose information to other agencies that administer funds on a needs basis. Mr. Starnes stated that if a person applied for welfare after having lost his job, it first has to be determined if he is eligible for unemployment before he would obtain welfare assistance. Mr. Sweeney asked if the interchange of information between state agencies was a problem. Mr. Starnes replied that he was not aware of any such problems.

In response to a question posed by Mr. Sweeney, Mr. Starnes stated that the

Department does not actively review the local offices to insure that their record systems comply with Federal and State law. Mr. Starnes indicated that the Department does perform quality control reviews on error rates in the local offices.

Mr. Clinton brought up the topic of adoption records. Mr. Starnes stated that at the moment adoptees do not have access to records pertaining to information on their natural family. He noted that the General Assembly was examining currently a bill that would authorize access.

Discussion followed on the child abuse registry. Mr. Starnes expressed his feeling that concern exists that reports can get into the registry without investigation. Mr. Starnes indicated that the report of a private citizen would not necessarily enter the registry, but that reports from a physician, school official, or police agency would be entered. Ms. Lapidus explained that not all names involved in a child abuse incident enter the registry. Access to the list is provided to social service personnel, education personnel and others in that general nature. An educator can call and get a name if it is on the confirmed abuse list or on the list of incidents where it was impossible to ascertain what actually happened. Ms. Lapidus also indicated that in cases of confirmed abuse, the individual can appeal and discover whether he can seek judicial review on the determination by the agency.

Mr. Tynes noted that the Department of Human Resources received considerable federal funding and asked about the normal federal reporting requirements. Mr. Starnes replied that statistical reporting was done on a quarterly basis and that the Department is reimbursed retroactively from the Federal Government. He indicated that Quality Control reporting is conducted every 6 months. Mr. Starnes elaborated on the issue-stating that a list of recipients is not required to support expenditures. He stated that the only occasion an individual's case is seen is if a case is pulled out as a sample for Quality Control.

Mr. Clinton asked about employee training in the use of the Citizen Response Plan. Mr. Starnes replied that it was a new plan. Due to the size of the Department, the administrative setup provides for direct organizational feed. Everything goes through the Executive Staff for discussion and the heads of each agency are charged with implementation. Mr. Starnes stated that because the department deals directly with the delivery of services to citizens, it is not difficult to notice a division that may not be following too closely their responses.

Mr. Gardner asked if the Department gets any requests for personal information from the Federal Government. Mr. Starnes replied that the only request involves review of the Department's Quality Control sample.

Mr. Heckrotte asked about data exchanged with Social Security under BENDEX, such as a record of people receiving Welfare Payments or Social Security. Mr. Starnes explained that Social Security only gets involved in that situation as a benefit agency. He indicated that the department shares information with Social Security but that Social Security has nothing to do with the supervision of the Department's program.

A five minute break was held.

Ms. Caroline Stellman, Executive Director of the Consumer Council of Maryland, was the next witness to testify. Mr. Stellman advocated patients in State medical facilities being permitted to examine and copy their own records. Ms. Stellman quoted the 1980 survey conducted by the Health Research Group of Washington, D.C., which discovered that all but seven states allow some access, generally through a mental health statute, to patient records by the person in interest. She indicated that Federal facilities allow the right to access and copy (for a fee) and have not found it to be a problem. In fact, Ms. Stellman said, Federal facilities studies with

mental health patients have shown anxieties and tensions lessened by the ability to look at health care records.

Ms. Stellman stated the Consumer Council's position that there would be a more open patient-physician relationship if patient access was granted. The patient would be able to see if his record was accurate, immediate emergency information would be available if necessary, there would be more continuity of care, and the patient could moderate the costs of health care.

Ms. Stellman added that there are four bills in the General Assembly to modify patient access to health care records in Maryland. She noted that the Council also maintained that if a patient has the right to examine his own records then he should have the right to correct and ammend them. The Council also supported the position that a patient should be permitted to insert a dissenting comment in the record if the health facility refuses to amend the record. Ms. Stellman expressed the Council's view that the patient should be notified of the right to access and of the necessity for a charge if he uses that right. She stated that, if a statute is passed, hospitals should have a definite time frame for responding to a patient query and a mechanism should be set up so that if there is a problem, the complaint can be handled in a uniform manner.

In response to a question raised by Mr. Heckrotte, Ms. Stellman stated the reasons given by health care facilities for not providing access and her responses to these reasons as the following:

-Patients won't understand their records. (This is in opposition to the principles of informed consent.)

-Potential harm. (Has not been documented.)

-Increase in malpractice suits. (HEW Secretary's Commission on Medical Malpractice)

found that there were fewer suits with open records.)

-Frequency of requests. (Hasn't happened in Federal facilities or states that allow access.)

-Cost (Appropriate charge-it pays for itself.)

-Quality and value of records-records won't reflect the true thoughts. (If the records aren't accurate-the physician is more open to malpractice suits and records might be written more carefully with open records.)

Mr. Drea asked if the Consumer Council's Report addressed the distinction between hospital records and attending physicians' records. Ms. Stellman responded affirmatevely. She noted that two current bills deal only with health care facility records as these were thought to be easier to open. Ms. Stellman expressed the view that both types should be open and stated that this was reflected in the Council's report. However, she added, no distinction was made in the report between public and private medical care facilities. Ms. Stellman stated that she would like to see the Commission include both public and private institutions, as a full health care record probably goes beyond the state institution.

The next witness was Ms. Beatrice Weitzel, Executive Assistant to the Secretary, Department of Health and Mental Hygiene. Ms Weitzel stated that a written reply would be forwarded to the Commission. Ms. Weitzel said that the Department was governed by the Maryland Code, a number of rules and regulations, policies developed within the Department, various acts and guidelines (NIDA-National Institute of Drug Abuse) and also by a number of court decisions. She stated that the major areas in the Department where the Interim Report of the Commission impacts involved patient/client records, vital records for state residents, licensing and permit records, medical assistance program information, laboratory tests and inspections, and inspections and surveys of hospitals, nursing homes and related institutions and public health information.

In the area of Medical Records, Ms. Weitzel said that according to information received from the Assistant Secretary for Mental Health and Addictions, there is currently no problem with making information available to patients. However, the Department does have reservations regarding copying of this information. There is concern that certain items in medical records not be available to the patient, such as comments of counselors and decisions by the medical director as to patient care or prognostics. It is felt that disclosure of this information would be counter-productive to the patient's progress and should be kept in file for use in treatment.

Ms. Weitzel added that the Department has information relative to persons in programs such as drug abuse, alcoholism, and quarter-way and half-way houses. Many use local health departments for clinic services-preliminary help in drug abuse/ alcoholism or information for family planning. She stated that the personal records of these programs are all confidential. The Department also has records of persons who were detained by court order in institutions and are covered under very specific areas through Supreme Court decisions and specific guidelines.

In the area of Vital Records, Ms. Weitzel stated that the Department maintained information on births, marriages, adoptions and deaths, and that these records are covered in the Code and in Departmental regulations. Regarding birth records, Ms. Weitzel said that the information is available only to the individual or to either parent if their name appears on the original certificate. On the state level, marriage information is available upon written request only to both parties involved. On the county levels, marriage information is covered under Clerk of Court orders and varies from County to County. Death information is available to the immediate family, to the persons designated to act, or to a person with a court order. Ms. Weitzel indicated that this information is only mailed to a proper address and is not handed to someone visiting the office.

Ms. Weitzel stated that information pertaining to medical care recipients was shared with the Department of Human Resources. She stated that Human Resources determined eligibility while the Department of Health and Mental Hygiene administers the care and handles bill paying. This information, she asserted, is computerized and security is ensured. Ms. Weitzel stated that the computer facility is supervised and identification codes are used. Password codes are at various levels-certain information is available to the person entering additional information. There is other information available only to another person with the proper password. In addition, a great deal of the information is in code and even if access to a printout sheet was available, it would mean very little.

The Department has a number of licensing boards which maintain information on a number of professional people. Ms. Weitzel stated that this information is controlled by the respective boards. Some supply rosters for public use at a charge which they determine. Some of the information is not public such as grades and information on allegations of investigations (until a determination has been made of the charges).

