



TESTIMONY OF

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SAN ANTONIO, TEXAS**

SUBMITTED TO

TEXAS SENATE COMMITTEE ON OPEN GOVERNMENT

10:00 A.M.

MONDAY, NOVEMBER 26, 2012

Room 2E.20

CONCERNING

THE PUBLIC INFORMATION ACT

TEXAS GOVERNMENT CODE, CHAPTER 552

Relating to requests to inspect or be provided with copies of information under the public information law.

Chairman Ellis and Members of the Committee:

Good morning. I am Camila Kunau, an Assistant City Attorney, for the City of San Antonio. I am speaking about Interim Charge 4, Overly Burdensome/Frivolous Open Records Requests, and the City of San Antonio's suggestion for amending the Public Information Act. The City supports the goal of the Public Information Act to promote transparency and the public's confidence in city government. To that end, our proposed changes would allow governmental bodies to respond to requests more efficiently:

- 1) first, which is in keeping with the electronic age we now live in, provide compliance with the law if a governmental entity informs a requestor (in writing) that the information they seek is on an internet website, providing the URL and an offer to use

- a computer at no charge or by posting the information on the internet and providing the above information to the requestor;
- 2) restart the 10 day clock when a requestor modifies a request, not pursuant to a request for clarification; and
 - 3) allow governmental bodies to recoup some, but not all, of the costs of retrieving records, including emails, for inspection-only requests from the more frequent requestors.

Direction to URL

Computers are today's connection to the world. Most open records requests we receive are submitted electronically, by a requestor using a computer. Most citizens want the easiest and fastest communication with governmental entities, and appreciate it when they can simply locate the records they want, by conducting a search on the computer. "Have you 'Googled' that?" is a familiar phrase today, that was unheard of a decade ago. When the City of San Antonio receives a request that can be satisfied by providing a link to a website, we contact the requestor provide them with this information, and ask if they want us to print or scan the records for them, and inform them of the costs associated with the request (if any). Most of the time the requestor thanks us for the direction, and considers the request closed. Few requestors ask for the records to be emailed to them, and even fewer ask for the records to be mailed to them, or indicate they will come pick up the records. Offering the use of a computer to access the information goes even further, and is consistent with the goal of the Act. Amending the Act to permit this type of communication to be permissible, and to satisfy the terms of the Act, will save time and money for both a requestor and the governmental entity.

Modified Requests

Quite often a requestor is not sure of what records they are seeking from a governmental entity, so submits an overly broad request. Upon receipt of a cost estimate, or a request to clarify, with details about the scope of the requested records, it is not uncommon for a requestor to modify their request, to reduce the number of responsive records, or to go in a different direction than they started. Currently, the Act provides that a governmental entity can restart the ten day clock if a requestor submits a clarification in writing. However, the Act does not provide for an extension of time to respond when the requestor adds to a request during the ten-day period, Amending the Act to restart the 10 day clock when a requestor modifies a request provides sufficient time for governmental employees to respond to a request, and ensures a requestor gets the records they wanted, at a reduced cost to all.

Multiple Requests

The city recognizes that emails are government communications and are of legitimate interest to citizens. The City has no concern about releasing the majority of its records to requestors. However, some requests result in cost incurred by a governmental entity, that they cannot currently recoup. As you know, at this time, the Act provides that if a requester asks only view these records, the government must do the work and use the same materials at virtually no cost to the requestor.¹ Not surprisingly, many requestors are familiar with this discrepancy and file their requests for inspection only. A requestor may even seek to inspect only those records not subject to redaction, to avoid inspection charges permitted by the law.

The proposed amendment would allow the government to recover some of these costs, namely the personnel time required to retrieve and transfer the records to a viewable format, for

¹ The government can charge for inspection only requests if the volume fills six banker boxes and requires 5 or more staff hours to compile. Six banker boxes contain approximately 24,000 to 30,000 pieces of paper. This may be too much detail for the presentation, but a fact you should have on hand if asked.

requestors who submit at least seven requests in a 31 day period. For “inspection-only” requests, the requestor would not be charged for the paper or other media to which the emails are transferred since they had not asked for copies, only to view the copies. The requestor can still reduce the cost of their request by viewing, but the government could recover some of its costs for the production of the records. If a requestor does not respond, in writing, to a cost estimate for actual costs that would be incurred if the request is completed, the request would be closed, and no one incurs costs.

Conclusion

We ask the Legislature to consider amending the Act, to permit governmental bodies to continue providing information to citizens in ways that are more efficient and responsible to everyone. We believe that the amendments will not affect the requestors’ right to ask for any type of government record in which they might be interested, nor would it affect the timeline in which they would receive the records. The amendments would, however, allow governmental bodies to recoup some, though not all, of the very real costs of responding to email inspection requests and submit requests to withhold records for only those records which are ultimately sought by the requestors.

I am happy to answer any questions you may have. Thank you for your consideration.

Committee Membership

Chair: Sen. Rodney Ellis
Vice Chair: Sen. Wendy Davis
Members: Sen. Kevin Eltife
Sen. Florence Shapiro
Sen. Jeff Wentworth