

By: Smithee

H.B. No. 3435

A BILL TO BE ENTITLED

AN ACT

relating to an expedited response by a governmental body to a request for public information.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 552.2615(g), Government Code, is amended to read as follows:

(g) The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G or K.

SECTION 2. Section 552.263(e), Government Code, is amended to read as follows:

(e) For purposes of Subchapters F, ~~and~~ G, and K, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs or unpaid amounts if the governmental body's officer for public information or the officer's agent requires a deposit or bond in accordance with this section.

SECTION 3. Section 552.302, Government Code, is amended to read as follows:

Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC. If a governmental body does not request an attorney general decision as provided by Section 552.301 or in response to an appeal under

1 Subchapter K and provide the requestor with the information
2 required by Sections 552.301(d) and (e-1) or Section 552.405(b),
3 the information requested in writing is presumed to be subject to
4 required public disclosure and must be released unless there is a
5 compelling reason to withhold the information.

6 SECTION 4. Section 552.321(a), Government Code, is amended
7 to read as follows:

8 (a) A requestor or the attorney general may file suit for a
9 writ of mandamus compelling a governmental body to make information
10 available for public inspection if the governmental body refuses to
11 request an attorney general's decision as provided by Subchapter G
12 or Section 552.405 or refuses to supply public information or
13 information that the attorney general has determined is public
14 information that is not excepted from disclosure under Subchapter
15 C.

16 SECTION 5. Section 552.352, Government Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) It is an affirmative defense to prosecution under
19 Subsection (a) that the defendant released information under
20 Subchapter K and did not release confidential information
21 intentionally, as defined by Section 6.03, Penal Code.

22 SECTION 6. Section 552.353(b), Government Code, is amended
23 to read as follows:

24 (b) It is an affirmative defense to prosecution under
25 Subsection (a) that the officer for public information reasonably
26 believed that public access to the requested information was not
27 required and that:

1 (1) the officer acted in reasonable reliance on a
2 court order or a written interpretation of this chapter contained
3 in an opinion of a court of record or of the attorney general issued
4 under Subchapter G;

5 (2) the officer requested a decision from the attorney
6 general in accordance with Subchapter G or Section 552.405, and the
7 decision is pending; or

8 (3) not later than the 10th calendar day after the date
9 of receipt of a decision by the attorney general that the
10 information is public, the officer or the governmental body for
11 whom the defendant is the officer for public information filed a
12 petition for a declaratory judgment against the attorney general in
13 a Travis County district court seeking relief from compliance with
14 the decision of the attorney general, as provided by Section
15 552.324, and the cause is pending.

16 SECTION 7. Chapter 552, Government Code, is amended by
17 adding Subchapter K to read as follows:

18 SUBCHAPTER K. EXPEDITED RESPONSE PROCEDURE

19 Sec. 552.401. APPLICABILITY. (a) This subchapter does not
20 apply to a request for information that may involve a person's
21 privacy or property interest under Section 552.305.

22 (b) This subchapter applies to a governmental body only if:

23 (1) the governmental body's officer for public
24 information or the officer's designee holds an active training
25 certificate issued under Section 552.406; and

26 (2) the governmental body's authorization to respond
27 to a request for information under this subchapter is not revoked

1 under Section 552.407 on the date the request is received.

2 Sec. 552.402. REQUEST FOR ATTORNEY GENERAL DECISION NOT
3 REQUIRED. Subject to Section 552.404, a governmental body that
4 receives a written request for information and complies with the
5 requirements of this subchapter may withhold any information it
6 makes a good faith determination is excepted from required public
7 disclosure under this chapter without the necessity of requesting a
8 decision from the attorney general under Subchapter G.

