

1-1 By: Wentworth S.B. No. 727
1-2 (In the Senate - Filed February 24, 2005; March 2, 2005,
1-3 read first time and referred to Committee on State Affairs;
1-4 May 2, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 2, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 727 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the public information law.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsections (a), (b), and (c), Section 552.009,
1-13 Government Code, are amended to read as follows:

1-14 (a) The open records steering committee is composed of two
1-15 representatives of the attorney general's office and:

1-16 (1) a representative of each of the following,
1-17 appointed by its governing entity:

1-18 (A) ~~the attorney general's office;~~

1-19 ~~the comptroller's office;~~

1-20 (B) ~~the Department of Public Safety;~~

1-21 (C) ~~the Department of Information~~

1-22 Resources; and

1-23 (D) ~~the Texas State Library and Archives~~

1-24 Commission; ~~and~~

1-25 ~~the General Services Commission;~~

1-26 (2) five public members, appointed by the attorney
1-27 general ~~[General Services Commission]; and~~

1-28 (3) a representative of each of the following types of
1-29 local governments, appointed by the attorney general ~~[General~~
1-30 ~~Services Commission]:~~

1-31 (A) a municipality;

1-32 (B) a county; and

1-33 (C) a school district.

1-34 (b) The representative of the attorney general designated
1-35 by the attorney general ~~[General Services Commission]~~ is the
1-36 presiding officer of the committee. The committee shall meet as
1-37 prescribed by committee procedures or at the call of the presiding
1-38 officer.

1-39 (c) The committee shall advise the attorney general
1-40 ~~[General Services Commission]~~ regarding the office of the attorney
1-41 general's ~~[commission's]~~ performance of its duties under Sections
1-42 552.010, 552.205, 552.262, 552.269, and 552.274 ~~[this chapter]~~.

1-43 SECTION 2. Section 552.010, Government Code, is amended to
1-44 read as follows:

1-45 Sec. 552.010. STATE GOVERNMENTAL BODIES: FISCAL AND OTHER
1-46 INFORMATION RELATING TO MAKING INFORMATION ACCESSIBLE. (a) Each
1-47 state governmental body shall report to the attorney general ~~[Texas~~
1-48 ~~Building and Procurement Commission]~~ the information the attorney
1-49 general ~~[commission]~~ requires regarding:

1-50 (1) the number and nature of requests for information
1-51 the state governmental body processes under this chapter in the
1-52 period covered by the report; and

1-53 (2) the cost to the state governmental body in that
1-54 period in terms of capital expenditures and personnel time of:

1-55 (A) responding to requests for information under
1-56 this chapter; and

1-57 (B) making information available to the public by
1-58 means of the Internet or another electronic format.

1-59 (b) The attorney general ~~[Texas Building and Procurement~~
1-60 ~~Commission]~~ shall design and phase in the reporting requirements in
1-61 a way that:

1-62 (1) minimizes the reporting burden on state
1-63 governmental bodies; and

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

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

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

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

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

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

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

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

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

(b) The officer for public information shall extend the initial examination period by an additional 10 business days if, within the initial period, the requestor files with the officer for public information a written request for additional time. The officer for public information shall extend an additional examination period by another 10 business days if, within the additional period, the requestor files with the officer for public information a written request for more additional time.

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

(b) The written statement must include:

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

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

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

(4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with

3-1 the rules established by the attorney general [~~General Services~~
3-2 ~~Commission~~] under Section 552.262; and

3-3 (5) a statement of the anticipated time required to
3-4 provide the information in the requested form.

3-5 (d) On providing the written statement to the requestor as
3-6 required by this section, the governmental body does not have any
3-7 further obligation to provide the information in the requested form
3-8 or in the form in which it is available unless within 30 days
3-9 [~~until~~] the requestor states in writing to the governmental body
3-10 that the requestor:

3-11 (1) wants the governmental body to provide the
3-12 information in the requested form according to the cost and time
3-13 parameters set out in the statement or according to other terms to
3-14 which the requestor and the governmental body agree; or

3-15 (2) wants the information in the form in which it is
3-16 available.

3-17 (d-1) If a requestor does not make a timely written
3-18 statement under Subsection (d), the requestor is considered to have
3-19 withdrawn the request for information.