Ms. Weitzel indicated that the Department laboratories are privy to sensitive information. Such information can only be given out to the submitter of information. The Department does not give out information on labs licensed by them, locations, number of tests and other related facts.

Ms. Weitzel stated that hospital and nursing home inspections conducted by the Department of Licensing and Certification are public information with the exception of any personal patient information that is in the records.

The Department has tried through not only the Citizen Response Plan but through individually developed procedures to determine that proper care is taken to ensure

that personal information is protected while at the same time permitting access to public information.

Ms. Weitzel indicated that the Department currently is reviewing its policies regarding the retention, distribution, and destruction of records. She stated that the Department would provide a list detailing points of disagreement with the Interim Report. Ms. Weitzel asserted that in general, the Department was pleased with the Interim Report and felt it does address a need.

Mr. Drea asked if there were written Departmental policies covering the areas addressed by Ms. Weitzel. Ms. Weitzel indicated that such written policies did exist and that they would be sent to the Commission with the other materials.

Mr. Sweeney asked if the Department thought that there was a need or that the law should be changed to allow the use of information for legitimate public health research efforts. Ms. Weitzell replied that she did not know, but would find out. Secondly, Mr. Sweeney questioned if it made sense on the state level to deny access to marriage license records when one can go to the county and get access. Mr. Sweeney asked if this policy should not be consistent. Ms. Whitzell responded that the Department feels its regulations are consistent. She indicated that throughout regulations, persons of primary interest should be allowed access. Mr. Sweeney summarized the Department's position as being the maintenance of consistency between different types of records in the possession of the Department even though counties may be following different policies.

Mr. Gardner asked if Ms. Weitzel was addressing information collected and retained in a central location. Ms. Whitzell replied that there is one central collection point for Vital Records. That information is completely separate from information collected for medical care programs.

Ms. Weitzel stated information pertaining for patient records is maintained at each hospital. She added that Department regulations pertain to whatever the area is and to anything within the Department. These regulations may overlap into another agency. In such a situation, she asserted, that agency has the opportunity to add input at the time of promulgation. When a regulation is published in the Maryland Register and becomes part of operating procedure, it applies department-wide. The regulation doesn't apply to parties providing information to the Department but only to those over which the Department has jurisdiction - such as marriage license information. The Department does not have jurisdiction over clerks of the counties.

Mr. Sweeney questioned if the Department's policy regarding medical records at state institutions is in writing. Ms. Weitzel replied that these policies were not in writing and were being examined at the present time.

Mr. Sweeney asked if the compensation paid by the State to doctors was regarded as public information. Ms. Weitzel replied that reports are prepared at the end of each year which give the total amounts to the providers. If inquiries are received as to individual providers they normally are handled with the Assistant Attorney General in that area. Such information is available to the public.

In response to a question from Mr. Drea, Ms. Weitzel indicated that all licensing boards have regulations in written form and that copies would be sent to the Commission within a week.

Discussion followed over the issue of patient access to comments in records and concern over the copying of records. Ms. Weitzel explained that it is often difficult to pinpoint the problem with, for example, patients suffering from mental disorders. As a consequence, some comments are highly speculative. Access to these comments might restrict what was put in a patient's file. At the same time, a physician might

not want a patient to examine a record if the outlook was not favorable. Mr. Drea questioned the difference between the medical patient whose prognosis was unfavorable and the mental health patient with a similar prognosis. Ms. Weitzel suggested that the issue should be dealt with by the psychiatrists themselves who could spell out their objections to the Commission.

Mr. Heckrotte wondered if any studies had been done to see how many patients are actually interested in looking at their records. This, he suggested, might be relevant to the cost objection mentioned by Ms. Stellman. Ms. Weitzel responded that she did not know. The Department had run into situations, however, where the cost of reproducing records requested in class action suits was a problem.

Mr. Sweeney asked if there was a policy regarding access to personal records by law enforcement personnel with proper identification. Ms. Weitzel answered that in certain situations, personal records could be available. If a charge of patient abuse had been made, the State Police would be asked to investigate. Investigators would be allowed access to the person's file with the person's knowledge. There may be instances of other allegations or incidents pertaining to the investigation. However, Ms. Weitzel added, for release of any other information other than that on the Department's own personnel, a court order would be required.

There were no further questions and the Public Hearing was concluded.

Mr. Drea held a short Commission meeting. The next meeting was set for April 20, 1981. (This has since been changed to April 27, 1981.)

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MINUTES OF PUBLIC HEARING-FEBRUARY 23, 1981

The first Public Hearing of the Governor's Information Practices Commission was held February 23, 1981 at 10 A.M. in the Montgomery County Delegation Room of the Lowe House Office Building in Annapolis, Maryland. The following Commission members were in attendance: Mr. Arthur S. Drea, Jr, Chairman, Mr. Dennis Sweeney, Mr. John Clinton, Mr. Donald Tynes, Dr. Harriet Trader, Delegate Nancy Kopp, Senator Timothy Hickman, Mr. Robin Zee, Mr. Albert Gardner and Mr. John Donahue.

Mr. Arthur S. Drea opened the hearing by explaining that the Commission had been charged with the responsibility of examining the record-keeping practices of state government and balancing the individual's right to privacy with the public's right to know.

The first speaker, Ms. Pat Doane, Aide to Delegate Judith Toth, related the case of an individual licensed to hunt in Maryland. The individual enlisted Delegate Toth's assistance when he found that his name had been given by the State of Maryland to the National Rifle Association. Delegate Toth discovered that current statute allows the State list to be sold. This policy is contrary to her belief that the confidentiality of personal information submitted to obtain a license should be protected. To this end, Delegate Toth introduced House Bill 1366 which would affect the sale of the Motor Vehicle Administration's List for car registration or personal licenses and House Bill 1368 which covers all state licensed individuals and prohibits the sale of their personal information for political or commercial purposes. Ms. Doane asked for the support of the Commission in this legislation.

Ms. Doane additionally discussed the State Information Referral Service. Due to the fact that Maryland has existing referral services, Ms. Doane maintained that the cost for a centralized service would be less for Maryland than other states. She noted that as a temporary stopgap measure, the state is helping citizens contact government by

functionalizing and using color-coded pages in the telephone book. This does not serve another function of the Information Referral Service however, which is to discover the needs of the citizens. Delegate Kopp and Ms. Doane discussed the state wide toll-free number and its funding. There was some confusion as to whether or not the current service was responsible for referral of all services.

In reference to the dissemination of personal information through state lists, Mr. Drea and Ms. Doane discussed the difficulties involved in providing information needed by the public-such as verification that an individual is a licensed physician-and at the same time limiting the information disseminated. This balance was not addressed in the bill.

The next witness was Mr. Basil Wisner from the Comptroller's Office. Accompanying Mr. Wisner were Mr. George Spriggs (Director-Income Tax Division) and Mr. Philip Martin (Director-Data Processing Division). Mr. Wisner presented written testimony (copy attached) in resonse to an incident cited in the Interim Report. Mr. Wisner discussed the incident and procedures employed in the Comptroller's Office to guarantee the security of personal records.

Mr. Clinton asked about the availability of tax information to other state agencies. Mr. Spriggs responded, citing Article 81, Section 300, which places limitations on the dissemination of tax return information. He stated that in regards to state agency requests, two cases existed where legislation allowed information to be shared with other state agencies-The Absent Parent Tracer Program (Department of Human Resources) and the Property Tax Circuit Breaker Program (Department of Assessments and Taxation). Any other requests from other state agencies for tax information would be referred to the Attorney General for an opinion. Mr. Spriggs responded to three questions posed by Mr. Dennis Hanratty concerning the disclosure of information to other state agencies. Mr. Spriggs informed the Commission that, first, the taxpayer is not notified regarding disclosure; second,

that the accuracy of information is not verified; and third, the taxpayer does not have the opportunity to prohibit such a disclosure. Mr. Wisner added that instances involving the disclosure of information to another state agency primarily evolve when information the taxpayer has supplied to one agency needs to be verified.