9 Sec. 552.403. RESPONSE REQUIREMENTS. (a) A governmental
10 body that withholds information under this subchapter must respond
11 to the requestor not later than the 10th business day after the date
12 the governmental body receives a written request for that
13 information by providing the requestor with:

14 (1) a list of the exceptions under Subchapter C and, if
15 applicable, the judicial decisions or constitutional or statutory
16 laws the governmental body determines are applicable to the
17 information being withheld;

18 (2) all information the governmental body determines
19 is not excepted from disclosure, including, if applicable,
20 partially redacted information with the redacted portions clearly
21 marked and labeled with the exceptions the governmental body relied
22 on to redact the information;

23 (3) a description of the volume and type of
24 information withheld; and

25 (4) a notice form promulgated by the attorney general
26 that includes, at a minimum:

27 (A) a unique identification number assigned by

1 the governmental body;

2 (B) a description of the appeal procedure;

3 (C) an appeal form the requestor must use to
4 appeal the withholding of information under this subchapter;

5 (D) a reference to the requestor's rights under
6 this chapter;

7 (E) the name of the individual who has received
8 training under Section 552.406; and

9 (F) a confirmation from the individual named in
10 Paragraph (E) that the individual reviewed and approved the
11 response.

12 (b) The governmental body shall retain, at a minimum, an
13 electronic or paper copy of the notice it provides to the requestor
14 under Subsection (a)(4) for the length of time the governmental
15 body retains the request for information.

16 Sec. 552.404. APPEAL. (a) On receipt of a response by a
17 governmental body under Section 552.403, the requestor may appeal
18 the withholding of information in the response not later than the
19 30th calendar day after the date the requestor receives the
20 response.

21 (b) The requestor must submit the appeal to the governmental
22 body that responded under Section 552.403 on the appeal form
23 provided to the requestor under Section 552.403(a)(4).

24 (c) The appeal is considered a new request and is subject to
25 the procedural requirements of Section 552.405.

26 (d) A governmental body may not seek to narrow or clarify an
27 appeal made under this section under Section 552.222(b).

1 (e) A governmental body may not respond to a requestor under
2 Section 552.232 in response to an appeal made under this section.

3 (f) Notwithstanding Sections 552.024(c)(2), 552.1175(f),
4 552.130(c), 552.136(c), and 552.138(c), a governmental body must
5 request an attorney general decision to withhold information
6 described by those provisions in response to an appeal.

7 Sec. 552.405. REQUEST FOR ATTORNEY GENERAL DECISION IN
8 RESPONSE TO APPEAL. (a) Except as provided by this subchapter:

9 (1) an appeal made under Section 552.404 is subject to
10 the provisions of this chapter; and

11 (2) an attorney general's decision requested under
12 this section is considered to be a decision under Subchapter G.

13 (b) A governmental body that receives an appeal under
14 Section 552.404 shall, within a reasonable time, but not later than
15 the fifth business day after the date the governmental body
16 receives the appeal, submit to the attorney general:

17 (1) a request for an attorney general's decision;

18 (2) a copy of the original written request for
19 information;

20 (3) a signed statement as to the date on which the
21 written response required by Section 552.403 was provided to the
22 requestor, or evidence sufficient to establish that date;

23 (4) a copy of the appeal form received by the
24 governmental body;

25 (5) a signed statement as to the date on which the
26 appeal was received by the governmental body, or evidence
27 sufficient to establish the date;

1 (6) the exceptions that apply and written comments
2 stating the reasons why the stated exceptions apply that would
3 allow the information to be withheld;

4 (7) if the governmental body provided partially
5 redacted information to the requestor in its initial response under
6 Section 552.403, an unredacted copy of the information the
7 governmental body provided to the requestor with the copy clearly
8 marked indicating the released portions and the withheld portions
9 labeled with the exceptions the governmental body relied on to
10 withhold the information; and

11 (8) a copy of the specific information the
12 governmental body seeks to withhold, or representative samples of
13 the information, labeled to indicate which exceptions apply to
14 which parts of the copy.

15 (c) A governmental body that receives an appeal under
16 Section 552.404 shall, within a reasonable time, but not later than
17 the fifth business day after the date the governmental body
18 receives the appeal, send a copy of the comments submitted under
19 Subsection (b)(6) to the requestor. If the written comments
20 disclose or contain the substance of the information requested, the
21 copy of the comments provided to the requestor must be a redacted
22 copy.

23 Sec. 552.406. TRAINING. (a) The public information
24 officer for a governmental body that responds to a request under
25 this subchapter or the officer's designee must have completed in
26 the four years preceding the response a course of training of not
27 less than four hours or more than six hours regarding the

1 responsibilities of the governmental body under this subchapter.

