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As executive director of the nonprofit Freedom of Information Foundation of Texas, and previously as a news reporter for nearly three decades at the Associated Press, the Dallas Morning News and other media organizations, I have used and advocated for strengthening the Texas Public Information Act. The statute is our open records law, which came into existence in 1973 amid a statewide government scandal. The law for years was known as one of the strongest in the nation because it presumes all government records are open unless exempted from release by an exception in the law, and, even then, a government agency cannot decide on its own to withhold information. It must, in most cases, seek a ruling from the Texas Attorney General's Office on whether the information can be withheld from the public. The law has endured some watering down in recent years, but its core principles remain intact.

In 2017, a state lawmaker was interested in helping his county government officials in east Texas who were being bombarded every day by very large public records requests from one person. The man used bots to generate hundreds of electronic records requests in the middle of the night to a small county government, essentially shutting down their operations. Even answering the many requests with cost estimates to fill them was more work than the county staff could handle.

The legislator was determined to pass a law to prevent this from continuing and was contemplating allowing governments to sue requestors in court to stop what they considered to be burdensome requests. Texas does not allow lawsuits by governments against records requestors, and we open government advocates certainly wanted to prevent that from becoming law.

So, after negotiations among open government advocates, the legislator and representatives of government agencies, we came up with the 36-hour annual time limit that could be imposed on an individual requestor. A government can still spend more time than that on a requestor, but being able to impose the limit gives the government a tool to tell a repeat/frequent requestor that they are cut off for a while. This especially helps smaller governments.

This doesn't apply to the news media, as defined in the law. We used the news media definition as stated in Texas' shield law. You can read through the burdensome requestor law, House Bill 3107 enacted in 2017, in the following link and see the news media definition:

<https://capitol.texas.gov/tlodocs/85R/billtext/html/HB03107F.htm>

Notably, with the ever-changing media landscape we are finding some online news media outlets aren't properly covered by this current language, so you might want to be careful about

your definition of news media if you consider similar legislation. Most government agencies, however, treat online news outlets the same as other news media.

A government agency can certainly still charge for copy costs, labor and other expenses as allowed under the [cost rules](#) in the Texas Administrative Code, even before the 36 hours specified in the law is reached. You would think that a large cost estimate under existing cost rules would serve to deter a burdensome requestor from making a huge records request, and sometimes it does. But, as in the east Texas example mentioned earlier, sometimes the requestor is merely seeking to cause work for the governmental entity in even coming up with the cost estimate. Meanwhile, some government entities in Texas unfairly give very large and unwarranted cost estimates to requestors simply hoping they go away. We've seen extreme examples reaching the hundreds of thousands or millions of dollars. So, this is a problem; it's government abuse of the law.

The 36-hour limit law occasionally does prevent a legitimate requestor from getting all the information they seek, so it's certainly not a perfect solution. It is, in the opinion of the FOI Foundation of Texas and other open government advocates, a much better solution than allowing a governmental entity to sue a requestor. We feared such a law would be overused and even abused and would undermine the premise of the Texas Public Information Act, which puts the power in the hands of citizens over government.