

## **BILL ANALYSIS**

Senate Research Center  
87R4571 SGM-F

S.B. 1492  
By: Bettencourt  
Business & Commerce  
4/1/2021  
As Filed

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

As Public Information Act (PIA) requests increase, procedural requirements and incentives for governmental bodies to request Office of the Attorney General (OAG) decisions on routine or non-complex issues place unnecessary administrative burdens on the PIA process. These burdens delay responses to requestors and significantly increase the time and costs governmental bodies and the OAG incur in the PIA process. In recent years requests have increased drastically (~34,000 in FY2020; ~19,000 in FY2011; and ~5,000 in FY2000). Around half of the decision requests OAG receives involve only straightforward issues that could be correctly addressed at the local level. The PIA also incentivizes unnecessary decision requests. Each decision request takes up significant and valuable resources that could be used to respond to other PIA matters.

S.B. 1492 addresses these concerns by improving the process, reducing the number of decisions governmental bodies must request from OAG, while also maintaining oversight and the protections members of the public have under PIA.

S.B. 1492 creates an optional PIA procedure that permits governmental bodies which complete additional training and follow specified procedures to withhold information under PIA without an OAG decision. Requestors receive clear notice describing the types of redacted information and can appeal any redaction through a streamlined appeal process. Current deadlines are maintained to ensure prompt responses. The bill also removes incentives to request unnecessary decisions and includes oversight and reporting requirements to ensure effective implementation. The process will improve requestor response time and quality, be more efficient, cost less, and provide critical process oversight.

As proposed, S.B. 1492 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, as follows:

(g) Provides that the time deadlines imposed by Section 552.2615 (Required Itemized Estimate of Charges) do not affect the application of a time deadline imposed on a governmental body under Subchapter G (Attorney General Decisions) or K, rather than Subchapter G.

SECTION 2. Amends Section 552.263(e), Government Code, as follows:

(e) Provides that, for purposes of Subchapters F (Charges for Providing Copies of Public Information), G, and K, rather than for the purposes of Subchapters F and G, 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 requires a deposit or bond in accordance with Section 552.263 (Bond for Payment of Costs or Cash Prepayment for Preparation of Copy of Public Information). Makes a nonsubstantive change.

SECTION 3. Amends Section 552.302, Government Code, as follows:

Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC. Provides that if a governmental body does not request an attorney general decision as provided by Section 552.301 (Request for Attorney General Decision) or in response to an appeal under Subchapter K and provide the requestor with the information required by certain sections of this code, including Section 552.405(b), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.

SECTION 4. Amends Section 552.321(a), Government Code, as follows:

(a) Authorizes a requestor or the attorney general to file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or Section 552.405, rather than as provided by Subchapter G, or refuses to supply public information or information that the attorney general has determined is public information that is not excepted from disclosure under Subchapter C (Information Excepted From Required Disclosure).

SECTION 5. 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 an offense if a person distributes certain confidential information) that the defendant released information under Subchapter K and did not release confidential information intentionally, as defined by Section 6.03 (Definitions of Culpable Mental States), Penal Code.

SECTION 6. Amends Section 552.353(b), Government Code, as follows:

(b) Provides that it is an affirmative defense to prosecution under Subsection (a) (relating to an offense for an officer for public information, or the officer's agent, fails or refuses to give access to certain information to certain requestors) that the officer for public information reasonably believed that public access to the requested information was not required and that certain criteria are met, including that the officer requested a decision from the attorney general in accordance with Subchapter G or Section 552.405, rather than in accordance with Subchapter G, and the decision is pending.

SECTION 7. Amends Chapter 552, Government Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. EXPEDITED RESPONSE PROCEDURE

Sec. 552.401. APPLICABILITY. (a) Provides that Subchapter K does not apply to a request for information that may involve a person's privacy or property interest under Section 552.305 (Information Involving Privacy or Property Interests of Third Party).

(b) Provides that Subchapter K applies to a governmental body only if:

(1) the governmental body's officer for public information or the officer's designee holds an active training certificate issued under Section 552.406; and

(2) the governmental body's authorization to respond to a request for information under this subchapter is not revoked under Section 552.407 on the date the request is received.

