



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 24, 1994

Mr. Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
P.O. Box 13084  
Austin, Texas 78711

OR94-032

Dear Mr. Reynolds:

Pursuant to the Texas Open Records Act, Gov't Code ch. 552, a member of the media submitted two letters to the Division of Pardons and Paroles of the Texas Department of Criminal Justice<sup>1</sup> ("TDCJ") requesting information relating to the parole of prison inmates. A third request, hand-delivered to the general counsel of the TDCJ, requested copies of documents<sup>2</sup> that identify inmates in disciplinary status in the institutional division or indicate that particular inmates were not released because they were in administrative segregation or disciplinary status.<sup>3</sup> We assigned the initial requests ID# 24198 and have consolidated all three requests under this number.

The requestor asks for memoranda and other documents on various subjects, such as parole quotas used to avoid exceeding the cap on prison population, the parole of

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<sup>1</sup>The following divisions are within the Department of Criminal Justice: the Community Justice Assistance Division; the Institutional Division; the Pardons and Paroles Division; and the State Jail Division. Gov't Code § 493.001. The pardons and paroles division "shall supervise and reintegrate felons into society after release from confinement." *Id.* § 493.005. The Board of Pardons and Paroles is "the exclusive authority to determine paroles." Code Crim. Proc. art. 42.18, § 1; *see also Id.* § 7.

<sup>2</sup>The letter forwarding this request to us describes the documents as memos from Jim Scott Killough of the Institutional Division's Classification Committee to Joe Moore, Institutional Parole Officer, and memos to "Administrative Board Panel" (of the Parole Board) from Institutional Analyst Section--Esther Laughlin. These memos are forms on which certain items of information about an inmate may be written.

<sup>3</sup>*See* 37 T.A.C. §§ 61.41 - 61.45 (disciplinary procedures), 61.44(b) (administrative segregation).

inmates who were in disciplinary status or administrative segregation, the authority of staff of the pardons and paroles division of TDCJ to make decisions about the parole of inmates, and information about parole absconders and pre-revocation warrants for parole absconders. The requestor seeks lists of the names and other identifying information about inmates who were in disciplinary status or administrative segregation and were approved for parole, who were released on parole prior to their FI-2 release dates,<sup>4</sup> who were approved for parole by the administrative or special review panels, or whose parole was reinstated by division staff during specific time periods, and lists kept by the Austin, Palestine, and Huntsville office of the Division of Pardons and Paroles of inmates who received administrative or special reviews. He requests statistical information relating to parole absconders, parolees required to file annual reports, release of inmates in certain categories to parole, and parole reinstatements and revocations by the staff of the Division of Pardons and Paroles.

TDCJ raises several arguments,<sup>5</sup> first claiming that much of the requested information is confidential under article 42.12, section 18 of the Code of Criminal Procedure. This statute provides as follows:

All information obtained and maintained in connection with inmates of the institutional division 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 pardons and paroles division, or persons directly identified in any proposed plan of release for a prisoner, including victim impact statements, lists of inmates eligible for parole, 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, the members of the board, and the Criminal Justice Policy Council to perform its duties under Section 413.021, Government Code, 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

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<sup>4</sup>A list of codes used by the Board of Pardons and Paroles to describe parole decisions shows that FI-2 stands for parole on a specified date, while FI-1 means parole on the eligibility date.

<sup>5</sup>The general counsel for the TDCJ also raises an argument based on the Final Judgment and Order Approving Proposed Final Judgment in *Ruiz v. Collins*, CN H-78-987-CA (S.D. Tex.). We do not address this argument, because the order applies to the Institutional Division of the TDCJ, while the records have been requested from the Division of Pardons and Paroles.

connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

This provision provides confidentiality for information about inmates who are subject to parole and individuals who are on parole.

Prior decisions of this office address former section 27, article 42.12 of the Code of Criminal Procedure, the predecessor statute to section 18 of article 42.18.<sup>6</sup> When a prison inmate requested all the information that the Board of Pardons and Paroles possessed about him, Open Records Decision No. 11 (1973) concluded that this information was confidential under section 27, article 42.12 of the Code of Criminal Procedure, and should not be made available to the inmate under the Open Records Act. *See also* Attorney General Opinion H-427 (1974) (Open Records Act does not require Board of Pardons and Paroles to reveal files on inmates to an individual legislator).

