

- SUBJECT:** Restricting public information requests by agents of inmates
- COMMITTEE:** Corrections — favorable, without amendment
- VOTE:** 7 ayes — Haggerty, Staples, Allen, Ellis, Gray, Lengefeld, Longoria
0 nays
2 absent — Culberson, Farrar
- WITNESSES:** For — Linda Reeves, Texas Inmate Families Association
Against — None
- BACKGROUND:** Under Government Code, sec. 552.028, a governmental body is not required to accept or comply with a public information request made by a person confined in a correctional facility unless the information pertains to that individual.
- DIGEST:** HB 2762 would allow a governmental body to ignore a public information request submitted by an agent of an incarcerated offender unless that agent was the offender's attorney. It also would allow an incarcerated offender's agent to obtain public information about that offender.
- The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.
- SUPPORTERS SAY:** HB 2762 would close a loophole in the public information law that could allow an incarcerated offender's agent to gain access to information that the offender otherwise would be denied if he were making the request himself. The bill would not prohibit a state agency from releasing this information but simply would allow the agency to deny a request intended to circumvent the law already on the books.
- Recent examples, particularly one in El Paso that gave rise to this legislation, have shown that offenders can use this loophole to gain access to information about their victims or about others confined with them. The El Paso incident involved an offender who was denied access to information about his victim's

family. He obtained that information by sending his mother to make the request. To ensure that this loophole is closed completely, the bill must use the broad term “agent” to encompass anyone who might be acting on behalf of the incarcerated offender.

The attorney general recently determined that to allow the agent of an inmate to receive access to information that the inmate would not have been allowed to receive would circumvent the purposes of the law allowing agencies to not comply with requests of inmates (Open Records Letter Ruling OR99-1027, April 15, 1999). HB 2762 simply would codify the attorney general’s interpretation in statute.

HB 2762 would take the most direct approach to resolving this issue by prohibiting agents of incarcerated offenders from obtaining information on their behalf. Other methods either would be administratively burdensome or would not ensure that the person obtaining the information was not doing so on behalf of the offender.

An amendment added to the companion bill, SB 744 by Shapleigh, by the House Corrections Committee would clarify that attorneys would not be entitled to any information that otherwise would not be subject to disclosure.

OPPONENTS
SAY:

HB 2762 would create the vague concept of an agent of a person incarcerated. The only enforcement mechanism to ensure that the person requesting the information was not an agent of an incarcerated offender would be to ask them the purpose of their request. Such probing into the reasons behind a public information request is unprecedented and would violate the purpose of the Public Information Act.

Other, less intrusive, means of achieving the same result could include requiring people, when obtaining information, to verify by their signatures that they were not acting as an agent of an incarcerated offender. Another method could be to allow the correctional institution, as it monitored items received by the offender, to withhold any information gathered by means of a public information request. If a governmental body does release information to an agent of an incarcerated offender, the agency may be held liable if that information is used to harm another person.

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OTHER
OPPONENTS
SAY:

Unless clarified, the bill could be read as giving attorneys of jailed offenders access to information that otherwise would not be allowed under the Public Information Act.

NOTES:

The companion bill, SB 744 by Shapleigh, passed the Senate by 30-0 on April 8. On April 20, the House Corrections Committee reported SB 744 favorably with an amendment providing that attorneys would not be entitled to any information that otherwise would not be subject to disclosure. SB 744 is eligible to be considered in lieu of HB 2762.