

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PAROLE DIVISION**



**POLICY AND
OPERATING PROCEDURE**

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SUBJECT: RELEASE OF INFORMATION/CONFIDENTIALITY

AUTHORITY: TEX. GOV'T CODE ANN. §§ 508.313, 552.027; Texas Department of Criminal Justice Office of the General Counsel Open Records Manual, Executive Directive 02.40 (Rev. 2) 12/28/02, News Media Relations

PURPOSE: To define the types of information that are classified as “public information” and releasable to the public under the Open Records Acts and which are confidential.

PROCEDURE:

I. GENERAL POLICY

- A. It is the policy of the Texas Department of Criminal Justice (TDCJ) to provide public information to the general public upon request and to protect information held by statute or Attorney General Opinion to be confidential.
- B. The information that can be released from an offender’s file is limited by both state and federal law as summarized in Section 1.05 of the TDCJ Office of the General Counsel’s Open Records Act policy, *Parole Division Records and Information*. Because of the number of laws that govern confidentiality of offender records and because some restrictions vary as the offender moves through the system, staff must exercise caution before releasing information that is not listed in Sections II-IV of this policy.
- C. Any questions regarding confidentiality of information should be referred to regional management and the Office of the General Counsel (OGC) immediately. The agency only has 10 days to request an Attorney General opinion to maintain the confidentiality of a record. Section 01.01 of the Open Records Act policy contains general information on responding to requests for information under the Open Records Act.

II. PUBLIC INFORMATION

The following information shall be released upon request to the general public:

- A. The name of the offender's supervising Parole Officer;
- B. The offender's name, age, race, gender, and date of birth;
- C. The offender's current address, including zip code;
- D. The offender's height, weight; hair color, eye color, shoe size, TDCJ-CID photograph, and fingerprints;
- E. Any known aliases of the offender;
- F. Offense title and sentence information, including sentence length, date of sentence, sentence begin date, court and county of conviction, cause number, parole eligibility date, parole and mandatory release dates, discharge dates, and date of commutation;
- G. Amount of court-ordered restitution if this information is included in the sentencing document;
- H. Parole or mandatory supervision status;
- I. Warrant information, including warrant number and date of issuance; and
- J. Name of the offender's attorney of record;
- K. All information displayed on the Public Information Display Screen (PIDS) both on Host on Demand (mainframe) and the Offender Information Management System (OIMS); however, any reference to substance abuse treatment shall be redacted per the Public Health Code in the Code of Federal Regulations (42 CFR § 2.1) *et seq.* before PIDS is released. All references to FI-5 and FI-6 votes shall be redacted.

III. DOCUMENTS THAT MAY BE RELEASED

- A. Discharge certificates and release certificates, if Special Condition "S" - Substance Abuse Treatment and wording that refers to substance abuse treatment is deleted before release of information per 42 CFR 2.1 *et seq.*;
- B. Indictment, Judgment, Sentence, and other District Clerk documentation;
- C. Board minutes sheets, provided that entries revealing confidential or protected information such as that related to substance abuse treatment (FI-5 and FI-6 designations) are completely obliterated by darkening out the confidential references;
- D. Orders granting and removing Annual Report status;
- E. Fee Affidavit submitted by an Offender's attorney;

- F. Portions of the Application for Full Pardon or other executive clemency applications shall be referred to Executive Clemency, Board of Pardons and Paroles;
- G. Hearing reports are releasable to only the offender and the offender's attorney of records. Public requests for the hearing reports (i.e., written documentation, cassette recordings of hearings, information presented in hearings) and other revocation proceedings and documentation, shall be referred to the Parole Division Open Records Coordinator.
- H. The public shall have access to any information that is available on the Parole Division website. It is not the responsibility of division staff to make a copy of the information requested if available on the website.

