

By: Miller of Comal

H.B. No. 3641

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the preservation of effective responses to requests for
3 information pursuant to the public information law.

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

5 SECTION 1. PURPOSE. The purpose of this Act is to enhance
6 and preserve the public's ability to obtain effective responses to
7 legitimate requests for information pursuant to the public
8 information law.

9 SECTION 2. Chapter 552 of the Government Code is amended by
10 creating Subchapter J as follows:

11 Sec. 552.401. DEFINITIONS. In this subchapter:

12 (1) "Defendant" means a person against whom a
13 governmental body commences an action under this subchapter.

14 (2) "Abusive Requestor" means a person who submits a
15 request to a governmental body for inspection or copies of public
16 information with the intent to harass, abuse, or waste public funds
17 and/or time of public officials or employees.

18 Sec. 552.402. SUIT TO DECLARE OPEN RECORDS REQUEST VOID.

19 (a) A governmental body may bring suit in accordance with this
20 subchapter against an Abusive Requestor.

21 (b) The governmental body must bring the suit not later than
22 the 10th business day after the date the governmental body receives
23 the request for records.

24 (c) A suit filed under this section must be filed in a

1 district court of Travis County.

2 (d) The governmental body shall provide notice to the
3 attorney general of a suit filed under this section and the attorney
4 general is entitled to intervene in the suit.

5 Sec. 552.403. TEMPORARY INJUNCTION AFFECTING FUTURE
6 REQUESTS. (a) Upon the commencement of an action under Section
7 552.402, the requestor is temporarily enjoined, for a period
8 determined by the court the earlier of 90 days or the date of final
9 judgment from requesting inspection or copies of public information
10 from the governmental body that filed the suit.

11 (b) For the purposes of this subchapter, commencement of an
12 action occurs when the defendant is served pursuant to the Texas
13 Rules of Civil Procedure.

14 (c) Within 10 business days of the date the defendant
15 answers the suit, the court shall hold a preliminary hearing to
16 determine whether probable cause exists to maintain the action.

17 (d) If the court finds probable cause exists, the court
18 shall enter a scheduling order to include the date for final hearing
19 on the matter before the 90th day after commencement of the action.

20 (e) If the court does not find that probable cause exists,
21 the temporary injunction shall be immediately lifted, the action
22 shall be dismissed, and reasonable costs/attorney's fees shall be
23 awarded the requestor.

24 Sec. 552.404. PRELIMINARY HEARING. (a) At the preliminary
25 hearing under Section 552.403, the court may consider any evidence
26 material to the grounds alleged in the pleadings of the
27 governmental body.

1 (b) The evidence to be considered may include:

2 (1) written or oral evidence; and

3 (2) evidence presented by witnesses or affidavit.

4 (c) At the preliminary hearing, the governmental body shall
5 provide the defendant with legible copies of any and all documents
6 intended to be introduced at the final hearing on the merits as
7 substantive evidence and proof of the allegations in the petition,
8 excluding any information relevant to a prior request for public
9 information that is either excepted from disclosure or otherwise
10 confidential.

11 Sec. 552.405. CRITERIA FOR FINDING REQUESTOR AN ABUSIVE
12 REQUESTOR. (a) A court may find a requestor an Abusive Requestor
13 if the governmental body shows, by clear and convincing evidence,
14 that the requestor, in the seven-year period immediately preceding
15 the date the governmental body commences the suit under Section
16 552.402, has made at least five requests for public information
17 that have either:

18 (A) sought information predominately excepted from
19 disclosure pursuant to Subchapter B of this chapter;

20 (B) sought predominately confidential information or
21 information otherwise excepted from disclosure pursuant to
22 Subchapter C of this chapter;

23 (C) resulted in the governmental body asking the
24 requestor to clarify the request or to narrow the scope of the
25 request and the requestor failed to clarify or narrow the scope of
26 the request, if the court finds the request was susceptible to
27 reasonable clarification or narrowing within the constraints of

1 Section 552.222;

2 (D) resulted in the governmental body providing the
3 requestor a written statement pursuant to 552.231, and the request
4 is later considered to be withdrawn pursuant to that section;

5 (E) resulted in the governmental body certifying to
6 the requestor that copies of the requested information were
7 previously furnished to the requestor pursuant to Section 552.232;
8 or

9 (F) resulted in an overdue balance in excess of
10 \$100.00 that was not paid within 30 days after the governmental body
11 sent notice of the overdue balance to the requestor.

