



RESOLUTION

A Resolution of the Williamson County Commissioners Court, Texas
Opposition to re:SearchTX, Tuesday, January 10, 2017

WHEREAS, the Williamson County Commissioners Court recognizes that the Texas Office of Court Administration (OCA), under the Supreme Court of Texas's direction, has created re:SearchTX, a web portal to allow judges secure access to a consolidated database of case information that has been e-Filed; and

WHEREAS, the sole purpose of the e-File system developed by the OCA was to provide a delivery system for attorneys to file documents electronically to the courts and that the information would only be retained for thirty days; and

WHEREAS, the OCA is now retaining information filed within the e-File system and plans to make it available to attorneys and the public (for a fee) through re:SearchTX in the near future; and

WHEREAS, as required by the Texas Constitution and state statutes, the county and district clerks of each Texas county are the designated custodians of court records, responsible for the management, preservation and access of court records; and

WHEREAS, Texas counties are responsible for providing resources to clerks for the management, preservation and access of court records by the public including having the option of offering county records through an electronic information system and may provide (on a contractual basis) direct access to the public, by statute;

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, by virtue of the authority vested in us, do hereby state that for the foregoing reasons, it is in the best interest of Williamson County and our taxpayers to oppose any change to current statutes regarding care, custody and control of records held by the county and district clerks and to any actions that would result in those records being centralized within any other entity, be it public or private.

BE IT FURTHER RESOLVED, we are opposed to the amendment and/or repeal of any current statutes or rules that authorize local control by commissioners court in the administration of our duties concerning records held by the county and district clerk or how the county chooses to offer those records to the public.

BE IT FURTHER RESOLVED, finally, we oppose any diversion of existing County revenue to any other government entity concerning records held under local control by statute.

PASSED AND APPROVED by the Williamson County Commissioners Court on this the 10th day of January, 2017.

Dan Gattis, County Judge

Lisa Birkman, Precinct 1 Commissioner

Cynthia Long, Precinct 2 Commissioner

Valerie Covey, Precinct 3 Commissioner

Larry Madsen, Precinct 4 Commissioner

Attest: _____

Lisa David, District Clerk



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NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF WILLIAMSON COUNTY, by virtue of the authority vested in us, do hereby state that for the foregoing reasons, it is in the best interest of Williamson County and our taxpayers to oppose any change to current statutes regarding care, custody and control of records held by the county and district clerks and to any actions that would result in those records being centralized within any other entity, be it public or private.

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BE IT FURTHER RESOLVED, finally, we oppose any diversion of existing County revenue to any other government entity concerning records held under local control by statute.

PASSED AND APPROVED by the Williamson County Commissioners Court on this the 10th day of January, 2017.

Dan Gattis, County Judge

Lisa Birkman, Precinct 1 Commissioner

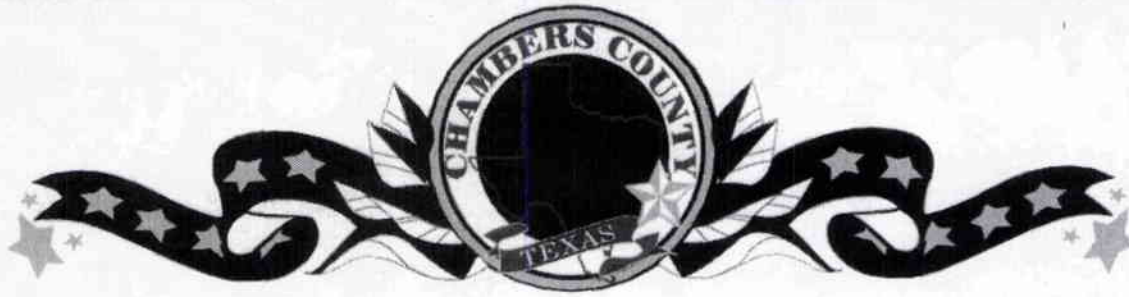
Cynthia Long, Precinct 2 Commissioner

Valerie Covey, Precinct 3 Commissioner

Larry Madsen, Precinct 4 Commissioner

Attest: _____

Lisa David, District Clerk



RESOLUTION

A Resolution of the Chambers County Commissioners Court, Texas
Opposition to re:SearchTX, Tuesday, November 22, 2016

WHEREAS, the Chambers County Commissioners Court recognizes that the Texas Office of Court Administration (OCA), under The Supreme Court of Texas's direction, has created re:SearchTX, a web portal to allow judges secure access to a consolidated database of case information that has been e-Filed; and

WHEREAS, the sole purpose of the e-File system developed by the OCA was to provide a delivery system for attorneys to file documents electronically to the courts and that the information would only be retained for thirty days; and

WHEREAS, the OCA is now retaining information filed within the e-File system and plans to make it available to attorneys and the public (for a fee) through re:SearchTX in the near future; and

WHEREAS, as required by the Texas Constitution and state statutes, the county and district clerks of each Texas county are the designated custodians of court records, responsible for the management, preservation and access of court records; and

WHEREAS, Texas counties are responsible for providing resources to clerks for the management, preservation and access of court records by the public including having the option of offering county records through an electronic information system and may provide (on a contractual basis) direct access to the public, by statute;

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF CHAMBERS COUNTY, by virtue of the authority vested in us, do hereby state that for the foregoing reasons, it is in the best interest of Chambers County and our taxpayers to oppose any change to current statutes regarding care, custody and control of records held by the county and district clerks and to any actions that would result in those records being centralized within any other entity, be it public or private.

BE IT FURTHER RESOLVED, we are opposed to the amendment and/or repeal of any current statutes or rules that authorize local control by commissioner's court in the administration of our duties concerning records held by the county and district clerk or how the county chooses to offer those records to the public.

BE IT FURTHER RESOLVED, finally, we oppose any diversion of existing County revenue to any other government entity concerning records held under local control by statute.

