



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1994

Mr. David Motley
County Attorney
County of Kerr
Kerr County Courthouse
700 East Main Street
Kerrville, Texas 78028-5324

OR94-153

Dear Mr. Motley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID #23555.

The Kerr County Commissioners Court² received an open records request on November 24, 1993 for various county records. Your letter to this office requesting an open records decision is dated December 7, 1993. You therefore failed to request a decision from this office within the ten days required by section 552.301 of the Government Code.

Section 552.301 requires a governmental body to release the requested information or to request a decision from the attorney general within ten days of receiving the request if it is information the governmental body wishes to withhold. If the governmental body fails to request a decision within ten days of receiving the open records request, the information at issue is presumed public. The governmental body must show a compelling interest to withhold the information to overcome this

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

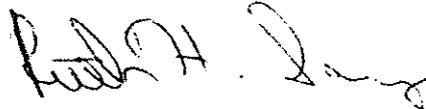
²We understand this to be a request made to the county commissioners court. The request was sent to the county judge, who is a member of and the presiding officer of the county commissioner's court. Local Gov't Code § 81.001; see Gov't Code § 552.003(a)(2), (b).

presumption, such as a confidentiality statute or protection of third party interests which have been recognized by the courts. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision Nos. 319 (1982); 150 (1977); 26 (1974).

You have not shown any compelling reasons why the requested information should not be released.³ You assert that the information may be excepted by sections 552.103 and 552.108 of the Government Code. However, we note that neither of these exceptions require information to be kept confidential nor do they protect the interests of third parties. These exceptions are discretionary.⁴ Gov't Code § 552.007; Open Records Decision Nos. 473 (1987) at 2 (section 552.103 waived by failure to raise it within the ten day deadline); 177 (1977) at 3 (section 552.108 is a discretionary exception). Therefore this information is presumed to be public and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

³We note your letter stated that there may be future requests for documents which contain information that "if released" might interfere with the county's investigations. If you receive future requests for information which you believe to be excepted by section 552.108, you should timely seek an opinion from this office and raise the exception at that time.

⁴Furthermore, we note that even if they had been timely raised, neither of these exceptions would be applicable. Section 552.103 provides an exception for documents relating to litigation or reasonably anticipated litigation. The mere chance of litigation will not trigger section 552.103. Open Records Decision Nos. 437 (1986) at 3; 328 (1982) at 1. You did not demonstrate that the county is a party to litigation or reasonably anticipated litigation. Section 552.108 provides an exception for information relating to an ongoing criminal investigation or prosecution. See Open Records Decision No. 582 (1990) at 3 (no protection when prosecution is speculative). If there is no active criminal investigation, the custodian of the records would have to show that release of the documents would unduly interfere with crime prevention and law enforcement to claim the section 552.108 exception. Attorney General Opinion MW-446 (1982). You did not demonstrate that the document in question is related to an active criminal investigation or that release of the document would interfere unduly with crime prevention and law enforcement.

RHS/mrc

Ref.: ID# 23555

Enclosures: Submitted documents

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