



RESOLUTION 2017-12

A Resolution of the Comal County Commissioners Court, Texas
Opposition to re:SearchTX, , March 23, 2017

WHEREAS, the Comal 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 free or an undetermined 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 to the public including having the option of offering county records through an electronic information system (on a contractual basis) direct access to the public, by statute;

NOW THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS COURT OF COMAL COUNTY, by virtue of the authority vested in us, do hereby state that for the foregoing reasons, it is in the best interest of Comal 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 Comal County Commissioners Court
on this the 23rd day of March, 2017

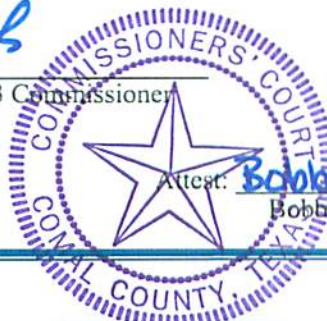
Absent
Sherman Krause, County Judge

Donna Eccleston
Donna Eccleston, Precinct 1 Commissioner

Scott Haag
Scott Haag Precinct 2 Commissioner

Kevin Webb
Kevin Webb, Precinct 3 Commissioner

Jen Crownover
Jen Crownover, Precinct 4 Commissioner



Attest: Bobbie Koepf by Nicole Bardwell
Bobbie Koepf, County Clerk Deputy Clerk

THE COUNTY & DISTRICT CLERKS' ASSOCIATION OF TEXAS

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PLEASE SPONSOR HB 1258

Protect court records and preserve local authority

HB 1258 by Clardy prohibits a state agency or vendor from making electronic court records available for public access without the agreement of the county and district clerks and commissioners courts.

Since early last year, the Office of Court Administration has captured and stored all documents and filings submitted to the county and district courts via E-File Texas *without the consent of the county and district clerks and the approval of any commissioners' court*. The clerks' opposition to this statewide database—currently called re:SearchTX—is not a reluctance to adopt emerging technology. Clerks champion access and transparency. A statewide court records database represents a troubling departure from local control and responsibility for the integrity of court records.

HB 1258 is about preserving and protecting the constitutional duties of a clerk and the statutes that establish the rights and responsibilities for the care and organization of court records. More than 130 county commissioners' courts have passed resolutions opposing the re:SearchTX court records database.

The County and District Clerks' Association of Texas supports HB 1258 and opposes the re:SearchTX database as currently proposed principally for these reasons:

Clerks are the custodians of court records. The Texas Constitution created the offices of the county clerk and district clerk (Texas Constitution Art. V, sections 9 and 20). The clerks are the custodians of records for all court activity and documents. (*See Gov't Code §51.303, Local Gov't Code §192.006.*) As custodians, clerks retain the authority to decide whether to include those records in a database managed by a state agency.

Commissioners' courts decide whether court records are available online. Local Government Code §191.008 vests authority with the commissioners' court to decide how and if documents and records are made available to the public for online purchase. The written agreement or consent of the clerk is also required. (See also Atty. Gen. Opinion GA-0566.)

Court records are already available to the public. Court records are currently open and available to the public. Public records do not necessarily have to be made available for online purchase for them to still be open to the public. Convenience is not a sufficient public policy rationale to take away local government control from clerks and commissioners' courts and certainly doesn't trump privacy concerns regarding confidential information.

Re:SearchTX takes away local control of county-owned records. State agencies cannot undermine the statutory authority and responsibility of locally-elected officials. There is no statute authorizing the creation, maintenance, or administration of a statewide court records database.

Change in e-file portal records retention was made without notice to counties. When e-filing was implemented, local officials were assured records were only maintained on the server for thirty days. However, beginning early last year, the Office of Court Administration has retained all documents filed through E-file Texas without the knowledge or consent of any clerk.

Removing confidential information will create an unfunded mandate for counties. At this time, there are no procedures in place to redact confidential information contained in court records maintained within the re:SearchTX database. County and district clerks are charged with the responsibility to make sure sealed, confidential, or expunged information is not made available under various statutes and court orders for the records they keep. The clerks fulfill this duty by ensuring their paper case files and electronic files are secured. Any requirement that clerks be responsible for sealing, redacting, and expunging information in records in re:SearchTX will be an unfunded mandate on counties, which already bear the considerable and ongoing costs of case management and court records technology.