PASSED AND APPROVED by the Chambers County Commissioners Court on
this the 22nd day of November, 2016

Jimmy Sylvia, County Judge

Mark Huddleston, Precinct 1 Commissioner

Larry George, Precinct 2 Commissioner

Gary Nelson, Precinct 3 Commissioner

A.R. "Rusty" Senac, Precinct 4 Commissioner

Attest: _____
Heather L. Hawthorne, County Clerk

re:SearchTX

Synopsis:

Re:SearchTX – managed by the OCA and hosted by Tyler Technologies, is a secure web portal powered by the e-Filing database, which includes all electronic filings (e-Filings) as of February 1, 2016. It is designed for judges to access cases from across the Texas counties. It can be accessed from any device and includes documents, filings, actions, and parties. This is what the OCA is advertising at this time. (exhibit a)

August 2016 an article was published in the State Bar Journal written by Blake Hawthorne, clerk of the Supreme Court. In this article, it was outlined that the intention is to expand the offering of access to attorneys by January of 2017 and the general public by the summer of 2017, funded by some sort of subscription fee and copies charges. (exhibit b)

This article was the first notice the clerks had been given that the system would be offered to anyone other than the judges. August 23, 2016, during a meeting with David Slayton of the OCA, was the first time the clerks heard that the e-Filing system was retaining case documents in the e-Filing system.

e-Filing is a secure web portal that is designed to be a delivery system for court filings. Attorneys upload case documents which are then electronically accepted by clerks who are the designated record keepers of the court. (exhibit c)

Clerk's points of concern include:

- Disregards – Article 5, Section 9 of the Texas Constitution and GC 51.303(a) “The clerk of a district court has custody of and shall carefully maintain and arrange the records relating to or lawfully deposited in the clerk’s office.”
- Disregards – Article 5, Section 20 of the Texas Constitution and LGC 192.006, “The county clerk is the custodian of the records of the county court in civil and criminal cases and in matters of probate.”
- Disregards - LGC 191.008, takes away the counties option to offer electronic access to public information, making it mandatory. (exhibit d)
- Legality of the State to keep the records, just because they are e-Filed. The original presentation of e-Filing stated the image would only be kept for 30 days (contracts with OCA and service providers).
- There is no statute or rule that entitles the Supreme Courts recent actions to capture, store, and act as vendor for court records for which the district and county clerks are the custodians. (exhibit e)
- Liability concerns – If someone is harmed because this information is obtained on the re:SearchTX site, i.e. identity theft, criminal, sensitive data, who is liable? The State of Texas-OCA, Tyler, the County or the Clerk?
- Non-disclosures, Expunctions, Adoptions, (either during the life of the case or upon final order cases are made confidential by one of these methods. To give the public access to this site would render expunctions and non-disclosures useless because the information would already be out in the world with no way to retrieve it.
- Revenue loss for the county. Subscription and copy costs to pay for electronic systems.
- Inability to remove a record from the system, unless it is done manually.
- Incomplete case records at the e-File level as not everything flows back up to e-File, therefore, clerks could be required in the future to scan complete cases into e-File.

Dear Commissioners and Judge,

"reSearchTX" is an initiative that is being discretely developed this year by the Office of Court Administration (OCA). Clerks, judges and county leadership throughout the state have expressed belief that this initiative is harmful to the integrity of local county control and to the Judicial Records of Texas, and that it directly conflicts with the Constitutional Duties of Clerks of the Court.

Last week there was a meeting in Austin with Jim Allison, County Commissioner's Court lobbyist, together with a few members of the Texas County and District Clerks Association. I attended the meeting as the State Legislative Chair for District Clerks. It was the unanimous consensus of the attendees that this OCA initiative is an encroachment on county affairs and that the local clerks should undoubtedly educate our County Commissioner's Courts about **"reSearchTX."** The pdf attachment above is a copy of this month's article by Jim Allison in this month's County Progress.

To this end I attached two presentations which will help explain the issue.

The first presentation, **"reSearchtx"** handout CW (002).pdf is a presentation developed by clerks for education of our clerks in our Regional meetings. The letter from Blake Hawthorne, Clerk of the Supreme Court, was presented at a recent Judge's conference that Doug attended and brought to me. The letter was the very first time in the progression of eFiling that a "public portal for research" was mentioned to anyone as far as we were aware. It came as a shock to the clerks. Alarming, you will notice that the letter indicates that the program will begin during the summer of 2017.

The second presentation, **"reSearchTX" Status – 91516. Pptx (3MB)** is a PowerPoint presentation which was unveiled at the Judicial Council on Technology Seminar in September. The PowerPoint presentation completely contradicts the stated plan for eFileTx in that, unlike the methodology outlined in eFileTx, the **"reSearchtx"** plan calls for a "central" location which will allow for "public searches" of Texas judicial records. As can be seen from this presentation many concerns and hurdles exist before electronic copies of all legally available public documents should and could be accessed in a single central public portal. The clerks have undertaken a vigorous effort to protect the records over which they are the constitutionally designated custodians. We believe that the best place to conscientiously screen documents for sensitive information, including such items as convictions which have been or may be overturned as a result of non-disclosure orders or expunction orders, scandalous details of a divorce filings, or other salacious materials so as to prevent their release to the general public, is for these matters to be handled at the local level by the local clerks, not at the punch of a computer button keyed into a central collection depository which is collecting information from who knows where.

Lastly, I have including a copy of Local Government Code 191.008 which addresses specifically the authority of the Commissioner's Court to establish computerized information system and the control thereof:

Sec. 191.008. AUTHORITY TO ESTABLISH COMPUTERIZED ELECTRONIC INFORMATION SYSTEM.