Senator Hickman asked if a catalogue of information systems was available at the present time. Mr. Martin explained that there is not a "master" list, noting that each department designed its own system. Mr. Martin observed that the data center functioned as a service area to the other agencies, running systems at the direction of the other agencies through the different procedures that those agencies have established. In response to a question from Senator Hickman, Mr. Martin stated that the Data Processing Division also encompassed the Baltimore Data Center and handled welfare, unemployment and retired employees' checks and food stamps.

Senator Hickman inquired about security measures in the Baltimore facility. Mr. Martin cited the study of security measures conducted in Annapolis mentioned in Mr. Wisner's testimony. A similar check of security was conducted at the Baltimore facility. Both centers had the same type of software and security requirements; however, the building in Baltimore is open to the public. Mr. Martin noted that additional security is provided in the Baltimore facility at the doors to the various rooms housing personal information.

A discussion followed concerning the security measures at terminals for Social Services around the state. Mr. Martin responded that each agency determined its own security levels and that a Security Officer is identified in each agency. In addition, Mr. Martin observed that state legislative auditors examine security procedures in the course of conducting their audits.

Mr. Drea returned to the topic of notifying the taxpayer of record dissemination. Mr. Spriggs stated that to his knowledge there is no law prohibiting the Income Tax Division

from notifying an individual that his tax information is being divulged. To date, the Division has never received complaints from individuals protesting the disclosure of this information.

According to the representatives of the Comptroller's office, Income Tax Information can be released to the State Police conducting a criminal investigation only upon receipt of a court order signed by a judge. In addition, it was noted that information is exchanged between Maryland and the Internal Revenue Service (in accordance with specific federal security regulations) and other states when such states have enacted security measures similar to those in Maryland.

Mr. Zee requested examples of problems the Division may have had in the realm of privacy of personal information. Mr. Spriggs noted that the Division receives requests for tax information pertaining to prominent individuals from members of the press. In addition, requests are received occasionally by telephone where the identity of the individual cannot be verified. Mr. Wisner also mentioned cases involving divorce settlements where a court order is required for the release of income tax information.

Mr. Drea asked if Federal security regulations governing the exchange of information between Maryland and the Internal Revenue Service (IRS) were available to the public. Mr. Spriggs thought that this was the case but stated he would have to check to be certain. In the discussion that followed it became clear that although the Comptroller's Division has its own Security Manual for its Income Tax data, federal regulations govern the release of information obtained from the IRS. Information obtained from the IRS cannot be released by Maryland to another state agency, a criminal investigation (without prior approval) or another division of the Comptroller's office. Mr. Clinton pointed out that Maryland and Minnesota are two states that have been used as models for a national training program on security procedures by the IRS.

Mr. Hanratty asked if Mr. Spriggs had any objections to placing stricter statutory limitations on the disclosure of Income Tax information similar to the language governing public assistance records. Mr. Spriggs commented that the Comptroller's Office would not object to additional limitations and noted that the preference of the department is to limit dissemination as much as possible.

In response to a question posed by Mr. Clinton, Mr. Spriggs elaborated on situations where Income Tax information might be shared with other tax divisions. Mr. Spriggs noted that this usually occurs in joint audits or joint collection efforts. Mr. Wisner added that another incident where information might be shared would be between Sales Tax and Income Tax to verify gross sales upon which to apply sales tax liability.

Mr. Sweeney returned to the issue of inter-state agreements and asked if these agreements were in writing. Mr. Spriggs responded affirmatively and observed that they limit the use that other states can make of records they receive. He agreed to provide samples of such agreements to the Commission.

Mr. Zee requested input in terms of any changes the Comptroller's Office would like to see in the current area of privacy or public information. Mr. Wisner responded that he favored as little dissemination of personal information as possible. In this way, the Comptroller's office could guarantee the confidentiality of such information. Mr. Wisner expressed the view that the privacy of the individual's tax return should be protected to the greatest extent possible.

Mr. Drea inquired as to the number of states with which Maryland had agreements governing the exchange of information. Mr. Spriggs replied that currently there were agreements with 8 to 10 states. The majority of cases necessitating the exchange of information between states occurred between continguous states and involved a person living in one state while working in another. Mr. Drea then asked whether there might not evolve

a need for the exchange of information in cases where an individual had moved and declared taxes paid in another state. Mr. Wisner agreed but stated that the border states made up the bulk of the cases necessitating inter-state agreements. Mr. Spriggs added that if an agreement did not exist at the current time, one could be made up and, if signed by both parties, would become effective for all subsequent requests.

Mr. Drea asked if there was any document outlining the results of the security system used in the Comptroller's Division. Mr. Wisner responded that he could probably review security documents and extract this information for the Commission. Mr. Martin added that computer software security gives regular reports on attempts to breach the system, and errors in accessing information are distinguished from actual unauthorized attempts to access the system.

Mr. Drea concluded by expressing the Commission's wish to cooperate with the Comptroller's Office when Mr. Hanratty visited them and assured Mr. Wisner that the Commission had not intended to single out the Comptroller's Office. Mr. Drea noted that the specific incident in the Interim Report was mentioned because of its wide publicity in the press and the conclusion was drawn that security of personal records of state agencies should be reviewed.

The public hearing closed with a notice that the next hearing would be held on March 16th in Baltimore at 201 West Preston Street, Room L-3 at 10 A.M.

A short Commission meeting followed. The survey on record-keeping practices of state and private hospitals was distributed to Commission members. No major changes were made.

Discussion covered the meetings that Mr. Hanratty has been scheduling with state agencies. He informed members that responses had been favorable, with the liaison appointed in each agency varying from the Public Affairs Officer to the Executive Assistant to the Secretary.

Mr. Drea brought up the intention of the Commission to request deferment of bills (without taking a position) which directly impacted on the work of the Commission-such as the one introduced by Delegate Toth. Those bills of a clarifying nature would not be affected.

In conclusion, Commission members requested that Mr. Hanratty contact the Departments of Health and Mental Hygiene, Human Resources, Public Safety and Education and inform them that the Commission would like to have a representative from their departments testify at the next public hearing. Mr. Hanratty added that the Department of Transportation would be sending a representative. Mr. Tynes stated that representatives from the Department of Personnel would attend and Mr. Zee informed Mr. Hanratty that the State Archivist would also be there.

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Governor's Information Practices Commission
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Governor's Information Practices Commission

Minutes of Commission meeting- January 19, 1981

The Commission convened with all present except Mr. E. Roy Shawn, Mr. John E. Donahue, Ms. Florence B. Isbell, Dr. Harriet Trader and Mr. Wayne Heckrotte. The meeting began with the introduction of Mr. John Clinton, the new representative from the Comptroller's Office. Mr. Arthur S. Drea, Jr. presented a flyer on a book entitled, Guidebook to Freedom of Information and Privacy Acts. It was decided that libraries would be checked to see if the book was currently available.

Mr. Drea asked if there were any additions to the minutes from the previous meeting. Delegate Nancy Kopp said that it had been her impression that the Commission had not decided that the issue of confidentiality of bill drafts was beyond its jurisdiction as indicated in the minutes of the meeting of December 15, 1980, but would be dealt with later if time allowed. Delegate Kopp requested that the minutes be corrected to reflect this fact. The minutes were adopted with this change.

Mr. Drea discussed the scheduling of the two public hearings. One is to be held in Annapolis for the general public early in the legislative session,perhaps the third week of February. The second is to be held in Baltimore and will be structured for agencies. Delegate Kopp added that the Commission might want a public hearing in Baltimore for state employees. Mr. Drea stressed that the Baltimore hearing will be open to all but if another hearing was necessary, one could be scheduled. Mr. Dennis Hanratty stated that it would be desireable for him to meet with the representatives from agencies before the hearings.

Discussion commenced on the proposed Interim Report. Delegate Kopp said that in the Introduction there appeared to be a confusion between the records of private organizations and those of governmental organizations. In addition, the report needed a more explicit recognition of the right of citizens to gain access to the public records of government. She suggested the insertion of a statement reflecting the growing concern in this area. Mr. Dennis Sweeney agreed, stating that current legislation dealing with openess in records and privacy had been underscrutinized but that the report seemed to put a greater emphasis on privacy. Mr. Drea concurred that the Introduction should be modified, but nonetheless stated that the emphasis of work would probably be in the privacy area. It was discussed and decided that a paragraph would be added to detail the public's right to know more explicitly.