Two open records decisions have determined that certain factual information from inmate files in the possession of the Board of Pardons and Paroles is available to the public under the Open Records Act. Open Records Decision No. 33 (1974) dealt with a request to the Board of Pardons and Paroles for the following information about persons whose sentences for possession of marijuana had been commuted by the governor: name, age, address of record, date and court of sentencing, the crime or crimes of which convicted, the date of release from prison, the date of commutation, length of the sentence and time served, and the previous criminal records and records of incarceration.<sup>7</sup> Open Records Decision No. 33 stated that "information obtained in connection with inmates and contained in the records of the Board of Pardons and Paroles is made confidential by law and is not subject to compelled disclosure under the [Open Records] Act." However, "even where a record as such might not be subject to disclosure, nevertheless, in keeping with the purposes of the Open Records Act, the custodian should make certain basic information from it available." Open Records Decision No. 33 at 3. This office determined that, with the exception of prior criminal records and records of incarceration, the requested records should be released. The decision stated that the confidentiality provision, in speaking in terms of information obtained in connection with inmates, referred to:

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<sup>6</sup>A 1985 enactment repealed former article 42.12 of the Code of Criminal Procedure and recodified it without substantive change as article 42.18. Acts 1985, 69th Leg., ch. 427, §§ 2, 4. The same enactment adopted a new article 42.12 of the Code of Criminal Procedure pertaining to adult probation. *Id.* § 1.

<sup>7</sup>After the Board of Pardons and Paroles referred this matter to the attorney general, it issued a press release giving the name, county and date of conviction, the offense and length of sentence, and the date of commutation for each individual.

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 or antisocial conduct, etc.

*Id.* Open Records Decision No. 33, in this quotation and throughout its text, construed only the part of section 27, article 42.12 of the Code of Criminal Procedure that provided confidentiality for "information obtained in connection with inmates." It did not address the final sentence of the confidentiality provision, which states that "statistical and general information" and "data recorded in connection with parole and mandatory supervision services" shall be open to public inspection.

Open Records Decision No. 190 (1978), another request to the Board of Pardons and Paroles for information about inmates before the board, did not address the final sentence in section 27, article 42.12 of the Code of Criminal Procedure. It relied on Open Records Decision No. 33 to conclude that the race and sex of such inmates were "basic information not intended to be made confidential by article 42.12, section 27 of the Code of Criminal Procedure." Open Records Decision No. 190 at 2. The fact that an inmate was represented by an attorney before the board was also public information. The names of "trial officials" required by law<sup>8</sup> to send information to the board about a specific inmate was also public, but the contents of their recommendations were confidential under section 27 of article 42.12, Code of Criminal Procedure.

The requestor asks for various categories of statistical information, represented by the following examples:

Total number of outstanding blue warrants<sup>9</sup> for absconder violations on a county by county basis in Texas for calendar years 1988 through 1992.

Number of outstanding blue warrants for parole absconders whose warrants were withdrawn or purged after passage of the discharge date for calendar years 1988 through 1991.

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<sup>8</sup>Former section 16 of article 42.12, Code of Criminal Procedure, required "any judge, district attorney, county attorney, police officer or other public official of the state," having information about any prisoner eligible for parole, to send such information upon request to the Board of Pardons and Paroles. Acts 1965, 69th Leg., ch. 722; see Code Crim. Proc. art. 42.18, § 8(h). The request for names of "trial officials" in Open Records Decision No. 190 (1978) appears to be for those officials mentioned in section 16 who actually participated in the inmate's trial.

<sup>9</sup>The Board of Pardons and Paroles describes pre-revocation warrants as "blue" warrants.

Number of parolees who are required to file annual reports and the number who have failed to file annual reports for the calendar years 1980 to 1992.

Breakdown of absconder violators according to the offense for which the individual received parole.

Number of absconder violators currently incarcerated in county jails that were arrested on new charges or convicted of a new offense.

Number of inmates whose parole was reinstated by Division staff during the time period of January 1990 through July 1992.

Section 18 of article 42.18 provides that statistical information about the parole system is subject to public inspection. The requested statistical information is not excepted from disclosure by section 18 of article 42.18, Code of Criminal Procedure, and no other exception is cited with respect to it. To the extent that the Division of Pardons and Paroles possesses such information, it must make it available to the requestor.

The requestor asks for lists of paroled inmates grouped according to the following categories:

The names, TDCJ numbers, and offenses of all inmates in disciplinary status who were approved for parole during the calendar years 1988 through 1991.

The names, TDCJ numbers, and offenses of all inmates in administrative segregation who were approved for parole during calendar years 1988 through 1991.

The names, TDCJ numbers, dates of release, FI-1 eligibility dates, and FI-2 release dates<sup>10</sup> of all inmates released on parole prior to their FI-2 release dates during calendar years 1990 to 1992.

Names and TDCJ numbers of all inmates whose parole was reinstated by division staff from January 1990 through June 1992.

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<sup>10</sup>See *supra* note 4.

