

## **BILL ANALYSIS**

C.S.H.B. 2328  
By: Lucio III  
Government Transparency & Operation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the number of decisions the attorney general has issued regarding whether a governmental body can withhold information requested under state public information law suggests that such requests are subject to considerable administrative delay. C.S.H.B. 2328 seeks to reduce this delay by providing governmental bodies with an alternative, expedited process for withholding information determined to be excepted from required public disclosure.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2328 amends the Government Code to authorize a governmental body that receives a written request for information and complies with the bill's requirements to withhold any information the body makes a good faith determination is excepted from required public disclosure under state public information law without the necessity of requesting a decision from the attorney general. The bill prohibits a governmental body from responding to a request in such a manner if the requested information may involve the privacy or property interests of a third party. The bill requires a governmental body that so withholds such information to 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 all applicable information not excepted from disclosure, certain specified information relating to the withholding, and a notice form promulgated by the attorney general relating to the procedure to appeal such withholding. The bill requires the governmental body to retain, at a minimum, an electronic or paper copy of such notice form for the length of time the governmental body retains the request for information.

C.S.H.B. 2328 authorizes a requestor on receipt of such a response to appeal the withholding of information in the response not later than the 30th calendar day after the date the requestor receives the response and requires the requestor to submit the appeal to the responding governmental body on the appeal form provided to the requestor as part of the response. The bill considers such an appeal to be a new request and subjects such an appeal to the procedural requirements of the bill's provisions relating to a request for the attorney general's decision in response to an appeal. The bill prohibits a governmental body from seeking to narrow or clarify such an appeal under statutory provisions authorizing a governmental body to ask a requestor to clarify an unclear request or discuss with a requestor how to narrow the scope of a large request

and from responding to a requestor under statutory provisions relating to responding to repetitious or redundant requests in response to such an appeal. The bill requires a governmental body to request an attorney general decision to withhold information described by statutory provisions authorizing the redaction of certain information in response to such an appeal.

C.S.H.B. 2328 establishes that such an appeal is subject to state public information law and that an attorney general's decision requested under the bill's provisions in response to such an appeal is considered to be a decision by the attorney general under state public information law. The bill requires a governmental body that receives such an appeal to submit to the attorney general, within a reasonable time but not later than the 10th business day after the date the governmental body receives the appeal, a request for the attorney general's decision regarding the appeal along with certain specified information to enable the attorney general to make such decision, including written comments stating the reasons why stated exceptions apply that would allow the information to be withheld, and to send a copy of such comments to the requestor within a reasonable time but not later than the 10th business day after the date the governmental body receives the appeal. The bill requires such copy to be redacted if the written comments disclose or contain the substance of the information requested.

C.S.H.B. 2328 requires the public information officer for a governmental body that responds to a request under the bill's provisions, or the officer's designee, to 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 the bill's provisions. The bill requires the attorney general to ensure that the training is made available and to prepare and from time to time revise at least one course of training that is available in an online presentation format. The bill authorizes the online training to be broken into separate sections and requires the online training to provide a means to verify that that trainee observed and comprehended the full online training session or, if applicable, each section of the training. The bill sets out the minimum requirements for such training and requires the office of the attorney general to provide a certificate to a person who completes the training and to keep records of the training certificates issued. The bill requires the public information officer for a governmental body with its main offices located in a county with a population of 250,000 or less, or the officer's designee, to complete the training either in person or online and requires the public information officer for a governmental body with its main offices located in a county with a population of more than 250,000, or the officer's designee, to complete the training in person from the office of the attorney general. The bill requires a governmental body to maintain the training certificate of any individual who provides a confirmation that the individual reviewed and approved a governmental body's response to a request for public information that withheld certain information under the bill's provisions and to make the certificate available for public inspection.