Mr. Albert Gardner requested clarification of the following statement that appeared in the first page of the report: " Today, companies throughout the world rather routinely engage in transactions that would have been impossible before the 1950s". Mr. Hanratty responded by providing an example of a foreign physician contacting the U.S. National Library of Medicine and receiving almost instantaneous assistance in diagnosis. Mr. Gardner stated that it was his understanding that computers affect the speed of transactions but not the type of transactions that could be conducted. Mr. Hanratty answered that certain transactions became feasible only as a consequence of computerization. Mr. Robin Zee felt that the key word of the sentence was "routinely". It was suggested that the sentence be modified to read: "Today, companies throughout the world rather routinely engage in transactions in a manner that would have been impossible before the 1950s".

A number of comments and questions were clarified rather quickly. Mr. Drea, Delegate Kopp and Mr. Clinton felt that the report should be footnoted; the other members concurred. Delegate Kopp asked if the use of "personal records" rather than "personnel records" in the first paragraph of Section IV had been intentional. Mr. Hanratty replied that the term "personal" was meant to include "personnel". Finally, Mr. Zee asked if the statement of the second paragraph of page 3- "...the expansion of our information-gathering ability has far outstripped the ability of individuals to determine what type of personal information is released and for what purposes"- was in reference to the ability to collect information. Mr. Hanratty responded affirmatively.

Considerable discussion ensued over the statement on page 5 of the report asserting the need for the enactment of comprehensive privacy legislation. Delegate Kopp maintained that though there was certainly a need for a thorough examination of the issues involved, it was too early to conclude that legislation was required. Mr. Hanratty noted that Mr. Wayne Heckrotte had called him and raised essentially the same objection. At the same time, a number of members requested clarification of the word "comprehensive". Mr. Sweeney observed that comprehensive privacy protection might be provided through the enactment of categorical, rather than omnibus, legislation. Mr. Hanratty stated that it had been his impression that the Commission supported the development of omnibus legislation; Commission members felt, however, that his point remained an open question. Mr. Zee suggested that it was probably premature to conclude that we needed a comprehensive privacy act. After deliberating on these points, the Commission instructed Mr. Hanratty to eliminate all statements in the report calling for comprehensive legislation and to state instead that the Commission would examine the suitability of such legislation.

Discussion was again held on the need for a balance in the report between privacy issues and public access issues. Delegate Kopp recommended the inclusion of a new section that would deal with matters affecting the right of citizens to gain access to the public records of government. Mr. Sweeney agreed, noting that the report gives the impression that privacy was by far and away the principal concern. Unless the emphasis on privacy was tempered somewhat, he suggested, the Commission would not receive substantial input from citizens on the issue of access to public records. Mr. Zee supported this position, noting that the report could, and should not be so biased as to eliminate the public records side of the question altogether.

Senator Timothy Hickman raised the issue of the development of adequate security of personal records in the possession of state government. He suggested that it might be helpful to expand and strengthen those sections of the report dealing with security, noting in particular the need for risk analysis assessment. A consensus was reached to add a paragraph that would address these points.

Various comments were made concerning the section of the report noting the Consumer Council's survey of record-keeping practices of Maryland hospitals. Senator Hickman asked whether the Consumer Council had surveyed state hospitals only, or included both state and private hospitals; Mr. Hanratty responded that the survey covered both types. Mr. Drea felt that this point should be noted in the report. Mr. Hanratty stated that a comprehensive survey examining hospital procedures was being designed by Ms. Thea Cunningham, and asked for guidance regarding to whom the survey should be sent. Delegate Kopp pointed out that the Executive Order establishing the Commission only authorized that body to consider the practices of state institutions. It was Mr. Sweeney's opinion, however, that access to hospital records was such a sensitive and important issue that the Commission should consider including private institutions as well. The Commission decided to send the survey to both public and private institutions; in the letter addressed to private institutions, however, the Commission would simply ask for their cooperation.

Mr. Sweeney suggested the utility of including an Appendix to the report listing those sections of the Maryland Annotated Code pertaining to the protection of personal records. In response Mr. Hanratty felt that such a list might be incomplete since there could be articles of the Annotated Code of which he might be unaware. He also recounted difficulties in receiving information on the subject from various Assistant Attorneys General. Mr. Sweeney offered to be of assistance to Mr. Hanratty in this regard. The Commission concluded that a list of privacy statutes would be attached to the report, though the list would be selected, not comprehensive.

Mr. Drea solicited the opinions of Commission members on Section III entitled "A Privacy Bill of Rights." It was agreed, first of all, that the section should be tentatively retitled, "General Issues of Privacy." As in the case of the report examining the current status of privacy policy in Maryland, the Commission felt that the language introducing Section III should be moderated. Rather than imply that the Commission had already endorsed the list of principles in that section, it was felt that the introductory statement should be rephrased indicating that these were merely issues to be considered. Delegate Kopp read a suggested introduction to which the members agreed.

Comments were requested from the members regarding the twenty-one issues that were listed in the report. Mr. Sweeney expressed concern that there was insufficient attention given to the cost of enacting comprehensive privacy protection. Mr. Hanratty replied that, in his opinion, costs were adequately mentioned on page 12 of Section IV. In addition, Mr. Drea observed that most of the issues contained disclaimers such as "to the greatest extent possible." It was decided to leave references to the cost of privacy protection as they appeared in the proposed report. One issue was modified at the request of Mr. Zee. Issue #21 was changed to read: "An agency which is authorized in accordance with state law and regulation to destroy records involving personal facts of an individual's life should ensure that records are destroyed in a secure and thorough manner."

Commission members agreed that the format used in Section III was an appropriate one in order to receive comments from agency officials and the general public. By listing issues numerically, readers would be able to make comments to specific items in the report. Mr. Zee noted that the Commission might want to invite groups to add issues that possibly were overlooked in the report. In this regard, Mr. Hanratty read a copy of a letter to be sent to agency officials along with the Interim Report. The members supported the content of the letter; Delegate Kopp felt, however, that the letter should come from Mr. Drea as Chairman of the Commission. This position was supported by the other members and adopted. Mr. Donald Tynes urged the inclusion in the letter of a date by which agency officials should respond to Commission requests; this position was also adopted.

Discussion then focused on the timing of the report. Mr. Drea suggested that the Interim Report be given to the Governor and the members of the General Assembly first, and then to agencies and interest groups. Delegate Kopp observed that the Information Practices Commission was a gubernatorial rather than legislative body and therefore protocol required that the Governor receive the report before anyone else. This position was seconded by Mr. Zee. It was decided to send the report to the Governor first; then, after waiting several days, the Commission would contact the Governor's Office and ask if there were any major objections before distributing it.

Senator Hickman inquired whether the staff had completed the personal record-keeping survey to be sent to agency officals. Mr. Hanratty showed him a copy of the proposed survey and stated that he felt that it would be better to delay distribution of the survey until agency officials had designated their liaisons to the Commission.

Commission members proceeded to discuss the new Section IV pertaining to access to public records. Delegate Kopp suggested the inclusion in the report of problems that citizens may have experienced in gaining access to such records. Mr. Hanratty agreed and asked Mr. Sweeney whether there existed any report summarizing problems encountered in this regard. Mr. Sweeney responded that such a report did not exist but offered to provide assistance to the Commission in delineating these problems. In order to provide a better sense of balance to the report, Commission members decided to change the part examining status of access to public information in Maryland to Section III and made Section IV cover issues regarding privacy. The plan of the Commission would then follow as Section V.

Two principal modifications were requested in the section of the proposed Interim Report specifying the plan of the Information Practices Commission. Delegate Kopp and Mr. Zee asked Mr. Hanratty to look at that section and modify any language obligating the Commission to design comprehensive privacy legislation. Mr. Clinton noted that the section discussed public hearings for agency officials and citizen groups and inquired as to where state employees fit into this general plan. Mr. Hanratty conceded that this was an oversight of the report and agreed to include a statement requesting the participation of state employees at the Commission's public hearings.