3-20 SECTION 6. Subsections (a) and (b), Section 552.2615,
3-21 Government Code, are amended to read as follows:

3-22 (a) If a request for a copy of public information will
3-23 result in the imposition of a charge under this subchapter that
3-24 exceeds \$40, or a request to inspect a paper record will result in
3-25 the imposition of a charge under Section 552.271 that exceeds \$40,
3-26 the governmental body shall provide the requestor with a written
3-27 itemized statement that details all estimated charges that will be
3-28 imposed, including any allowable charges for labor or personnel
3-29 costs. If an alternative less costly method of viewing the records
3-30 is available, the statement must include a notice that the
3-31 requestor may contact the governmental body regarding the
3-32 alternative method. The governmental body must inform the
3-33 requestor of the responsibilities [~~duties~~] imposed on the requestor
3-34 by this section and of the rights granted by this entire section and
3-35 give the requestor the information needed to respond, including:

3-36 (1) that the requestor must provide the governmental
3-37 body with a mailing, facsimile transmission, or electronic mail
3-38 address to receive the itemized statement and that it is the
3-39 requestor's choice which type of address to provide;

3-40 (2) that the request is considered automatically
3-41 withdrawn if the requestor does not respond in writing to the
3-42 itemized statement and any updated itemized statement in the time
3-43 and manner required by this section; and

3-44 (3) that the requestor may respond to the statement by
3-45 delivering the written response to the governmental body by mail,
3-46 in person, by facsimile transmission if the governmental body is
3-47 capable of receiving documents transmitted in that manner, or by
3-48 electronic mail if the governmental body has an electronic mail
3-49 address.

3-50 (b) A request described by Subsection (a) is considered to
3-51 have been withdrawn by the requestor if the requestor does not
3-52 respond in writing to the itemized statement by informing the
3-53 governmental body within 10 business days after the date the
3-54 statement is sent to the requestor that:

3-55 (1) the requestor will accept the estimated charges;

3-56 (2) the requestor is modifying the request in response
3-57 to the itemized statement; or

3-58 (3) the requestor has sent to the attorney general
3-59 [~~Texas Building and Procurement Commission~~] a complaint alleging
3-60 that the requestor has been overcharged for being provided with a
3-61 copy of the public information.

3-62 SECTION 7. Section 552.262, Government Code, is amended to
3-63 read as follows:

3-64 Sec. 552.262. RULES OF THE ATTORNEY GENERAL [~~GENERAL~~
3-65 ~~SERVICES COMMISSION~~]. (a) The attorney general [~~General Services~~
3-66 ~~Commission~~] shall adopt rules for use by each governmental body in
3-67 determining charges for providing copies of public information
3-68 under this subchapter and in determining the charge, deposit, or
3-69 bond required for making public information that exists in a paper

4-1 record available for inspection as authorized by Sections
 4-2 552.271(c) and (d). The rules adopted by the attorney general
 4-3 [~~General Services Commission~~] shall be used by each governmental
 4-4 body in determining charges for providing copies of public
 4-5 information and in determining the charge, deposit, or bond
 4-6 required for making public information that exists in a paper
 4-7 record available for inspection, except to the extent that other
 4-8 law provides for charges for specific kinds of public information.
 4-9 The charges for providing copies of public information may not be
 4-10 excessive and may not exceed the actual cost of producing the
 4-11 information or for making public information that exists in a paper
 4-12 record available for inspection. A governmental body, other than
 4-13 an agency of state government, may determine its own charges for
 4-14 providing copies of public information and its own charge, deposit,
 4-15 or bond for making public information that exists in a paper record
 4-16 available for inspection but may not charge an amount that is
 4-17 greater than 25 percent more than the amount established by the
 4-18 attorney general [~~General Services Commission~~] unless the
 4-19 governmental body requests an exemption under Subsection (c).

4-20 (b) The rules of the attorney general [~~General Services~~
 4-21 ~~Commission~~] shall prescribe the methods for computing the charges
 4-22 for providing copies of public information in paper, electronic,
 4-23 and other kinds of media and the charge, deposit, or bond required
 4-24 for making public information that exists in a paper record
 4-25 available for inspection. The rules shall establish costs for
 4-26 various components of charges for providing copies of public
 4-27 information that shall be used by each governmental body in
 4-28 providing copies of public information or making public information
 4-29 that exists in a paper record available for inspection.

