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PUBLIC RECORDS:

REAL ESTATE BROKERS AND SALESMEN:

RESIDENTIAL BUILDERS, MAINTENANCE AND ALTERATION CONTRACTORS:

Complaints filed with the department of licensing and regulation pursuant to the residential builders, maintenance and alteration contractors act and real estate brokers and salesmen act must be disclosed to the public, such disclosure being limited only by such rules and regulations prescribing time and place of access, removal and copying.

Investigative reports compiled by the department relating to licensees and persons holding themselves out as residential builders, maintenance and alteration contractors or real estate brokers and salesmen must be disclosed to the public where the investigation has been completed.

No. 4730

June 16, 1972.

Mr. Charles E. Harmon, Director
Department of Licensing and Regulation
1033 South Washington Avenue
Lansing, Michigan

With respect to persons licensed as residential builders, maintenance and alteration contractors under 1965 P.A. 383¹ and as real estate brokers and salesmen under 1919 P.A. 306,² you have requested my opinion regarding the following questions:

"I (a). May the department divulge on the telephone to a member of the public information that complaints have been filed with it against a licensee?

(b). If so, may the department divulge the number of such complaints and specify the number thereof that are open or closed?

"II (a). Does a member of the public have a right to examine a complaint file made and kept by the department as a result of a complaint filed against one of its licensees if the request for such examination is made after the department's investigation of such complaint has been completed and such file has been closed?

(b). Does a member of the public have a right to examine the contents of a complaint file made and kept by the department as a result of a complaint filed against one of its licensees if the request for such examination is made before the department's investigation of such complaint has been completed?

"III. Does a member of the public have a right to examine a licensee's master complaint record which is maintained by the department

¹ M.C.L.A. 338.1501 et seq.; M.S.A. 18.86(101) et seq.

² M.C.L.A. 451.201 et seq.; M.S.A. 3.560(101) et seq.

and which contains a record, by number, of all complaints filed with the department against such licensee, the dates of filing of such complaints and indications that such complaints have been closed?

- "IV. Does a member of the public have a right to examine the contents of a hearing file which has been made and is kept by the department as the result of complaint filed under Act 306 or Act 383 and which contains the Notice of Hearing and preliminary and final orders of the department required for disposition of such hearing?

Is there any right in the public to examine a file after hearing and before a proposal for decision or final decision is rendered?"

Each of the questions you ask relates not to the character of records kept by the department, be they complaints filed by citizens of this state against a licensee or investigation reports made by department personnel, but essentially whether these records are available for public inspection.

Three statutory references are helpful in determining whether the public has a right of access to these records. The first two are the residential builders, maintenance and alteration contractors act and the real estate brokers and salesmen act, and the third is the administrative procedures act of 1969.³

Section 14⁴ of the residential builders, maintenance and alteration contractors act reads as follows:

"* * * All records kept in the office of the commission under authority of this act shall be open to public inspection under such rules and regulations as shall be prescribed by the commission."

Section 6⁵ of the real estate brokers and salesmen act contains identical language.

Among the records kept under the authority of the residential builders, maintenance and alteration contractors act are complaints filed pursuant to Section 9⁶ as well as reports of investigations of any licensee or any person "who shall assume to act in such capacity."

Therefore, a reading alone of the two licensing acts leads to the conclusion that each complaint filed and each investigation made is available for public inspection under such rules and regulations as prescribed by the department. Can, however, the rules and regulations limit the right of access to such records? In my opinion rules that may be adopted must relate solely to the administrative means of access and cannot diminish the right of access. Thus a fair reading of the statute imparts a legislative intent that such records shall be made available to the public, but at such times and in such manner prescribed under rules adopted for such purposes. Thus, rules designating specific times of access, place of examination, removal of the records from the premises and copying thereof would appear reasonable.

³ 1969 P.A. 306; M.C.L.A. 24.201 et seq.; M.S.A. 3.560(101).

⁴ M.C.L.A. 338.1514; M.S.A. 18.86(114).

⁵ M.C.L.A. 451.206; M.S.A. 19.796.

⁶ M.C.L.A. 338.1509; M.S.A. 18.86(109).

Turning to the administrative procedures act, does that act either diminish or reaffirm the right of access to the described records? Chapter 2, Section 21,⁷ of the act details that all governmental records of agencies are available for public inspection although there are exceptions contained in Chapter 2, Section 22(1), which are:

“* * *

“(a) Material exempted from disclosure by statute.

