By: Lucio III, Elkins H.B. No. 2328

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 J.

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

(e) For purposes of Subchapters F, [~~and~~] G, and J, 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

Subchapter J and provide the requestor with the information required by Sections 552.301(d) and (e-1) or Section 552.404(b), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

SECTION 4. Section 552.352, Government Code, is amended by adding Subsection (d) to read as follows:

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

SECTION 5. Chapter 552, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. EXPEDITED RESPONSE PROCEDURE

Sec. 552.401. REQUEST FOR ATTORNEY GENERAL DECISION NOT REQUIRED. (a) Subject to Subsection (b) and Sections 552.403 and 552.405, a governmental body that receives a written request for information and complies with the requirements of this subchapter may withhold any information it makes a good faith determination is excepted from required public disclosure under this chapter without the necessity of requesting a decision from the attorney general under Subchapter G.

(b) If the requested information may involve a person's interests as provided by Section 552.305, the governmental body may not respond to the request under Subsection (a).

Sec. 552.402. RESPONSE REQUIREMENTS. (a) A governmental body that withholds information under this subchapter must respond

to the requestor not later than the fifth business day after the date the governmental body receives a written request for that information by providing the requestor with:

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

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

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

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

(A) a unique identification number assigned by the governmental body;

(B) a description of the appeal procedure;

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

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

(E) the name of an individual who holds an active training certificate issued under Section 552.406 and a confirmation by that individual that the individual reviewed and approved the response.

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

Sec. 552.403. APPEAL. (a) On receipt of a response by a governmental body under this subchapter, the requestor may appeal the withholding of information in the response not later than the 30th calendar day after the date the requestor receives the response.

(b) The requestor must submit the appeal to the governmental body that responded under this subchapter on the appeal form provided to the requestor by the governmental body under Section 552.402(a)(4).

(c) The appeal is considered a new request and is subject to the procedural requirements of Section 552.404.

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

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

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

Sec. 552.404. REQUEST FOR ATTORNEY GENERAL DECISION IN RESPONSE TO APPEAL. (a) Except as otherwise provided by this subchapter:

(1) the appeal is subject to the provisions of this chapter; and

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

(b) A governmental body that receives an appeal under Section 552.403 shall, within a reasonable time, but not later than the 10th business day after the date the governmental body receives the appeal, submit to the attorney general:

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

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

(3) a copy of the appeal form received by the governmental body;

(4) a signed statement as to the date on which the appeal was received by the governmental body or evidence sufficient to establish the date;

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

(6) if the governmental body provided partially redacted information to the requestor in its initial response under this subchapter, an unredacted copy of the information the governmental body provided to the requestor with the copy clearly marked indicating the released portions and the withheld portions labeled with the exceptions the governmental body relied on to withhold the information; and

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

(c) A governmental body that receives an appeal under Section 552.403 shall, within a reasonable time, but not later than the 10th business day after the date the governmental body receives the appeal, send a copy of the comments submitted under Subsection (b)(5) to the requestor. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the requestor must be a redacted copy.

Sec. 552.405. ELIGIBILITY. Before a governmental body may respond to a request under this subchapter:

(1) the governmental body's public information officer or the officer's designee must hold an active training certificate issued under Section 552.406; and

(2) the governmental body may not have had its authorization to rely on this subchapter revoked under Section 552.407.

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

(b) The attorney general shall ensure that the training is made available. The attorney general shall prepare and from time to

time revise at least one course of training that is available in an online presentation format. The online training may be broken into separate sections. The online training must provide a means to verify that the trainee observed and comprehended the full online training session or, if applicable, each section of the training.

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

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

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

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

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

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

(d) For a governmental body with its main offices located in a county with a population of 250,000 or less, the public information officer or the officer's designee must complete the training in person or online. For a governmental body with its main offices located in a county with a population of more than 250,000, the public information officer or the officer's designee must complete the training in person from the office of the attorney general.

(e) The office of the attorney general shall provide a certificate to a person who completes the training required by this section and keep records of the training certificates issued. A

governmental body shall maintain the training certificate of any individual who provides a confirmation under Section 552.402(a)(4)(E) and make the certificate available for public inspection.

Sec. 552.407. REVOCATION. (a) If the attorney general determines that a governmental body failed to comply with the requirements of this chapter, the office of the attorney general, in its sole discretion, may revoke the governmental body's authorization to respond under this subchapter or the training certificate issued to an individual responsible for the governmental body's failure.

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

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

(d) The notice of revocation form provided to an individual must inform the individual that the attorney general has revoked the individual's training certificate under Subsection (a). The

individual must repeat the course of training under Section 552.406 to obtain a new training certificate.

(e) If an individual is employed by a governmental body when the governmental body's authorization to respond under this subchapter is revoked under Subsection (a), and the individual obtains employment at a different governmental body with authorization to respond under this subchapter, the individual may not provide a confirmation under Section 552.402(a)(4)(E) until the revocation period for the initial governmental body has expired.

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

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

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

Sec. 552.408. REPORT ON IMPLEMENTATION OF SUBCHAPTER. (a) For the state fiscal biennium beginning September 1, 2017, the attorney general shall collect data detailing the number of:

(1) requests for decisions in response to appeals the attorney general receives under Section 552.404;

(2) individuals who complete training under Section 552.406;

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

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

(b) Not later than February 1, 2019, the attorney general shall make the data collected under Subsection (a) available on the attorney general's Internet website for open records.

(c) This section expires September 1, 2019.

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

SECTION 7. This Act takes effect September 1, 2017.