

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON
PROPOSED BILL 846, AN ACT DECREASING RECIDIVISM AND
PROMOTING RESPONSIBLE REINTEGRATION**

March 22, 2013

The Freedom of Information Commission objects to Section 6 only of Proposed Bill 846, An Act Decreasing Recidivism and Promoting Responsible Reintegration.

Section 6 of the proposal would exempt from public disclosure all records submitted to the Board of Pardons and Paroles (BOPP) for its consideration in connection with the granting of a pardon. Although responsible reintegration into society of those who have served their sentences and been granted a pardon may be a laudable goal, this sweeping confidentiality provision, unlimited in both scope and time, would permit the BOPP to keep secret all information upon which its decisions to pardon applicants are based. This would be a catastrophic blow to government transparency. Put simply, the public has a right to know how and why decisions to grant or deny pardons are made, and Section 6 of SB 846 would eliminate this right.

Designating all records submitted to the BOPP as confidential, also would provide a vehicle for the BOPP to discuss such records in executive session, thereby further excluding the public from its decision-making process. Accordingly, the FOI Commission (FOIC) submits that Section 6 of the proposal should be stricken in its entirety; however, if it is not, the FOIC urges, at a minimum, that Section 6 be amended to add a temporal limitation to the confidentiality provision, and to distinguish between records of "absolute" pardons and records of "provisional" pardons, thus making the proposal consistent with the current erasure statutes.

The FOIC feels strongly that prior to the granting of any pardon, all records submitted to, and reviewed by the BOPP, in its decision-making process, should be subject to public disclosure. In fact, because the applicant has been convicted of a crime, it is likely that information regarding the applicant, his arrest, trial (if any) and conviction is already publicly available on the internet, at the court or police department. However, to the extent that records submitted to the BOPP for its consideration might contain information of a more sensitive nature, exemptions to disclosure already exist under current law. For example, records containing medical information, police records that disclose the identity of informants, or victims of sexual assault, may be permissibly exempt from disclosure. Records, the disclosure of which may result in a safety risk, or constitute an invasion of personal privacy, likewise, are not subject to mandatory disclosure. The FOIC believes that these existing exemptions strike the proper balance between privacy concerns and transparency.

Under the erasure statutes, a person who has been granted an absolute pardon, found not guilty of a crime, or had a criminal charge dismissed or nolle, is entitled to erasure of police and court records pertaining to those criminal charges. Police and court records of arrests are generally available to the public, until such time as the criminal charge is dismissed or nolle. Similarly, records submitted to the BOPP should be available to the public until such time as an absolute pardon has been granted. Section 6 of the proposal, however, would make all pardon

records submitted to the BOPP secret **before** any pardon is granted and forever after. Such result is inconsistent with the erasure provisions for dismissals and nolles, and offensive to notions of open government. No one would seriously argue that records of arrests should be kept secret **before** a dismissal or nolle is entered, simply because at some point in the future, the charges may be erased. Section 6 of the proposal, however, suggests doing exactly that with respect to pardon records maintained by the BOPP.

Finally, the FOIC notes that a person who receives a provisional pardon is not entitled to have his or her police or court records erased. Thus, the FOIC believes there is no public policy reason to sweepingly designate the BOPP's records, as they pertain to the granting of a provisional pardon, as confidential. Thus, at a minimum, Section 6 of the proposal should be amended to indicate that the confidentiality provisions only apply to records related to applications for absolute pardons.

To reiterate, the FOIC urges that Section 6 of the proposal be stricken in its entirety. In doing so, the legislature will ensure that the records related to the granting of pardons are available for inspection prior to, and during, the public hearing on each pardon application. Thus, the public will have oversight over the decisions of the BOPP.

The preamble to the legislation that became the FOI Act reads, in part, "The legislature finds ... that secrecy in government is inherently inconsistent with a true democracy ... that the people in delegating authority do not give their public servants the right to decide what is good for them to know." A member of the public has the right to know for him or herself, through access to government records, that the decision-making process with respect to the granting of all pardons is fair, unbiased and free from influence. Accordingly, the FOIC is strongly opposed to Section 6 of SB 846.

For further information contact: Colleen M. Murphy, Executive Director and General Counsel or Mary Schwind, Managing Director and Associate General Counsel at (860) 566-5682.