



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2012

Mr. Habib Erkan
Denton, Navarro, Rocha & Bernal, P.C.
2517 North Main Avenue
San Antonio, Texas 78212

OR2012-16264

Dear Mr. Erkan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 467655.

The Frio County Clerk's Office (the "county clerk's office"), which you represent, received a request for "an electronic copy of any recorded real property indices that are maintained in digital form by, or on behalf of" Frio County (the "county"). You claim the county clerk's office lacks the technological ability to provide the requested information in the requested format. You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments regarding the requested format and the claimed exception. We have also considered comments submitted by an attorney for the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note the requestor seeks the information at issue in electronic format. *See id.* § 552.228(a) ("If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape"). In response, you explain the county clerk's office lacks the technological ability to provide the requested information in the requested format. Section 552.228(b) of the Government Code requires a governmental body to provide electronically stored information in the requested medium if it has the technological ability to do so without the purchase of software or hardware. *Id.* § 552.228(b). The requestor asserts the county clerk's office has the technological ability to provide the requested

information in electronic format. Whether the county clerk's office has the technological ability to provide the requested information in the requested format is a question of fact that this office cannot resolve through the open records ruling process. *See* Open Records Decisions Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Thus, based on your representations, we determine because the county clerk's office lacks the technological ability to provide the requested information in the requested electronic format, to the extent the requested information is subject to release, the county clerk's office must provide the information in paper format or in another medium acceptable to the requestor. *See* Gov't Code § 552.228(c).

We next address the obligations of the county clerk's office under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the county clerk's office received the present request for information on July 26, 2012. Accordingly, the fifteen-business-day deadline was August 16, 2012. However, as of the date of this letter, you have not submitted a copy or representative sample of the specific information requested. Accordingly, we conclude the county clerk's office failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise section 552.108 of the Government Code for the requested information, this section is discretionary in nature. Section 552.108 serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 665 at 2 n.5 (2000)

(discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 at 3 (1997) (statutory predecessor to section 552.108 subject to waiver). Thus, the county clerk's office has waived its claim under section 552.108, and none of the requested information may be withheld under this section. Therefore, we must order the county clerk's office to release this information in accordance with section 552.302 of the Government Code. Thus, because the county clerk's office lacks the technological ability to provide the requested information in the requested electronic format, the county clerk's office must provide the information in paper format or in another medium acceptable to the requestor. See Gov't Code § 552.228(c). If you believe the information may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 467655

No submitted documents

c: Requestor