IV. STATISTICAL AND GENERAL INFORMATION

- A. Statistical and general information regarding the parole and mandatory supervision system and programs, including data recorded in connection with parole and mandatory supervision services, is not confidential and shall be made available for public inspection at any reasonable time.
- B. Names of offenders released to parole or mandatory supervision are not confidential, however lists of offenders who are eligible for parole may not be released.
- C. In addition, some information about the circumstances of release in certain years is confidential (including names, TDCJ numbers, and offenses of offenders in disciplinary status or Administrative Segregation who were approved for parole by administrative or special review panels in certain years). Refer to §01.05 of the TDCJ Office of the General Counsel *Open Record Act Manual* for a detailed list.
- D. Staff shall refer all requests for statistical or general information to the Regional Director who will contact the Public Information Office (PIO) in Austin or Huntsville.

V. CONFIDENTIAL INFORMATION

- A. Substance Abuse Information. No information that in any way identifies an offender as a substance abuser may be released to the public other than the nature of the offense for which they were convicted. Participation in substance abuse treatment programs or other treatment programs is confidential. Refer to Parole Division policy 1.2.4, *Management of Substance Abuse Treatment Information and Records*.
- B. Victim Information. Victim Impact Statements, victim correspondence, protest records, and any victim-identifying information shall not be released to anyone, including state agencies, without consulting the General Counsel or Division Director. Do not release the contents of letters or statements from families of offenders or victims, trial officials, attorneys, or other persons, and do not release any correspondence that acknowledges receipt of such letters.
- C. Residential Providers and Sponsors. The identity of any person with whom an offender will

reside or does reside is confidential, including names of residential providers or persons directly identified in any proposed plan of release for an inmate. Addresses that are proposed in release plans are confidential (an offender's residence address may not be released until the offender is physically living there). The name of a sponsor is also confidential.

- D. Arrest Records and Criminal History Reports. National Crime Information Center (NCIC) reports are confidential pursuant to federal law. Arrest records are confidential. Texas Crime Information Center (TCIC) reports shall be considered confidential since they usually contain arrest records and other confidential information in addition to conviction information. The Department of Public Safety (DPS) is required to provide the public with criminal history record information maintained by DPS provided that a "court record" relating to a conviction (either felony or misdemeanor) or to a grant of deferred adjudication for a felony offense and re-release of such information is permitted.
- E. Information not normally found in courthouse records is confidential according to Open Records Decision No. 33 (1974). This includes information that was added by interviewers or persons who are trying to assess the extent of a prisoner's rehabilitation, recommendations for or against parole, and reports having to do with social or antisocial conduct, etc.
- F. All other information not specifically listed as public information in Sections II-IV above shall be considered confidential and not subject to public release unless cleared by the OGC, including the following types of frequently-requested information:
 - 1. Social Security number, Driver License number, and telephone number;
 - 2. Medical information;
 - 3. Chronological entries and monthly reports;
 - 4. Employment information;
 - 5. Social information other than the data listed in Section II;
 - 6. Records of incarceration;
 - 7. Photographs (other than TDCJ-CID photograph);
 - 8. Reports of disciplinary actions and an inmate's disciplinary status on release;
 - 9. Transmittals;
 - 10. Payment or nonpayment of supervision fees or restitution;
 - 11. Pre-sentence and post-sentence investigations;
 - 12. Lists of persons eligible of parole; and
 - 13. All other information contained in the offender field file and information stored in OIMS, except the Public Information Display Screen.
- G. Staff members should contact the OGC when they are uncertain about whether requested information is releasable.

VI. HIV/AIDS INFORMATION

All information regarding human immunodeficiency virus (HIV) infection is confidential, per the Texas Health and Safety Code, Title 2, Ch. 81.103 and Ch. 85.115. HIV-related information may only be disclosed by written consent of the offender having the condition or by a person legally authorized to consent to an HIV test on the offender's behalf. A breach of confidentiality is a criminal misdemeanor offense under the Texas Health and Safety Code and could make a staff member subject to civil liability in the United States Code under 24 U.S.C. § 183.

- A. Offenders who are known or suspected to be HIV-positive shall receive drug tests using the same procedures as other offenders if they meet the drug testing selection criteria.
- B. No identifying marks or codes shall be used on drug testing paperwork, specimen containers, test kits, or any other drug testing item used to identify drug specimens coming from HIV-positive offenders.
- C. Urine specimens submitted by HIV-positive offenders shall be treated and handled in the same manner as other samples where the HIV status is negative or unknown.
- D. No test results shall contain any indication or identifier that discloses HIV information.

