

By: Bettencourt

S.B. No. 1579

A BILL TO BE ENTITLED

AN ACT

relating to procedures under the public information law, including expedited responses and charges for bad faith requests.

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 K.

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

(e) For purposes of Subchapters F, ~~and~~ G, and K, 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

1 Subchapter K and provide the requestor with the information
2 required by Sections 552.301(d) and (e-1) or Section 552.405(b),
3 the information requested in writing is presumed to be subject to
4 required public disclosure and must be released unless there is a
5 compelling reason to withhold the information.

6 SECTION 4. Subchapter G, Chapter 552, Government Code, is
7 amended by adding Section 552.310 to read as follows:

8 Sec. 552.310. CHARGES FOR BAD FAITH REQUEST. (a) The
9 attorney general may impose a \$1,000 charge to process a request for
10 an attorney general decision made by a governmental body that the
11 attorney general determines has made the request in bad faith.

12 (b) The attorney general may impose on a governmental body a
13 \$500 charge for each business day that occurs after the date the
14 attorney general issues a written determination that the
15 governmental body made a request for an attorney general decision
16 in bad faith and before the date the governmental body provides to
17 the requestor all information withheld in connection with the bad
18 faith request.

19 SECTION 5. Section 552.321(a), Government Code, is amended
20 to read as follows:

21 (a) A requestor or the attorney general may file suit for a
22 writ of mandamus compelling a governmental body to make information
23 available for public inspection if the governmental body refuses to
24 request an attorney general's decision as provided by Subchapter G
25 or Section 552.405 or refuses to supply public information or
26 information that the attorney general has determined is public
27 information that is not excepted from disclosure under Subchapter

1 C.

2 SECTION 6. Section 552.352, Government Code, is amended by
3 adding Subsection (d) to read as follows:

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

8 SECTION 7. Section 552.353(b), Government Code, is amended
9 to read as follows:

10 (b) It is an affirmative defense to prosecution under
11 Subsection (a) that the officer for public information reasonably
12 believed that public access to the requested information was not
13 required and that:

14 (1) the officer acted in reasonable reliance on a
15 court order or a written interpretation of this chapter contained
16 in an opinion of a court of record or of the attorney general issued
17 under Subchapter G;

18 (2) the officer requested a decision from the attorney
19 general in accordance with Subchapter G or Section 552.405, and the
20 decision is pending; or

21 (3) not later than the 10th calendar day after the date
22 of receipt of a decision by the attorney general that the
23 information is public, the officer or the governmental body for
24 whom the defendant is the officer for public information filed a
25 petition for a declaratory judgment against the attorney general in
26 a Travis County district court seeking relief from compliance with
27 the decision of the attorney general, as provided by Section

1 552.324, and the cause is pending.

2 SECTION 8. Chapter 552, Government Code, is amended by
3 adding Subchapter K to read as follows:

4 SUBCHAPTER K. EXPEDITED RESPONSE PROCEDURE

5 Sec. 552.401. APPLICABILITY. (a) This subchapter does not
6 apply to a request for information that may involve a person's
7 privacy or property interest under Section 552.305.

8 (b) This subchapter applies to a governmental body only if:

9 (1) the governmental body's officer for public
10 information or the officer's designee holds an active training
11 certificate issued under Section 552.406; and

12 (2) the governmental body's authorization to respond
13 to a request for information under this subchapter is not revoked
14 under Section 552.407 on the date the request is received.

15 Sec. 552.402. REQUEST FOR ATTORNEY GENERAL DECISION NOT
16 REQUIRED. Subject to Section 552.404, a governmental body that
17 receives a written request for information and complies with the
18 requirements of this subchapter may withhold any information it
19 makes a good faith determination is excepted from required public
20 disclosure under this chapter without the necessity of requesting a
21 decision from the attorney general under Subchapter G.

22 Sec. 552.403. RESPONSE REQUIREMENTS. (a) A governmental
23 body that withholds information under this subchapter must respond
24 to the requestor not later than the 10th business day after the date
25 the governmental body receives a written request for that
26 information by providing the requestor with:

27 (1) a list of the exceptions under Subchapter C and, if

1 applicable, the judicial decisions or constitutional or statutory
2 laws the governmental body determines are applicable to the
3 information being withheld;

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

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

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

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

15 (B) a description of the appeal procedure;

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

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

20 (E) the name of the individual who has received
21 training under Section 552.406; and

22 (F) a confirmation from the individual named in
23 Paragraph (E) that the individual reviewed and approved the
24 response.

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

1 body retains the request for information.

2 Sec. 552.404. APPEAL. (a) On receipt of a response by a
3 governmental body under Section 552.403, the requestor may appeal
4 the withholding of information in the response not later than the
5 30th calendar day after the date the requestor receives the
6 response.