“(b) Interagency or intra-agency letters, memoranda or statements which would not be available by law to a party other than an agency in litigation with the agency and which, if disclosed, would impede the agency in the discharge of its functions.

“(c) Material obtained in confidence from a person, matter privileged by law and trade secrets.

“(d) Financial and commercial information relating to a specific regulated person prepared by or for the use of an agency responsible for the regulation or supervision of the person.

“(e) Investigatory materials compiled or used for regulatory or law enforcement purposes except to the extent available by law to a party to a contested case.

“(f) Material the disclosure of which would constitute an unwarranted invasion of privacy.”

Nevertheless, Subsection (2) of Section 22, just quoted, makes plain the legislative intent that the exception provisions of Subsection (1) to public inspection do not apply where a statute of this state expressly requires the records be made available to the public as does Section 14 of the residential builders, maintenance and alteration contractors act and Section 6 of the real estate brokers and salesmen act. That Subsection (2) reads:

“(2) This chapter does not authorize the withholding of information otherwise required by law to be made available to the public or to a party in a contested case.”

Finally, the public inspection provisions of that act are virtually identical with those of the federal freedom of information act.⁸ Recently the case of *Wellford v. Hardin*, 444 F2d 21 (4th Cir., 1971) was decided which interpreted the federal law.

It is a general, though not unyielding, rule of construction that when a statute is adopted from another jurisdiction the construction given there will be helpful.⁹

The court in *Wellford* ordered disclosure of certain United States Department of Agriculture files relating to adulterated and misbranded meat and poultry products as well as warnings issued to meat and poultry processors suspected of engaging in interstate commerce without registering for federal

⁷ M.C.L.A. 24.221; M.S.A. 3.560(121)

⁸ 5 U.S.C.A., § 552 (1970).

⁹ *People, ex rel. Attorney General v. Welch's Estate*, 235 Mich. 555 (1926).

inspection. The department contended these were investigatory files compiled for law enforcement purposes.

The argument may be advanced, as it was in *Wellford*, that disclosure will infringe upon a licensee's interest in preserving his reputation. The Michigan legislature, as Congress did, explicitly recognized and provided protection to some privacy interests in adopting the act.

The residential builders, maintenance and alteration contractors law, the real estate brokers and salesmen law, and the public inspection provisions of the administrative procedures act of 1969 express a public policy of disclosure for consumer information purposes as well as a strong support of the public interest in seeing how government agencies are carrying out their responsibilities.¹⁰

It is therefore my opinion that in light of the express statutory mandates, the policy of disclosure along with the reasoning of the *Wellford* decision, your questions are answered in the affirmative.

FRANK J. KELLEY,
Attorney General.

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TAXATION: Property, Delinquent:

To recover delinquent taxes imposed by 1953 P.A. 189, the local treasurer charged with their collection may bring an action against the beneficial user of the property in the name of the units of government for which he collects. Each local unit which is entitled to taxes imposed under 1953 P.A. 189, may institute legal action for the collection of the delinquent taxes against the beneficial user of the property on its own behalf.

The legislature may impose the duty for collection of the entire delinquent taxes imposed under 1953 P.A. 189, either upon the treasurer of the tax-collecting unit or upon the county treasurer.

No. 4746

July 6, 1972.

Hon. Gilbert E. Bursley
State Senator
State Capitol Bldg.
Lansing, Michigan

You request my opinion concerning unpaid and delinquent taxes upon lessees of state-owned property. Specifically, you ask me to identify the gov-

¹⁰ It will be noted that this policy would not apply when a statute prohibits disclosure. Admin. Pro. Act Chapter 2. See: medical research study data, M.C.L.A. 325.131; M.S.A. 14.57(1); information for medical research & education, M.C.L.A. 331.531-3; M.S.A. 14.57(21) (23); categorical & medical assistance records not open to inspection, M.C.L.A. 400.35; M.S.A. 16.435; records concerning applicant or recipient for any form of aid or relief confidential, M.C.L.A. 400.64; M.S.A. 16.464; adoption records not open to public inspection, M.C.L.A. 710.11; M.S.A. 27.3178(551); records of illegitimate births secret, M.C.L.A. 326.16; M.S.A. 14.236; wilful betrayal of professional secret by physician, forfeiture of license, M.C.L.A. 338.53; M.S.A. 14.533; physician-patient information privileged communication, M.C.L.A. 600.2157; M.S.A. 27A.2157.