

- SUBJECT:** Allowing extra charge for open records requests exceeding time limit
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 6 ayes — Swinford, Paxton, Van Arsdale, Christian, Flynn, Parker
1 nay — Farrar
1 present not voting — Veasey
1 absent — B. Cook
- WITNESSES:** For — Jackie Lain, Texas Association of School Boards; Donald Lee, Texas Conference of Urban Counties

Against — Ken Whalen, Texas Daily Newspaper Association, Texas Press Association; (*Registered, but did not testify*: Michael Schneider, Texas Association of Broadcasters)

On — Hadassah Schloss, Texas Attorney General's Office
- BACKGROUND:** The Public Information Act (Government Code, ch. 552) ensures public access to records and other material maintained by governmental bodies, including local governments. The act provides exceptions for certain types of records, including personnel information, litigation or settlement negotiations, private communications, trade secrets, student records, and audit working papers.

In 1999, the 76th Legislature enacted SB 1851 by Wentworth, et al. which made several revisions to Government Code, ch. 552. Government Code, sec. 552.2615 requires that a government entity must provide a itemized estimate of charges if the projected cost to comply with a public information request exceeds \$40 for copying and allowable labor and personnel expenses. Government Code, sec. 552.267 allows a governmental entity to waive or reduce the cost of providing copies to comply with an open records request, and Government Code, sec. 552.269 provides an appeals process to the Attorney General's Office if the requestor believes that the governmental entity overcharged for the copies.

DIGEST:

HB 2564 would amend Government Code, ch. 552 to add sec. 552.275 that would allow a governmental body to set a reasonable limit on the time that personnel would have to spend to comply with a request for public information to a requestor without recovering the costs for that personnel time. The time limit could not be less than 36 hours to respond to cumulative open records requests by a single requestor within the 12-month period that corresponded to the government body's fiscal year.

The bill would require a governmental entity that established a time limit to provide a written statement detailing the amount of time complying with the most recent request as well as the cumulative time spent on all requests during the past 12 months. However, the government entity would not be allowed to include the time preparing the compliance statement as part of the cumulative time limit for open records requests.

The bill would include any requests made in the name of a minor in the cumulative total for the parent, guardian, or other person who had control of the minor under a court order, if the minor lived with that person. However, the person would be able to establish that the request had been by the minor.

HB 2564 would require the governmental body to prepare an itemized estimate for complying with requests that exceeded the 36 hour limit, including cost for materials, personnel time, and other overhead expenses. The estimate would have to be provided within 10 days, and the requestor would have the option of paying:

- actual costs incurred in complying with the request; or
- the amount of the original estimate.

If a requestor failed or refused to submit a statement committing to pay for the additional expenses, then the request for information would be considered withdrawn. A governmental entity would be allowed to reduce or waive the charges as provided by Government Code, sec. 552.267.

The bill would apply to requests made after the bill takes effect. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2564 would help conserve taxpayer dollars by limiting frivolous and excessive requests. The bill would not withhold public information from individuals who make repeated requests requiring many hours of personnel time, but it would set a reasonable limit on the cumulative amount of government time spent complying with the requests before charging the requestor for that time. Individual requestors should pay their fair share of costs for requests that require personnel time beyond a reasonable limit. The bill would be permissive and would not require government entities to establish a time limit, but if a government entity made that decision, the cumulative limit for a single requestor could not be less than 36 total hours during a fiscal year before allowing a charge for the personnel costs required to comply. Governmental entities still would be allowed to reduce or waive the charges.

Governmental bodies are trying to respond to an increasing number of requests for information by making more and more information available on Internet websites. The comptroller has made detailed information about budgets and expenditures for more than 20 state agencies available on an accessible and searchable website. Legislation is pending before the Legislature to make all state agencies put the information on their expenditures down to the level of their cost for pencils and office supplies on the Internet. Citizens have access to detailed information about government spending and operations without making formal open records requests. However, when those who make repeated requests exceed a reasonable limit on personnel time, they should have to pay for that time.

**OPPONENTS
SAY:**

HB 2564 indirectly would reduce access to public information by making it unaffordable for some individuals and groups to make open records requests. While information may be available on the Internet about state agencies, such records may not be readily available for smaller governments. The bill could limit the access, for example, a West Texan wanting to learn more about the head football coach's contract or the school district budget. Newspapers and radio and television stations could easily absorb the additional costs, but individual citizens or bloggers might not have the resources to pursue public information requests if they exceeded the cumulative limit on personnel time to comply with their requests.