



DALLAS COUNTY

CRAIG WATKINS DISTRICT ATTORNEY CIVIL DIVISION

April 20, 2011

Facsimile (512-463-2092)

Honorable Greg Abbott
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711

RE: Texas Public Information Act (PIA) request from John Wright

Dear Sir:

On April 6, 2011, the Dallas County Court Administrator received a request for public information for:

Any and all documents relating to an amendment to Dallas County's employment policy that prohibits discrimination based on "sexual orientation." This amendment is listed on Page 113 of Dallas County Commissioners Court Briefing Agenda for May 22, 2011.

The request is attached as **Exhibit A**. Dallas County will release to the requestor information that is not deemed confidential under any PIA exceptions or exclusions, and at the same time wishes to seek protection for the remaining documents that are confidential under the following PIA exceptions and/or exclusions:

1. AGENCY MEMORANDA EXCEPTION – Deliberative Process Privilege

Dallas County asserts that Texas Government Code § 552.111 protects some of the requested emails and documents from disclosure, because the records constitute inter- or intra-agency communications that consist of advice, recommendations, and opinions reflecting the policymaking processes of a governmental body. Section 552.111 provides:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.

This statutory provision excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This exception encompasses the deliberative process privilege. *See* Open Records Decisions No. 1602 (2005), No. 1379 (2005), No. 615 (1993). As consistently stated in prior attorney general opinions on

this subject, the purpose of § 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App. – San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

Some of the emails that the requestor is seeking are inter- or intra-agency communications, discussion and recommendations among the personnel and administrators about changes and improvements in procedures and policies related to discrimination. Dallas County strives to provide a working environment free from harassment and retaliation. In order for Dallas County to carry out this public interest purpose, and to improve its operations with such public policy in mind, it must have the ability to communicate internally in an unguarded manner without fear of reprisal.

Without the proper policy and procedures in place, Dallas County would not be able to comply with statutory requirements, applicable administrative codes, or accepted professional standards. The disclosure of these documents would chill and discourage candid discussion on improvements from staff at all levels. Further, disclosure would serve to dampen open discussion and actions to improve processes and necessary corrective actions or improvement measures.

It would be impossible to have any frank discussion of legal or policy matters in writing if all such writings were to be subjected to public scrutiny. *See* Open Records Decision No. 615 (1993). It has been argued, and with merit, that the efficiency of a government agency would be greatly hampered if, with respect to legal and policy matters, all government agencies were forced to operate in a fish bowl. *Id.* The requested information is of the type that should be protected from disclosure. It goes to the heart of what § 552.111 was intended to protect, and Dallas County should not be required to release the information.

Dallas County has included a representative sample of the documents it wishes to withhold as **Exhibit B** and seeks a ruling from your office regarding the release of such documents.

Thank you for your consideration of this matter.

Sincerely,

Michele Tapia
Assistant District Attorney

cc: John Wright (w/o enclosure) (Via Email wright@dallasvoice.com)