

SUBJECT: Establishing expedited response procedure for public information requests

COMMITTEE: Government Transparency and Operation — committee substitute recommended

VOTE: 7 ayes — Elkins, Capriglione, Gonzales, Lucio, Shaheen, Tinderholt, Uresti

0 nays

WITNESSES: For — (*Registered, but did not testify:* Trey Lary, Allen Boone Humphries Robinson LLP; Mark Mendez, Tarrant County; Michael Schneider, Texas Association of Broadcasters; John Dahill, Texas Conference of Urban Counties; Zindia Thomas, Texas Municipal League; Donnis Baggett, Texas Press Association)

Against — Zenobia Joseph; (*Registered, but did not testify:* David Anderson, Arlington ISD; Nicole Hudgens, Texas Values Action)

On — (*Registered, but did not testify:* Kelley Shannon, Freedom of Information Foundation of Texas; Justin Gordon, Texas Attorney General)

BACKGROUND: Subchapter G of the Public Information Act (Government Code, ch. 552) establishes the process by which a governmental body must request an attorney general decision if it wishes to withhold information from public disclosure under a statutory exception, if there has not been a previous determination that the information falls within one of the exceptions. Within 10 business days of receiving the request, the body must request the opinion and notify the original requestor that the attorney general will decide whether the information will be released. The attorney general has 45 days to render a decision.

DIGEST: CSHB 2328 would establish a procedure for an expedited response to a public information request.

Expedited requests. The bill would allow a governmental body to withhold any information it made a good-faith determination was excepted from required public disclosure under public information laws without requesting an attorney general decision.

The governmental body would have to respond to the requestor within five days and would have to include in the response:

- a list of the statutory or constitutional exceptions or a judicial decision the governmental body determined was applicable to the information being withheld;
- all information to be released and, if any information was redacted, clear markings labeling relevant exceptions;
- a description of the volume and type of information withheld; and
- a notice form from the attorney general that included certain items, including an appeal form and a description of the appeal procedure.

If the requested information was suspected to involve certain confidential information, including information related to bidding, trade secrets, or student records, among others, an expedited response could not be rendered.

The bill would offer an affirmative defense to prosecution for the offense of distributing information considered confidential under public information laws if the governmental body unintentionally released the confidential information in an expedited response.

Appeal. A requestor could appeal the withholding of information within 30 days of receiving the response. The appeal would have to be submitted on the form provided in the response and would be considered a new request subject to the procedure for an attorney general decision.

In the event of an appeal, a governmental body would have 10 days to submit required information to the attorney general, including a request for a decision, a copy of the original request for information, a copy of the appeal form, and details on the exceptions that applied to the information.

A governmental body could not seek to narrow or clarify an appeal or respond to a requestor under provisions governing repetitious or redundant requests.

Eligibility. For a governmental body to be eligible to provide an expedited response to a request, the public information officer or a designee would have to hold an active training certificate, and the governmental body could not have had its authorization to do so revoked.

Training. A public information officer or their designee within the previous four years would be required to have completed a course of training on the responsibilities of the body under the bill in relation to a request.

The attorney general would be required to ensure that training was made available, including at least one course made available online. Certain public information officers would be required to complete the training in person, depending on the population of the county in which the government office was located. The training would have to include instruction on certain items listed in the bill.

The Office of the Attorney General would be required to provide a certificate after a person completed the required training and keep records of those issued. A governmental body would have to maintain the training certificate of its employees and make them available for public inspection.

Revocation. If the attorney general determined that a governmental body failed to comply with the requirements of public information laws, the Office of the Attorney General could revoke its authorization to provide an expedited response or the training certificate of the individual responsible for the body's failure. The governmental body's revocation could not be in effect for more than six months from the date the body received a notice of revocation form. An individual whose certificate was revoked would have to repeat the training to obtain a new certificate.

If an individual was employed by a governmental body when its authorization was revoked and obtained employment at a different governmental body, the individual could not provide responses until the revocation period for the initial place of employment expired.

A list of individuals who held an active training certificate and a list of the governmental bodies whose authorizations had been revoked would be published on the Office of the Attorney General's website.

Report on implementation. For fiscal 2018-19, the attorney general would be required to collect data detailing the number of requests for decisions received in response to appeals, individuals who completed training, governmental bodies who had their authorization revoked, and individuals who had their training certificates revoked. The attorney general's office would make this data available on its website by February 1, 2019.

The bill would take effect September 1, 2017, and would apply only to a request for information received on or after that date.

**SUPPORTERS
SAY:**

CSHB 2328 would make it more efficient for governmental entities to respond to public information requests by establishing an expedited response procedure that incentivized faster responses while ensuring that requestors maintained all of the protections and administrative review under current law.

Currently, governmental bodies have 10 days to request an attorney general decision to withhold information in response to a request. The attorney general has 45 days to render the decision. Requestors note that this process takes too long and encourages governmental bodies to request decisions to delay a response. This process also is burdensome for governmental bodies and expends resources. In addition, the attorney general's office has experienced a notable increase in requests.

CSHB 2328 should help requestors get information faster and reduce the burden on the attorney general's office. A governmental body would have

five days to respond to a request instead of the 10 days allowed under subchapter G of the Public Information Act. An attorney general decision already is not needed in most cases if there was a ruling on a similar issue. Governmental bodies in good faith redacting information known to be exempted would allow the attorney general's office to be used instead as a backstop in the event of an appeal.

The bill would protect the public's right to information by providing several safeguards for requestors. Each response would include a description of why the information was redacted and what statutory authority allowed the governmental body to do so. The requestor would have the right to appeal and require the attorney general to render a decision, a practice consistent with current procedures. If a governmental body did not comply with public information laws, the attorney general's office would have the discretion to revoke an entity's ability to use the process based on a pattern of bad behavior. Further, the bill would not make the expedited response procedure a requirement; rather, governmental bodies could elect to use it as a tool.

OPPONENTS
SAY:

CSHB 2328 would not balance competing interests between governmental bodies and the public's right to access open records. Although the bill would attempt to expedite the release of information, it also would provide a means for bad actors to automatically withhold information by by-passing the administrative procedures under current law.

NOTES:

A companion bill, SB 1347 by Watson, was placed on the Senate's intent calendar on April 27.