C.S.H.B. 2328 authorizes the office of the attorney general in its sole discretion to revoke a governmental body's authorization to respond under the bill's provisions or the training certificate issued to an individual responsible for the governmental body's failure if the attorney general determines that the governmental body failed to comply with the requirements of state public information law. The bill requires the attorney general to create a notice of revocation form and to inform a governmental body that the attorney general has so revoked the governmental body's authorization or an individual that the attorney general has so revoked the individual's training certificate by sending the form by certified mail or by another written method of notice that requires the return of a receipt. The bill requires the notice of revocation provided to a governmental body to inform the governmental body of the length of time the governmental body's revocation is in effect and caps that period at six months from the date the governmental body receives the form. The bill requires the notice of revocation form provided to an individual to inform the individual that the attorney general has so revoked the individual's training certificate and requires the individual to repeat the course of training under the bill's provisions to obtain a new training certificate. The bill prohibits an individual employed by a governmental body when the governmental body's authorization to respond under the bill's provisions is revoked who obtains employment at a different governmental body with such

authorization from providing a confirmation that the individual reviewed and approved the body's response to a request for public information that withheld certain information under the bill's provisions until the revocation period for the initial governmental body has expired. The bill requires the office of the attorney general to publish on its website a list of the governmental bodies that are not authorized to respond to a request under the bill's provisions because their authorization has been so revoked and a list that provides the first and last names of individuals who hold an active training certificate issued under the bill's provisions, the date each individual's training was completed, and the date each individual's training certificate expires.

C.S.H.B. 2328 requires the attorney general, for the 2018-2019 state fiscal biennium, to collect data detailing the number of requests for decisions in response to appeals the attorney general receives under the bill's provisions, the number of individuals who complete training under the bill's provisions, the number of governmental bodies that have their authorization to respond under the bill's provisions revoked, and the number of individuals who have their training certificates revoked. The bill requires the attorney general to make such data available on the attorney general's website for open records not later than February 1, 2019. These provisions expire September 1, 2019.

C.S.H.B. 2328 requires a governmental body's public information officer or the officer's designee to hold an active training certificate issued under the bill's provisions before the body may respond to a request under the bill's provisions and prohibits a body that has had its authorization to rely on the bill's provisions revoked by the office of the attorney general under the bill's provisions from so responding.

C.S.H.B. 2328 establishes as an affirmative defense to prosecution for the distribution of confidential information that the defendant released information under the bill's provisions and did not release confidential information intentionally, as such mental state is defined by the Penal Code.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2328 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 552.2615(g), Government Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 552.263(e), Government Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 552.302, Government Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 552.352, Government Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Chapter 552, Government Code, is amended by adding Subchapter J to	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. Subject to 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.

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

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 the individual who has received training under Section 552.406.

(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.

Sec. 552.404. REQUEST FOR ATTORNEY GENERAL DECISION IN RESPONSE TO APPEAL.

Sec. 552.405. ELIGIBILITY. Before a governmental body may respond to a request under this subchapter, the governmental body must comply with the requirements of Section 552.406 and

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 ensure that at least one course of training is available at no cost on recorded video or a functionally similar and widely available medium.

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;

(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.

Sec. 552.404. REQUEST FOR ATTORNEY GENERAL DECISION IN RESPONSE TO APPEAL.

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.

(c) The office of the attorney general shall provide a certificate of course completion to a person who completes the training required by this section.

A governmental body shall maintain the certificate and make it available for public inspection.

Sec. 552.407. REVOCATION. (a) The office of the attorney general, in its sole discretion, may revoke a governmental body's authorization to respond under this subchapter if the attorney general determines the governmental body failed to comply with the requirements of this chapter.

(b) The attorney general shall create a notice of revocation form. The attorney general shall inform the governmental body that the attorney general has revoked the governmental body's eligibility under Subsection (a)

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 form must inform the governmental body of the length of time the revocation is in effect.

The length of time the revocation is in effect may not exceed six months from the date the governmental body receives the notice of revocation form.

(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.

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

(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

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).

(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

SECTION 6. Same as introduced version.

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.

SECTION 7. Same as introduced version.