(a) The commissioners court of a county by order may provide for the establishment and operation of a computerized electronic information system through which it may provide on a contractual basis direct access to information that relates to all or some county and

precinct records and records of the district courts and courts of appeals having jurisdiction in the county, that is public information, and that is stored or processed in the system. The commissioners court may make records available through the system only if the custodian of the records agrees in writing to allow public access under this section to the records.

(b) The commissioners court may:

(1) provide procedures for the establishment, maintenance, and operation of the information system;

(2) establish eligibility criteria for users;

(3) delineate the public information to be available through the system;

(4) set a reasonable fee, charged under a contract, for use of the system; and

(5) consolidate billing and collection of fees and payments under one county department or office.

(c) The commissioners court may contract with a person or other governmental agency for the development, acquisition, maintenance, or operation of:

(1) the information system or any component of the information system, including telecommunication services necessary for access to the system; and

(2) billing and collection services for the system.

I realize that this is a lot of information for the Court to digest all at once, but I wanted each of you to be aware of this issue from the clerks' perspective. I would very much like to visit with each of you concerning this situation. If possible, please call me so that we can discuss it, or I will be happy to meet with you at your convenience.

Thank you for your time.

August 2, 2016

A STATEWIDE ACCESS SYSTEM FOR COURT ELECTRONIC RECORDS

Blake Hawthorne, Clerk, Texas Supreme Court

Texas lawyers want a statewide access system for Texas court records similar to the federal PACER system. A recent poll conducted by the Office of Court Administration (OCA) showed that 98% of the over three thousand Texas attorneys who responded said they would use a statewide public access system. The survey also showed that Texas attorneys and their staff want to be able to search the court records of all 254 Texas counties at once, with the ability to immediately search and download those records 24 hours a day, 7 days a week. And their minimum expectations for the information available through a statewide access system include basic case information like party names, the court name and location, the judge assigned to the case, the attorneys on the case, and the docket sheet—like the federal PACER system.

Many Texas attorneys are also frustrated by the lack of uniformity in online access to court records. Some counties provide online access to their court records, while others do not. Some counties that provide access require attorneys to pay subscription fees, which can be expensive when an attorney does not regularly work in that county and only needs access to one case. Other counties provide access without a subscription, but charge \$1.00 per page—which can quickly add up to a large bill.

Members of the Judicial Committee on Information Technology (JCIT), a committee of Texas lawyers, judges, clerks, and court administrators appointed by the Supreme Court of Texas to study and recommend improvements to court technology, have long heard the familiar refrain “why doesn’t Texas just use the federal PACER system?” Many years ago, members of JCIT met with the Administrative Office of the United States Courts to discuss whether Texas courts could adopt the federal the PACER system. An effort was already underway in Mississippi to see if state courts there could adopt the federal PACER system.¹ But

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PACER's technology was aging at that time and the federal judiciary was preparing for a major rewrite of the system. Texas' system of local funding for and local control of court technology would have made it extremely difficult, if not impossible, to implement the federal judiciary's technology in all 254 Texas counties, each with varying levels and types of court technology.

Instead of attempting to shoehorn the unified federal PACER system into technologically-diverse and locally-controlled Texas court case management systems, JCIT pursued a different course. To achieve statewide public access to court electronic records, JCIT first advocated for mandating electronic filing in all Texas courts. Without mandatory electronic filing, there could be no statewide access to Texas electronic court records. Texas courts had been slow to adopt electronic filing. With JCIT's urging, however, the Supreme Court of Texas mandated electronic filing first for itself, then in the courts of appeals, and finally for civil cases in Texas district, county and probate courts. The Court of Criminal Appeals recently followed suit and mandated electronic filing for criminal cases in Texas trial courts.

Besides supporting mandatory electronic filing, JCIT members also proposed requiring the e-filing vendor to implement a statewide access system for Texas court records. When the former vendor of the Texas court electronic filing system announced it would not renew its contract, the new vendor, Texas-based Tyler Technologies, agreed to provide a statewide access system.

But how does one implement a single electronic access system for 254 counties, which use a variety of different case management systems? Fortunately, regardless of the local case management system they use, all Texas courts use the eFileTexas system to review and accept electronically filed documents. When the clerk accepts a document for filing, eFileTexas file-stamps the document and returns a file-stamped copy to the filer. And eFileTexas also has basic case information about each filing (e.g. court name, judge assigned, case number, attorneys on the case). By saving the filed-stamped documents and their associated case information through eFileTexas, a searchable statewide access system can be created.

Not only is it possible, but it has actually been accomplished. Tyler Technologies is currently beta-testing a statewide access system. Once a

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registered user is logged in with a user name and a password, the system provides a Google-type search bar for searching documents and docket information. The system returns search results along with suggestions on how to refine the results (like narrowing search results to certain counties or case types). Because the system is web-based and uses HTML 5, it can be used on any device, including tablets and smart phones. The beta version appears to be fast and quickly returns search results. Folders can be created to save cases or search results, and these folders can be organized and labeled by the user. Future improvements may include the ability to electronically file documents into a case through the electronic access system with the click of a button.

Judges that hear cases in multiple jurisdictions will particularly benefit from the features of the new system. Instead of learning to use multiple different county systems, these judges will be able to access their cases through one website on the device of their choosing. And they will be able to organize their cases into their own electronic folders, making it easier to keep track of cases filed in different counties. For traveling judges (and lawyers too), the ability to look up cases on mobile devices will be a great help.

Judges can get access to the system now by submitting a form to OCA. The form can be found at research.txcourts.gov. Once the form is received, OCA will provide judges with a username and a password.

Attorneys can expect to have access to the system beginning this fall. Initially, attorney access will be limited to cases that they have made an appearance in. But once rules are put into place for the types of cases that can be accessed through the system, members of the public will be allowed to register for access—and attorneys will be granted the same access rights as registered public members. Registered public access should be available summer 2017.

