

BILL ANALYSIS

Senate Research Center

S.B. 1655
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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. Section 552.302 of the PIA provides that if a governmental body fails to comply with the procedures and deadlines for requesting an OAG ruling, then information is presumed public unless there is a compelling reason to withhold it. This is an important enforcement mechanism that encourages governmental bodies to comply with the PIA.

OAG had long concluded that discretionary PIA exceptions do not qualify as a compelling reason to withhold information under Section 552.302. These are exceptions that allow, but do not require, a governmental body to withhold information.

A Texas Supreme Court (supreme court) case decided earlier this year, *Paxton v. City of Dallas*, overturned this longstanding interpretation and replaced it with a new test that balances the interests protected by the asserted exception against the public's interest in promptly receiving information. The supreme court went on to conclude that the interests protected by one discretionary exception, the attorney-client privilege, were inherently compelling, and so now governmental bodies who violate the PIA can still raise this exception to prevent the release of public information. Even more concerning, however, is that this same logic could be extended to other discretionary exceptions, taking away a key enforcement tool of the PIA.

S.B. 1655 addresses this concern by preventing the *City of Dallas* ruling from applying to discretionary exceptions other than the attorney-client privilege. S.B. 1655 also clarifies that Section 552.101 cannot be used as a kind of catch-all provision to withhold information when there is not an explicit PIA exception to cover it. Taken together, these provisions codify OAG's current interpretation of the law as it stands after *City of Dallas* and prevent litigation from further unwinding the PIA's protections.

As proposed, S.B. 1655 amends current law relating to the confidentiality of certain 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 552.101, Government Code, as follows:

Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Provides that this section does not encompass the attorney-client privilege, the work product privilege, other exceptions in this Chapter (Public Information), or state or federal discovery privileges, including but not limited to the Texas Rules of Civil Procedure, Texas Rules of Evidence, Texas Disciplinary Rules of Professional Conduct, Federal Rules of Evidence, and Federal Rules of Civil Procedure.

SECTION 2. 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. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Provides that, notwithstanding Subsection (a) (relating to releasing the requested information under certain circumstances), Sections 552.103 (Exception: Litigation or Settlement Negotiations Involving the State or a Political Subdivision), 552.104 (Exception: Information Related to Competition or Bidding), 552.105 (Exception: Information Related to Location or Price of Property), 552.106 (Exception: Certain Legislative Documents), 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information), 552.111 (Exception: Agency Memoranda), 552.112 (Exception: Certain Information Relating to Regulation of Financial Institutions or Securities), 552.116 (Exception: Audit Working Papers), 552.122 (Exception: Test Items), 552.125 (Exception: Certain Audits), 552.144 (Exception: Working Papers and Electronic Communications of Administrative Law Judges at State Office of Administrative Hearings), 552.146 (Exception: Certain Communications with Assistant or Employee of Legislative Budget Board), 552.153 (Proprietary Records and Trade Secrets Involved in Certain Partnerships), and 552.154 (Exception: Name of Applicant for Executive Director, Chief Investment Officer, or Chief Audit Executive of Teacher Retirement System of Texas) do not constitute compelling reasons to withhold information for a governmental body that fails to comply with the requirements of Section 552.301 (Request for Attorney General Decision).

SECTION 3. Effective date: September 1, 2017.