Members turned to a discussion of a number of administrative matters associated with the Interim Report. Mr. Drea suggested that the report should include the names of all Commission members. Mr. Drea distributed a list of interest groups to be considered as recipients of the report; any additions or deletions would be referred to Mr. Hanratty. Commission members considered the publishing of the Interim Report in the Maryland Register and other publicity

through newspaper articles. Mr. Drea stated that after the report was delivered to the Governor, Mr. Hanratty would contact Mr. Gene Oishi regarding a possible press release.

Two final points were covered before the meeting was concluded. Delegate Kopp asked that in the future the minutes be stamped "DRAFT" until adopted by the Commission members and that the minutes from the previous meeting be corrected. Mr. Sweeney asked whether bills were being reviewed to determine whether they should be deferred. Mr. Drea responded that he was handling it himself and would send letters regarding bills that the Commission would like deferred.

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CORRECTED

Governor's Information Practices Commission

Minutes of Commission meeting-December 15, 1980

The Commission convened with all present except Mr. E. Roy Shawn, Mr. John E. Donahue, Ms. Florence B. Isbell, Mr. Albert J. Gardner, Jr., and Dr. Harriet Trader. The meeting began with an explanation of the Mileage Reimbursement Form by Mr. Dennis Hanratty.

Mr. Arthur Drea informed the members that he and Mr. Hanratty had met with Delegate Helen Koss, Chairperson of the House Constitutional and Administrative Law Committee,to discuss coordinating committees. Delegate Koss preferred holding separate House and Senate "pre-hearings" in the Fall of 1982. Mr. Drea stated that it had been agreed that any bill proposed in this session that impacted on the work of the Commission would be deferred and referred to the Commission. He enlisted the aid of Commission members in the review of proposals relating to the Commission's purpose. Delegate Kopp asked if the confidentiality of bill drafts would be covered by the Commission. The consensus of the members was that the issue would not be dealt with at the present time.

The remainder of the meeting was spent continuing the discussion of the document Mr. Hanratty had presented on December 1. Again Mr. Hanratty reiterated that the proposal was meant as a guide only and open to additions or deletions. Discussion ensued on the topic of Social Services. Delegate Nancy Kopp asked if general questions would be covered throughout; the members agreed that such questions would be included. The issue of Federal regulation and potential conflicts between State and Federal regulations was raised. Mr. Dennis Sweeney stated that this was usually covered by the provision "except as Federal law requires" in most documents. In addition to the questions posed under "Use" of Social Services information, Senator Timothy Hickman suggested the addition of questions concerning with whom the information is shared, for what purpose and under what authority. Mr. Robin Zee requested that #32 be changed to read "Are there opportunities for the objection to records" instead of "correction of records". Mr. Hanratty brought up the fact that he had identified only one section of the Annotated Code to date as having relevance to these questions. It was suggested that he contact Joel Rabin, Assistant Attorney General, who might have further references. The discussion of the topic was concluded with the statement that Social Services should also include confidentiality in the service sector-such as child abuse registries.

Mr. Hanratty discussed his findings on Criminal Justice. He noted that although this is a sensitive topic, there already exists significant protection of criminal justice records through various sections of the Annotated Code. He suggested that the Commission might want to focus on the issue of sealing versus purging. In the

statutes, expungement of records can be accomplished by either sealing or purging. Expunging is not automatic-should it be? Senator Hickman raised the question that if records are expunged in Maryland, do they also get expunged in other states where information may have been sent? Mr. Drea stated that the area had been recently considered and mandated to a large extent. It was agreed that the Commission would review the work of others for its own education rather than duplicate their efforts.

Question #46 brought up the question of what constitutes investigatory data. Several members raised concerns about the location of such data after the completion of an investigation. It was proposed that a separate heading be established for investigatory records. Mr. Sweeney noted that there is currently a section in the Public Information Act stating that investigatory files can be released if certain factors are applied. The Commission discussed looking at implementation of the statute for its own education. Mr. Drea proposed that since the Commission has decided to review the Public Information Act, perhaps we should avoid specific references to investigatory data. He indicated that the minutes would reflect the discussion.

Mr. Hanratty's division of the Commission's goal by using subject areas was discussed. It was decided to include general principles of privacy and that it might be useful to have a document that could be addressed by the public before the hearings (not a proposal but a discussion draft). A list of across the board issues could be included in the interim report. Because several questions are applicable across subject lines, a preface of general questions pertaining to privacy, followed by specific questions peculiar to individual topics was agreed upon. Mr. Drea also suggested the inclusion in the Interim Report of procedures for deciding questions of legal conflict. Mr. Sweeny indicated that values should be established first.

The Commission moved on to the Juvenile Justice System. Mr. Hanratty stated again that this category had received extensive attention. Delegate Kopp proposed that there be a statement in the Interim Report noting that the Commission does not assert the existence of a problem in either the Juvenile Justice System or the Criminal Justice System. Rather, the Commission is examining the areas merely for its own education and to determine whether additional action is warranted.

Mr. Hanratty stated that the privacy of Educational Records is protected considerably as a consequence of the Buckley Amendment. However, the Commission might want to look at its implementation in Maryland. Mr. Hanratty noted that the Commission could also decide to expand the provisions of the Buckley Amendment. It was brought out that the question of interagency use of records was another recurring question along with the use of information for research purposes, and security. These topics could be included in the general across the board questions.

In the discussion of topic "H", Mr. Zee proposed the question of whether information submitted to start new businesses is available to others. Mr. Sweeney suggested an additional category entitled "Confidential Commercial and Financial Information". Mr. Donald Tynes and Mr. Zee explained state procedures in this area for the benefit of the members of the Commission. Discussion ensued on bidding and contracting information and access to that information. It was decided to be within the purview of the Commission.

Mr. Hanratty discussed an addition to the proposal-a section on Tax Records.

A theme evident throughout questions was the disclosure of information by the Treasury Department to other Government agencies. Mr. Hanratty stated that the statutes are general and appear to allow disclosure. Other issues raised by members of the Commission were: who is chosen for audit, what criteria are used, and accountability for improper disclosure.

Senator Hickman inquired if anything had been done to ask agencies to submit information on their data practices to the Commission. It was decided that members of the Commission would be contacts for the agencies they represent. Letters would be sent to other agencies asking for a liaison from each. Mr. Hanratty could then meet with the points of contact and determine the difficulties involved in obtaining information. Senator Hickman suggested including a list of the information desired with the letter.

Mr. Drea stated that the tax issue would be summarized in the Interim Report. Mr. Hanratty asked for feedback on the goals of the Interim Report. The members of the Commission agreed that it should be privacy oriented. Mr. Drea added that no review of privacy is complete without an examination of the Public Information Act. Senator Hickman brought up the scheduled public hearings suggesting that a series of agency hearings be held separately, as it would be difficult to handle everyone at a public hearing.

Time did not permit a thorough discussion of the proposed schedule for the Commission throught 1982. The Commission did agree that the next meeting would be devoted to consideration of a draft of the Interim Report.

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Governor's Information Practices Commission

Minutes of Commission meeting- December 1,1980

The Commission convened with all present, except Mr. E. Roy Shawn, Mr. John E. Donahue, Ms. Florence B. Isbell, and Delegate Nancy Kopp. The meeting began with Mr. Arthur Drea informing the Commission members of certain administrative details such as the scheduling of interviews fot the clerical assistant position and the purchasing of Commission stationery. Mr. Drea also recommended that Mr. Dennis Hanratty's title be changed from Staff Assistant to Executive Director. He expressed the view that such a change was necessary in order to enable Mr. Hanratty to have greater access to agency directors. The Commission approved the new title.

All of the remaining time of the meeting was spent discussing a document that Mr. Hanratty had prepared for the Commission. In the document, Mr. Hanratty presented a series of questions that, in his opinion, were issues that could be the subject of the Commission's investigation. He noted that the document focused on privacy issues rather than freedom of information issues. In response to a question from Mr. Albert Gardner, Mr. Drea stated that the Commission will examine the freedom of information provisions found in Article 76A of the Annotated Code. Mr. Drea also noted that the Commission does have the authority to recommend substantial changes in Article 76A.