The system won't be perfect, of course. Because self-represented litigants are not required to electronically file documents, their filings will not be available through the statewide access system unless they are electronically filed (some self-represented litigants file electronically). Also, because judges are not required to electronically file their orders, most orders will not be available through the system either (in some counties, however, orders are filed electronically). This problem could be remedied if judges agreed to transmit their signed orders to the

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clerk through eFileTexas. Then file-stamped copies of their orders would be available through the access system.

There are other issues that remain to be resolved as well. For example, how should the system be funded? Should users be required to pay a monthly subscription fee? Or should a PACER-like funding model be adopted, charging \$0.10 per page with the cost of a single document capped at \$3.00? Or a combination of subscription fees and per page fees? Lawyers seem to prefer the PACER model because it is one that they are familiar with and have become accustomed too. JCIT will study the fee structure and make a recommendation to the Supreme Court of Texas.

JCIT and others will also study and make recommendations about the case types, document types, and other case information that should be available through the statewide access system. Decisions will be made about whether certain types of cases and documents should be viewable by persons that are not counsel of record in the case. And there will need to be further study and improvement of the rules regarding the redaction of sensitive data (e.g. bank account numbers, social security numbers, etc.) from court records. Enforcement of these rules will continue to be an important topic for JCIT and the courts.

Despite these challenges, the new statewide public access for court electronic records promises to be a major advance for the transparency and efficiency of the Texas court system. The Texas court system presents some unique challenges to providing a uniform access system. But with the support of the Supreme Court of Texas and the Court of Criminal Appeals, JCIT, OCA, judges, and clerks are overcoming those unique challenges to provide what attorneys have long demanded—a uniform statewide system for accessing Texas court records.

¹ Mississippi still has not mandated electronic filing in all of its courts and does not have statewide access to court records.

GENERAL COUNSEL'S REPORT

State Agencies Squeeze County Revenues



Jim Allison
General Counsel

While legislators are proposing to limit county property tax revenue, some state agencies are adopting rules to further restrict the ability to fund county services. The Texas Department of Motor Vehicles (DMV) has adopted new rules to increase agency funding while reducing the title registration fees retained by the county tax assessor-collector. These rules will result in less county revenues, leaving the tax assessor-collector with the responsibility for the difficult and complex title transfers. Rep. Joe Pickett, Chairman of the House Committee on Transportation, has protested these changes and has submitted an alternative plan that would meet the state objectives while preserving county revenues. Please contact your legislators and Gov. Abbott and request that they urge the DMV to adopt the Pickett Plan for title registration and transfers.

On a similar note, the Office of Court Administration has proposed to allow its private E-filing vendor to sell copies of all legal documents stored in the electronic filing system. This proposal will provide additional revenue to the vendor while reducing the revenue collected by the district clerk and county clerk. The clerks will continue to be responsible for the maintenance and security of the files with less revenue to support these services. Please contact your legislators and the members of the Texas Judicial Council and object to the Office of the Court Administration's proposal to allow a private vendor to collect these fees while reducing county revenue.

Road Repair Grants Begin to Expire

Finally, counties need to complete the county road repair grant projects. The Legislature provided \$225 million in road repair grants through the Texas Department of Transportation (TxDOT) in 2013. Of the 191 counties that received grants, 134 counties have remaining funds available for reimbursement. The TxDOT grant agreement requires that projects must begin within three years from the May 2014 execution date. This means that 105 counties have 6-9 months to commence work on projects eligible for reimbursement of \$47.2 million. Projects may be commenced by submitting an invoice for a project contract or county work. Let's keep these projects moving and demonstrate that this assistance is needed and appreciated.

For additional information, please call me at 1-800-733-0699. ★

RESOLUTIONS FOR CONSIDERATION:

Resolutions from the Commissioners Court and other organizations are effective means of conveying local concerns on legislative issues. The County Judges and Commissioners Association of Texas has posted sample resolutions concerning 1) Unfunded Mandates, 2) State Funding for Indigent Defense and 3) Opposition to Revenue Caps on the TAC listservs. Copies of these sample resolutions are on page 38 of this issue of County Progress. If your Commissioners Court or other local organizations adopt any resolutions on these matters, please send a copy to your legislators, Gov. Abbott, Lt. Gov. Patrick, Speaker Straus and me.

State Association Officers



Grover "Tiger" Worshan
President
County Commissioner
Trinity County



Woodrow W. "Woody" Gossom Jr.
First Vice President
County Judge
Wichita County



Neil Fritsch
Second Vice President
County Commissioner
Calhoun County



Terry Simpson
Immediate Past President
County Judge
San Patricio County

Regional Associations



Everett "Bo" Alfred, President
Johnson County Commissioner

Byron Ryder
First Vice President
Leon County Judge

Rick Bailey
Second Vice President
Johnson County Commissioner

Sydney Murphy, Secretary/Treasurer
Polk County Judge

Robert Johnson,
Immediate Past President
Anderson County Judge



SOUTH TEXAS
Ben Zeller, President
Victoria County Judge
Joseph Pelaez
First Vice President
Hidalgo County Commissioner
Jamil Canales
Second Vice President
Webb County Commissioner
Roger Galvan
Immediate Past President
Calhoun County Commissioner



WEST TEXAS
Bill McCoy, President
Lubbock County Commissioner
Sherri Harrison
First Vice President
Bailey County Judge
Tim Addison
Second Vice President
Yoakum County Commissioner
Kim Hoffmann
Immediate Past President
Glasscock County Judge

Directors: John Nanny, Irion County Commissioner;
Rex Fields, Eastland County Judge; and Glen Whitely,
Tarrant County Judge

NO. 33,843-D

THE STATE OF TEXAS

IN THE 320TH DISTRICT COURT

VS.

