

By: Wentworth

S.B. No. 727

A BILL TO BE ENTITLED

AN ACT

relating to the public information law.

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

SECTION 1. Subsections (a), (b), and (c), Section 552.009, Government Code, are amended to read as follows:

(a) The open records steering committee is composed of two representatives of the attorney general's office and:

(1) a representative of each of the following, appointed by its governing entity:

- (A) ~~[the attorney general's office;~~
- ~~[(B)]~~ the comptroller's office;
- (B) ~~[(C)]~~ the Department of Public Safety;
- (C) ~~[(D)]~~ the Department of Information Resources; and
- (D) ~~[(E)]~~ the Texas State Library and Archives Commission; ~~and~~
- ~~[(F) the General Services Commission;]~~

(2) five public members, appointed by the attorney general ~~[General Services Commission]~~; and

(3) a representative of each of the following types of local governments, appointed by the attorney general ~~[General Services Commission]~~:

- (A) a municipality;
- (B) a county; and

1 (C) a school district.

2 (b) The representative of the attorney general designated
3 by the attorney general [~~General Services Commission~~] is the
4 presiding officer of the committee. The committee shall meet as
5 prescribed by committee procedures or at the call of the presiding
6 officer.

7 (c) The committee shall advise the attorney general
8 [~~General Services Commission~~] regarding the office of the attorney
9 general's [~~commission's~~] performance of its duties under Sections
10 552.010, 552.205, 552.262, 552.269, and 552.274 [~~this chapter~~].

11 SECTION 2. Section 552.010, Government Code, is amended to
12 read as follows:

13 Sec. 552.010. STATE GOVERNMENTAL BODIES: FISCAL AND OTHER
14 INFORMATION RELATING TO MAKING INFORMATION ACCESSIBLE. (a) Each
15 state governmental body shall report to the attorney general [~~Texas~~
16 ~~Building and Procurement Commission~~] the information the attorney
17 general [~~commission~~] requires regarding:

18 (1) the number and nature of requests for information
19 the state governmental body processes under this chapter in the
20 period covered by the report; and

21 (2) the cost to the state governmental body in that
22 period in terms of capital expenditures and personnel time of:

23 (A) responding to requests for information under
24 this chapter; and

25 (B) making information available to the public by
26 means of the Internet or another electronic format.

27 (b) The attorney general [~~Texas Building and Procurement~~

1 ~~Commission~~] shall design and phase in the reporting requirements in
2 a way that:

3 (1) minimizes the reporting burden on state
4 governmental bodies; and

5 (2) allows the legislature and state governmental
6 bodies to estimate the extent to which it is cost-effective for
7 state government, and if possible the extent to which it is
8 cost-effective or useful for members of the public, to make
9 information available to the public by means of the Internet or
10 another electronic format as a supplement or alternative to
11 publicizing the information only in other ways or making the
12 information available only in response to requests made under this
13 chapter.

14 (c) The attorney general [~~commission~~] shall share the
15 information reported under this section with the open records
16 steering committee.

17 SECTION 3. Section 552.205, Government Code, is amended to
18 read as follows:

19 Sec. 552.205. INFORMING PUBLIC OF BASIC RIGHTS AND
20 RESPONSIBILITIES UNDER THIS CHAPTER. (a) An officer for public
21 information shall prominently display a sign in the form prescribed
22 by the attorney general [~~General Services Commission~~] that contains
23 basic information about the rights of a requestor, the
24 responsibilities of a governmental body, and the procedures for
25 inspecting or obtaining a copy of public information under this
26 chapter. The officer shall display the sign at one or more places
27 in the administrative offices of the governmental body where it is

1 plainly visible to:

2 (1) members of the public who request public
3 information in person under this chapter; and

4 (2) employees of the governmental body whose duties
5 include receiving or responding to requests under this chapter.

6 (b) The attorney general [~~General Services Commission~~] by
7 rule shall prescribe the content of the sign and the size, shape,
8 and other physical characteristics of the sign. In prescribing the
9 content of the sign, the attorney general [~~commission~~] shall
10 include plainly written basic information about the rights of a
11 requestor, the responsibilities of a governmental body, and the
12 procedures for inspecting or obtaining a copy of public information
13 under this chapter that, in the opinion of the attorney general
14 [~~commission~~], is most useful for requestors to know and for
15 employees of governmental bodies who receive or respond to requests
16 for public information to know.

17 SECTION 4. Subsections (a) and (b), Section 552.225,
18 Government Code, are amended to read as follows:

19 (a) A requestor must complete the examination of the
20 information not later than the 10th business day after the date the
21 custodian of the information makes it available [~~to the person~~]. If
22 the requestor does not complete the examination of the information
23 within 10 business days after the date the custodian of the
24 information makes the information available and does not file a
25 request for additional time under Subsection (b), the requestor is
26 considered to have withdrawn the request.

