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When Must the Attorney General Render a Decision Under the Public Information Act?

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At the recent 2008 TSAA Conference in Austin it was my pleasure to talk about the Texas Public Information Act. One question asked during the discussion was “How long does the Attorney General have to respond to an open records request?” After I responded, “Ten days like the rest of us!” the question was clarified. “How long does the Attorney General have to respond to a school district’s request for opinion?” I responded that I would talk about various timetables at the end of the talk. Unfortunately, time expired before we could get back to this question.

Once upon a time in Texas, the Attorney General had no deadline for responding to requests for opinion. A request for opinion I submitted to the Attorney General in 1990 wasn’t responded to until eighteen months later. This was after the matter (the subject of a pending lawsuit) had been settled out of court. And the Attorney General simply responded that they wouldn’t issue an opinion because the matter had been settled and the request was now moot.

A citizen’s right to promptly access public information becomes moot if the Attorney General fails to make a timely decision on a request for opinion. The Act sets out specific administrative procedures for determining whether information is subject to public disclosure or not. If these administrative procedures are being followed, there is virtually no other remedy available to a requestor than to wait. Unfortunately, like fish, information has a shelf life. Too long of a wait and the requested information becomes worthless.

Because of this, Section 552.306 was added to the Act by the 73rd Legislature in 1993. Section 552.306 provides that the Attorney General must render a decision “promptly” but not later than the 45th business day after he receives a request for opinion. If the Attorney General cannot render an opinion within the 45 business days, it may extend the time limit by an additional 10 business days by sending notice to the requestors and the governmental units involved.

An “exception” to this time limit may exist under Section 552.305 of the Act. This section relates to requests for information that might violate the privacy or proprietary rights of private citizens and businesses unrelated to the governmental unit or the requestor. The governmental unit must give the Attorney General notice of the request for information within ten business days of receipt like any other request for opinion. But instead of submitting its opinion like other requests, the governmental unit is required to make a good faith effort to: (1) contact the third party, and (2) inform it of its right to submit written comments to the Attorney General on why the information shouldn’t be released to the public. After receiving this notice, the third party has ten business days to provide the Attorney General with its written arguments. Some argue that the Attorney General’s 45 day time limit starts when he receives the third party’s written case for confidentiality. However, in my experience, the Attorney General starts the clock when he receives the first governmental unit’s notice.

In general though, the Attorney General has up to about 11 weeks to respond to a school district’s request for opinion under the Texas Public Information Act. It should be noted that the Act doesn’t penalize the Attorney General if he fails to meet this deadline. In my experience though, the Attorney General does an excellent job of issuing its opinions within the statutory time period.

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