

A BILL TO BE ENTITLED

AN ACT

Relating to the preservation of effective responses to requests for information pursuant to the public information law.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. PURPOSE. The purpose of this Act is to enhance and preserve the public's ability to obtain effective responses to legitimate requests for information pursuant to the public information law.

SECTION 2. Chapter 552 of the Government Code is amended by creating Subchapter J as follows:

§552.401 DEFINITIONS. In this subchapter:

- (1) “Defendant” means a person against whom a governmental body commences an action under this subchapter.
- (2) “Abusive Requestor” means a person who submits a request to a governmental body for inspection or copies of public information with the intent to harass, abuse, or waste public funds and/or time of public officials or employees.

§552.402 SUIT TO DECLARE OPEN RECORDS REQUEST VOID. (a) A governmental body may bring suit in accordance with this subchapter against an Abusive Requestor.

- (b) The governmental body must bring the suit not later than the 10<sup>th</sup> business day after the date the governmental body receives the request for records.

- (c) A suit filed under this section must be filed in a district court of Travis County.
- (d) The governmental body shall provide notice to the attorney general of a suit filed under this section, and the attorney general is entitled to intervene in the suit.

§552.403. TEMPORARY INJUNCTION AFFECTING FUTURE REQUESTS. (a)

Upon the commencement of an action under Section 552.402, the requestor is temporarily enjoined for a period determined by the court, the earlier of 90 days or the date of final judgment, from requesting inspection or copies of public information from the governmental body that filed the suit.

(b) For the purposes of this subchapter, commencement of an action occurs when the defendant is served pursuant to the Texas Rules of Civil Procedure.

(c) Within 10 business days of the date the defendant answers the suit, the court shall hold a preliminary hearing to determine whether probable cause exists to maintain the action.

(d) If the court finds probable cause exists, the court shall enter a scheduling order to include the date for final hearing on the matter before the 90<sup>th</sup> day after commencement of the action.

(e) If the court does not find that probable cause exists, the temporary injunction shall be immediately lifted, the action shall be dismissed, and the court may award the requestor reasonable costs which may including attorney's fees.

§552.404. PRELIMINARY HEARING. (a) At the preliminary hearing under Section 552.403, the court may consider any evidence material to the grounds alleged in the pleadings of the governmental body.

(b) The evidence to be considered may include:

- (1) written or oral evidence; and
- (2) evidence presented by witnesses or affidavit.

(c) At the preliminary hearing, the governmental body shall provide the defendant with legible copies of any and all documents intended to be introduced at the final hearing on the merits as substantive evidence and proof of the allegations in the petition, excluding any information relevant to a prior request for public information that is either excepted from disclosure or otherwise confidential.

§552.405. CRITERIA FOR FINDING REQUESTOR AN ABUSIVE REQUESTOR. (a) A court may find a requestor an Abusive Requestor if the governmental body shows, by clear and convincing evidence, that the requestor, in the seven-year period immediately preceding the date the governmental body files the suit under Section 552.402, has made at least five requests for public information that have either:

- (A) sought information predominately excepted from disclosure pursuant to Subchapter B of this chapter;
- (B) sought predominately confidential information or information otherwise excepted from disclosure pursuant to Subchapter C of this chapter;
- (C) resulted in the governmental body asking the requestor to clarify the request or to narrow the scope of the request and the requestor failed to clarify or narrow

the scope of the request, if the court finds the request was susceptible to reasonable clarification or narrowing within the constraints of §552.222;

(D) resulted in the governmental body providing the requestor a written statement pursuant to 552.231, and the request is later considered to be withdrawn pursuant to that section;

(E)resulted in the governmental body certifying to the requestor that copies of the requested information were previously furnished to the requestor pursuant to §552.232;  
or

(F)resulted in an overdue balance in excess of \$100.00 that was not paid within 30 days after the governmental body sent notice of the overdue balance to the requestor.