KEVIN LEDOIT ECKROAT

IN AND FOR
POTTER COUNTY, TEXAS

ORDER PRONOUNCING ADJUDICATION OF GUILT

On the 25th day of March, 1997, came on to be heard the motion of the State of Texas to pronounce and enter adjudication of guilt in the above entitled and numbered cause, such adjudication of guilt having been deferred upon the Defendant's plea of guilty on the 12th day of December, 1994, in accordance with Article 42.12 § 5, Texas Code of Criminal Procedure, and the Court, having duly considered the pleadings and evidence, is of the opinion and finds that good cause exists therefore and that such motion should be granted.

IT IS THEREFORE ACCORDINGLY ADJUDGED that the defendant, Kevin Ledoit Eckroat, is guilty of the offense of Aggravated Sexual Assault as alleged in the indictment.

SIGNED AND ENTERED this the 26th day of March, 1997


JUDGE PRESIDING

189557

THE STATE OF TEXAS

NO. 33,843-D

IN THE 320TH DISTRICT COURT

VS.

IN AND FOR

KEVIN LEDOIT ECKROAT

POTTER COUNTY, TEXAS

SID: TX04375517

JUDGMENT

Judge Presiding:	Don Emerson
Date of Judgment:	March 25, 1997
Attorney for State:	Paul Herrmann
Attorney for Defendant:	Mike Hrin
Offense Convicted of:	Aggravated Sexual Assault
Degree:	First Degree
Date Offense Committed:	March 20, 1994
Date of Probation Order:	December 12, 1994
Paragraph Violated and Grounds for Revocation: 5. Report to the probation officer as directed. 7. Immediately notify probation officer of any change of address, employment, marital status or arrest. 15. Pay probation fees as directed. 21. Pay court costs, restitution and fine as directed.	
As Set in State's Motion to Adjudicate Guilt	
Finding on Use of Deadly Weapon:	N/A
Punishment Imposed and Place of Confinement:	Defendant pled as charged and sentenced to Twenty (20) years Tex. Dept. Crim. Just. Inst. Div.
Date of Sentence:	March 25, 1997
Time Credited:	In 8-13-94 Out 9-9-94 In 1-14-97 to Present
Total Amount of Restitution/Reparation:	N/A
Concurrent Unless Otherwise Specified:	

On the 12th day of December, 1994, the above numbered and entitled cause was regularly reached and called for trial, the State appeared by her Assistant District Attorney, Paul Herrmann, and the defendant, Kevin Ledoit Eckroat, appeared in person and with counsel, Mike Hrin, and both parties announced ready for trial, and the said defendant, in open court, waived the reading of the Indictment. The defendant, defendant's counsel and the District Attorney announced that they and each of them, agreed in writing to waive a jury in this cause and to submit this cause to the Court, and the said defendant, in open court, pleaded "Guilty" to the charge of Aggravated Sexual Assault, as alleged in the indictment. Thereupon the defendant was admonished by the Court of the

189558

consequences of said plea; including the minimum and maximum punishment and the fact that any recommendation of the prosecuting attorney as to punishment is not binding on the Court. The Court inquired as to the existence of any plea bargaining agreement between the State and the defendant, and the Court admonished the defendant that it could follow or reject said recommendation of the prosecuting attorney and that if the Court rejected the recommendation of the prosecuting attorney the defendant would be permitted to withdraw the plea of guilty. If the Court assessed punishment that did not exceed the recommendation made by the prosecuting attorney, the defendant was admonished that any appeal from his plea entered in Court could only be made with permission of the Court, except on those matters which had been raised by written motion filed prior to trial, and the said defendant persisted in pleading guilty; and it plainly appearing to the Court that the said defendant was mentally competent and sane and that the said defendant was not influenced in making said plea by any consideration of fear, or by a persuasion or delusive hope of pardon prompting him to confess his guilt and that such plea was freely and voluntarily made, the plea of guilty was received by the Court and entered of record in the Minutes of the Court as the plea herein of said defendant; and at said hearing defendant entered in writing and under oath his Application for Deferred Judgment in the above entitled and numbered cause; and the Court having read the Application admonished the defendant that if the Court granted Deferred Adjudication that there could be no appeal and further, in the event the Court proceeded with adjudication of guilt on the original charge, that defendant's punishment could be increased to the maximum allowed by law and there would be no right of appeal from the adjudication of guilt. Further, that the defendant would have thirty days in which to request the Court to proceed with the adjudication from the date adjudication is deferred, and the Court having heard all the evidence for the State and the defendant and argument of counsel, found that it substantiated the defendant's guilt, and it was the opinion of the Court that the best interest of society and the defendant would be served

by granting said Application and the Court deferred all further proceedings in this cause and the defendant was placed on probation for a period of ten (10) years.

Thereafter, on the 21st day of November, 1996, the State filed an Motion to Proceed With Adjudication of Guilt On Original Charge under Art. 42.12, Texas Code of Criminal Procedure.

On the 25th day of March, 1997 the State of Texas appeared by her Assistant District Attorney and the defendant, accompanied by counsel, appeared in open court.

After having heard evidence and argument of counsel, the Court is of the opinion and so finds that the State's Motion is well taken and that the violations of the Order Deferring Probation as set out in the State's Motion have been proved by a preponderance of the evidence and are true and the Court further finds that the defendant is guilty of Aggravated Sexual Assault.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that on the 25th day of March, 1997, the said defendant is guilty of the offense of Aggravated Sexual Assault, which occurred on the 18th day of April, 1994, as alleged in the indictment in this cause, and as confessed by the defendant in defendant's plea of guilty heretofore made on the 12th day of December, 1994; and the Court, having heard evidence on the question of punishment and argument of counsel thereon, fixes the punishment at confinement in the Texas Department of Criminal Justice Institutional Division for a term of twenty (20) years and that the State of Texas do have and recover of the said defendant all costs in this proceeding incurred, as set in the Bill of Costs attached hereto and by this reference incorporated herein for all purposes.