For additional information, please contact your county or district clerk or:
Carter Casteel and Cary Roberts | 512-482-8107 | cary@casteelroberts.com
Teresa Kiel, Guadalupe County Clerk | 830-303-8859 | tkiel@co.guadalupe.tx.us
Heather Hawthorne, Chambers County Clerk | 409-267-2421 | hhawthorne@co.chambers.tx.us
Caroline Woodburn, Potter County District Clerk | 806-379-2310 | caroline.woodburn@co.potter.tx.us
Patti Henry, Chambers County District Clerk | 409-267-5596 | phenry@co.chambers.tx.us



RESOLUTION

A Resolution of the County & District Clerk's Association of Texas
Opposition to re:SearchTX, November 22, 2016

WHEREAS, the County & District Clerk's Association of Texas 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 COUNTY & DISTRICT CLERKS ASSOCIATION OF TEXAS and its 254 current member counties that for the foregoing reasons, it is in the best interest of Texas counties and their 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 their duties concerning records held by the county and district clerk or how the counties choose 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 County & District Clerks Association
of Texas on this the 22nd day of November, 2016

Celeste Bichsel

Celeste Bichsel, President

THE COUNTY & DISTRICT CLERKS' ASSOCIATION OF TEXAS

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January 12, 2017

Honorable Nathan L. Hecht
Chief Justice
Supreme Court of Texas
Post Office Box 12248
Austin, Texas 78711

Dear Chief Justice Hecht:

County and district clerks are proud to work with our colleagues in the judiciary to ensure the efficient operation of government. Like you, clerks take their sworn oath and responsibilities seriously. That's why I'm writing to express concerns about the development of a statewide database of court records (re:SearchTX).

Since early last year, the re:SearchTX database has captured and stored all documents and filings submitted to the county and district courts via E-File Texas (the state-owned portal for delivery of e-filed court documents to counties). The intent is to ultimately provide access to attorneys and the public to view and purchase court records. However, the collection and retention of these documents as they pass through E-File Texas has been done without the express or implied consent of the county and district clerks and the approval of any county commissioners' court.

The County and District Clerks' Association of Texas currently opposes the re:SearchTX database principally for these reasons:

Clerks are the custodians of court records. The Texas Constitution created the offices of the county clerk and district clerk (Texas Constitution Art. V, sections 9 and 20). The clerks are the custodians of records for all court activity and documents. (See Gov't Code §51.303, Local Gov't Code §192.006.) As custodians, clerks retain the authority to decide whether to include those records in a database managed by a state agency.

Commissioners' courts decide whether court records are available online. Local Government Code §191.008 vests authority with the commissioners' court to decide how and if documents and records are made available to the public for online purchase. The written agreement or consent of the clerk is also required. (*See also* Atty. Gen. Opinion GA-0566.)

Court records are already available to the public. Court records are currently open and available to the public. Public records do not necessarily have to be made available for online purchase for them to still be open to the public. Convenience is not a sufficient public policy rationale to take away local government control from clerks and commissioners' courts and certainly doesn't trump privacy concerns regarding confidential information.

re:SearchTX takes away local control of county-owned records. Implementing re:SearchTX is a usurpation of county governments. State agencies cannot undermine the statutory authority and responsibility of locally-elected officials. There is no statute authorizing the creation, maintenance, or administration of a statewide court records database.

Change in e-file portal records retention was made without notice to counties. When e-filing was implemented, local officials were assured records were only maintained on the server for thirty days. However, beginning early last year, the Office of Court Administration has retained all documents filed through E-file Texas without the knowledge or consent of any clerk.

Removing confidential information will create an unfunded mandate for counties. At this time, there are no procedures in place to redact confidential information contained in court records maintained within the re:SearchTX database. County and district clerks are charged with the responsibility to make sure sealed, confidential, or expunged information is not made available under various statutes and court orders for the records they keep. The clerks fulfill this duty by ensuring their paper case files and electronic files are secured. Any requirement that clerks be responsible for sealing, redacting, and expunging information in records in re:SearchTX will be an unfunded mandate on counties, which already bear the considerable and ongoing costs of case management and court records technology.

The County and District Clerks' Association's opposition to re:SearchTX is not a reluctance to adopt emerging technology. Clerks champion access and transparency. A statewide database represents a troubling departure from local control and responsibility for the integrity of court records. **The association fully supports any clerk who wants to contract with the state (i.e., "opt-in") to make records available using re:SearchTX.** However, utilization of the state's database system and maintenance of court records and documents should be agreed upon by the respective clerk, county, and the Office of Court Administration.

A copy of the resolution recently adopted by the County and District Clerks' Association of Texas regarding re:SearchTX is enclosed. Similar resolutions have been passed by more than sixty commissioners' courts to date.

The 443 county and district clerks of Texas look forward to an ongoing and productive discussion about this issue.

Sincerely,

Celeste Bichsel
President
County and District Clerks' Association of Texas

Enclosure

cc: County and district clerks
Supreme Court of Texas
Texas Judicial Council
Hon. Greg Abbott, Governor of Texas
Hon. Dan Patrick, Lieutenant Governor of Texas
Hon. Joe Straus III, Speaker of the Texas House of Representatives
