



— 2017 UT SYSTEM — LEGAL CONFERENCE

presented by the Office of General Counsel

THE UNIVERSITY of TEXAS SYSTEM | FOURTEEN INSTITUTIONS, UNLIMITED POSSIBILITIES.

Session 4c

What Do I Do Now? A Discussion on How To Handle New Legislation, Complaints, and Requests for Voluminous Information

Presented by:

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September 28, 2017 1:30-2:30 pm

The 85th Texas Legislature & The Texas Public Information Act

HB 1861 | SB 532 | HB 8

HB 1861 and HB 8 add § 552.139(d), which allows us to redact from contracts posted online any information that is confidential under § 552.139 – network security.

HB 1861 and SB 532 add § 552.139(b)(4), which now provides that information directly arising from our routine efforts to prevent, detect, investigate, or mitigate a computer security incident, including information contained in or derived from an information security log is confidential.

*both bills also add § 552.139(b-1), which provides the confidentiality provision of § 552.139(b)(4) does not affect our breach notification requirements under the Business & Commerce Code.

The 85th Texas Legislature & The Texas Public Information Act

SB 533

Provides that before posting contracts online, we must first redact:

- Information that is confidential by law;
- Information that the Attorney General determines is excepted from public disclosure under the TPIA; and
- social security numbers.

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HB 3107

Amends § § 552.221, 552.261, 552.275 and 552.3215.

Change to § 552.221:

If a requestor does not begin inspection or fails to pay applicable charges by the 60th day after the date we inform the requestor the information is ready for inspection or ready to be produced upon payment, we can consider the request withdrawn.

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Change to § 552.261 –

Allows us to combine all requests received from the same requestor on the same calendar day as one request for purposes of charging the requestor.

*does not allow us to combine the requests for any other reason and does not allow us to combine requests sent from the same entity but different individuals.

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Changes to § 552.275:

Allows us to establish a 15-hour per month limit on the amount of personnel time we expend working on requests of the same individual without recovering our personnel costs.

Akin to the yearly 36-hour limit, we are required to send a statement to requestor noting the amount of time we have spent on his or her request and the total amount of time we have spent on all of his or her requests. Once the limit is reached, we must also send the estimate of costs by the 10th day after the date on which the information was requested.

* the bill specifically notes we can't count the time preparing that statement into our personnel time.

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- HB 3107 also allows us to not work on any request from a requestor who has not paid a balance for which we sent a statement under § 552.275 notifying the requestor that a limit has been reached. But in order to do so we must ensure:
 - the previous requests made by the requestor were not withdrawn
 - we sent the requestor a statement that complies with § 552.275
- *This does not affect our deadlines under the TPIA to request a ruling*
- Still does not apply to the media and expands the definition of media.

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Change to § 552.3215:

If an individual files a complaint with a district or county attorney alleging we failed to comply with the TPIA and the district or county attorney does not file a complaint by the 90th day after the date the individual filed that complaint, the individual is entitled to file a complaint with the Attorney General.

The 85th Texas Legislature & The Texas Public Information Act

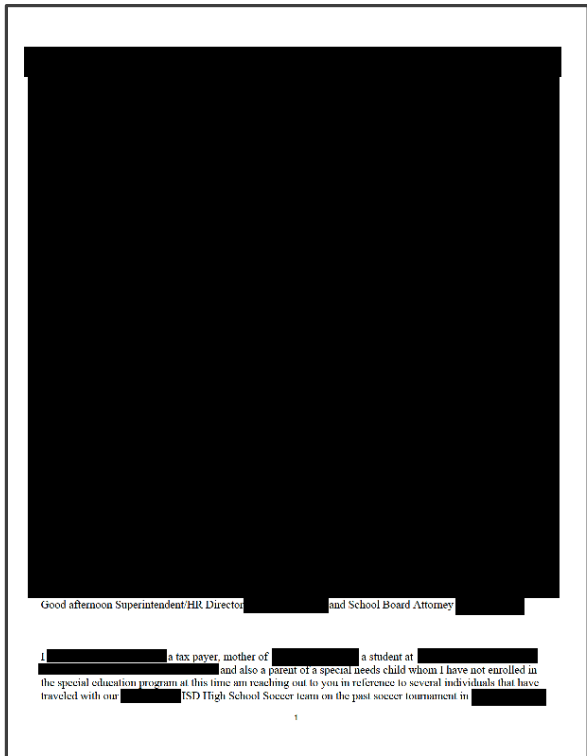
SB 79


Allows us to give a requestor a URL instead of a document if we post the information requested online. We must still notify the requestor that if he or she wants a copy of the information, we will provide it.