AND THEREUPON, the defendant was asked by the Court whether the defendant had anything to say why said sentence should not be pronounced against the defendant, and the defendant answered nothing in bar thereof, and the defendant having agreed to accept sentences this date whereupon the Court proceeded, in the presence of the defendant and the defendant's attorney, to pronounce sentence as follows:

IT IS THE ORDER OF THIS COURT that the defendant who has been adjudged guilty of the offense of Aggravated Sexual Assault, and whose punishment has been assessed at twenty (20) years, is hereby sentenced to twenty (20) years in the Texas Department of Criminal Justice Institutional Division or other persons authorized to receive such convicts, and the said defendant shall be confined in the Texas Department of Criminal Justice Institutional Division in accordance with the provisions of the laws governing such confinement. The said defendant is remanded to jail until said Sheriff can obey the directions of this sentence.

And the Court makes a finding that there is \$0- owing on the fine, \$0- owing on the fees, and \$0- owing on the restitution previously assessed against the defendant by this Court.

SIGNED AND ENTERED this 26th day of March, 1997

JUDGE PRESIDING

DEPUTY

CLERK

MAR 27 8 51 AM '97

FILED
CINDY GROOMER
DISTRICT CLERK

501 S. Fillmore-Suite 1B
P.O. Box 9570
Amarillo, Texas 79105-9570

Potter County

Cindy Groomer
DISTRICT CLERK
COUNTY COURTS AT LAW (CIVIL)



BILL OF COSTS CRIMINAL

CAUSE NO. 033843-00-D

STYLE: THE STATE OF TEXAS VS KEVIN LEDOIT ECKROAT

IN AND FOR THE: 320TH DISTRICT COURT

JUDGMENT DATE: MARCH 25, 1997

TO: TDCJ-ID

CLERK FEE	***	40.00
LAW ENFORCEMENT OFFICERS FUND		3.50
CRIMINAL JUSTICE PLANNING FUND		20.00
CRIME VICTIM COMPENSATION FUND		45.00
JUDICIAL/COURT PERSONNEL TRAINING FUND		1.00
CRIME STOPPERS		2.00
RECORDS PRESERVATION		10.00
COURTHOUSE SECURITY FEE		5.00
SHERIFF FEES		350.00
ATTORNEY FEES (COURT APPOINTED)		900.00
FINE		
LAW LIBRARY		
JURY FEE		
VISUAL RECORD BY ELECTRONIC DEVICE		
BREATH ALCOHOL TESTING PROGRAM		
COMPREHENSIVE REHABILITATION FUND		
APPEAL TRANSCRIPT		

TOTAL COSTS	1376.50
PRIOR PAYMENTS	
BALANCE DUE	1376.50

I HEREBY CERTIFY THE ABOVE TO BE A CORRECT ACCOUNT OF THE FINE AND COSTS
IN THE ABOVE CAPTIONED CAUSE AS SHOWN IN THE RECORDS AS OF MARCH 27,
1997.

ISSUED AND GIVEN UNDER MY HAND AND SEAL ON MARCH 27, 1997.

CINDY GROOMER, CLERK OF THE COURT
POTTER COUNTY, TEXAS

BY  DEPUTY



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 27, 2007

The Honorable Tracy King
Chair, Committee on Border and
International Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. GA-0566

Re: Authority of the El Paso County District or
County Clerk to establish an online electronic
database accessible to the public (RQ-0498-GA)

Dear Representative King:

Your predecessor as Chair of the Committee on Border and International Affairs inquired whether the El Paso County District Clerk or County Clerk may store court documents on an electronic database and make them accessible to the public via the Internet.¹ She asked the following questions:

Under current state law, may the El Paso [County] District Clerk or County Clerk create an electronic database accessible online to display civil, family and criminal case docket information in its entirety and all document images pertaining to all cases filed regardless of case disposition or status?

If such a database can be created, should access to the electronic database be limited to certain parties?

Furthermore, should personal identifiers on the documents to be displayed, such as Social Security numbers and/or bank account[] [numbers], be redacted?

Lastly, could the El Paso [County] District Clerk or County Clerk assess a reasonable fee to the public in order to retrieve information?

Request Letter, *supra* note 1, at 1.

¹Letter from Honorable Norma Chávez, Chair, House Committee on Border and International Affairs, to Honorable Greg Abbott, Attorney General of Texas, at 1 (June 5, 2006) (on file with the Opinion Committee, *also available at* <http://www.oag.state.tx.us>) [hereinafter Request Letter].

Your predecessor inquired about court case documents held by the district and county clerks. Accordingly, we do not address other kinds of documents filed with the county clerk in his capacity as county recorder. *See* TEX. CONST. art. V, § 20; TEX. LOC. GOV'T CODE ANN. § 192.001 (Vernon 1999) (county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded).

I. Authority of El Paso County District or County Clerk to Maintain Online Database of Court Records

Pursuant to Local Government Code section 191.008, the El Paso County Commissioners Court may provide for online access to case information maintained by the district and county clerks. Section 191.008(a) provides as follows:

The commissioners court of a county by order may provide for the establishment and operation of a computerized electronic information system through which it may provide on a contractual basis direct access to information that relates to all or some county and precinct records and records of the district courts and courts of appeals having jurisdiction in the county, *that is public information*, and that is stored or processed in the system. The commissioners court may make records available through the system only if the custodian of the records agrees in writing to allow public access under this section to the records.

TEX. LOC. GOV'T CODE ANN. § 191.008(a) (Vernon 1999) (emphasis added). Under this provision, the El Paso County Commissioners Court may establish an electronic database that includes court case records maintained by the district and county clerks. Subject to the clerk's written agreement and the other requirements of section 191.008, a commissioners court may provide access to the clerk's records from a computer terminal in the clerk's office or in a remote location.