VII. SEX OFFENDER INFORMATION

- A. Information concerning treatment of a sex offender may be released to another criminal justice agency, a local law enforcement authority, or a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or certified social worker who, while licensed or certified, provides or provided health or medical services for the rehabilitation of sex offenders.
 - 1. A sex offender, for the purposes of this section, is defined in Code of Criminal Procedure art. 42.12 § 9(m). Sex offenders are offenders who have been convicted of or have entered a plea of guilty or nolo contendere for one (1) or more of the following offenses:
 - a. Aggravated Kidnapping, if the person committed the offense with the intent to violate or abuse the victim sexually;
 - b. Indecent Exposure;
 - c. Indecency with a Child;
 - d. Sexual Assault;
 - e. Aggravated Sexual Assault;
 - f. Prohibited Sexual Conduct;
 - g. Burglary of a Habitation with intent to commit a sex offense (Penal Code, § 30.02(d));
 - h. Sexual Performance of a Child; or Possession or Promotion of Child Pornography.

2. Documents concerning the treatment of sex offenders are confidential and may not be released as public information, but shall be made available to the appropriate requester in Section A above. Treatment information includes the following:
 - a. Criminal history;
 - b. Discharge summary;
 - c. Official offense report;
 - d. Progress reports;
 - e. Test results;
 - f. Victim statement; and
 - g. Any other information necessary for the treatment of sex offenders.
 3. Release of confidential information shall only be for the administration of criminal justice: detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender, including criminal identification activities and the collection, storage, and dissemination of criminal history record information.
- B. Inquiries for information on registered sex offenders should be referred to DPS, which will provide any information described as public information in the sex offender registration statute.

VIII. CONTINUITY OF CARE INFORMATION

- A. If an offender is under the care of the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) because the offender is mental impaired, elderly, physically disabled, terminally ill, or significantly ill, then receipt or disclosure of confidential information is authorized without the consent of the offender, if the agency receives the information for the purpose of providing continuity of care.
- B. The agencies entitled to share this information without a consent form from the offender include TDCJ, the Texas Health & Human Services Commission (HHSC), Texas Department of Aging and Disability Services (DADS), Texas Department of Family and Protective Services (DFPS), and Texas Department of State Health Services (DSHS).

IX. INFORMATION FOR VICTIMS

If in doubt about releasing information to victims, advise regional management. Regional management will refer the requester to Victim Services at 1-800-848-4284.

X. INMATE REQUESTS FOR INFORMATION

According to Texas Government Code §522.028, a governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility, including an intermediate sanction facility. An agency is also not required to provide information to a person acting as agent, other than the inmate's attorney. While § 522.028 does not prohibit the governmental body from disclosing the information to the inmate or agent, it is the policy of the Parole Division not to release information to an inmate or agent under normal circumstances. Upon request, Institutional Parole Officers shall release the latest computer-generated Board Action no more than one (1) time per year to offenders and family members.

XI. NEWS MEDIA CONTACTS

News media representatives shall be referred to the Public Information Office, in Austin at (512) 463-8280 or in Huntsville at (936) 437-1302(3). These offices shall coordinate release of information with District Parole Offices.

XII. RELEASE AUTHORIZATIONS

Refer to Parole Division policy 1.2.4, *Management of Substance Abuse Treatment Information and Records*, regarding release authorizations for substance abuse information. Medical and personal information regarding an offender may be released to a specified party if authorized by the offender on a Consent for Disclosure form (PSV-37).

XIII. EXCEPTIONS

Upon request, staff shall release privileged and confidential information to the Governor, members of the Texas Legislature, members of the Texas Board of Criminal Justice and the Texas Board of Pardons and Paroles, and the Criminal Justice Policy Council. Staff may release privileged and confidential information if the information is needed for a law enforcement, prosecutorial, correctional, clemency, or rehabilitation purpose, to a government agency (including the office of a prosecuting attorney), an organization with which TDCJ contracts, an organization to which TDCJ provides a grant, or an organization to which offenders are referred for services by TDCJ.

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