Mr. Drea asked Mr. Hanratty to present the questions to the Commission as they appeared in the prepared document. Considerable time was devoted to a discussion of issues associated with public employment. Commission members felt that in addition to the points raised in the document, other concerns needed to be examined. Among important issues raised were the rights of employees to protest materials in their files and request deletions, the dissemination of such information, the extent to which procedures exist to guarantee the relevance of information in such files, the degree to which information obtained in background checks is maintained, and the appropriate level of security necessary for protecting each type of record. Mr. Gardner expressed the view that the Commission should look closely at issues associated with the maintenance and destruction of personnel files. Mr. Wayne

Heckrotte also raised the point that the Commission should examine issues resulting from the existence of computerized files. Mr. Hanratty asked whether the Commission had the authority to look at the information practices of employers operating under contract to the State government. The consensus of the members was that such an issue was within the jurisdiction of the Commission; Mr. Heckrotte expressed reservations, however, regarding the examination of private industry by the Commission. Mr. Donald Tynes offered to gather materials from the Department of Personnel on many of the issues discussed and to make those materials available to Mr. Hanratty.

The Commission also discussed questions pertaining to medical records. Mr. Hanratty noted that although his report focused exclusively on the issue of access to medical records, in point of fact many of the same points raised under the heading of public employment were relevant to health care as well. Among issues raised by the Commission members were the degree to which researchers should have access to medical records, possible distinctions in access to records between general hospitals and psychiatric institutions, and the normative question concerning who should own medical files. Senator Timothy Hickman suggested that the issue of security of medical records needed to be addressed. The Commission did not reach a final decision as to whether it would examine only State medical institutions or would also consider practices in private facilities.

The Commission decided after some deliberation that it would for the time being steer away from the issue of adoption records. Mr. Drea suggested that the members adopt the following standard: unless there existed a compelling problem that needed to be addressed, the Commission would not deal with a particular subject. In the area of adoption records, another State commission has already produced a report and made recommendations; thus, concern was raised that the Information Practices Commission might end up replicating the study of another body. In addition, Mr. Drea expressed caution in delving into an area involving judicial records.

Throughout the discussion of public employment, medical and adoption records, various general comments were made. Mr. Dennis Sweeney alerted the Commission members to the fact that "records of State government" includes municipal and county governments as well. Senator Hickman suggested that at some point, the Commission needed to obtain the reactions of various agencies. Mr. Heckrotte felt that it might be useful to receive public comments on a specific document, such as the proposed Uniform Information Practices Code. Senator Hickman also recommended looking at some states that have already developed information practices statutes. Mr. Drea suggested giving top priority to the formulation of the interim report.

At the conclusion of the meeting, members discussed the future

direction of the Commission. Mr. Robin Zee felt that it would be helpful if Mr. Hanratty prepared a timetable for the Commission, outlining a schedule that the body could follow. Mr. Zee also recommended that the Commission invite at some point in the future Mr. David Williams from the Department of Budget and Fiscal Planning. Mr. Williams would be able to assist the Commission in the area of information contained in computer systems. Mr. Heckrotte also offered to provide assistance to the Commission in that area. At its next meeting, the Commission will continue with an examination of the document prepared by Mr. Hanratty, beginning with the issue od social services.

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Governor's Information Practices Commission
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To :Governor's Information Practices Commission Members

From:Dennis M. Hanratty

Attached you will find a list of questions that would appear to fall within the jurisdiction of the Commission. It is important to emphasize that the mandate of the Commission is neither limited to, nor responsible for, these questions. The Commission may decide not to examine many of the issues raised here and instead may substitute other concerns. Thus, this document merely is intended to facilitate discussion and assist in the development of an agenda for the Commission.

Questions in this document are both empirical and normative in nature. Under the Executive Order of the Governor, the Commission would appear to have the authority, for example, to ask not only what is the present situation regarding an individual's access to his own medical records but also whether that individual should have such access?

At the end of each category of questions, various comments have been attached. These comments are made either to identify relevant sections of the Maryland Annotated Code or to note State reports that have already been produced on a particular subject.

This report focuses on issues relating to personal privacy rather than consideration of freedom of information concerns. This is done principally in response to the emphasis given to personal privacy in the most recent Commission meeting. In addition, there already exists a Maryland statute, Article 76A, that deals largely with freedom of information. With respect to freedom of information, then, many of the critical issues have already been raised. What still remains to be done, however, is an assessment of the relative effectiveness of the implementation of Article 76A.

A. PUBLIC EMPLOYMENT

I. Collection

1. Are state agencies limited in the information that is collected form employees or applicants?

II. Use

2. Are employees informed of the uses that may be made of the records contained by agencies?
3. Do uniform procedures exist for disclosing information from personal files?
4. What protections exist on the use of personal information in statistical reports and research studies?
5. Are there opportunities for an individual to prevent information that was obtained for one purpose from being used or made available for other purposes without his consent?

III. Access

6. Who can look at an employee's file?
7. How much of an employee's file can be disclosed to another person?
8. Are employees given opportunities to see and copy portions of their own files?

IV. Accuracy

9. Do uniform procedures exist to make sure that information contained in personnel files are accurate?

V. Investigations

10. How are background checks conducted for prospective state employees?
11. Are polygraph tests used by state agencies in screening applicants?
12. What procedures are followed by agencies in disclosing employee information to law enforcement officials? Are subpoenas demanded, or is information frequently disclosed in response to less formal requests?

VI. Security

13. What procedures exist to guarantee security of employee records?

VII. General

14. How long are performance appraisals kept?
15. At what point, if any, does the public accountability of a government employee require that he be treated differently from a private employee?

There are at least three sections of the Maryland Code that deal directly with the questions just raised. First of all, Article 76A, Section 1A contains a general statement restricting the collection of information: "The State, counties, municipalities, and political subdivisions, or any agencies thereof, may maintain only such information about a person as is relevant and necessary to accomplish a purpose of the governmental entity or agency which is authorized or required to be accomplished by statute, executive order of the Governor or the chief executive of a local

jurisdiction, judicial rule, or other legislative mandate.

An additional section, Article 100, Section 95A (a), places limitations on the types of questions to be asked: "An employer may not require an applicant to answer any questions, written or oral, pertaining to any physical, psychological or psychiatric illness, disability, handicap or treatment which does not bear a direct, material, and timely relationship to the applicant's fitness or capacity to properly perform the activities or responsibilities of the desired position."

Finally, Article loo, Section 95B prevents the state from using polygraphs for purposes of employment: " An employer may not demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment." Until,1978, state government was exempted from this provision.

B. MEDICAL RECORDS

I. Access

16. Are individuals in state medical facilities allowed to see and copy their own records?
17. Should individuals in such facilities be allowed to see and copy these files?
18. Should any distinction in access to records be made between medical care and psychiatric care?
19. Should any distinction be made between a physician's record and a hospital's record?
20. Should hospitals and doctors be prevented from disclosing information concerning a patient in the absence of that patient's authorization?

The most controversial aspect of medical records appears to revolve around the issue of access. Medical records under state law are the property of the doctor or institution in question, not the patient. However, patients have been granted access in certain specified situations. Article 43, Section 565c (4) concerns itself with the rights of patients in skilled nursing facilities and intermediate care facilities: "Every patient shall receive from his attending physician or the resident physician of the facility complete information concerning his diagnosis, treatment and prognosis in terms and language the patient can reasonably be expected to understand unless medically unadvisable." It should be noted, however, that this section does not grant a patient physical access to his records. Article 43, 565c (6) provides some protection for patients in these specialized facilities in the disclosure of their records to third parties. Article 48A, Section 490c grants an individual access to health insurance files: "Medical files compiled by insurance companies under life or health policies on applicants and claimants shall be made available for inspection on demand by the applicant, the claimant or his agent. Information provided by a physician shall be available upon request after

a period of five years from the date of the medical examination or sooner upon written authorization of the physician."