Only information "that is public information" may be made available online. *See id.* The "El Paso County Local Rules of the District and County Courts concerning the Electronic Filing of Court Documents" include a similar limitation, providing that "the district clerk shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free." EL PASO COUNTY, LOCAL RULES OF THE DISTRICT AND COUNTY COURTS, ELECTRONIC FILING OF COURT DOCUMENTS R. 6.2(a) (2003), *available at* <http://www.co.el-paso.tx.us/districtclerk/e-file-info.pdf> (adopted pursuant to TEX. GOV'T CODE ANN. § 51.807) (last visited Aug. 14, 2007) (hereinafter EL PASO COUNTY E-FILING).² Section 191.006 of the Local Government Code also provides that "[a]ll records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times." TEX. LOC. GOV'T CODE ANN. § 191.006 (Vernon 1999).

²Government Code sections 51.801 through 51.807 apply to the electronic filing of court documents with a district or county court clerk. *See* TEX. GOV'T CODE ANN. §§ 51.801–.807 (Vernon 2005).

We conclude in answer to the first question that the Commissioners Court may adopt an order pursuant to Local Government Code section 191.008 authorizing the El Paso County District Clerk and County Clerk to create electronic databases that may be accessible online to display information in civil, family, and criminal cases, as long as the information is public information. *See id.* §§ 191.006, .008(a); *see also* EL PASO COUNTY E-FILING R. 6.2(b). The District or County Clerk must agree in writing to allow public access to records under this section, and the Commissioners Court and the Clerks must comply with other requirements of this provision. *See* TEX. LOC. GOV'T CODE ANN. § 191.008(a) (Vernon 1999).

II. Whether the District or County Clerk May Make Criminal Case Information Accessible Online

A brief from the El Paso County Attorney raises a concern that confidential criminal history record information may be accessible from the clerks' Internet sites.³ It states that the El Paso County District and County Clerk have Internet websites that allow members of the public to access, without charge, certain information from criminal and civil cases. Rodríguez Brief, *supra* note 3, at 1. A search on the public website using an individual defendant's name will bring up a list of all open and closed cases involving that defendant, including the indictment number, indictment date, court, charge, and disposition. *See id.* The brief also states that El Paso County has established a password-protected website accessible only by certain government agencies, such as the Federal Bureau of Investigation (the "FBI"). *See id.* A search of the password-protected website, in addition to yielding the same basic information available from the public website, allows the user to view and print any documents filed in a case. *See id.* at 1-2. The brief raises the possibility that allowing members of the public to access a list of all El Paso County criminal cases involving a particular defendant would be a release of a compiled criminal history in violation of a common-law privacy right. *See id.* at 2 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976)).

The court in *Houston Chronicle Publishing Co.* considered whether a Personal History and Arrest Record, or "rap sheet," maintained by the City of Houston Police Department was available under the Texas Open Records Act, now the Public Information Act (the "PIA"). *See Houston Chronicle Publ'g Co.*, 531 S.W.2d 177; *see also* TEX. GOV'T CODE ANN. ch. 552 (Vernon 2004 & Supp. 2006) (Public Information Act); Act of May 19, 1973, 63d Leg., R.S., ch. 424, 1973 Tex. Gen. Laws 1112 (adopting Open Records Act). The rap sheet showed each previous arrest and other data relating to individuals and included crimes that they had been suspected of committing, and the court determined that individual privacy rights prevented the disclosure of this information. *See Houston Chronicle Publ'g Co.*, 531 S.W.2d at 181, 186. The rap sheet in *Houston Chronicle Publishing Co.* included criminal history information, including unverified suspicions, that is not available from a district or county clerk's files on court cases.

³Brief from Honorable José R. Rodríguez, El Paso County Attorney, to Honorable Greg Abbott, Attorney General of Texas, at 1 (July 14, 2006) (on file with the Opinion Committee) [hereinafter Rodríguez Brief].

The United States Supreme Court, in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, addressed an issue similar to that in *Houston Chronicle Publishing Co. v. City of Houston*. See *Reporters Comm.*, 489 U.S. 749. The *Reporters Committee* case arose from a request under the Federal Freedom of Information Act ("FOIA") for criminal identification records, or "rap sheets," stored electronically by the FBI. See *id.* at 751; see also 5 U.S.C.A. § 552 (2007) (Freedom of Information Act). The rap sheets, primarily used to aid in detecting and prosecuting offenders, contained information describing individuals, such as birth date and physical characteristics, as well as a history of arrests, charges, convictions, and incarcerations. See *Reporters Comm.*, 489 U.S. at 752. Because of the large number of rap sheets collected, they were sometimes incorrect or incomplete. See *id.* The Court addressed the FOIA provision that excepts from disclosure to the public "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy," or to harm various other specific interests. 5 U.S.C.A. § 552(b)(7)(C) (2007). The Court found a high privacy interest in the "compiled computerized information" derived from rap sheets and held that they were not subject to disclosure under FOIA. *Reporters Comm.*, 489 U.S. at 766.

Houston Chronicle Publishing Co. and *Reporters Committee* both deal with criminal history information held by a law enforcement agency, not information about cases held by a court clerk. The information addressed in those cases included conviction information, but it also included information about arrests that never resulted in indictment and incorrect or unverified information that might cast suspicion on a person who in reality had never been arrested. However, we find no authority indicating that the privacy interests in criminal history information articulated in these two cases would apply to case records made available online by the El Paso County District or County Clerk.

