

BILL ANALYSIS

C.S.H.B. 3033
By: Landgraf
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, state public information law provides a governmental body the opportunity to delay the release of information subject to a public information request by requesting an opinion from the Office of the Attorney General regarding whether the information may legally be withheld. The opinion process as currently written does not ensure the timely release of requested information and thus effectively permits governmental bodies to delay the response to a public information request for an extended amount of time. C.S.H.B. 3033 seeks to address this issue and ensure a more timely release of information subject to public information law by implementing a number of safeguards, including requiring a governmental body to take action within 30 days after the issuance of an opinion by the attorney general following a request from the governmental body.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 3033 amends the Government Code to require a governmental body that requests an attorney general decision regarding whether the governmental body may withhold information requested under state public information law to submit the request through the attorney general's designated electronic filing system. That requirement does not apply to a request made if, as follows:

- the governmental body requesting the decision has fewer than 16 full-time employees or is located in a county with a population of less than 150,000; or
- the amount or format of responsive information at issue in a particular request makes use of the attorney general's electronic filing system impractical or impossible.

The bill authorizes the attorney general to adopt rules necessary to implement these provisions, including rules that define the amount or type of formatting of information that makes use of the electronic filing system impractical or impossible. These provisions apply to a request for an attorney general decision made on or after the bill's effective date.

C.S.H.B. 3033, with respect to the rendition of the attorney general decision and the issuance of a written opinion, removes the option for the attorney general to extend the initial 45-day response period following a request by 10 business days if unable to issue a decision within the time allotted. The bill requires a governmental body, as soon as practicable but not later than the

30th day after the date the attorney general issues an opinion regarding the requested information, to take the following actions, as applicable:

- provide the requestor of the information an itemized estimate of charges for production of the information, if the estimate is required by law;
- produce the requested information or notify the requestor in writing that the information is authorized to be withheld, as applicable depending on the opinion issued; or
- notify the requestor in writing that the governmental body has filed suit against the attorney general regarding the information.

These provisions apply to a request for an attorney general decision made on or after the bill's effective date.

C.S.H.B. 3033 requires the Office of the Attorney General to make available on its website not later than January 1, 2024, an easily accessible and searchable database consisting of each decision request and the attorney general's opinion issued for the request. The database, at a minimum, must allow a person to search for a request or opinion by the name of the governmental body making the request and by the exception to required disclosure that a governmental body asserts in the request applies to its request to withhold information. The database must also allow a person to view the current status of a request and an estimated timeline indicating the date each stage of review of the request will be started and completed.

C.S.H.B. 3033, with respect to the exception from required disclosure for certain law enforcement, corrections, and prosecutorial information, requires a governmental body to promptly release basic information responsive to a public information request unless the governmental body seeks to withhold the information as provided by another provision of state public information law, and regardless of whether the governmental body requests an attorney general decision regarding other information subject to the request.

C.S.H.B. 3033 authorizes the attorney general to require each public official of a governmental body to complete an open records training course if the attorney general determines that the governmental body has failed to comply with a requirement of state public information law. The bill requires the attorney general to notify each public official in writing of the attorney general's determination and the requirement to complete the training and requires a public official who receives the notice to complete the training not later than the 60th day after the date of receipt.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3033 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the provision from the introduced shortening the response period for the attorney general with respect to a request by a governmental body to withhold information under state public information law by changing the deadline for the attorney general to render a decision on the matter from the 45th business day after the date the attorney general received the request to the 30th business day after that date.

Whereas the introduced required a governmental body, as soon as practicable but not later than the 15th day after the date the attorney general's decision is issued following such a request, to either produce the requested information or notify the person requesting the information in writing that the information is authorized to be withheld, as applicable depending on the decision issued, the substitute includes this provision but revises it to change the deadline for action

following the response from the attorney general from 15 days, as in the introduced, to 30 days and to include the following among the required actions prior to that deadline, if applicable:

- providing the requestor of the information an itemized estimate of charges for production of the information, if the estimate is required by law; and
- notifying the requestor in writing that the governmental body has filed suit against the attorney general regarding the information.

The substitute includes provisions absent from the introduced relating to the following:

- a requirement for a request for such an attorney general decision to be submitted electronically, with certain exceptions, and an authorization for the attorney general to adopt rules necessary to implement electronic submission of a request;
- a requirement, with respect to the exception from required disclosure for certain law enforcement, corrections, and prosecutorial information, that a governmental body promptly release basic information responsive to a public information request unless the governmental body seeks to withhold the information as provided by another provision of state public information law, and regardless of whether the governmental body requests an attorney general decision regarding other information subject to the request; and
- an authorization for the attorney general to require each public official of a governmental body to complete an open records training course if the governmental body has failed to comply with a requirement of state public information law.