



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 9, 1998

Ms. Paula H. Powell  
Assistant District Attorney  
Criminal District Attorney  
Smith County Courthouse  
Tyler, Texas 75702

OR98-0390

Dear Ms. Powell:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112751.

The Smith County Clerk (the "county clerk") received a request for "copies of the deed records that are electronically stored [to] be provided on a diskette or other computer compatible media." You do not claim any specific exception from public disclosure under chapter 552 of the Government Code. However, you state that the county clerk "does not have the technological ability through its contractual agreement with Government Record Services, Inc. to produce a copy of this stored information in the requested medium from the AS400 without additional programming and formatting and the purchase of additional software and hardware to accommodate the request."

The Open Records Act imposes two obligations on the county clerk with respect to the request. First, the county clerk must comply with section 552.228 of the Government Code. Section 552.228 of the Government Code provides in pertinent part:

(b) 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. A governmental body shall provide a copy in the requested medium if:

- (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;
- (2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

Gov't Code § 552.228. Pursuant to section 552.228, the county clerk must inform the requestor as to whether it is able to provide the requested information in any medium other than magnetic tape. You state that you do not have the technological ability to produce a copy of the requested information in the requested medium, and therefore, you are releasing the requested information "by suitable copy through that of the paper form by the deed books themselves, and by computer access through public terminals with printers." Of course, the county clerk need not provide the information in the alternative medium unless the alternative is acceptable to the requestor.

Second, section 552.231 of the Government Code provides that when a governmental body is unable to comply with a request because compliance would require programming or manipulation of data, the governmental body must provide the requestor with a written statement that includes the following:

- (1) a statement that the information is not available in the requested form;
- (2) a description of the form in which the information is available;
- (3) a description of any contract or services that would be required to provide the information in the requested form;
- (4) a statement of the estimated cost of providing the information in the requested form as determined in accordance with the rules established by the General Services Commission under Section 552.262; and
- (5) a statement of the anticipated time required to provide the information in the requested form.

Gov't Code § 552.231(b). Section 552.231 of the Government Code is applicable to the circumstances presented here. Thus, we conclude that the county clerk must provide the

requestor with a written statement that complies with section 552.231 of the Government Code.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/ glg

Ref.: ID# 112751

cc: Mr. Michael Barnett  
Chief Appraiser  
Smith County Appraisal District  
245 S.S.E. Loop 323  
Tyler, Texas 75702