

MAINE STATE LEGISLATURE

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*Complaints, Disclosure of Source
Freedom of Access Names of Complaints*

STATE OF MAINE

Inter-Departmental Memorandum Date April 25, 1977

To Paul A. Sawyer
From David P. Cluchey
Subject Request for Opinion

Dept. Real Estate Commission
Dept. Attorney General

You have forwarded four specific questions for response by this office.

The first question reads as follows: "Should the name of a person providing information in confidence to a member of the Commission, relating to a licensee's possible license law violation, be held in confidence from other members of the Commission?"

Enclosed is a copy of an Attorney General's opinion, dated September 29, 1975, in regard to the disclosure of names of persons making complaints. This opinion generally provides that the name of an informer may be kept confidential under the circumstances outlined in the opinion. On the other hand, the statutes provide that complaints shall be verified, 32 M.R.S.A. §4056, and to the extent that the name of the person is part of the records of the Commission, it would be open to public inspection, 1 M.R.S.A. §401 et seq. In general, however, this question raises issues concerning the internal operations of the Commission which should be dealt with by an appropriate Commission rule or regulation.

The second question reads as follows: "Should the Director withhold confidential information from the Commissioners if he feels it should be withheld or should the Director withhold any information from the Commissioners?"

While the Director is a voting member of the Commission, the relevant statute, 32 M.R.S.A. §4051-A, provides that the "Director shall be responsible for the management of the Commission's affairs within the guidelines, policies, rules, and regulations established by the Commission." It would ordinarily be presumed that any information in the possession of the Director in his capacity as manager of the Commission's affairs would be available to all Commissioners. In addition, 32 M.R.S.A. §4054, specifies that all records of the Commission are open to public inspection under such rules and regulations as shall be prescribed by the Commission. Short of a Commission rule or regulation to the contrary, the Director would have no authority to withhold information from other Commissioners or from the public generally.

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The third question reads as follows: "Is all the information in the Commission Office the property of the Commission and Commissioners for deliberation as a Commission?"

The information in the Commission Office is not the property of the Commission or the Commissioners and absent a specific guideline, policy, rule or regulation established by the Commission should be available for Commission deliberation. Moreover, it is a serious criminal offense, 1 M.R.S.A. §452, to remove, mutilate, or refuse to return any book, record, document or instrument belonging to the State or kept in a State office.

Your fourth question reads as follows: "In view of the above, would it be proper for the Director to refuse to comply with a request from an individual member of the Commission until such time as the Commission could meet and rule on that request?"

The answer to this question would depend entirely upon the factual circumstances of a particular case. Certainly the Director could refuse to violate the rules and regulations of the Commission or to do any illegal act. However, it is the responsibility of the Commission to promulgate specific rules and regulations to guide the Director in other areas.

DPC:js

Enclosure