

## **BILL ANALYSIS**

Senate Research Center  
85R21490 SRS-F

C.S.S.B. 1347  
By: Watson  
Business & Commerce  
4/19/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under the Public Information Act (PIA), governmental bodies are generally required to request a decision from the Office of the Attorney General (OAG) before they can withhold information from a requestor. A request for an OAG decision must be submitted within 10 business days of receiving the PIA request.

Once a governmental body requests an OAG decision, the OAG considers the governmental body's arguments, as well as any information submitted by the requestor and third-parties. Then the OAG must render its decision within 45 business days of receiving the ruling request. This deadline may be extended by an additional 10 business days in certain circumstances.

Open government advocates complain that this process takes too long and encourages governmental bodies to request decisions to delay a PIA response. Governmental bodies complain that this process is cumbersome, expensive, and time-consuming. Finally, the OAG is struggling to keep up with the growing number of requests with its current resources. In 2000, the OAG issued about 5,000 decisions; by last year this number had grown to nearly 29,000.

S.B. 1347 attempts to address all of these concerns by creating a new expedited response procedure within the PIA. Under this procedure, a governmental body with an employee who has received special training can withhold information without requesting an OAG decision, as long as the governmental body responds to the PIA request within five business days. This response must include all of the information that is not excepted, information about the withheld information and claimed exceptions, and a plain language explanation of the requestor's right to appeal to the OAG.

Taken together, these provisions should help requestors get public information more quickly, and relieve governmental bodies and the OAG of some of their PIA compliance burden. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1347 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 prohibit the time deadlines imposed by this section from affecting 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, 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 required a deposit or bond in accordance with this section.

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 Sections 552.301(d) (relating to requiring a governmental body that requests an attorney general decision to provide certain information by a certain date) and (e-1) (relating to requiring a governmental body that submits certain written comments to the attorney general to send a copy of those comments to the person who requested the information from the governmental body by a certain date) or 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 (Information Involving Piracy or Property Interests of Third Party).

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 by 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 authorizing a governmental body to discuss with the requestor how the scope of a request might be narrowed but prohibiting the governmental body from inquiring into the purpose for which the information will be used).

(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 authorizing a governmental body to redact or withholds certain information without requesting an attorney general decision), 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 request 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 after the governmental body receives the appeal, 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.** Provides that before a governmental body is authorized to respond to a request under this subchapter the governmental body's public information officer or the officer's designee is required to hold an active training certificate issued under Section 552.406 and the governmental body may not have had its authorization to rely on this subchapter revoked under Section 552.407.

**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) Requires that the training, at a minimum, 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.

(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 (OAG).

(e) Requires 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 who provides a confirmation under Section 552.402(a)(4)(E) (relating to requiring a governmental body to provide certain information relating to individuals who hold an active training certificate) and make the certificate available for public inspection.

Sec. 552.407. REVOCATION. (a) Authorizes OAG, if the attorney general determines that a governmental body failed to comply with the requirements of this chapter, in its sole discretion, to 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) Requires the attorney general to create a 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 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) Requires the notice of revocation provided to a governmental body to inform the governmental body of the length of time the revocation is in effect. Prohibits the length of time the governmental body's 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 an individual, if the 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 OAG to publish on its Internet website a list that provides certain information relating to individuals who hold an active training certificate issued under Section 552.406 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:

(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) Requires the attorney general, not later than February 1, 2019, to make the data collected under Subdivision (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.