27 (b) The officer for public information shall extend the

1 initial examination period by an additional 10 business days if,
2 within the initial period, the requestor files with the officer for
3 public information a written request for additional time. The
4 officer for public information shall extend an additional
5 examination period by another 10 business days if, within the
6 additional period, the requestor files with the officer for public
7 information a written request for more additional time.

8 SECTION 5. Section 552.231, Government Code, is amended by
9 amending Subsections (b) and (d) and adding Subsection (d-1) to
10 read as follows:

11 (b) The written statement must include:

12 (1) a statement that the information is not available
13 in the requested form;

14 (2) a description of the form in which the information
15 is available;

16 (3) a description of any contract or services that
17 would be required to provide the information in the requested form;

18 (4) a statement of the estimated cost of providing the
19 information in the requested form, as determined in accordance with
20 the rules established by the attorney general [~~General Services~~
21 ~~Commission~~] under Section 552.262; and

22 (5) a statement of the anticipated time required to
23 provide the information in the requested form.

24 (d) On providing the written statement to the requestor as
25 required by this section, the governmental body does not have any
26 further obligation to provide the information in the requested form
27 or in the form in which it is available unless within 30 days

1 ~~[until]~~ the requestor states in writing to the governmental body
2 that the requestor:

3 (1) wants the governmental body to provide the
4 information in the requested form according to the cost and time
5 parameters set out in the statement or according to other terms to
6 which the requestor and the governmental body agree; or

7 (2) wants the information in the form in which it is
8 available.

9 (d-1) If a requestor does not make a timely written
10 statement under Subsection (d), the requestor is considered to have
11 withdrawn the request for information.

12 SECTION 6. Subsections (a) and (b), Section 552.2615,
13 Government Code, are amended to read as follows:

14 (a) If a request for a copy of public information will
15 result in the imposition of a charge under this subchapter that
16 exceeds \$40, or a request to inspect a paper record will result in
17 the imposition of a charge under Section 552.271 that exceeds \$40,
18 the governmental body shall provide the requestor with a written
19 itemized statement that details all estimated charges that will be
20 imposed, including any allowable charges for labor or personnel
21 costs. If an alternative less costly method of viewing the records
22 is available, the statement must include a notice that the
23 requestor may contact the governmental body regarding the
24 alternative method. The governmental body must inform the
25 requestor of the responsibilities ~~[duties]~~ imposed on the requestor
26 by this section and of the rights granted by this entire section and
27 give the requestor the information needed to respond, including:

1 (1) that the requestor must provide the governmental
2 body with a mailing, facsimile transmission, or electronic mail
3 address to receive the itemized statement and that it is the
4 requestor's choice which type of address to provide;

5 (2) that the request is considered automatically
6 withdrawn if the requestor does not respond in writing to the
7 itemized statement and any updated itemized statement in the time
8 and manner required by this section; and

9 (3) that the requestor may respond to the statement by
10 delivering the written response to the governmental body by mail,
11 in person, by facsimile transmission if the governmental body is
12 capable of receiving documents transmitted in that manner, or by
13 electronic mail if the governmental body has an electronic mail
14 address.

15 (b) A request described by Subsection (a) is considered to
16 have been withdrawn by the requestor if the requestor does not
17 respond in writing to the itemized statement by informing the
18 governmental body within 10 business days after the date the
19 statement is sent to the requestor that:

20 (1) the requestor will accept the estimated charges;

21 (2) the requestor is modifying the request in response
22 to the itemized statement; or

23 (3) the requestor has sent to the attorney general
24 [~~Texas Building and Procurement Commission~~] a complaint alleging
25 that the requestor has been overcharged for being provided with a
26 copy of the public information.

27 SECTION 7. Section 552.262, Government Code, is amended to

1 read as follows:

2 Sec. 552.262. RULES OF THE ATTORNEY GENERAL [~~GENERAL~~
3 ~~SERVICES COMMISSION~~]. (a) The attorney general [~~General Services~~
4 ~~Commission~~] shall adopt rules for use by each governmental body in
5 determining charges for providing copies of public information
6 under this subchapter and in determining the charge, deposit, or
7 bond required for making public information that exists in a paper
8 record available for inspection as authorized by Sections
9 552.271(c) and (d). The rules adopted by the attorney general
10 [~~General Services Commission~~] shall be used by each governmental
11 body in determining charges for providing copies of public
12 information and in determining the charge, deposit, or bond
13 required for making public information that exists in a paper
14 record available for inspection, except to the extent that other
15 law provides for charges for specific kinds of public information.
16 The charges for providing copies of public information may not be
17 excessive and may not exceed the actual cost of producing the
18 information or for making public information that exists in a paper
19 record available for inspection. A governmental body, other than
20 an agency of state government, may determine its own charges for
21 providing copies of public information and its own charge, deposit,
22 or bond for making public information that exists in a paper record
23 available for inspection but may not charge an amount that is
24 greater than 25 percent more than the amount established by the
25 attorney general [~~General Services Commission~~] unless the
26 governmental body requests an exemption under Subsection (c).

