

May 15, 2003

Bradley S. LeBoeuf  
333 S. Main Street, Suite 509  
Akron, OH 44223

Re: *Advisory Opinion 03-FC-30*; Alleged Improper Denial of Access to Public Records by the Office of the Indiana Attorney General, Consumer Protection Division.

Dear Mr. LeBoeuf:

This is in response to your formal complaint, which was received on April 28, 2003. You have alleged that the Office of the Indiana Attorney General, Consumer Protection Division ("Consumer Protection Division") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Consumer Protection Division denied you access in violation of the APRA in response to your April 11, 2003 request for public records related to a consumer complaint filed against Leonard Pryweller. Mr. David Stewart, Section Chief for Professional Licensing within the Consumer Protection Division responded in writing to your complaint. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Consumer Protection Division did not deny you access to public records in violation of the APRA because consumer complaint files are confidential under Indiana Code section 25-1-7-10 until the Attorney General files a notice with the licensing board to prosecute the licensee.

## BACKGROUND

According to your complaint, on April 11, 2003 you sent a public records request to the Consumer Protection Division requesting copies of the following records:

1. Any and all correspondence, notes, affidavits, journals, logs, faxes, photographs, minutes, comments, summaries, faxes, records or other reports concerning statements, interviews or telephone conversations, and inter-office and intra-office memoranda relating to the consumer complaint alleging licensing violations of Leonard Pryweller of Leonard Pryweller Realty involving BDX, Inc. and Eugene A. LeBoeuf, since January 1, 2002.
2. Any and all policy statements, directives, protocols, pamphlets, bulletins, instructions, and reports regarding how the Indiana Attorney General handles consumer complaints against an

Indiana licensee regarding an alleged licensing violation that have been in effect since January 1, 2002.

In a letter dated April 21, 2003, Mr. Stewart responded to your request by providing a summary of the items that are contained in the complaint file and that the Consumer Protection Division determined that the allegations of licensing violations could not be substantiated and that the file had been closed. Mr. Stewart then advised you that under Indiana Code section 25-1-7-10 the complaint and information pertaining to the complaint is confidential since no disciplinary charges were filed as a result of the complaint. As to the second item you requested, Mr. Stewart advised you that they do not have any documents that satisfy this request. It is your position that the complaint file information should be made available to you under the APRA since you are a party in interest as the original author of the consumer complaint in question. As a result, you then filed your formal complaint with this Office seeking access to all of the documentation that has not previously been provided to you from the subject consumer complaint file.

In his response to your formal complaint, Mr. Stewart stated that the Consumer Protection Division did receive your request on April 14, 2003 and that on April 21st, he sent you a response partially denying you access to public records of the Division. Mr. Stewart indicated that he has attempted to explain that he could not provide a copy of the entire consumer complaint file to you because Indiana Code section 25-1-7-10 made these public records confidential. According to his response, both the complainant and respondent are limited in what is provided to them from a consumer complaint file unless or until formal disciplinary charges are filed with the appropriate licensing board. Mr. Stewart stated that while the Consumer Protection Division will provide you with any documents to which you are legally entitled, Indiana Code section 25-1-7-10 prevents them from releasing to you any other information from the consumer complaint file in question.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Consumer Protection Division is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of this public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). If a public record is confidential, a public agency may not disclose that public record unless disclosure is required by state or federal statute or ordered by a court under the rules of discovery. Ind. Code §5-14-3-4(a).

While public records are generally open for public inspection or copying, there may be statutes that restrict access to such public records as contemplated under Indiana Code section 5-14-3-4. Under

Indiana Code section 5-14-3-4(a)(1), the APRA states that a public agency may not disclose public records that are declared confidential under state statutes. The Consumer Protection Division, in denying you access to many of the documents contained in the consumer complaint file in question, cited Indiana Code section 25-1-7-10 as the statute that renders the public records in question as confidential. Under Indiana Code section 25-1-7-10, the Consumer Protection Division could release these public records only after the Attorney General had filed a notice with the appropriate licensing board, in this case the Indiana Real Estate Commission, that the licensee would be prosecuted as a result of the consumer complaint. Id. In this case, the Consumer Protection Division has closed the file without providing any notice to the licensing board that formal disciplinary action would be taken. For this reason it is my opinion that the Consumer Protection Division did not violate the APRA with respect to your April 11, 2003 request for access to a consumer complaint file when the Attorney General has not filed the requisite notice of prosecution under Indiana Code section 25-1-7-10. The Consumer Protection Division cannot release information that has been declared confidential by state statute unless disclosure is required under state or federal statute or ordered by a court under the rules of discovery.

### CONCLUSION

It is my opinion that the Office of the Indiana Attorney General, Consumer Protection Division did not violate the APRA by denying you access to records in a consumer complaint file because these records are confidential and may only be released if and when the Attorney General files notice with the appropriate licensing board of his intent to prosecute the licensee.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: : Mr. David Stewart, DAG, Office of the Attorney General

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