



September 29, 1999

Mr. K. Scott Oliver
Assistant Criminal District Attorney
Bexar County
Bexar County Justice Center
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR99-2748

Dear Mr. Oliver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128664.

The Bexar County Planning and Resource Management Department received a request for information relating to the selection by the commissioner's court of candidates to interview for the vacant position of County Court at Law Judge. You seek to withhold, from the information responsive to the request, a list of applicants for the County Court at Law position with the commissioners court's votes on which ones should be interviewed for the position. You seek to withhold this information under sections 552.101 and 552.111 of the Government Code.

Section 552.101 requires withholding "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You argue that one of the holdings in *Jefferson County Drainage District No. 6 v. Lower Neches Valley Authority*, 876 S.W.2d 940 (Tex. App. – Beaumont 1994, writ den'd) indicates that the information at issue here may be withheld. In that case, the Beaumont court of appeals ruled, *inter alia*, that the trial court had not erred in refusing to admit "direct proof" of the reasons the valley authority's board members had for voting as they did on a drainage project.

Protection under the public information act is a separate question from litigation privileges. Open Records Decision No. 575 (1990). We do not believe that the *Jefferson County Drainage District No. 6* applies, under section 552.101, to make the information at issue confidential in the context of the Public Information Act.

Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [Emphasis in original.]

In our opinion, the portion of the information at issue that reflects the commissioners court's votes on which county court at law candidates should be interviewed relates to deliberations on policy-making such as to be within the scope of the section 552.111 exception. Unless the information has already been disclosed to the public -- in a public meeting or otherwise -- you may withhold the information we have marked under section 552.111. If the information has been disclosed to the public, it may not now be withheld. See Gov't Code § 552.007 (if information has been voluntarily disclosed to the public it must be made available to any person).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ljp

Ref: ID# 128664

Encl. Marked documents

cc: Mr. William L. Baskette
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(w/o enclosures)