Complaints



AG Complaints




KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2017

Ms. Kristi Godden
Attorney for [REDACTED] Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701

Dear Ms. Godden:

The Office of the Attorney General (the "OAG") has received a complaint from [REDACTED] alleging the [REDACTED] Independent School District has failed to respond appropriately to a request for information. The complaint was assigned to [REDACTED].

The Public Information Act (the "Act"), chapter 552 of the Texas Government Code, requires a governmental body to release requested public information that it collects, assembles, maintains, or has right of access to, or to request a ruling from this office as to the applicability of exceptions to the Act. Our records do not indicate a request for an attorney general's decision has been made in accordance with section 552.301 of the Act.

The OAG has civil enforcement authority under the Act. Although our office takes that responsibility seriously, we prefer to work with the parties to try and resolve complaints informally if at all possible. The easiest way to resolve this open records complaint is to release the information that was requested, provided the requested information is not confidential by law.

We request a written response to this notification letter within 10 business days, and a certification form is attached to this letter in order to expedite your response. If the requested information has been or will be released to the requestor, please so indicate by completing the top portion of the attached certification form. In the alternative, if you have no information responsive to the request, please so indicate by completing the middle portion of the attached form. Similarly, if you believe that responsive information is exempt from disclosure and have requested or will request an attorney general's decision, please so

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JUSTIN DEMERATH

April 13, 2017

By USPS Priority Mail
The Honorable Ken Paxton
Texas Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Re: Complaint from [REDACTED] (AG ID# [REDACTED])

Dear General Paxton:

Our law firm serves as counsel to the [REDACTED] Independent School District (the "District"). On March 30, 2017, the District received your office's correspondence regarding a complaint filed with your office by [REDACTED] complaints that the District has failed to respond to her requests for information made under the Public Information Act, Tex. Gov't Code § 552.001, et seq. (the "Act").

[REDACTED] sent the District nine separate requests for information. The District has requested clarification/narrowing on each request, but to date has not received adequate clarification or narrowing as requested. The requests and dates of clarifications are as follows:

Request 1 – [REDACTED]-001: sent to District on December 20, 2016.
Request 2 – [REDACTED]-002: sent to District on December 21, 2016.
Request 3 – [REDACTED]-003: sent to District on December 26, 2016.

The District closed for business at noon on December 20, 2016 for winter break and remained closed until January 5, 2017. The District requested clarification on January 19, 2017, which was the 10th business day following the District's receipt of the requests (see attached, Exhibit 1).



§ 552.269 – OVERCHARGE OR OVERPAYMENT FOR COPY OF PUBLIC INFORMATION

(a) A person who believes the person has been overcharged for being provided with a copy of public information may complain to the attorney general in writing of the alleged overcharge, setting forth the reasons why the person believes the charges are excessive. The attorney general shall review the complaint and make a determination in writing as to the appropriate charge for providing the copy of the requested information. The governmental body shall respond to the attorney general to any written questions asked of the governmental body by the attorney general regarding the charges for providing the copy of the public information. The response must be made to the attorney general within 10 business days after the date the questions are received by the governmental body. If the attorney general determines that a governmental body has overcharged for providing the copy of requested public information, the governmental body shall promptly adjust its charges in accordance with the determination of the attorney general.

(b) A person who overpays for a copy of public information because a governmental body refuses or fails to follow the rules for charges adopted by the attorney general is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the costs.