2 (b) The attorney general shall ensure that the training is
3 made available. The attorney general shall maintain at least one
4 updated course of training that is available in an online
5 presentation format. The online training may be broken into
6 separate sections. The online training must provide a means to
7 verify that the trainee observed and comprehended the full online
8 training session or, if applicable, each section of the training.

9 (c) At a minimum, the training must include instruction in:

10 (1) the general background of the legal requirements
11 for the governmental body's use of this subchapter and related law;

12 (2) the applicability of this subchapter to
13 governmental bodies;

14 (3) the procedures and requirements for complying with
15 an appeal under this subchapter;

16 (4) the role of the attorney general under this
17 subchapter; and

18 (5) penalties and other consequences for failing to
19 comply with this subchapter.

20 (d) The office of the attorney general shall provide a
21 certificate to a person who completes the training required by this
22 section and keep records of the training certificates issued. A
23 governmental body shall maintain the training certificate of any
24 individual who provides a confirmation under Section
25 552.403(a)(4)(F) and make the certificate available for public
26 inspection.

27 Sec. 552.407. REVOCATION. (a) If the attorney general

1 determines that a governmental body failed to comply with the
2 requirements of this chapter, the office of the attorney general,
3 in its sole discretion, may revoke the governmental body's
4 authorization to respond under this subchapter or the training
5 certificate issued to an individual responsible for the
6 governmental body's failure.

7 (b) The attorney general shall create a notice of revocation
8 form. The attorney general shall inform a governmental body that
9 the attorney general has revoked the governmental body's
10 eligibility under Subsection (a) or an individual that the attorney
11 general has revoked the individual's training certificate by
12 sending the notice of revocation form by certified mail or by
13 another written method of notice that requires the return of a
14 receipt.

15 (c) The notice of revocation provided to a governmental body
16 must inform the governmental body of the length of time the
17 revocation is in effect. The length of time the governmental body's
18 revocation is in effect may not exceed six months from the date the
19 governmental body receives the notice of revocation form.

20 (d) The notice of revocation form provided to an individual
21 must inform the individual that the attorney general has revoked
22 the individual's training certificate under Subsection (a). The
23 individual must repeat the course of training under Section 552.406
24 to obtain a new training certificate.

25 (e) If an individual is employed by a governmental body when
26 the governmental body's authorization to respond under this
27 subchapter is revoked under Subsection (a), and the individual

1 obtains employment at a different governmental body with
2 authorization to respond under this subchapter, the individual may
3 not provide a confirmation under Section 552.403(a)(4)(F) until the
4 revocation period for the initial governmental body has expired.

5 (f) The office of the attorney general shall publish on its
6 Internet website:

7 (1) a list that provides the first and last names of
8 individuals who hold an active training certificate issued under
9 Section 552.406, the date each individual's training was completed,
10 and the date each individual's training certificate expires; and

11 (2) a list of the governmental bodies that are not
12 authorized to respond to a request under this subchapter because
13 their authorization has been revoked under Subsection (a).

14 Sec. 552.408. REPORT ON IMPLEMENTATION OF SUBCHAPTER. (a)
15 For the state fiscal biennium beginning September 1, 2021, the
16 attorney general shall collect data detailing the number of:

17 (1) requests for decisions in response to appeals the
18 attorney general receives under Section 552.405;

19 (2) individuals who complete training under Section
20 552.406;

21 (3) governmental bodies that have their authorization
22 to respond under this subchapter revoked under Section 552.407; and

23 (4) individuals who have their training certificates
24 revoked under Section 552.407.

25 (b) Not later than February 1, 2023, the attorney general
26 shall make the data collected under Subsection (a) available on the
27 attorney general's Internet website for open records.

1 (c) This section expires September 1, 2023.

2 SECTION 8. The changes in law made by this Act apply only to
3 a request for information that is received by a governmental body on
4 or after the effective date of this Act. A request for information
5 that was received before the effective date of this Act is governed
6 by the law that was in effect on the date the request was received,
7 and the former law is continued in effect for that purpose.

8 SECTION 9. This Act takes effect September 1, 2021.