

# MAINE STATE LEGISLATURE

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Inter-Departmental Memorandum Date May 4, 1977

To Andy Brown Dept. Executive  
From Joseph E. Brennan, Attorney General Dept. Attorney General  
Subject Citizen Access to Written Recommendations Submitted to the Governor by a Three-Member Pardon Board Created by Executive Order.

FACTS:

With the demise of the Executive Council, the power to grant full and free pardons, conditional pardons, commutations and reprieves rests exclusively in the Governor (Art. V, Pt. 1, §11 of the Maine Constitution effective January 4, 1977). A three-member pardon board is being created by executive order whose sole function will be to accept petitions which comply with any regulations as may be provided by law, relative to the manner of applying for the same, and, after thorough evaluation, advise the Governor as to whether or not a pardon, commutation or reprieve should be granted. Such advice to the Governor could take the form of a written recommendation.

QUESTION:

Are written recommendations submitted to the Governor by his pardon board considered "public records" pursuant to §402(3) of the "Freedom of Access" Law (1 M.R.S.A. §§401-410)?

ANSWER:

The written recommendations submitted to the Governor by his pardon board are "public records" as that term is defined in §402(3) of the "Freedom of Access" Law (1 M.R.S.A. §§401-410) and are available to public scrutiny as mandated by §408. None of the statutory exceptions found in §402(3) appear to be applicable here.

REASON:

The term "public record" is defined in §402(3) of the "Freedom of Access" Law as

". . . any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business . . ."

Andy Brown  
May 4, 1977  
Page 2

The written recommendations to the Governor from his pardon board appear to constitute (1) "written" matter that is (2) "in the possession or custody of a public official of this State" - namely, the Governor - and (3) which has been "received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business." Consequently, such recommendations are "public records" and available to public scrutiny as mandated by §408.

JEB/mp