4-30 (c) A governmental body may request that it be exempt from
 4-31 part or all of the rules adopted by the attorney general [~~General~~
 4-32 ~~Services Commission~~] for determining charges for providing copies
 4-33 of public information or the charge, deposit, or bond required for
 4-34 making public information that exists in a paper record available
 4-35 for inspection. The request must be made in writing to the attorney
 4-36 general [~~General Services Commission~~] and must state the reason for
 4-37 the exemption. If the attorney general [~~General Services~~
 4-38 ~~Commission~~] determines that good cause exists for exempting a
 4-39 governmental body from a part or all of the rules, the attorney
 4-40 general [~~commission~~] shall give written notice of the determination
 4-41 to the governmental body within 90 days of the request. On receipt
 4-42 of the determination, the governmental body may amend its charges
 4-43 for providing copies of public information or its charge, deposit,
 4-44 or bond required for making public information that exists in a
 4-45 paper record available for inspection according to the
 4-46 determination of the attorney general [~~General Services~~
 4-47 ~~Commission~~].

4-48 (d) The attorney general [~~General Services Commission~~]
 4-49 shall publish annually in the Texas Register a list of the
 4-50 governmental bodies that have authorization from the attorney
 4-51 general [~~General Services Commission~~] to adopt any modified rules
 4-52 for determining the cost of providing copies of public information
 4-53 or making public information that exists in a paper record
 4-54 available for inspection.

4-55 (e) The rules of the attorney general [~~General Services~~
 4-56 ~~Commission~~] do not apply to a state governmental body that is not a
 4-57 state agency for purposes of Subtitle D, Title 10.

4-58 SECTION 8. Section 552.269, Government Code, is amended to
 4-59 read as follows:

4-60 Sec. 552.269. OVERCHARGE OR OVERPAYMENT FOR COPY OF PUBLIC
 4-61 INFORMATION. (a) A person who believes the person has been
 4-62 overcharged for being provided with a copy of public information
 4-63 may complain to the attorney general [~~Texas Building and~~
 4-64 ~~Procurement Commission~~] in writing of the alleged overcharge,
 4-65 setting forth the reasons why the person believes the charges are
 4-66 excessive. The attorney general [~~Texas Building and Procurement~~
 4-67 ~~Commission~~] shall review the complaint and make a determination in
 4-68 writing as to the appropriate charge for providing the copy of the
 4-69 requested information. The governmental body shall respond to the

5-1 attorney general [~~Texas Building and Procurement Commission~~] to any
 5-2 written questions asked of the governmental body by the attorney
 5-3 general [~~commission~~] regarding the charges for providing the copy
 5-4 of the public information. The response must be made to the
 5-5 attorney general [~~Texas Building and Procurement Commission~~]
 5-6 within 10 business days after the date the questions are received by
 5-7 the governmental body. If the attorney general [~~Texas Building and~~
 5-8 ~~Procurement Commission~~] determines that a governmental body has
 5-9 overcharged for providing the copy of requested public information,
 5-10 the governmental body shall promptly adjust its charges in
 5-11 accordance with the determination of the attorney general [~~Texas~~
 5-12 ~~Building and Procurement Commission~~].

5-13 (b) A person who overpays for a copy of public information
 5-14 because a governmental body refuses or fails to follow the rules for
 5-15 charges adopted by the attorney general [~~Texas Building and~~
 5-16 ~~Procurement Commission~~] is entitled to recover three times the
 5-17 amount of the overcharge if the governmental body did not act in
 5-18 good faith in computing the costs.

5-19 SECTION 9. Section 552.274, Government Code, is amended to
 5-20 read as follows:

5-21 Sec. 552.274. REPORTS BY ATTORNEY GENERAL [~~GENERAL SERVICES~~
 5-22 ~~COMMISSION~~] AND STATE AGENCIES ON COST OF COPIES. (a) The
 5-23 attorney general [~~General Services Commission~~] shall:

5-24 (1) biennially update a report prepared by the
 5-25 commission about the charges made by state agencies for providing
 5-26 copies of public information; and

5-27 (2) provide a copy of the updated report on the
 5-28 attorney general's open records page on the Internet [~~to each state~~
 5-29 ~~agency~~] not later than March 1 of each even-numbered year.

5-30 (b) [~~Not later than December 1 of each odd-numbered year,~~
 5-31 ~~each state agency shall provide the General Services Commission~~
 5-32 ~~detailed information, for use by the commission in preparing the~~
 5-33 ~~report required by Subsection (a), describing the agency's~~
 5-34 ~~procedures for charging and collecting fees for providing copies of~~
 5-35 ~~public information.~~

5-36 [~~(c)~~] Before the 30th day after the date on which a regular
 5-37 session of the legislature convenes, each state agency shall issue
 5-38 a report that describes that agency's procedures for charging and
 5-39 collecting fees for providing copies of public information. A
 5-40 state agency may comply with this subsection by posting the report
 5-41 on the agency's open records page or another easily accessible page
 5-42 on the agency's website on the Internet.