Names and TDCJ numbers of all inmates who were approved for parole by the administrative or special review panels in calendar years 1990 and 1991.

All transmittal sheets sent to administrative and special review panels in calendar years 1990 and 1991.

All lists of inmates who received administrative or special reviews that are kept by the division's Austin headquarters, Palestine parole office, or Huntsville parole office.

As we have already mentioned,<sup>11</sup> the requestor also seeks copies of documents that identify inmates in disciplinary status in the institutional division or that indicate that particular inmates were not released because they were in administrative segregation or disciplinary status.

The names of paroled prisoners are expressly open to public inspection. Code Crim. Proc. art. 42.18, § 18. The requestor, however, is not simply requesting a list of all paroled inmates. He also asks for additional information about paroled inmates, such as whether an inmate was on disciplinary status or in administrative segregation when he was approved for parole, or whether his parole was approved by an administrative or special review panel. The additional information requested is "information obtained and maintained in connection with inmates of the institutional division subject to parole, . . . or individuals who may be on . . . parole and under the supervision of the pardons and paroles division." *Id.* It is not the kind of "basic information" or information "normally found in courthouse records" that Open Records Decision No. 33 determined could be released under former section 27 of article 42.12, Code of Criminal Procedure. Accordingly, the above lists of information are excepted from disclosure by article 42.18, section 18 of the Code of Criminal Procedure.

One of the memoranda in the group of documents identified as "exhibit A" contains information about an individual inmate's disciplinary status. We have marked this as excepted from disclosure by section 18 of article 42.18 of the Code of Criminal Procedure. The remaining memoranda do not contain information protected by the confidentiality provision found in section 18 of article 42.18.

The brief submitted by your predecessor as general counsel claims that memoranda identified as exhibits 1 through 6 and part of exhibit 7 are excepted from disclosure by section 552.111 of the Government Code, which applies to:

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<sup>11</sup>See *supra* notes 2, 3 and accompanying text.

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency . . . .

This exception protects internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 (1993). Purely factual information is not excepted from disclosure by section 552.111. We have examined exhibits 1 through 7 and have marked the portions that are excepted from disclosure by section 552.111 of the Government Code.

You also claim that exhibit 7 is excepted from disclosure by section 552.107 of the Government Code as information protected by the attorney-client privilege. Section 552.107 excepts information if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Gov't Code § 552.107 (1). All but the last paragraph of exhibit 7 has been made available to the requestor, and we have decided that the last paragraph is excepted from disclosure by section 552.111. Accordingly, we need not address the application of section 552.107 to this exhibit. The unmarked portions of exhibits 1 through 7 are not excepted from disclosure by either section 552.107 or 552.111 of the Government Code and accordingly are open to the public under the Open Records Act.

The brief indicates that documents identified as exhibits A, B, and C might be excepted from required public disclosure by section 552.103 of the Government Code, which excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

*Id.* § 552.103 (a).

Your predecessor indicated that these documents may be related to issues raised in *Daniel Johnson v. Texas Department of Criminal Justice*, CN 85-CA-094.<sup>12</sup> However, the issues in the *Johnson* suit relate to protest letters, writ writers, and out-of-state furloughs and do not reach the subject matter of the present request. Accordingly, this information is not excepted as information related to the *Johnson* case. Since no other exception has been claimed with respect to exhibits A, B, and C, the documents they include are available to the requestor under the Open Records Act.<sup>13</sup>

If you have any questions with regard to this letter, please refer to ID# 24198.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Open Government Section

SLG/rho

Ref.:	ID# 17806	ID# 17813	ID# 17970	ID# 18634	ID# 19289
	ID# 22109	ID# 22110	ID# 22141	ID# 22142	ID# 22840
	ID# 23027	ID# 23904	ID# 24198	ID# 24199	ID# 24200
	ID# 24201	ID# 24202	ID# 24203	ID# 24204	ID# 24205
	ID# 24206	ID# 24207	ID# 24208	ID# 24209	ID# 24210

Enclosures: Marked documents

cc: Mr. Thomas S. Leatherbury  
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(w/o enclosures)

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<sup>12</sup>Your predecessor also suggested that these documents might be related to the litigation in *Steven Joseph Thebeau v. Kyle*, 492-CV-613-Y (N.D.Tex.). This case was dismissed with prejudice on April 18, 1993. It is no longer "litigation of a civil or criminal nature . . . to which the state . . . is or may be a party" within section 552.103(a) of the Government Code.

<sup>13</sup>Some of the documents included in exhibits A through C are duplicates of documents identified as exhibits 1 through 6. The information in exhibits 1 through 6 that is excepted from disclosure by section 552.111 of the Government Code is also excepted in the copies of those documents found in exhibits A through C.

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