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- (a) Pursuant to §552.269(a) of the Texas Government Code, requestors who believe they have been overcharged for a copy of public information may complain to the Attorney General.
- (b) The complaint must be in writing, and must:
- (1) Set forth the reason(s) the person believes the charges are excessive;
 - (2) Provide a copy of the original request and a copy of any correspondence from the governmental body stating the proposed charges; and
 - (3) Be received by the Attorney General within 10 business days after the person knows of the occurrence of the alleged overcharge.
 - (4) Failure to provide the information listed within the stated timeframe will result in the complaint being dismissed.
- (c) The Attorney General shall address written questions to the governmental body, regarding the methodology and figures used in the calculation of the charges which are the subject of the complaint.
- (d) The governmental body shall respond in writing to the questions within 10 business days from receipt of the questions.
- (e) The Attorney General may use tests, consultations with records managers and technical personnel at the Attorney General and other agencies, and any other reasonable resources to determine appropriate charges.
- (f) If the Attorney General determines that the governmental body overcharged for requested public information, the governmental body shall adjust its charges in accordance with the determination, and shall refund the difference between what was charged and what was determined to be appropriate charges.
- (g) The Attorney General shall send a copy of the determination to the complainant and to the governmental body.
- (h) Pursuant to §552.269(b) of the Texas Government Code, a requestor who overpays because a governmental body refuses or fails to follow the charges established by the Attorney General, is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the charges.

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

- (1) The hourly charge for a programmer is \$28.50 an hour. Only programming services shall be charged at this hourly rate.
- (2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code.
- (3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code.
- (d) Labor charge for locating, compiling, manipulating data, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

(2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

- (A) Two or more separate buildings that are not physically connected with each other; or
- (B) A remote storage facility.

(3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

- (A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or
- (B) To research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code.

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).

(6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing, $\$15.00 \times .20 = \3.00 ; or Programming labor charge, $\$28.50 \times .20 = \5.70 . If a request requires one hour of labor charge for locating, compiling, and reproducing information ($\$15.00$ per hour); and one hour of programming labor charge ($\$28.50$ per hour), the combined overhead would be: $\$15.00 + \$28.50 = \$43.50 \times .20 = \8.70 .

§ 552.231 - RESPONDING TO REQUESTS FOR INFORMATION THAT REQUIRE PROGRAMMING OR MANIPULATION OF DATA

(a) A governmental body shall provide to a requestor the written statement described by Subsection

(b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

- (1) a statement that the information is not available in the requested form;**
- (2) a description of the form in which the information is available;**
- (3) a description of any contract or services that would be required to provide the information in the requested form;**
- (4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the attorney general under Section 552.262; and**
- (5) a statement of the anticipated time required to provide the information in the requested form.**

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed.

§ 552.2615 - REQUIRED ITEMIZED ESTIMATE OF CHARGES

(a) If a request for a copy of public information will result in the imposition of a charge under this subchapter that exceeds \$40, or a request to inspect a paper record will result in the imposition of a charge under Section 552.271 that exceeds \$40, the governmental body shall provide the requestor with a written itemized statement that details all estimated charges that will be imposed, including any allowable charges for labor or personnel costs. If an alternative less costly method of viewing the records is available, the statement must include a notice that the requestor may contact the governmental body regarding the alternative method. The governmental body must inform the requestor of the responsibilities imposed on the requestor by this section and of the rights granted by this entire section and give the requestor the information needed to respond, including:

- (1) that the requestor must provide the governmental body with a mailing, facsimile transmission, or electronic mail address to receive the itemized statement and that it is the requestor's choice which type of address to provide;
- (2) that the request is considered automatically withdrawn if the requestor does not respond in writing to the itemized statement and any updated itemized statement in the time and manner required by this section; and
- (3) that the requestor may respond to the statement by delivering the written response to the governmental body by mail, in person, by facsimile transmission if the governmental body is capable of receiving documents transmitted in that manner, or by electronic mail if the governmental body has an electronic mail address.