Sec. 552.402. REQUEST FOR ATTORNEY GENERAL DECISION NOT REQUIRED. Authorizes a governmental body that receives a written request for information and complies with the requirements of Subchapter K, subject to Section 552.404, to withhold any information it makes a good faith determination is excepted from required public disclosure under Chapter 552 (Public Information) without the necessity of requesting a decision from the attorney general under Subchapter G.

Sec. 552.403. RESPONSE REQUIREMENTS. (a) Requires a governmental body that withholds information under Subchapter K to respond to the requestor not later than the 10th 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 Chapter 552;

(E) the name of the individual who has received training under Section 552.406; and

(F) a confirmation from the individual named in Paragraph (E) that the individual reviewed and approved the response.

(b) Requires the governmental body to 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. 552.404. APPEAL. (a) Authorizes the requestor, on receipt of a response by a governmental body under Section 552.403, to appeal the withholding of information in the response not later than the 30th calendar day after the date the requestor receives the response.

(b) Requires the requestor to submit the appeal to the governmental body that responded under Section 552.403 on the appeal form provided to the requestor under Section 552.403(a)(4).

(c) Provides that the appeal is considered a new request and is subject to the procedural requirements of Section 552.405.

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

(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 section.

(f) Requires a governmental body, notwithstanding Sections 552.024(c)(2), 552.1175(f), 552.130(c), 552.136(c), and 552.138(c), to request an attorney general decision to withhold information described by those provisions in response to an appeal.

**Sec. 552.405. REQUEST FOR ATTORNEY GENERAL DECISION IN RESPONSE TO APPEAL.** (a) Provides that except as provided by Subchapter K:

(1) an appeal made under Section 552.404 is subject to the provisions of Chapter 522; and

(2) an attorney general's decision requested under this section is considered to be a decision under Subchapter G.

(b) Requires a governmental body that receives an appeal under Section 552.404 to, within a reasonable time, but not later than the fifth business day after the date the governmental body receives the appeal, submit to the attorney general:

(1) a request for an attorney general's decision;

(2) a copy of the original written request for information;

(3) a signed statement as to the date on which the written response required by Section 552.403 was provided to the requestor, or evidence sufficient to establish that date;

(4) a copy of the appeal form received by the governmental body;

(5) a signed statement as to the date on which the appeal was received by the governmental body, or evidence sufficient to establish the date;

(6) the exceptions that apply and written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(7) if the governmental body provided partially redacted information to the requestor in its initial response under Section 552.403, an unredacted copy of the information the governmental body provided to the requestor with the copy clearly marked indicating the released portions and the withheld portions labeled with the exceptions the governmental body relied on to withhold the information; and

(8) a copy of the specific information the governmental body seeks to withhold, or representative samples of the information, labeled to indicate which exceptions apply to which parts of the copy.

(c) Requires a governmental body that receives an appeal under Section 552.404 to, within a reasonable time, but not later than the fifth business day after the date the governmental body receives the appeal, send a copy of the comments submitted under Subsection (b)(6) to the requestor. Requires that, if the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the requestor be a redacted copy.

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

(b) Requires the attorney general to ensure that the training is made available. Requires the attorney general to maintain at least one updated 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 Subchapter K to governmental bodies;

(3) the procedures and requirements for complying with an appeal under Subchapter K.

(4) the role of the attorney general under Subchapter K; and

(5) penalties and other consequences for failing to comply with Subchapter K.

(d) Requires the Office of the Attorney General (OAG) to provide a certificate to a person who completes the training required by this section 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 552.403(a)(4)(F) and make the certificate available for public inspection.

Sec. 552.407. REVOCATION. (a) Authorizes OAG, in its sole discretion, if the attorney general determines that a governmental body failed to comply with the requirements of Chapter 552, to revoke the governmental body's authorization to respond under Subchapter K 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 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) Requires that the notice of revocation provided to a governmental body 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 Subchapter K, from providing a confirmation under Section 552.403(a)(4)(F) until the revocation period for the initial governmental body has expired.

(f) Requires OAG 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

(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) Requires the attorney general, for the state fiscal biennium beginning September 1, 2021, to collect data detailing the number of:

(1) requests for decisions in response to appeals the attorney general receives under Section 552.405;

(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, 2023, 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, 2023.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2021.