7 (b) The requestor must submit the appeal to the governmental
8 body that responded under Section 552.403 on the appeal form
9 provided to the requestor under Section 552.403(a)(4).

10 (c) The appeal is considered a new request and is subject to
11 the procedural requirements of Section 552.405.

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

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

16 (f) Notwithstanding Sections 552.024(c)(2), 552.1175(f),
17 552.130(c), 552.136(c), and 552.138(c), a governmental body must
18 request an attorney general decision to withhold information
19 described by those provisions in response to an appeal.

20 Sec. 552.405. REQUEST FOR ATTORNEY GENERAL DECISION IN
21 RESPONSE TO APPEAL. (a) Except as provided by this subchapter:

22 (1) an appeal made under Section 552.404 is subject to
23 the provisions of this chapter; and

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

26 (b) A governmental body that receives an appeal under
27 Section 552.404 shall, within a reasonable time, but not later than

1 the fifth business day after the date the governmental body
2 receives the appeal, submit to the attorney general:

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

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

6 (3) a signed statement as to the date on which the
7 written response required by Section 552.403 was provided to the
8 requestor, or evidence sufficient to establish that date;

9 (4) a copy of the appeal form received by the
10 governmental body;

11 (5) a signed statement as to the date on which the
12 appeal was received by the governmental body, or evidence
13 sufficient to establish the date;

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

17 (7) if the governmental body provided partially
18 redacted information to the requestor in its initial response under
19 Section 552.403, an unredacted copy of the information the
20 governmental body provided to the requestor with the copy clearly
21 marked indicating the released portions and the withheld portions
22 labeled with the exceptions the governmental body relied on to
23 withhold the information; and

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

1 (c) A governmental body that receives an appeal under
2 Section 552.404 shall, within a reasonable time, but not later than
3 the fifth business day after the date the governmental body
4 receives the appeal, send a copy of the comments submitted under
5 Subsection (b)(6) to the requestor. If the written comments
6 disclose or contain the substance of the information requested, the
7 copy of the comments provided to the requestor must be a redacted
8 copy.

9 Sec. 552.406. TRAINING. (a) The public information
10 officer for a governmental body that responds to a request under
11 this subchapter or the officer's designee must have completed in
12 the four years preceding the response a course of training of not
13 less than 16 hours regarding the responsibilities of the
14 governmental body under this subchapter.

15 (b) The attorney general shall ensure that the training is
16 made available. The attorney general shall maintain at least one
17 updated course of training that is available in an online
18 presentation format. The online training may be broken into
19 separate sections. The online training must provide a means to
20 verify that the trainee observed and comprehended the full online
21 training session or, if applicable, each section of the training.

22 (c) At a minimum, the training must include instruction in:
23 (1) the general background of the legal requirements
24 for the governmental body's use of this subchapter and related law;
25 (2) the applicability of this subchapter to
26 governmental bodies;
27 (3) the procedures and requirements for complying with

1 an appeal under this subchapter;

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

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

6 (d) The office of the attorney general shall provide a
7 certificate to a person who completes the training required by this
8 section and keep records of the training certificates issued. A
9 governmental body shall maintain the training certificate of any
10 individual who provides a confirmation under Section
11 552.403(a)(4)(F) and make the certificate available for public
12 inspection.

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

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

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

6 (d) The notice of revocation form provided to an individual
7 must inform the individual that the attorney general has revoked
8 the individual's training certificate under Subsection (a). The
9 individual must repeat the course of training under Section 552.406
10 to obtain a new training certificate.

11 (e) If an individual is employed by a governmental body when
12 the governmental body's authorization to respond under this
13 subchapter is revoked under Subsection (a), and the individual
14 obtains employment at a different governmental body with
15 authorization to respond under this subchapter, the individual may
16 not provide a confirmation under Section 552.403(a)(4)(F) until the
17 revocation period for the initial governmental body has expired.

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

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

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

27 Sec. 552.408. REPORT ON IMPLEMENTATION OF SUBCHAPTER. (a)

1 For the state fiscal biennium beginning September 1, 2023, the
2 attorney general shall collect data detailing the number of:

3 (1) requests for decisions in response to appeals the
4 attorney general receives under Section 552.405;

5 (2) individuals who complete training under Section
6 552.406;

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

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

11 (b) Not later than February 1, 2025, the attorney general
12 shall make the data collected under Subsection (a) available on the
13 attorney general's Internet website for open records.

14 (c) This section expires September 1, 2025.

15 SECTION 9. The changes in law made by this Act apply only to
16 a request for information that is received by a governmental body on
17 or after the effective date of this Act. A request for information
18 that was received before the effective date of this Act is governed
19 by the law that was in effect on the date the request was received,
20 and the former law is continued in effect for that purpose.

21 SECTION 10. This Act takes effect September 1, 2023.