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ATTORNEY GENERAL OPINION NO. 89- 127

Frank S. Henderson, Jr., Chairman
Kansas Parole Board
Landon State Office Building
900 Jackson St., 4th Floor
Room 452S
Topeka, Kansas 66612-1220

Re: Laws, Journals and Public Information--Records Open
to Public--Certain Records Not Required to Be Open;
Kansas Parole Board

Synopsis: Preparole reports and written correspondence received from private individuals regarding an inmate in the custody of the Department of Corrections are public records while in the possession of the Kansas Parole Board. Such records, however, are not subject to mandatory disclosure as they fall within exceptions listed in the Kansas open records act. By statute, the parole report is considered privileged and shall not be disclosed to anyone other than the Kansas Parole Board, the judge, the attorney general or others entitled to receive the information, except that the Kansas Parole Board, secretary of corrections or court may permit the inspection of the report by the defendant, inmate, defendant's or inmate's attorney or other person having a proper interest in it. The Kansas Parole Board has discretion whether to disclose written correspondence received from the public. Cited herein: K.S.A. 22-3711; 45-201; 45-216; 45-217; K.S.A. 1988 Supp. 45-221, as amended by L. 1989, ch. 154, § 1.

* * *

Dear Mr. Henderson:

As chairman of the Kansas Parole Board (KPB), you request our opinion regarding the disclosure of certain records in the possession of the KPB. Specifically you ask whether the KPB is required to disclose the preparole report or other written correspondence submitted by private individuals regarding an inmate in the custody of the Kansas Department of Corrections.

The Kansas open records act (KORA), K.S.A. 45-201 et seq., states that "public records shall be open for inspection by any person unless otherwise provided by this act. . . ." K.S.A. 45-216(a). "Public record" is defined in K.S.A. 45-217(f)(1) as:

"any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency."

As the KPB falls within the definition of "public agency" in K.S.A. 45-217(e)(1), the preparole report and other written correspondence submitted by private individuals and in the possession of the KPB would be classified as "public records" and would be subject to disclosure unless an exception provides otherwise.

Exceptions to the disclosure requirement are listed at K.S.A. 1988 Supp. 45-221. The statute provides that, except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

"(1) Records the disclosure of which is specifically prohibited or restricted by . . . state statute . . . or the disclosure of which is prohibited or restricted pursuant to specific authorization of . . . state statute . . . to restrict or prohibit disclosure.

. . . .

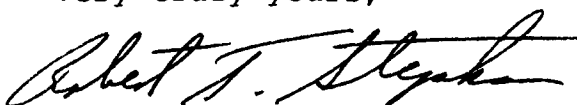
"(14) Correspondence between a public agency and a private individual, other than correspondence which is intended to give notice of an action, policy or

determination relating to any regulatory, supervisory or enforcement responsibility of the public agency or which is widely distributed to the public by a public agency and is not specifically in response to communications from such a private individual.

Under K.S.A. 22-3711, the preparole report is considered privileged and "shall not be disclosed directly or indirectly to anyone other than the [KPB], the judge, the attorney general or others entitled to receive the information. . . ." The KPB, secretary of corrections and court are granted the authority to permit "inspection of the report or parts of the report by the defendant, inmate, defendant's or inmate's attorney or other person having a proper interest in it, whenever the best interest or welfare of a particular defendant or inmate makes the action desirable or helpful." K.S.A. 22-3711. Because the KPB is required by K.S.A. 22-3711 to restrict disclosure of the preparole report, the preparole report is subject to the exception listed at K.S.A. 45-221(1), and disclosure shall not be required.

Written correspondence submitted by private individuals regarding an inmate in the custody of the Kansas Department of Corrections is "correspondence between a public agency and a private individual" and is subject to the exception to disclosure provided at K.S.A. 45-221(14). Because the written correspondence is not intended to provide notice of an action, policy or determination of the KPB nor widely distributed to the public, the KPB is given the discretion of whether or not to disclose the written correspondence. As with the preparole report, disclosure of such types of written correspondence is not required.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
Assistant Attorney General