

1977 S.C. Op. Atty. Gen. 111 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-132, 1977 WL 24473

Office of the Attorney General

State of South Carolina

Opinion No. 77-132

May 2, 1977

**\*1** When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8–800.387, and the complaint is later determined to be groundless, the Administrator is not required to release such information under the S. C. Freedom of Information Act.

TO: Irvin D. Parker  
Administrator  
Department of Consumer Affairs

QUESTION PRESENTED:

If the Administrator of Consumer Affairs receives information while handling a complaint pursuant to Code Section 8–800.387, and the complaint is found to be without merit, is the acquired information reachable under the State's Freedom of Information Act?

STATUTES, CASES, ETC.

Code of Laws of South Carolina, 1962, as amended, Section 8–800.387, et seq.;

Also Section 1–20, et seq.;

DISCUSSION OF ISSUES:

The Consumer Protection Act, specifically Code Section 8–800.376(4) provides that the Administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, except for disclosures in actions or enforcement proceedings pursuant to this chapter.

Section 8–800.376(1) provides that the Administrator may, upon probable cause, investigate to determine if a person has engaged in an act which is subject to action by the administrator.

Section 8–800.387 gives the Administrator administrative powers and responsibilities in addition to those relating to consumer credit transactions, including receiving complaints arising out of any consumer transaction, and attempting to evaluate and reconcile such complaints.

In the opinion of this Office statutory protection from publicity in Section 8–800.376(4) relates to the Administrator's investigation of acts which are subject to action by the Administrator. The reference to 'action' is considered to mean formal enforcement action by the Administrator.

This formal enforcement action would be distinguished from the administrative responsibilities set out in Section 8–800.387. The opposite interpretation, i.e., that the Section 8–800.387 powers are merely additional grants of authority for action by the

Administrator, is difficult to accept because of its separate placement at the end of the Act, and because of its supplemental nature.

Since the 8–800.387 responsibilities are supplementary grants of authority not subject to Section 8–800.376(4) confidentiality requirements, data obtained by the Administrator pursuant to 8–800.387(a), would not be specifically protected by Section 8–800.376(4).

However, when the data obtained through Section 8–800.387(a) convinces the Administrator that there is no probable cause to support the allegations of the complaint, such data should not be made public. I base this decision on the public interest exception to the Freedom of Information Act appearing in Code Section 1–20.1:

\*2 . . . nor shall the definition of public records include those records concerning which it is shown that the public interest is best served by not disclosing them to the public.

I believe that this exception clearly applies to the records in question. Support for such a view comes from Section 8–800.376(4), which specifically prevents public disclosure of information relating to investigations made pursuant to such Code Section. The legislative intent is clear that consumer investigations are to be confidential, until enforcement action is taken. This confidentiality should logically extend to Section 8–800.387 proceedings. Such a result is especially warranted where there has been a determination by the Administrator of no wrong doing. In such a case disclosure could unnecessarily embarrass or damage the consumer or vendor, without any resulting public good.

#### CONCLUSION:

When the Administrator of Consumer Affairs receives information relating to consumer complaints, pursuant to Code Section 8–800.387, and the complaint is later determined to be groundless, the Administrator is not required to release such information under the S. C. Freedom of Information Act.

George C. Beighley  
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