

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON  
RAISED HOUSE BILL 5063, AN ACT CONCERNING THE  
DISCLOSURE OF PARDON APPLICATIONS**

February 18, 2014

**The Freedom of Information Commission objects to Raised House Bill 5063, An Act Concerning the Disclosure of Pardon Applications.**

Raised House Bill 5063 would exempt from public disclosure all applications to the Board of Pardons and Paroles (BOPP) for its consideration in connection with the granting of a pardon. The legislature has delegated its constitutional power to grant pardons to BOPP, which exercises this power to a great extent, granting hundreds of pardons per year.

Raised House Bill 5063's sweeping confidentiality provision, unlimited in both scope and time, would permit BOPP to keep secret all information it uses to decide pardon applications. This would deal a significant blow to government transparency. Pardon applicants voluntarily seek a substantial benefit from the public in whose name they were originally convicted. Put simply, the public has a right to know how and why the Board, in doing the public's business, decides to grant or deny pardons. Raised HB 5063, however, would revoke forever the public's ability to oversee the Board's exercise of its power to pardon.

The FOIC feels strongly that **prior to** receipt of any pardon, all applications to BOPP 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 are already publicly available on the internet, at the court or police department. However, to the extent pardon applications 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, records containing victim contact information, and records whose disclosure may result in a risk of harm are just a few of the existing exemptions that apply to pardon applications. The FOIC believes that these exemptions and other confidentiality provisions found throughout the general statutes already strike the proper balance between privacy concerns and transparency.<sup>1</sup>

Under current law, a person who has been granted an absolute pardon is entitled to erasure of police and court records pertaining to those criminal charges. As in the case with dismissal or nolle, where criminal records are not erased until the dismissal or the nolle takes effect, the criminal records of a person who receives an absolute pardon are not erased until the person actually receives the pardon, a few months after the Board votes in favor of the application. Police and court records

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<sup>1</sup> Indeed, the FOIC recently issued final decisions in two cases involving BOPP's records of pardon applications. In both cases, the FOIC concluded that there is no blanket confidentiality of pardon applications, and each application must be examined on a case-by-case basis. The FOIC concluded that many exemptions within the FOIA and others contained elsewhere in the General Statutes applied to protect portions of the applications from disclosure. See Docket #FIC2012-668; Alexander Wood and the Manchester Journal Inquirer v. BOPP, and Docket #FIC2013-082; Alexander Wood and the Manchester Journal Inquirer v. BOPP. BOPP declined to appeal the first case; as of today, the 45-day appeal period for the second case is still pending.

of arrests are generally available to the public until the criminal charge is dismissed or nolle. Similarly, records submitted to BOPP should be available to the public until an absolute pardon has been received.

Raised HB 5063, however, would make secret all pardon applications before any pardon is even discussed, and forever after. Such result is inconsistent with the erasure provisions for dismissals and nolle, 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. Raised HB 5063, however, suggests doing exactly that with respect to pardon applications.

Moreover, only absolute pardons erase the recipient's criminal record, not conditional or provisional pardons. (A conditional pardon is one to which the Board attaches a condition, such as no pistol permit, that could result in the pardon's revocation if the recipient fails to comply with the condition. A provisional pardon removes one or more enumerated barriers to employment or forfeiture of professional licenses. See Conn. Gen. Stat. §54-130a.) Thus, the FOIC believes there is no public policy reason to sweepingly designate as confidential all applications, including those resulting in provisional or conditional pardons, in light of the fact that a provisional or conditional pardon does not erase the recipient's criminal record.

Another concern with Raised HB 5063 is that by designating all pardon applications as confidential, BOPP would no longer be able to conduct its pardon hearings in public, as is its current practice. Now, BOPP hears testimony on each application in open session, usually consisting of a statement by, and questioning of, the applicant and sometimes also a family member, a victim and/or the state's attorney. Raised HB 5063 would end that practice, and require the Board to discuss the applications in executive session, further excluding the public from its decision-making process.

Furthermore, Raised HB 5063 permits disclosure of the applications to a state's attorney, presumably so that the state's attorney can recommend whether to grant the pardon. But the bill as written would forever prevent the public from learning the state's attorney's recommendation and his or her reasons. Just this single element of secrecy alone could potentially severely erode public confidence in the integrity of the pardons process.

To reiterate, the FOIC urges the Committee to reject Raised HB 5063 to continue to ensure public access to BOPP's proceedings and decision-making process.

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 Raised House Bill 5063.

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