27 (b) The rules of the attorney general [~~General Services~~

1 ~~Commission~~] shall prescribe the methods for computing the charges
2 for providing copies of public information in paper, electronic,
3 and other kinds of media and the charge, deposit, or bond required
4 for making public information that exists in a paper record
5 available for inspection. The rules shall establish costs for
6 various components of charges for providing copies of public
7 information that shall be used by each governmental body in
8 providing copies of public information or making public information
9 that exists in a paper record available for inspection.

10 (c) A governmental body may request that it be exempt from
11 part or all of the rules adopted by the attorney general [~~General~~
12 ~~Services Commission~~] for determining charges for providing copies
13 of public information or the charge, deposit, or bond required for
14 making public information that exists in a paper record available
15 for inspection. The request must be made in writing to the attorney
16 general [~~General Services Commission~~] and must state the reason for
17 the exemption. If the attorney general [~~General Services~~
18 ~~Commission~~] determines that good cause exists for exempting a
19 governmental body from a part or all of the rules, the attorney
20 general [~~commission~~] shall give written notice of the determination
21 to the governmental body within 90 days of the request. On receipt
22 of the determination, the governmental body may amend its charges
23 for providing copies of public information or its charge, deposit,
24 or bond required for making public information that exists in a
25 paper record available for inspection according to the
26 determination of the attorney general [~~General Services~~
27 ~~Commission~~].

1 (d) The attorney general [~~General Services Commission~~]
2 shall publish annually in the Texas Register a list of the
3 governmental bodies that have authorization from the attorney
4 general [~~General Services Commission~~] to adopt any modified rules
5 for determining the cost of providing copies of public information
6 or making public information that exists in a paper record
7 available for inspection.

8 (e) The rules of the attorney general [~~General Services~~
9 ~~Commission~~] do not apply to a state governmental body that is not a
10 state agency for purposes of Subtitle D, Title 10.

11 SECTION 8. Section 552.269, Government Code, is amended to
12 read as follows:

13 Sec. 552.269. OVERCHARGE OR OVERPAYMENT FOR COPY OF PUBLIC
14 INFORMATION. (a) A person who believes the person has been
15 overcharged for being provided with a copy of public information
16 may complain to the attorney general [~~Texas Building and~~
17 ~~Procurement Commission~~] in writing of the alleged overcharge,
18 setting forth the reasons why the person believes the charges are
19 excessive. The attorney general [~~Texas Building and Procurement~~
20 ~~Commission~~] shall review the complaint and make a determination in
21 writing as to the appropriate charge for providing the copy of the
22 requested information. The governmental body shall respond to the
23 attorney general [~~Texas Building and Procurement Commission~~] to any
24 written questions asked of the governmental body by the attorney
25 general [~~commission~~] regarding the charges for providing the copy
26 of the public information. The response must be made to the
27 attorney general [~~Texas Building and Procurement Commission~~]

1 within 10 business days after the date the questions are received by
2 the governmental body. If the attorney general [~~Texas Building and~~
3 ~~Procurement Commission~~] determines that a governmental body has
4 overcharged for providing the copy of requested public information,
5 the governmental body shall promptly adjust its charges in
6 accordance with the determination of the attorney general [~~Texas~~
7 ~~Building and Procurement Commission~~].

8 (b) A person who overpays for a copy of public information
9 because a governmental body refuses or fails to follow the rules for
10 charges adopted by the attorney general [~~Texas Building and~~
11 ~~Procurement Commission~~] is entitled to recover three times the
12 amount of the overcharge if the governmental body did not act in
13 good faith in computing the costs.

14 SECTION 9. Section 552.274, Government Code, is amended to
15 read as follows:

16 Sec. 552.274. REPORTS BY ATTORNEY GENERAL [~~GENERAL SERVICES~~
17 ~~COMMISSION~~] AND STATE AGENCIES ON COST OF COPIES. (a) The
18 attorney general [~~General Services Commission~~] shall:

19 (1) biennially update a report prepared by the
20 commission about the charges made by state agencies for providing
21 copies of public information; and

22 (2) provide a copy of the updated report on the
23 attorney general's open records page on the Internet [~~to each state~~
24 ~~agency~~] not later than March 1 of each even-numbered year.

