



STATE OF INDIANA

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September 22, 2014

Ms. Erin A. Webley
C/o Ice Miller, LLP
One American Square, Ste. 2900
Indianapolis, IN 46282

*Re: Informal Inquiry 14-INF-24; Indiana Board of Chiropractic
Examiners*

Dear Ms. Webley:

This is in response to your informal inquiry regarding a request to inspect documents maintained by the Indiana Board of Chiropractic Examiners ("Board"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1.

BACKGROUND

On November 27, 2013, one of your clients received two consumer complaint forms filed on behalf of the Indiana Board of Chiropractic Examiners. After receiving the complaints, on June 2, 2014, your client sought to inspect documentation related to the decision to file these complaints. The request was denied by the Board on June 2, 2014 citing the confidentiality requirements of Ind. Code § 25-1-7-10(b), which declares material relating to complaints nondisclosable.

You take exception to the application of Ind. Code § 25-1-7-10(b) by the Board as you speculate it may run afoul of not only the Indiana Access to Public Records Act, but also the Open Door Law.

The Board argues the complaints were not filed at the direction of a majority of the Board, but rather by a single member or a delegate. It asserts the complaints merely have the Board's name on it when it goes to the Attorney General's Office for review and is not an indication of any vote or decision made by a majority of the Board.

DISCUSSION

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.” *See* Ind. Code § 5-14-3-1. The Indiana Board of Chiropractic Examiners is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board’s non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

After discussing with Counsel for the Board, the complaint process can be generated by any number of individuals. The Board as a collective does not have to authorize a complaint before it is filed with the Indiana Attorney General. No vote or meetings takes place before the complaint is filed.

Ind. Code § 25-1-7-10 states:

(a) Except as provided in section 3(b) of this chapter, all complaints and information pertaining to the complaints shall be held in strict confidence until the attorney general files notice with the board of the attorney general's intent to prosecute the licensee.

(b) A person in the employ of the office of attorney general or any of the boards, or any person not a party to the complaint, may not disclose or further a disclosure of information concerning the complaint unless the disclosure is required:

- (1) under law; or
- (2) for the advancement of an investigation.

It is clear the Board cannot release any information before the Attorney General has made the decision to send the licensure action back to the Board for a vote. Once that happens, the confidentiality veil is lifted and it becomes a disclosable public record. Moreover, any licensure action taken by the Board would have to be in public.

Your analysis of the Open Door Law is correct in that the Board may not take a vote or meet behind closed doors to decide to file the complaint with the Attorney General. The Board can discuss the matter in executive session, if properly noticed, but they may not take a vote.

A meeting is defined under the ODL as a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. *See* Ind. Code § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* Ind. Code § 5-14-1.5-2(d). “Public business” means to any functions upon which the public agency is empowered or authorized to take official action. *See* Ind. Code 5-14-3-2(e).

In order for the ODL to apply, the meeting must be held by a governing body of a public agency. A governing body is defined as:

- (b) "Governing body" means two (2) or more individuals who are:
 - (1) a public agency that:
 - (A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and
 - (B) takes official action on public business;

If the Board were to meet as a condition precedent to filing a complaint with the Attorney General, that meeting should be open to the public unless they publish notice of an executive session as authorized by Ind. Code 5-14-1.5-6.1(b)(7). If that were the case, a vote or conclusive decision could not take place in an executive session.

It appears, however, the Board does not meet as a collective before a complaint is filed with the Attorney General. An individual staff member or delegate may file the complaint without authorization from the Board and a vote is not necessary. If this is the case, then the confidentiality requirement of Ind. Code § 25-1-7-10 remains in place until notice of an intent to prosecute is given by the Attorney General. Because that particular action had not taken place at the time of the request in June 2014, the Board did not err in denying your client's public records request.

Please do not hesitate to contact me with any further questions.

Best regards,



Luke H. Britt
Public Access Counselor

Cc: Michael A. Minglin, Esq.