It appears that there are significant variations in the attitudes of doctors and hospitals in their willingness to grant their patients access to records. The Consumer Council of Maryland recently conducted a survey of eighteen hospitals in the Baltimore metropolitan area and an additional sampling of county hospitals. The Consumer Council asked the following question: " Do patients in your hospital have access to their medical records?" There were four general categories of responses: 1) never; 2) yes, if the request comes from an attorney; 3) yes, but only if it is authorized by the physician; 4) yes. It might be useful for the Commission to expand this survey to include both a larger number of state facilities and a larger number of issues related to access of records.

In addition to an in-state survey, it might be helpful to learn about the experiences of other states. For example, both Illinois and Colorado have statutes which provide for significant patient access to medical records. How have these laws worked out? Similarly, what has been the experience in federal hospitals since the passagae of the Privacy Act of 1974?

C. ADOPTION RECORDS

I. Access

21. Should adoption records be released to adoptees?
22. Should adoption records be released only to certain categories of adoptees? (e.g. those over 21 years of age).

In January 1980, the Governor's Commission to Study Adoption Laws released its report. The Commission made four principal recommendations: 1) there should be no change in the law for those adoptees under 21 years of age; 2) adult adoptees should be entitled to information concerning then names and addresses of their birthparents; 3) "...in the case of adoptions which have occurred during the time when records were sealed the Commission recommends that a court petition by the adoptee be used to obtain information which would identify a birth parent. Unless clear and convincing evidence of potential harm to the birthparent is adduced, it is recommended that the records be opened."; 4) in case of future adoptions, the Commission recommends that records be opened when the adoptee reaches the age of 21.

D. SOCIAL SERVICES

I. Collection

23. What type of information is collected on clients of social service agencies?
24. Are there restrictions on information that may be collected?
25. Is information collected only from clients themselves, or from other sources?
26. If other sources are contacted, are social service agencies restricted in whom they may contact?

27. Does a client have an opportunity to indicate certain sources that he does not wish contacted? (e.g. an employer).
28. Are clients informed of the type of information that is collected about them?

II. Access

29. Do clients have access to social service records?
30. Should clients have access to social service records?
31. Should a parent have access to a child's records? (e.g. the records of family planning services).
32. Are there opportunities for the correction of records?

III. Use

33. What provisions of confidentiality exist concerning such records?
34. Is information shared among agencies?
35. Should information be shared among agencies?

The only section of the Annotated Code that I have identified at the present time as having direct relevance to the questions raised here is Article 88A, Section 6, (1), which states the following: "Except in accordance with proper judicial or legislative order and except to an officer of the State, or the United States, having a right thereto in his official capacity, it shall be unlawful for any person or persons to divulge or make known in any manner the names of, the amounts paid to, or any other information concerning persons applying for or receiving social services, child welfare services, general assistance, old age assistance, aid to the blind, aid to families with dependent children, or aid to the permanently and totally disabled, directly or indirectly derived from the records, papers, files, investigations or communications of the State, county or city, or subdivisions or agencies thereof, or acquired in the course of the performance of official duties." This article deals with the subject of confidentiality, but does not address the issues of collection or access.

It should be noted that the federal Privacy Act only covers those records that are maintained by a part of the Executive branch of government. Thus, even if a program is federally funded, as in the case of Food Stamps, the records of that program are not covered under the provisions of the Privacy Act if the states are responsible for its administration.

E. CRIMINAL JUSTICE SYSTEM

I. Access

36. Should an individual have access to his criminal justice records?
37. How do we balanceaccess to records with the needs of law enforcement?
38. What possibilities should exist for the correction of records?
39. Should law enforcement agencies maintain arrest records in situations where no conviction occurred?
40. Should any restriction be placed on access to conviction data if an individual has no further involvement with the

criminal justice system for some specified period of time?
41. If access to conviction data is restricted, should these restrictions apply to all conviction data, or only to misdemeanors and non-violent felonies?
42. Should purging (as opposed to sealing) occur for convictions for crimes that have been decriminalized?

II. Use

43. What regulations, if any, should exist regarding release of criminal justice records through interstate information systems?
44. What regulations, if any, should exist concerning the use of criminal offender information for research purposes?
45. If arrest records are maintained, should there be prohibitions against their being shared with other law enforcement units?
46. Should intelligence data and investigatory data be barred from entry into the central repository of criminal justice information?

In 1973 the federal Crime Control Act was passed, requiring that information systems developed with federal funds be protected by measures to insure privacy and security of criminal justice information. This Act necessitated the development in Maryland of a comprehensive plan to guarantee security of information. The results of that plan have been codified in Article 27, Sections 742 through 752. Under these sections, a central repository for criminal history information was created. In addition, a Criminal Justice Information Advisory Board was established to make recommendations on the functioning of this repository. Authority over the collection and dissemination of criminal justice information was given to the Secretary of Public Safety and the Chief Judge of the Court of Appeals, each of whom were responsible for his particular branch of government. These sections also established procedures whereby an individual could inspect and challenge information.

Various sections of the Annotated Code deal with procedures for the expungement of criminal records. Article 27, Section 292 provides for expungement of an arrest record if the individual is not convicted in this case and has never been previously convicted of a crime. Two points should be noted with respect with this section. First of all, expungement is not an automatic process. It is up to the Court to decide whether the record should be expunged. Second, expungement does not necessarily mean the purging, or the physical destruction, of the record. Instead, it could also mean sealing, whereby a record is separated in some fashion from other records. The same section also provides for expungement of a record for an individual who is a first offender and is placed on probation.

Article 27, Section 736 states that if an individual is arrested and not charged with a crime, "... he may give written notice of these facts to any law enforcement agency which he believes may have police records concerning that arrest, detention, or confinement, and request the expungement

of those police records." It is important to note that the request for expungement must come from the individual himself. Expungement is not an automatic process. In addition, expungement can mean sealing rather than purging.

F. JUVENILE JUSTICE SYSTEM

I. Collection

47. What limitations, if any, should be placed on the collection of records by the juvenile justice system?

II. Use

48. Should any restriction be placed on the automation of juvenile records?

49. Should special provisions be enacted for the dissemination of information to researchers, the news media, etc.?

50. Should such records be sealed or purged after the individual ceases to come under the jurisdiction of the juvenile justice system?

The most relevant section of the Annotated Code to the questions raised here is CJ 3-828, which states the following:"a) A police record concerning a child is confidential and shall be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and confidential use of the record by the Juvenile Services Administration or in the investigation and prosecution of the child by any law enforcement agency. b) A juvenile court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by order of the court upon good cause shown. This subsection does not prohibit access to and the use of the court record in a proceeding in the court involving the child, by personnel of the court, the State's attorney, counsel for the child, or authorized personnel of the Juvenile Services Administration. c) The court, on its own motion or on petition, and for good cause shown, may order the court records of a child sealed, and upon petition or on its own motion, shall order them sealed after the child has reached 21 years of age. If sealed, the court records of a child may not be opened, for any purpose, except by order of the court upon good cause shown."

G. EDUCATIONAL RECORDS

Educational records are in a special category in that they are governed by federal statute. The Family Educational Rights and Privacy Act of 1974 gives a student or his parent the right to inspect the student's records and request correction of such records. In addition, parents and students are given some degree of control over the dissemination of information. The Act applies to any institution that receives funds from the Department of Education. The Commission could thus recommend measures that were more stringent than the federal standards, but not weaker ones. For example, at the present time, records about applicants who have never been students at a particular institution are exempt from

parent and student access. This type of provision could be changed under a Maryland statute.

H. OTHER

51. What restrictions, if any, should be placed on motor vehicle registration lists?

52. What restrictions, if any, should be placed on voter registration lists?

TR 12-112 (a) of the Annotated Code addresses the first issue: " Unless the information is classified as confidential under 12-111 of this subtitle or otherwise as provided by law, the Administration may furnish listings of vehicle registration and other public information in its records to those persons who request them, but only if the Administration approves of the purpose for which the information is requested."

62 Opinion of the Attorney General 396 (1977) states that registration records of voters are public documents unless the Board of Election Supervisors rules otherwise.

what criteria are used to determine who is going to be audited?