(b) A court may alternatively find a requestor to be an abusive requestor if the governmental body shows, by clear and convincing evidence, that, in the seven-year period immediately preceding the date the governmental body files the suit under Section 552.402, the defendant has previously been declared an Abusive Requestor by a state court in a suit filed by a different governmental body and the requestor has made at least three requests for public information from the governmental body that filed the suit that meets any of the criteria in subsection (a) of this section.

§552.406. FINAL HEARING ON THE MERITS. (a) Within the 90-day temporary injunction period, the court shall hold a final hearing on the merits on its own motion or the motion of any party.

(b) Each party shall be entitled to ten (10) days notice prior to the date of the final hearing on the merits.

(c) Only the defendant may move for a continuance of the final hearing that would extend beyond the 90-day temporary injunction period. If the defendant obtains a continuance extending the time for the final hearing beyond the 90-day temporary injunction period, the court may extend the temporary injunction until completion of the final hearing on the merits.

(d) At the final hearing, the court may consider any evidence material to the grounds alleged in the pleadings of the governmental body.

(e) The evidence to be considered may include:

(1) written or oral evidence; and

(2) evidence presented by witnesses or by affidavit.

(f) At the final hearing, the governmental body may, in compliance with the rules of evidence, introduce legible copies of any and all documents produced at the preliminary hearing.

(g) At the final hearing, any evidence sought to be introduced that is information relevant to a prior request for public information by the requestor that the governmental body asserts is either excepted from disclosure or otherwise confidential shall be admitted and considered only by the court for determination of the issue. Any such exhibit(s) shall be sealed and included in the clerk's record.

§552.407. ORDER DECLARING REQUESTOR AN ABUSIVE REQUESTOR. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from submitting any further or new requests for public information from a

governmental body that successfully filed suit under this subchapter if the court finds, after notice and final hearing as provided by Section 552.406 that:

- (1) the person is an abusive requestor; and
- (2) the local administrative judge of the court which found the person to be an abusive requestor has not granted permission to the person under Section 552.408 to file the request.

(b) The court's order may set a reasonable time in which it would remain effective not to exceed five (5) years from the date the court's judgment becomes final.

(c) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(d) A governmental body shall not have any duty nor shall it be required to respond to any subsequent request for public information submitted in violation of an order under Subsection (a).

§552.408. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE. (a) A local administrative judge may grant permission to a person found to be an abusive requestor under Section 552.406 to file a new request for public information from a governmental body that successfully filed suit under this subchapter only if it appears to the judge that:

- (1) probable cause exists to indicate the request:
  - (A) does not seek information likely to be excepted from disclosure pursuant to Subchapter B of this chapter;
  - (B) does not seek confidential information or information otherwise excepted from disclosure pursuant to Subchapter C of this chapter; or
  - (C) does not seek information susceptible to reasonable clarification or narrowing within the constraints of §552.222, and

(2) the request has not been filed for the purposes of harassment.

(b) The local administrative judge may condition permission on the furnishing of security for the benefit of the governmental body that is likely to cover the legitimate costs of providing copies of the information requested.

SECTION 3. Chapter 552 of the Government Code is amended by altering Subchapter G as follows:

§552.324 SUIT BY GOVERNMENTAL BODY. (a) ~~The only suit a~~ A governmental body or officer for public information may file suit seeking to withhold information from a requestor ~~is a suit~~ that is filed in accordance with Sections 552.325 and 552.353 and that challenges a decision by the attorney general issued under Subchapter G.

(b) The governmental body must bring suit not later than the 30<sup>th</sup> calendar day after the date the governmental body receives the decision of the attorney general being challenged. If the governmental body does not bring suit within that period, the governmental body shall comply with the decision of the attorney general. This subsection does not affect the earlier deadline for purposes of Section 552.353(b)(3) for a suit brought by an officer for public information.

SECTION 4. This Act takes effect September 1, 2009.