III. Limits on Public Access to Online Database of Court Records Maintained by District or County Clerk

Your predecessor raised a broad issue about the confidentiality of information in an online database of court records—whether access must be limited to certain parties. See Request Letter, *supra* note 1, at 1. Records in the district or county clerk's office are as a general rule available to everyone. See TEX. LOC. GOV'T CODE ANN. § 191.006 (Vernon 1999) (county clerk records shall be open "to the public"); TEX. R. CIV. PROC. 76a.1 (presumption that court records are open); EL PASO COUNTY E-FILING R. 6.2(a)–(b) (district clerk records may be viewed "by all persons" and may be made available "for both filers and the general public"). Of course, the general public may not have access to confidential or privileged records. See TEX. LOC. GOV'T CODE ANN. § 191.006 (Vernon 1999) (county clerk records are accessible only if "not otherwise restricted by law or by court order"); TEX. R. CIV. PROC. 76a (procedure for sealing court records); EL PASO COUNTY E-FILING R. 6.2(c) (district clerk records not accessible if "legally confidential"). Section 191.008 of the Local Government Code authorizes a commissioners court to establish eligibility criteria for users and to "delineate the public information to be available through the system." TEX. LOC. GOV'T CODE ANN. § 191.008(b)(2)–(3) (Vernon 1999). Pursuant to this authority, a commissioners court

may assist the clerks in determining whether specific kinds of information may be made available to the general public or only to a narrow class of persons.

Your predecessor also asked whether identifiers, such as social security numbers and bank account numbers, *should* be redacted from documents made available online.⁴ Our advice will thus go beyond the limits that the law places on district and county clerks.

Court clerks are not required to place social security or bank account numbers online. A commissioners court, in providing for a computerized electronic information system pursuant to Local Government Code section 191.008, may "delineate the public information to be available through the system." TEX. LOC. GOV'T CODE ANN. § 191.008((b)(3) (Vernon 1999). The commissioners court and the court clerks, in deciding what information should not go online, have an opportunity to combat the serious and growing crime of identity theft. Social security numbers are much sought-after by identity thieves because these numbers can be used to locate other information about a person. See SOCIAL SECURITY ADMINISTRATION, IDENTITY THEFT AND YOUR SOCIAL SECURITY NUMBER (Jan. 2006) (Publ'n No. 05-10064), available at <http://www.ssa.gov/pubs/10064.pdf> (last visited Aug. 14, 2007). We urge commissioners courts and court clerks to help prevent identity theft by ensuring that social security numbers and bank account numbers from court case documents will not be available online. Court clerks should anticipate and prepare for new laws directed toward greater privacy for social security numbers and other personal identifiers.⁵

IV. Authority of Clerk to Charge a Fee to Access Online Database

Your predecessor finally asked whether the El Paso County District Clerk or County Clerk may assess a reasonable fee to the public for access to electronically-stored case information. See Request Letter, *supra* note 1, at 1. The El Paso County E-Filing Rules provide that the district clerk "shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free." See EL PASO COUNTY E-FILING R. 6.2(a). Section 118.066 of the Local Government Code provides that "[a] county clerk is not

⁴The Eightieth Legislature amended section 552.147 of the PIA, overruling the analysis of this provision set out in Attorney General Opinion GA-0519 (2007). See Act of Mar. 19, 2007, 80th Leg., R.S., ch. 3, § 1, 2007 Tex. Sess. Law Serv. 3, 4 (effective immediately) (to be codified at TEX. GOV'T CODE ANN. § 552.147); see also Tex. Att'y Gen. Op. No. GA-0519 (2007) (addressing former version of Government Code section 552.147(a)).

Section 552.147(d) requires district and county clerks to redact the first five digits of an individual's social security number from its records upon the individual's request. See Act of Mar. 19, 2007, *supra*, 2007 Tex. Sess. Law Serv. 3, 4 (to be codified at TEX. GOV'T CODE ANN. § 552.147(d)). The PIA does not govern "[a]ccess to information collected, assembled, or maintained by or for the judiciary." TEX. GOV'T CODE ANN. § 552.0035(a) (Vernon 2004). The obligation to redact part of a social security number applies to information subject to disclosure under the PIA, and it thus does not apply to the court case documents that your predecessor inquired about. See Tex. Att'y Gen. ORD-671 (2001) (the PIA does not apply to records of the judiciary maintained by a district clerk).

⁵See TEXAS JUDICIAL COUNCIL, PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS (2004) (proposing Rule of Judicial Administration on public access to case records), available at <http://www.courts.state.tx.us/tjc/reports.asp> (last visited Aug. 14, 2007).


entitled to a fee for . . . the examination of a paper or record in the clerk's office." TEX. LOC. GOV'T CODE ANN. § 118.066(1) (Vernon 1999); *see id.* § 191.006 (records of county clerk to which access is not restricted by law or by court order shall be open to the public). Section 51.606 of the Government Code moreover provides that "[a] clerk is not entitled to a fee for . . . the examination of a paper or record in the clerk's office." TEX. GOV'T CODE ANN. § 51.606(1) (Vernon 2005). The El Paso County Attorney states that "in El Paso County, both the District Clerk and the County Clerk have . . . online access and terminals set up in their offices for use by the public." Rodríguez Brief, *supra* note 3, at 3. If a clerk provides for public access to records in his office by providing online access, as the El Paso County District and County Clerks have done, he may not charge a fee for this service.

Section 191.008(b)(4), however, permits a commissioners court to "set a reasonable fee, charged under a contract" to use the computerized electronic information system. TEX. LOC. GOV'T CODE ANN. § 191.008(b)(4) (Vernon 1999). As long as district and county clerks provide free onsite access to records maintained by their offices, persons who contract with the county pursuant to section 191.008 for electronic access to such information may be charged a fee as set by the commissioners court.

S U M M A R Y

Pursuant to Local Government Code section 191.008, the El Paso County Commissioners Court may adopt an order authorizing the District Clerk and County Clerk to create electronic databases of public information in court case documents and to provide online access to that information. Records maintained by each clerk must be available to the public without charge in the clerk's office, but persons who contract with the county for electronic access to such information may be charged a fee as set by the Commissioners Court. A court clerk should redact social security numbers and bank account numbers from documents made available online.

Very truly yours,


GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

NANCY S. FULLER
Chair, Opinion Committee

Susan L. Garrison
Assistant Attorney General, Opinion Committee