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ID# 13114
CBL-GOV

July 31, 1991

RQ-131

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

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Opinion Committee

Dear General Morales:

On July 23, 1991, the Employees Retirement System of Texas (ERS) received the enclosed request for information under the Texas Open Records Act from Eduardo Diaz of the Texas State Employees Union (TSEU).

Following a meeting between my staff and representatives of the TSEU during which the requests were clarified, the ERS provided copies of all of the information requested in lettered paragraphs A, C, E and F of Mr. Diaz's letter (see copy of Charles D. Travis' July 30, 1991 letter to Mr. Diaz and copy of James A. Adkins' July 24, 1991 letter to Mr. Diaz, enclosed).

Although the exception provisions of Section 3 of the Act do not specifically address this issue, it is my opinion that the identity of the candidate for whom an individual voter cast his vote is protected under Texas common law. An individual's choice in an election such as that described in Section 815.003(d), Government Code, is, I believe, a highly intimate fact about a person's private affairs the publication of which would be highly objectionable to a reasonable person; and although information about the overall results of the election is clearly of legitimate concern to the public, information about an individual voter's choice is not. That information is, therefore, excepted from disclosure under Section 3(a)(1) of the Act.

For this reason, the ERS has provided to Mr. Diaz copies of "all computer reports from January 18, 1991, date and title, pertaining to the election" with identifying information deleted (see lettered paragraph B of Mr. Diaz's letter). The ERS could also provide copies of or access to "... all ERS ballots cast during the election" with identifying information deleted (see

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lettered paragraph D of Mr. Diaz's letter). The removal of identifying information from almost 50,000 ballots will involve a considerable expense for Mr. Diaz and/or the TSEU.

Your advice with regard to the disclosure of reports and ballots which would identify voters and the candidate for whom each voted is respectfully requested.

Sincerely,


CHARLES D. TRAVIS
Executive Director

CDT/KJ/sh

Enclosures 7/23/91 Letter from Mr. Diaz
 7/24/91 Letter to Mr. Diaz
 7/30/91 Letter to Mr. Diaz
 Example Reports, two forms
 Example Ballot, two forms