I. TAX RECORDS

53. What information from individual tax records is disclosed by the Treasury Department to other government agencies?
54. Why is such information disclosed?
55. What security safeguards are demanded by the Treasury Department before information from tax records is disclosed to other agencies?
56. Should restrictions be placed on the disclosure of tax information to other government agencies for purposes unrelated to tax collection?
57. Should any restrictions be placed on the dissemination of tax information to law enforcement officials?
58. Should law enforcement officials be required to convince a court that the information is directly relevant to an investigation?
59. Should taxpayers be notified that information is being turned over to law enforcement officials?
60. Should taxpayers have the opportunity to contest the accuracy of tax records before they are released to law enforcement officials?
61. What restrictions should be placed on the redisclosure of tax informantion by third parties who have received such information from the Treasury Department?
62. Should the Treasury Department make distinctions between information that is collected directly from the taxpayer and information that is obtained from other third-party sources?

There are few, if any, statutes in the Maryland Annotated Code that address the issues presented above. Instead, one finds fairly vague language regulating the transfer of tax records from the Treasury Department to other government agencies.

Article 81, Section 5A deals with the subject of confidentiality of property tax records. It states the following:

"a) Divulging amounts and particulars unlawful.- Except in accordance with proper judicial or legislative order and except to an officer of the State having a right thereto in his official capacity, any officer or employee or former officer or employee of the State or any political subdivision may not divulge or make known in any manner:

1) The amount of income or any particulars set forth or disclosed in any return required under any provision of Maryland law if the return contains federal return information; or

2) Any federal return, federal return information, or copies of a federal return or return information required by State law to be attached to or included in any State return."

Article 81, Section 300 regulates the confidentiality of income tax records, stating the following:
" Divulging amounts and particulars unlawful. - Except in accordance with proper judicial or legislative order and except to an officer of the State having a right thereto in his official capacity, it shall be unlawful for any officer or employee of the State or any political subdivision to divulge or make known in any manner:
1) The amount of income or any particulars set forth or disclosed in any return under this subtitle; or
2) Any federal return, federal return information, or copies of a federal return or return information required by State law to be attached to or included in the State return.
b) Reciprocity between Maryland and other officials.- In the event the United States government or any other state allows the State's official to examine its income tax returns or any class thereof, or to receive tax return information, then this State upon application by the proper authorities of the United States or such other state to the Comptroller, shall allow the proper officials of the United States government or of such other state, whose official duties require them to make such inspection, to inspect the income tax returns of such corresponding class of such income tax returns filed hereunder or to receive tax return information. Disclosure to the proper officials of such other state may be made only in those instances where the laws of such other state provide confidentiality for such exchanged tax returns or tax return information."

On February 5, 1973, an Opinion of the Attorney General was released which prohibited the disclosure of income tax records by the Comptroller to county governments for the purposes of conducting local studies.

Article 81, Section 302A places restrictions on the disclosure of income tax returns by those who have assited in the preparation of such returns:
"a) It is a misdemeanor, punishable upon conviction by a fine of not less than five hundred dollars nor more than ten thousand dollars, for any person to disclose anyinformation related to a specific client obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns, unless such disclosure is within any of the following categories:
1) When requested in writing by the taxpayer.
2) When expressly authorized by State or federal law.
3) When necessary to the preparation of the return.
4) When pursuant to court order.

Finally, Article 81, Section 366 regulates disclosure of retail sales tax information:
" Except in accordance with proper judicial order, or as otherise provided by law, it shall be unlawful for the Comptroller or any deputy, agent, auditor or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid or any particulars set forth or disclosed in any return required

by this subtitle. Nothing herein contained shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representatives of the State of the report or return of any taxpayer who shall apply for a review or appeal from any determination or against whom an action or proceeding is about to be instituted or has been instituted to recover any tax or penalty imposed by this subtitle. Reports and returns shall be preserved for two years and thereafter until the Comptroller orders them to be destroyed."

- A similar statute exists in Article 62A, 1A (covering confidentiality of estate taxes)

STATE OF MARYLAND
EXECUTIVE DEPARTMENT
ANNAPOLIS, MARYLAND 21404

HARRY HUGHES
GOVERNOR

State House - Room H-4
301-269-2810

Governor's Information Practices Commission

Minutes of Commission meeting- November 17,1980

Mr. Arthur Drea began by explaining the selection process of the new Staff Assistant. He then introduced the individual chosen, Mr. Dennis Hanratty, to the Commission members.

Mr. Hanratty presented a proposed news release concerning the Commission's existence and function; the release was approved by the members. He also informed the members that an ad had been placed in the Baltimore and Annapolis papers for a clerical assistant.

Considerable time was devoted to the need for an issuance of an interim report. After discussing the matter, the consensus among those present was that it would be feasible to produce an interim report by early February. The interim report would be basically a document that discusses the central focus of the Commission and presents the issues to be considered by that body. It was felt that such a report should be available for the legislators before too much time elapsed in the session. Mr. Wayne Heckrotte and Mr. Dennis Sweeney suggested the usefulness of holding public hearings soon after the issuance of the interim report. In this way, the public would be able to comment on the direction of the Commission and recommend consideration of issues that were not covered in the report. Mr. Sweeney suggested contacting various organizations which might have a strong interest in the direction of the Commission's work. While the Commission prepares its interim report, it will also issue a short progress report to the Governor.

Mr. Drea requested that time be alloted at the next meeting for a discussion of the proposed Uniform Information Practices Code as drafted by the National Conference of Commissioners on Uniform State Laws. He also asked Mr. Hanratty to outline a list of issues that could be discussed by the Commission, and to have that outline available at the next meeting.

INFORMATION PRACTICES COMMISSION

MINUTES OF COMMISSION MEETINGS

SEPTEMBER 8, 1980 - The first meeting of the Information Practices Commission was convened at 4:00 p.m. with all members present, except E. Roy Shawn and Harriet Trader.

The Commission generally discussed organizational matters, including the scheduling of key people, such as, Delegate Helen Koss, Judson Garrett, and Dennis Parkinson to appear before the Commission and discuss their activities with subjects pertinent to the Commission's responsibility.

The Commission also considered the importance of hiring professional and clerical staff to assist it in its endeavors. There was much discussion about the type of person necessary for a professional staff position. This discussion included minimum requirements for the position, as well as a need for experience in research and writing. Donald Tynes volunteered to work with the Chairman in preparing the necessary advertisements to begin the process of hiring a professional staff person.

SEPTEMBER 22, 1980 - The Commission convened with all members present, except E. Roy Shawn, Dennis M. Sweeney, Esq., and John E. Donahue. The Commission welcomed The Honorable Helen Koss and a general discussion ensued concerning Delegate Koss' efforts over the recent years in the General Assembly to address meaningful legislation in the areas of individual rights regarding privacy. Delegate Koss discussed numerous problem areas and suggested to the Commission that it obtain a computer run regarding all of the areas in the code dealing with privacy and confidentiality. She also discussed the propriety of using public information which was obtained for one purpose such as voting records, for an entirely different purpose such as jury selection. Delegate Koss also expressed her concerns with regard to data security and the lack of uniformity among departments in the handling of public records. Further matters were also discussed and the Commission addressed a number of questions to Delegate Koss. There was a further discussion among Commission members of the progress in the pursuit of retaining professional staff and in the budget allocated to the Commission.

OCTOBER 6, 1980 - The Commission convened with all members present except John E. Donahue, Florence Isbell, and E. Roy Shawn. The Commission welcomed Judson Garrett, Esq., Counsel to the Governor, and a general discussion ensued regarding the Governor's primary purposes in appointing the Commission and the areas which Mr. Garrett felt the Commission should explore first. Mr. Garrett also gave the Commission the benefit of his experience as Counsel to the

Legislature in subject areas pertinent to the Commission's work. Mr. Garrett confirmed the wide disparity of practices which presently exist between various State departments and agencies and the handling of public records. He strongly recommended that, at some appropriate time, the State agencies be consulted in a public forum regarding their practices. He also expressed the Governor's concern with regard to the security of data materials.

The Commission was informed that over 350 applications had been received for the professional staff position to the Commission and that the Chairman was organizing those applications for the purpose of conducting interviews. A subcommittee, consisting of Delegate Kopp, Florence Isbell and the Chairman, was appointed for the purpose of conducting interviews. It was decided that the Commission would not meet again until the professional staff person was retained so that work assignments could begin at that time.