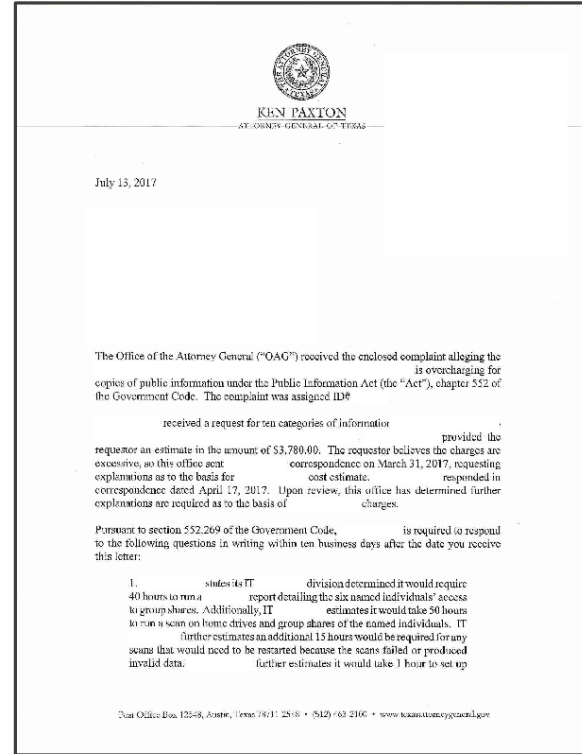
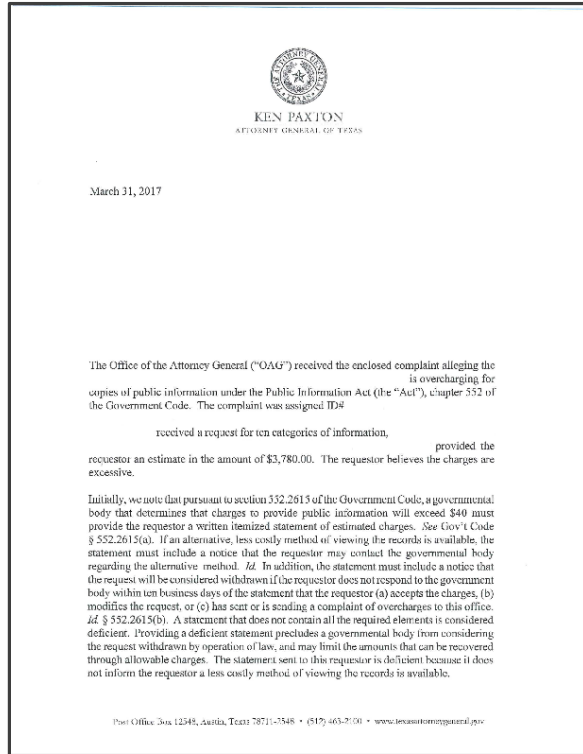
§ 552.271 - INSPECTION OF PUBLIC INFORMATION IN PAPER RECORD IF COPY NOT REQUESTED

- (a) If the requestor does not request a copy of public information, a charge may not be imposed for making available for inspection any public information that exists in a paper record, except as provided by this section.
- (b) If a requested page contains confidential information that must be edited from the record before the information can be made available for inspection, the governmental body may charge for the cost of making a photocopy of the page from which confidential information must be edited. No charge other than the cost of the photocopy may be imposed under this subsection.
- (c) Except as provided by Subsection (d), an officer for public information or the officer's agent may require a requestor to pay, or to make a deposit or post a bond for the payment of, anticipated personnel costs for making available for inspection public information that exists in paper records only if:
- (1) the public information specifically requested by the requestor:
 - (A) is older than five years; or
 - (B) completely fills, or when assembled will completely fill, six or more archival boxes; and
 - (2) the officer for public information or the officer's agent estimates that more than five hours will be required to make the public information available for inspection.

§ 552.272 - INSPECTION OF ELECTRONIC RECORD IF COPY NOT REQUESTED

(a) In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, the governmental body shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available. A charge under this section must be assessed in accordance with this subchapter.

Cost Complaints



Requests for Voluminous Information



1. Clarification – § 552.222

2. Cost Estimates – § § 552.2615 and 552.231

3. Deposits – § 552.263

QUESTIONS?



Contact Information

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