5-43 (c) [~~(d)~~] In this section, "state agency" has the meaning
 5-44 assigned by Sections 2151.002(2)(A) and (C).

5-45 SECTION 10. Section 552.301, Government Code, is amended by
 5-46 adding Subsection (e-1) to read as follows:

5-47 (e-1) A governmental body that submits written comments to
 5-48 the attorney general under Subsection (e)(1)(A) shall send a copy
 5-49 of those comments to the person who requested the information from
 5-50 the governmental body. If the written comments disclose or contain
 5-51 the substance of the information requested, the copy of the
 5-52 comments provided to the person must be a redacted copy.

5-53 SECTION 11. Section 552.302, Government Code, is amended to
 5-54 read as follows:

5-55 Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY
 5-56 GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC. If a
 5-57 governmental body does not request an attorney general decision as
 5-58 provided by Section 552.301 and provide the requestor with the
 5-59 information required by Sections [~~Section~~] 552.301(d) and (e-1),
 5-60 the information requested in writing is presumed to be subject to
 5-61 required public disclosure and must be released unless there is a
 5-62 compelling reason to withhold the information.

5-63 SECTION 12. Section 552.304, Government Code, is amended to
 5-64 read as follows:

5-65 Sec. 552.304. SUBMISSION OF PUBLIC COMMENTS. (a) A person
 5-66 may submit written comments stating reasons why the information at
 5-67 issue in a request for an attorney general decision should or should
 5-68 not be released.

5-69 (b) A person who submits written comments to the attorney

6-1 general under Subsection (a) shall send a copy of those comments to
6-2 both the person who requested the information from the governmental
6-3 body and the governmental body. If the written comments submitted
6-4 to the attorney general disclose or contain the substance of the
6-5 information requested from the governmental body, the copy of the
6-6 comments sent to the person who requested the information must be a
6-7 redacted copy.

6-8 (c) In this section, "written comments" includes a letter, a
6-9 memorandum, or a brief.

6-10 SECTION 13. Subsection (d), Section 402.081, Labor Code, is
6-11 amended to read as follows:

6-12 (d) The commission may charge a reasonable fee for making
6-13 available for inspection any of its information that contains
6-14 confidential information that must be redacted before the
6-15 information is made available. However, when a request for
6-16 information is for the inspection of 10 or fewer pages, and a copy
6-17 of the information is not requested, the commission may charge only
6-18 the cost of making a copy of the page from which confidential
6-19 information must be redacted. The fee for access to information
6-20 under Chapter 552, Government Code, shall be in accord with the
6-21 rules of the attorney general [~~General Services Commission~~] that
6-22 prescribe the method for computing the charge for copies under that
6-23 chapter.

6-24 SECTION 14. (a) On the effective date of this Act:

6-25 (1) all powers and duties of the Texas Building and
6-26 Procurement Commission under the public information law, Chapter
6-27 552, Government Code, are transferred to the attorney general;

6-28 (2) all appropriations to the Texas Building and
6-29 Procurement Commission for the purpose of performing those duties,
6-30 all personnel of the Texas Building and Procurement Commission who
6-31 are employed to perform those duties, and all records and other
6-32 property of the Texas Building and Procurement Commission used to
6-33 perform those duties are transferred to the attorney general;

6-34 (3) all rules, forms, and signs adopted or prescribed
6-35 by the Texas Building and Procurement Commission or its predecessor
6-36 under Chapter 552, Government Code, are continued in effect as if
6-37 they were rules, forms, or signs adopted or prescribed by the
6-38 attorney general until they are repealed or otherwise changed by
6-39 the attorney general; and

6-40 (4) a reference in law to the Texas Building and
6-41 Procurement Commission, the General Services Commission, the State
6-42 Purchasing and General Services Commission, or the Board of Control
6-43 in relation to the performance of the transferred duties is
6-44 considered to be a reference to the attorney general.

6-45 (b) The validity of an authorization granted, determination
6-46 made, or other action taken by the Texas Building and Procurement
6-47 Commission or its predecessor under Chapter 552, Government Code,
6-48 is not affected by the transfer of powers and duties under this Act.

6-49 SECTION 15. This Act takes effect September 1, 2005.

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