

SUBJECT: Keeping personal information about former TDCJ employees confidential

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Marchant, Madden, B. Cook, J. Davis, Elkins, Gattis, Lewis
0 nays
2 absent — Goodman, Villarreal

WITNESSES: For — Toby Tobias, American Federal of State, County and Municipal Employees/CEC 7
Against — John Cook, Title Data, Inc.
On — Katherine Cary, Office of the Attorney General, Open Records Division; Carol Johnston and Carl Reynolds, Texas Department of Criminal Justice; (*Registered, but did not testify:*) Warren Moore, Texas Department of Criminal Justice

BACKGROUND: Information collected, assembled or maintained under a law or ordinance or in connection with the transaction of official government business is considered public information under the Public Information Act and must be open to public access, unless some specific exception applies.

Government Code sec. 552.024 requires current or former government employees or officials to choose whether to allow public access to personal information about their home addresses, home telephone numbers, social security numbers, and whether they have family members. Employees and officials can elect in writing to keep this information confidential, which must occur within 14 days after beginning or ending government service. Failure to record a choice makes the information public. However, the 77th Legislature amended 552.024 to state that this requirement does not apply to a peace officer, county jailer, security officer, or employees of the Texas Department of Criminal Justice (TDCJ) covered under sec. 552.1175.

The 77th Legislature enacted SB 247 by Shapleigh to add sec. 552.1175 that allows peace officers, county jailers, and employees of TDCJ to choose to prohibit from disclosure under the Public Information Act personal information relating to their home addresses, home telephone numbers, social security numbers, and family members.

Government Code sec. 552.117 also excepts from disclosure requirements information relating to the home addresses, telephone numbers, social security numbers, and family members of peace officers, certain security officers, TDCJ employees, and peace officers and other law enforcement officers killed in the line of duty, regardless of whether these persons complied with the requirements in sec. 552.024.

On March 5, 2003, Attorney General Open Records Letter Ruling (OR2003-1421) held that the TDCJ must withhold information under Government Code, sec. 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under sec. 552.024 prior to the date that TDCJ received the request for the information. If the current or former TDCJ employee had made a timely request to keep personal information confidential, the department would have to withhold the social security number, home address, and home telephone number of the former employee. However, TDCJ could not withhold this information under sec. 552.117 for the former employee if the request had not been made to keep the information confidential.

DIGEST:

CSHB 863 would amend Government Code, sec. 552.117 to provide that personal information about a current or former employee of TDCJ or a predecessor in function of the department or any division of the department, such as the Texas Department of Corrections, would not be disclosed under the Public Information Act. The personal information withheld would be the home address, home telephone number, and social security number. The prohibition would be effective regardless of whether the current or former employee complied with the notice requirements of sec. 552.024 or 552.1175, as applicable.

The bill would apply to information regarding all former employees of TDCJ, its predecessor agencies, or any division of the department without regard to

whether that information was created or acquired before, on, or after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 863 would clarify the uncertainty raised by the attorney general's opinion regarding the confidentiality of former TDCJ employees' records. Current law creates a presumption that personal information of current TDCJ personnel is confidential, whether or not the employee signs a specific form requesting that it be kept private. Those leaving the department assumed that the protection would continue, and this bill would ensure that it did.

Providing a blanket exception would prevent a costly administrative process that would be required to contact and notify all former TDCJ personnel. Literally thousands of employees have retired or left service with the department. There is no need to go to the expense of locating and send each one a form to meet an unnecessary bureaucratic request.

The state should do all it can to ensure that the personal information of current and former TDCJ employees remains confidential because their work puts, or has put, them in contact with persons who sometimes use personal data for harassment, intimidation, retaliation, or blackmail. The need for this protection continues even employees have left the department.

Current law allows for discovery of pertinent information about TDCJ employees as part of legal action regarding their duties. The bill would make clear that personal information not related to the performance of official duties must not be released.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

HB 863 as introduced would have amended sec. 552.1175 to make TDCJ personal information confidential and would have applied to real estate records maintained by county clerks. The substitute would amend sec. 552.117 to provide that only personal information of current and former

HB 863
House Research Organization
page 4

TDCJ employees maintained by the department would be excepted from disclosure regardless of whether the person filed the request form required under sec. 552.024.