



DANNY E. HILL  
DISTRICT ATTORNEY

District Attorney  
17th Judicial District of Texas  
POTTER AND ARMSTRONG COUNTIES  
POTTER COUNTY COURTS BUILDING  
501 FILLMORE SUITE 1A  
AMARILLO, TEXAS 79101

ID# 13372  
CBL-601

AREA CODE 806  
379-2325

RQ-168

August 23, 1991

Texas Attorney General's Office  
% Robert Patterson  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

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Opinion Committee

RE: Request for Attorney General's opinion under  
the provisions of Art. 6252-17a, §§ 3B(e) and 7 V.A.T.S.

Dear Mr. Patterson:

Enclosed is the request of John Phillip Terry for release of information pursuant to Art. 6252-17a V. A. T. S. In accordance with Sections 3B(e) and 7 of that statute this office is requesting a decision as to whether our office is required to comply with Mr. Terry's request and release the information Mr. Terry desires.

This office takes the position that Mr. Terry's requests, "A" through "E", are specifically excepted from disclosure under Sections 3(a)(3), 3(a)(7), and 3(a)(8) of Article 6252-17a V.A.T.S. for the following reasons:

1. This matter involves the trial of two criminal felony cases in the 320th District Court of Potter County, Texas. Section 3(a)(3) specifically exempts disclosure of any materials relating to litigation of a criminal or civil nature to which the State of Texas may be a party.

Section 3(e) of Art. 6252-17a specifically states that the State of Texas is considered a party to criminal litigation until the applicable statute of limitations had expired or the defendant has exhausted all his state and federal appellate and postconviction remedies. Clearly by this request the petitioner has shown that he has not exhausted all his appellate and postconviction remedies in state and federal court. The offense for which petitioner was convicted in Cause No. 28,035-D was Robbery which alleged to have been committed on or about July 16, 1989. The offense for which petitioner was convicted in Cause No. 28,037-D was Robbery alleged to have been committed on or about July 3, 1989. The

ACCOMPANIED BY ENCLOSURES —  
FILED SEPARATELY

statute of limitations for both these offenses is five years in accordance with Article 12.01(3) of the Texas Code of Criminal Procedure.

The State will continue to be a party to these two criminal actions until at least July 16, 1994 or until petitioner exhausts all his state and federal remedies, therefore, the State of Texas is not required to release any of the requested information.

2. Additionally most of the material requested by petitioner is work product of either the 47th District Attorney's office or the Amarillo, Texas Police Department and as such is not discoverable under Article 39.14 of the Texas Code of Criminal Procedure or the cases of FRANKLIN v. STATE, 702 S.W. 2d 241 (Tex. Ct. App.- Houston, 1985. N.W.H.); GUILDER v. STATE, 794 S.W. 2d 765 (Tex. Ct. App.-Dallas, 1990. N.W.H.); and VASQUEZ GARZA v. STATE, 794 S.W. 2d 530 (Tex. Ct. App.-Corpus Christi, 1990. N.W.H.).
3. The State of Texas would also direct the Attorney General's office to the provisions of Article 1, Section 30 of the Texas Constitution which absolutely prohibits the disclosure of certain information regarding victims in criminal cases.
4. The State's position regarding petitioner's request for information "F" is that this information is a public record obtainable through a request of the Potter County District Clerk's office and as such the 47th District Attorney's office does not have the responsibility to disclose this information.

For the reasons set out above the 47th District Attorney respectfully requests a decision in the matter in accordance with Article 6252-17a V.A.T.S.

Sincerely,

**DANNY HILL**  
47th District Attorney



**Michael D. Meredith**  
Assistant District Attorney

cc.

**Philip J. Terry #569279**  
Michael Unit  
P. O. Box 4500  
Tennessee Colony, Texas 75886

8-15-91

Dawson Hill - District Attorney  
Potter County Courts Building  
Amarillo, Texas  
79105

RE: THE STATE OF TEXAS V. PHILLIP JEFFERY TERRY, CAUSE  
NO.(S) 28,035-D; AND 28,037-D.

REQUEST FOR DOCUMENTS  
UNDER THE OPEN RECORDS ACT  
AND FREEDOM OF INFORMATION ACT  
BY PAUPER

To the District Attorney of Potter County:

Now comes Phillip Jeffery Terry, defendant/applicant in the above-entitled and numbered causes, requesting the District Attorney of Potter County, Texas, to disclose the following information and documents to the applicant, within the ten day limitation period, pursuant to Article 6252-17, Section 3(B)(A) and (E) under the Open Records Act, and the Freedom of Information Act.

Applicant also request that the following documents be forwarded and copied without prepayment or cost to applicant because applicant is indigent and owns no property.

I.

Applicant would show that he has a special right, beyond that of the general public, of access to and to copies of any records held by a governmental body,

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IN THIS CASE THE DISTRICT ATTORNEY'S OFFICE, THAT CONTAIN INFORMATION RELATING TO THE APPLICANT THAT IS PROTECTED FROM PUBLIC DISCLOSURE BY LAWS INTENDED TO PROTECT THAT PERSON'S PRIVACY INTERESTS.

## II.

The disclosure and production to include, but not limited to the following:

- (A) ANY MEMORANDA, DOCUMENTS OR STATEMENTS USED OR MADE BY THE DISTRICT ATTORNEY'S OFFICE DURING THE INVESTIGATION OF SAID CASE(S).
- (B) THE INITIAL STATEMENT AND/OR AFFIDAVITS GIVEN TO POLICE, DETECTIVES OR ANY MEMBER OF THE D.A.'S STAFF, BY THE COMPLAINANTS OF THE ABOVE CAUSES(S).
- (C) THE PROCEDURE USED TO IDENTIFY THE DEFENDANT, AND THE RESULTS OF THAT PROCEDURE.
- (D) ANY MEMORANDA, STATEMENTS OR DOCUMENTS IN REGARDS TO ANY STATEMENTS GIVEN BY THE VICTIMS, PRIOR TO OR SUBSEQUENT TO THE ARREST OF DEFENDANT CONCERNING THE IDENTIFICATION OF THE ALLEGED ROBBER.
- (E) ARREST REPORTS AND INCIDENT REPORTS
- (F) ARREST WARRANT(S) AND AFFIDAVIT(S) FOR ARREST WARRANT.

Respectfully submitted,

~~Phillip Jeffrey Terry~~

PHILLIP JEFFERY TERRY, APPLICANT

Michael Unit - T.D.C. #569279

P.O. Box 4500

TENNESSEE COLONY, TEXAS  
75886