THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 29, 1989

Ms. Deborah L. Churchill
Assistant General Counsel
Board of Pardons and Paroles
P.O. Box 13401, Capitol Station
Austin, Texas 78711

Dear Ms. Churchill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7651; this decision is OR89-407.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion H-436 (1974). The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The Board of Pardons and Paroles received a request from a parolee for information in his parole file. You assert that article 42.18, section 19, of the Texas Code of Criminal Procedure protects the information from required disclosure under the Open Records Act. Section 3(a)(1) of the Open Records Act protects information deemed confidential by law, including statutes such as the Code of Criminal Procedure.

Article 42.18, section 19, provides:

> 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, including victim impact statements and inmates' arrest records, 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 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. (Emphasis added.)

This provision makes parolees' files confidential within the meaning of section 3(a)(1) of the Open Records Act.

This does not, however, resolve the issue at hand. The requestor in this case is the parolee himself. In Open Records Decision No. 481 (1987), the attorney general held that the privacy rights recognized in certain of the act's exceptions cannot be used to withhold information from the individuals whose privacy rights are protected. This holding was codified by the 71st Legislature in section 3B of the act. See V.T.C.S. art. 6252-17a, § 3B (special right of access to confidential information). Section 3B leaves the governmental body free to claim that other exceptions to disclosure, i.e. exceptions not intended solely to protect the individual at issue, apply.

Part of the purpose of article 42.18 is to protect parolees. For example, inmate's arrest records are protected from public disclosure. Code Crim. Proc. art. 42.18, § 19. As a general rule, criminal history information is not subject to public disclosure. See Houston Chronicle Publishing Co. v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976). It is, however, available to the subject of the information. See Attorney General Opinion MW-95 (1979).

Article 42.18 also protects victims' privacy rights. Victim impact statements are expressly made confidential. The privacy rights of victims arguably could be used to

prevent disclosure to any other person, including the parolee.

It is unnecessary to resolve the issue of the full scope of article 42.18, section 19, because the parolee seeks only information about the dates when a specific individual was listed as the parolee's wife. Article 42.18, section 19, does not authorize withholding this information from this requestor. See Open Records Decision No. 481 (1987).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-407.

Yours very truly,

Open Government Section
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/le

Ref.: ID# 7651
ID# 7364

Enclosure: ORD-481

cc: Jackie Robinson
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