



# The Attorney General of Texas

April 24, 1978

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Honorable George Killinger, Chairman  
Texas Board of Pardons and Paroles  
Room 711, Stephen F. Austin Building  
Austin, Texas 78701

Open Records Decision No. 190

Re: Whether information in  
files of the Board of Pardons and  
Paroles is public under the Open  
Records Act.

Dear Chairman Killinger:

The Board of Pardons and Paroles has received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for certain information concerning inmates before the Board. The Executive Director has already determined that much of the information is public.

You ask whether information concerning (1) the race and sex of inmates before the Board, (2) the fact that an inmate was represented by an attorney before the Board, and (3) the names and recommendations of the trial officials mentioned in article 42.12, section 16, of the Texas Code of Criminal Procedure, are excepted from required public disclosure by section 3(a)(1) of the Texas Open Records Act, which excepts "information deemed confidential by law . . . ."

The law which you contend makes the requested information confidential is article 42.12, section 27 of the Code of Criminal Procedure which states:

All information obtained in connection with inmates of the Texas Department of Corrections subject to parole, release to mandatory supervision, or executive clemency or individuals who may be on mandatory supervision or parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such

information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

This provision makes confidential the files of the Board of Pardons and Paroles. Attorney General Opinion H-427 (1974); Open Records Decision No. 11 (1973). However, we determined in Open Records Decision No. 33 (1974) that certain basic information in the files should be made public. We said that the name, age, address of record, the date and court of sentencing, the crime or crimes of which convicted, the date of release from the Department of Corrections, the date of commutation and length of the sentence and time served of persons whose sentences had been commuted by the Governor, was public information.

In accordance with Open Records Decision No. 33 it is our opinion that the race and gender of inmates are basic information not intended to be made confidential by article 42.12, section 27 of the Code of Criminal Procedure. There is nothing inherently private about a person's race and gender. The gender and ethnicity of public employees are specifically made public information. V.T.C.S. art. 6252-17a, § 6(2). See Attorney General Opinion H-118 (1973). You indicate that records of race and gender are contained in Department of Corrections incarceration records rather than in documents generated by the Board; however, if these records are in your possession, we believe that portion reflecting the race and gender of an inmate is required to be released.

Your second question is whether the fact that an attorney was involved in a matter before the Board is public information. In your letter you state that your records do not necessarily contain this information and that the only way you have to determine whether an inmate or former inmate is represented by an attorney is if there is a letter in the file so stating or if the attorney has filed a fee affidavit as required by article 42.12, section 18 of the Code of Criminal Procedure. Nonetheless, any record of the involvement of attorneys is public information.

Open Records Decision No. 33 discussed the type of information intended to be made confidential by article 42.12, section 27 of the Code of Criminal Procedure. That decision listed as confidential

information not normally found in courthouse records — such information as might be placed in the records by interviewers, persons interested in and determining whether a

prisoner was rehabilitated to the extent he should be paroled, recommendations for or against parole, medical records, reports having to do with social and antisocial conduct, etc.

It is our opinion that the mere fact that an inmate or former inmate was or was not represented by an attorney is not information intended to be made confidential by article 42.12, section 27. We find support for this conclusion in the legislative policy behind article 6252-23, V.T.C.S. This statute requires registration of persons who represent other persons before state boards and agencies. Such information is specifically made public in the statute. This indicates a clear legislative policy that the fact that persons are appearing before state agencies on behalf of others is public information.

Your third question asks whether the names and recommendations of the trial officials required by article 42.12, section 16 of the Code of Criminal Procedure to send information to the Board is public information. Section 16 of article 42.12 requires

any judge, district attorney, county attorney, police officer or other public official of the state, having information with reference to any prisoner eligible for parole, to send in writing such information as may be in his possession or under his control to the Board, upon request of any member or employee thereof.

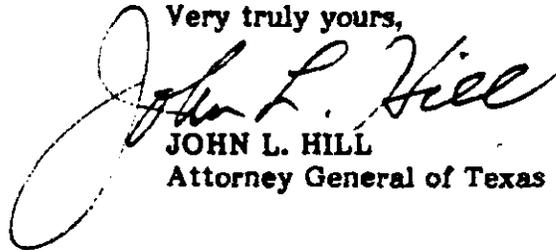
Since the names of the trial officials listed in section 16 could be determined in the case of any particular inmate by access to other sources of public information, it is our opinion that the names of these officials are not meant to be made confidential by section 27 of article 42.12. Furthermore, the disclosure of the names of these trial officials should not inhibit the ability of the Board to obtain recommendations.

However, we believe that the contents of these recommendations are made confidential by article 42.12, section 27 of the Code of Criminal Procedure and are thereby excepted from public disclosure by section 3(a)(1) of the Texas Open Records Act.

In summary, it is our decision that information concerning the race and gender of inmates before the Board of Pardons and Paroles and the fact that an attorney was involved in a matter before the Board is public information. The names of the trial officials mentioned in article 42.12, section 16 of the Code of Criminal Procedure are public information, but the contents of their recommendations are made confidential by article 42.12, section 27 of the Code of Criminal

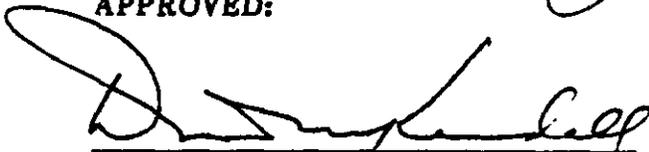
Procedure and are thereby excepted from public disclosure by section 3(a)(1) of the Texas Open Records Act.

Very truly yours,

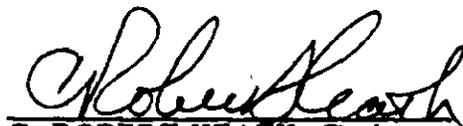


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APPROVED:



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