

BILL ANALYSIS

Senate Research Center
85R21490 SRS-F

H.B. 2328
By: Lucio III; Elkins (Watson)
Administration
5/2/2017
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2328 amends current law relating to an expedited response by a governmental body to a request for public information.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 552.2615(g), Government Code, to provide that the time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G (Attorney General Decisions) or J, rather than under Subchapter G.

SECTION 2. Amends Section 552.263(e), Government Code, to provide that for purposes of Subchapters F (Charges for Providing Copies of Public Information), G, and J, rather than Subchapters F and G, a request for a copy of public information is considered to have been received by a governmental body on a certain date.

SECTION 3. Amends Section 552.302, Government Code, to provide that if a governmental body does not request a Texas attorney general (attorney general) decision as provided by Section 552.301 (Request for Attorney General Decision) or in response to an appeal under Subchapter J and provide the requestor with the information required by certain subsections, including Section 552.404(b), the information requested in writing is presumed to be subject to required public disclosure and is required to be released unless there is a compelling reason to withhold the information.

SECTION 4. Amends Section 552.352, Government Code, by adding Subsection (d), to provide that it is an affirmative defense to prosecution under Subsection (a) (relating to providing that a person commits an offense if the person distributes information considered to be confidential) that the defendant released information under Subchapter J and did not release confidential information intentionally, as defined by Section 6.03 (Definitions of Culpable Mental States), Penal Code.

SECTION 5. Amends Chapter 552, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. EXPEDITED RESPONSE PROCEDURE

Sec. 552.401. REQUEST FOR ATTORNEY GENERAL DECISION NOT REQUIRED. Authorizes a governmental body that receives a written request for information and complies with the requirements of this subchapter, subject to Subsection (b) and Sections 552.403 and 552.405, to 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) Prohibits the governmental body from responding to the request under Subsection (a) if the requested information may involve a person's interests as provided by Section 552.305.

Sec. 552.402. RESPONSE REQUIREMENTS. (a) Requires a governmental body that withholds information under this subchapter to respond to the requestor not later than a certain date by providing the requestor with certain information.

(b) Requires the governmental body to retain, at minimum, an electronic or paper copy of the notice it provides to the requestor under Subsection (a)(4) (relating to requiring a governmental body that withholds information to respond by a certain date and provide the requestor with a notice form promulgated by the attorney general that includes certain information) for the length of time the governmental body retains the request for information.

Sec. 552.403. APPEAL. (a) Authorizes the requestor, on receipt of a response by a governmental body under this subchapter, to appeal the withholding of information in the response not later than a certain date after the request or receives the response.

(b) Requires the requestor to 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) Provides that the appeal is considered a new request and is subject to the procedural requirements of Section 552.404.

(d) Prohibits a governmental body from seeking to narrow or clarify an appeal made under this subchapter under Section 552.222(b) (relating to certain procedures for a governmental body asking the requestor to clarify the request).

(e) Prohibits a governmental body from responding to a requestor under Section 552.232 (Responding to Repetitious or Redundant Requests) in response to an appeal made under this subchapter.

(f) Requires a governmental body, notwithstanding Sections 552.024(c)(2) (relating to requiring a governmental body that redacts or withholds certain information to provide certain information to the requestor on a prescribed form), 552.1175(f) (relating to authorizing a governmental body to redact certain information without the necessity of requesting a decision from the attorney general), 552.130(c) (relating to authorizing a governmental body to redact certain information without the necessity of requesting a decision from the attorney general), 552.136(c) (relating to authorizing a governmental body to redact certain information without the necessity of requesting a decision from the attorney general), and 552.138(c) (relating to authorizing a governmental body to redact certain information without the necessity of requesting a decision from the attorney general), to 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) Provides that, except as otherwise provided by this subchapter, the appeal is subject to the provisions of this chapter and an attorney general's decision that was requested under this section is considered to be a decision under Subchapter G.

(b) Requires a governmental body that receives an appeal under Section 552.403, within a reasonable time, but by a certain date, to submit certain documentation to the attorney general.

(c) Requires a governmental body that receives an appeal under Section 552.403, within a reasonable time, but by a certain date, to send a copy of the comments submitted under Subsection (b)(5) (relating to requiring a governmental body that

receives a certain appeal, by a certain date, to submit to the attorney certain exceptions and written comments) to the requestor. Requires the copy of the comments provided to the request, or, if the written comments disclose or contain the substance of the information requested, to be a redacted copy.

Sec. 552.405. ELIGIBILITY. Requires the governmental body's public information officer or the officer's designee, before the body may respond to a request under this subchapter, to hold an active training certificate issued under Section 552.406. Prohibits a governmental body from having had its authorization to rely on this subchapter revoked under Section 552.407 before a body may respond to a request.

Sec. 552.406. TRAINING. (a) Requires the public information officer for a governmental body that responds to a request under this subchapter 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 this subchapter.

(b) Requires the attorney general to ensure that the training is made available. Requires the attorney general to prepare and from time to time revise at least one course of training that is available in an online presentation format. Authorizes the online training to be broken into separate sections. Requires that the online training 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) Require that the training, at a minimum, include instruction in the general background of the legal requirements for the governmental body's use of this subchapter and related law, the applicability of this subchapter to governmental bodies, the procedures and requirements for complying with an appeal under this subchapter, the role of the attorney general under this subchapter, and penalties and other consequences for failing to comply with this subchapter.

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

(e) Requires the Office of the Attorney General (OAG) to provide a certificate to a person who completes the required training and keep records of the training certificates issued. Requires a governmental body to maintain the training certificate of any individual of certain individuals and make the certificate available for public inspection.

Sec. 552.407. REVOCATION. (a) Authorizes OAG, in its sole discretion, to revoke a governmental body's authorization to respond under this subchapter or the responsible individual's training certificate if the attorney general determines the governmental body failed to comply with the requirements of this chapter.

(b) Requires the attorney general to create notice of revocation form. Requires the attorney general to inform the governmental body that the attorney general has revoked the governmental body's eligibility under Subsection (a) or 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) Requires the notice of revocation form to inform the governmental body of the length of time the revocation is in effect. Prohibits the length of time the revocation is in effect from exceeding six months from the date the governmental body receives the notice of revocation form.

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

(e) Prohibits the individual, 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, from providing a confirmation under Section 552.402(a)(4)(E) until the revocation period for the initial governmental body has expired.

(f) Requires that the office of the attorney general publish on its Internet website 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).

Sec. 552.408. REPORT ON IMPLEMENTATION OF SUBCHAPTER. (a) Requires the attorney general, for the state fiscal biennium beginning September 1, 2017, to collect data detailing the number of requests for decisions in response to appeals the attorney general receives under Section 552.404, individuals who complete training under Section 552.406, governmental bodies that have their authorization to respond under this subchapter revoked under Section 552.407, individuals who have their training certificates revoked under Section 552.407.

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

(c) Provides that this section expires September 1, 2019.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2017.