25 (b) [~~Not later than December 1 of each odd-numbered year,~~
26 ~~each state agency shall provide the General Services Commission~~
27 ~~detailed information, for use by the commission in preparing the~~

1 ~~report required by Subsection (a), describing the agency's~~
2 ~~procedures for charging and collecting fees for providing copies of~~
3 ~~public information.~~

4 [(c)] Before the 30th day after the date on which a regular
5 session of the legislature convenes, each state agency shall issue
6 a report that describes that agency's procedures for charging and
7 collecting fees for providing copies of public information. A
8 state agency may comply with this subsection by posting the report
9 on the agency's open records page or another easily accessible page
10 on the agency's website on the Internet.

11 (c) [(d)] In this section, "state agency" has the meaning
12 assigned by Sections 2151.002(2)(A) and (C).

13 SECTION 10. Section 552.301, Government Code, is amended by
14 adding Subsection (e-1) to read as follows:

15 (e-1) A governmental body that submits written comments to
16 the attorney general under Subsection (e)(1)(A) shall send a copy
17 of those comments to the person who requested the information from
18 the governmental body. If the written comments disclose or contain
19 the substance of the information requested, the copy of the
20 comments provided to the person must be a redacted copy.

21 SECTION 11. Section 552.302, Government Code, is amended to
22 read as follows:

23 Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY
24 GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC. If a
25 governmental body does not request an attorney general decision as
26 provided by Section 552.301 and provide the requestor with the
27 information required by Sections [~~Section~~] 552.301(d) and (e-1),

1 the information requested in writing is presumed to be subject to
2 required public disclosure and must be released unless there is a
3 compelling reason to withhold the information.

4 SECTION 12. Section 552.304, Government Code, is amended to
5 read as follows:

6 Sec. 552.304. SUBMISSION OF PUBLIC COMMENTS. (a) A person
7 may submit written comments stating reasons why the information at
8 issue in a request for an attorney general decision should or should
9 not be released.

10 (b) A person who submits written comments to the attorney
11 general under Subsection (a) shall send a copy of those comments to
12 both the person who requested the information from the governmental
13 body and the governmental body. If the written comments submitted
14 to the attorney general disclose or contain the substance of the
15 information requested from the governmental body, the copy of the
16 comments sent to the person who requested the information must be a
17 redacted copy.

18 (c) In this section, "written comments" includes a letter, a
19 memorandum, or a brief.

20 SECTION 13. Subsection (d), Section 402.081, Labor Code, is
21 amended to read as follows:

22 (d) The commission may charge a reasonable fee for making
23 available for inspection any of its information that contains
24 confidential information that must be redacted before the
25 information is made available. However, when a request for
26 information is for the inspection of 10 or fewer pages, and a copy
27 of the information is not requested, the commission may charge only

1 the cost of making a copy of the page from which confidential
2 information must be redacted. The fee for access to information
3 under Chapter 552, Government Code, shall be in accord with the
4 rules of the attorney general [~~General Services Commission~~] that
5 prescribe the method for computing the charge for copies under that
6 chapter.

7 SECTION 14. (a) On the effective date of this Act:

8 (1) all powers and duties of the Texas Building and
9 Procurement Commission under the public information law, Chapter
10 552, Government Code, are transferred to the attorney general;

11 (2) all appropriations to the Texas Building and
12 Procurement Commission for the purpose of performing those duties,
13 all personnel of the Texas Building and Procurement Commission who
14 are employed to perform those duties, and all records and other
15 property of the Texas Building and Procurement Commission used to
16 perform those duties are transferred to the attorney general;

17 (3) all rules, forms, and signs adopted or prescribed
18 by the Texas Building and Procurement Commission or its predecessor
19 under Chapter 552, Government Code, are continued in effect as if
20 they were rules, forms, or signs adopted or prescribed by the
21 attorney general until they are repealed or otherwise changed by
22 the attorney general; and

23 (4) a reference in law to the Texas Building and
24 Procurement Commission, the General Services Commission, the State
25 Purchasing and General Services Commission, or the Board of Control
26 in relation to the performance of the transferred duties is
27 considered to be a reference to the attorney general.

1 (b) The validity of an authorization granted, determination
2 made, or other action taken by the Texas Building and Procurement
3 Commission or its predecessor under Chapter 552, Government Code,
4 is not affected by the transfer of powers and duties under this Act.

5 SECTION 15. This Act takes effect September 1, 2005.