12 (b) A court may alternatively find a requestor to be an
13 abusive requestor if the governmental body shows, by clear and
14 convincing evidence, that, in the seven-year period immediately
15 preceding the date the governmental body commences the suit under
16 Section 552.402, the defendant has previously been declared an
17 Abusive Requestor by a state court in an action commenced by a
18 different governmental body and the requestor has made at least
19 three requests for public information from the governmental body
20 that commenced this suit that meet either of the criteria in
21 Subsection (a) of this section.

22 Sec. 552.406. FINAL HEARING ON THE MERITS. (a) Within the
23 90-day temporary injunction period, the court shall hold a final
24 hearing on the merits on its own motion or the motion of any party.

25 (b) Each party shall be entitled to ten (10) days notice
26 prior to the date of the final hearing on the merits.

27 (c) Only the defendant may move for a continuance of the

1 final hearing that would extend beyond the 90-day temporary
2 injunction period. If the defendant obtains a continuance extending
3 the time for the final hearing beyond the 90-day temporary
4 injunction period, the court may extend the temporary injunction
5 until completion of the final hearing on the merits.

6 (d) At the final hearing, the court may consider any
7 evidence material to the grounds alleged in the pleadings of the
8 governmental body.

9 (e) The evidence to be considered may include:

10 (1) written or oral evidence; and

11 (2) evidence presented by witnesses or by affidavit.

12 (f) At the final hearing, the governmental body may, in
13 compliance with the rules of evidence, introduce legible copies of
14 any and all documents produced at the preliminary hearing.

15 (g) At the final hearing, any evidence sought to be
16 introduced that is information relevant to a prior request for
17 public information by the requestor that the governmental body
18 asserts is either excepted from disclosure or otherwise
19 confidential shall be admitted and considered only by the court for
20 determination of the issue. Any such exhibit(s) shall be sealed and
21 included in the clerk's record.

22 Sec. 552.409. ORDER DECLARING REQUESTOR AN ABUSIVE
23 REQUESTOR. (a) A court may, on its own motion or the motion of any
24 party, enter an order prohibiting a person from submitting any
25 further or new requests for public information from a governmental
26 body that successfully filed suit under this subchapter if the
27 court finds, after notice and final hearing as provided by Section

1 552.408 that:

2 (1) the person is an abusive requestor; and

3 (2) the local administrative judge of the court which
4 found the person to be an abusive requestor has not granted
5 permission to the person under Section 552.410 to file the request.

6 (b) The court's order may set a reasonable time in which it
7 would remain effective not to exceed five (5) years from the date
8 the court's judgment becomes final.

9 (c) A person who disobeys an order under Subsection (a) is
10 subject to contempt of court.

11 (e) A governmental body shall not have any duty nor shall it
12 be required to respond to any subsequent request for public
13 information submitted in violation of an order under Subsection
14 (a).

15 Sec. 552.410. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE.

16 (a) A local administrative judge may grant permission to a person
17 found to be an abusive requestor under Section 552.408 to file a new
18 request for public information from a governmental body that
19 successfully filed suit under this subchapter only if it appears to
20 the judge that:

21 (1) probable cause exists to indicate the request:

22 (A) does not seek information likely to be
23 excepted from disclosure pursuant to Subchapter B of this chapter;

24 (B) does not seek confidential information or
25 information otherwise excepted from disclosure pursuant to
26 Subchapter C of this chapter; or

27 (C) does not seek information susceptible to

1 reasonable clarification or narrowing within the constraints of
2 Section 552.222; and

3 (2) the request has not been filed for the purposes of
4 harassment.

5 (b) The local administrative judge may condition permission
6 on the furnishing of security for the benefit of the governmental
7 body that is likely to cover the legitimate costs of providing
8 copies of the information requested.

9 SECTION 3. Chapter 552 of the Government Code is amended by
10 altering Subchapter G as follows:

11 Sec. 552.324. SUIT BY GOVERNMENTAL BODY. (a) ~~[The only~~
12 ~~suit a]~~ A governmental body or officer for public information may
13 file suit seeking to withhold information from a requestor ~~[is a~~
14 ~~suit]~~ that is filed in accordance with Sections 552.325 and 552.353
15 and that challenges a decision by the attorney general issued under
16 Subchapter G.

17 (b) The governmental body must bring suit not later than the
18 30th calendar day after the date the governmental body receives the
19 decision of the attorney general being challenged. If the
20 governmental body does not bring suit within that period, the
21 governmental body shall comply with the decision of the attorney
22 general. This subsection does not affect the earlier deadline for
23 purposes of Section 552.353(b)(3) for a suit brought by an officer
24 for public information.

25 SECTION 4. This Act takes effect September 1, 2009.