

SUBJECT: Nondisclosure of a person's social security number by government entity

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Martinez, Bohac, Solomons, Taylor, Vo, Zedler

0 nays

2 absent — Elkins, Bailey

WITNESSES: For — None

Against — None

On — Mindy Carr, Texas Land Title Association; Gail M. Turley, County and District Clerks' Association of Texas

BACKGROUND: Government Code, ch. 552, also known as the Public Information Act, provides for public access to records maintained by state and local governments. Sec. 552.101 exempts confidential information from disclosure. Secs. 552.024, 552.117, and 552.1175 except from disclosure social security numbers and other personal information of employees or officials of governmental bodies who elect to keep this information confidential, current county jailers who elect not to disclose this information, current peace officers and peace officers killed in the line of duty, current and former employees of the Texas Department of Criminal Justice, and commissioned security officers. Sec. 552.352 imposes criminal penalties for the release of confidential information, while sec. 552.353 imposes criminal penalties for failing to release public information.

Historically, attorneys general have ruled in open records opinions that Social Security numbers collected by government agencies are not protected from public disclosure by the Public Information Act or by a constitutional right to privacy, nor are they protected by the common-law privacy test of being highly intimate and embarrassing information. (See Open Record Decisions 169 (1977), 254 (1980), 373 (1983), and 455 (1987), and *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976).)

In January 1994, Attorney General Dan Morales stated in Open Records Decision 622 that social security numbers are excepted from public disclosure under the Public Information Act only if obtained or maintained by a governmental body pursuant to a law enacted on or after October 1, 1990. The opinion incorporated federal changes to the Social Security Act, which made confidential social security numbers obtained or maintained by a federal, state, or local governmental body pursuant to any provision of law enacted on or after October 1, 1990.

DIGEST:

CSHB 1952 would make a person's social security number maintained by a governmental body confidential, with specified exceptions. A person's social security number could not be disclosed publicly under any state law without the person's written consent. The consent would have to be on a form prescribed by the attorney general.

The bill would allow release of a person's social security number without the person's written consent in the following situations:

- to another governmental agency for a legitimate governmental purpose;
- by or for a governmental body if the social security number was contained in information maintained before September 1, 2005, and disclosure of the number otherwise was not prohibited by law;
- in a district or county clerk's information and disclosure was not otherwise prohibited by law;
- to a private vendor as necessary for the vendor to perform a service for a governmental body under contract;
- in connection with the collection of delinquent child support payments; or
- in order to establish identity if the person had been convicted of a felony and disclosure of the person's social security number was relevant.

A private vendor that received a social security number from a governmental body could only disclose that number as necessary to allow the vendor to perform a service for that governmental body under contract.

CSHB 1952 would amend Government Code, sec. 552.024 on the right of each employee or official of a governmental body to permit public access to specific information about that person. If an employee or official or a former employee or official failed to state the person's choice regarding

release of information, the person's social security number still would be protected from disclosure under this bill or applicable law.

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, 2005.

**SUPPORTERS  
SAY:**

CSHB 1952 would help reduce the risk of identity theft by not permitting release of a person's social security number without the person's written consent. Social security numbers have been called "the gateway to all financial information" because they are used widely for identity verification and personal account numbers in banking, insurance, utilities, and other services. Access to this number, when combined with other relevant, easy-to-obtain information such as a person's name, home or office address, and phone number, can open the door to fraudulent use of a person's credit card, medical benefits, and government bonds. Terrorists also have an incentive to commit identity theft for the purpose of creating false passports and opening bank accounts. The growing prevalence of identity theft and the misuse of social security numbers make it essential that these numbers are kept secure. CSHB 1952 would offer such security by creating protections in order to restrict access of social security numbers by the general public.

The bill also would clarify confusion in current law about whether social security numbers of citizens are confidential under the Open Records Act. Under an attorney general's opinion, these numbers may only be withheld if they were collected or maintained pursuant to a law passed after October 1, 1990. The majority of open records requests, however, do not cite an applicable law enacted after that date, which could lead to the inappropriate release of the numbers without consent. CSHB 1952 would make it clear that social security numbers were excepted from release under open records requests.

This bill would be a significant step toward protecting future governmental documents without placing onerous requirements on state or local governments. If social security numbers collected and maintained by governmental bodies prior to September 1, 2005, were not exempted from this bill, the Secretary of State's Office, for example, would be forced to examine literally millions of documents and to redact social security numbers and rescan possibly hundreds of thousands of them. This bill's approach would ensure greater protection of social security numbers

moving forward. Other exceptions for legitimate purposes, such as collecting delinquent child support payments and attempting to establish the identity of a person convicted of a felony, would strike the right balance between protecting privacy and allowing the courts and governmental entities to carry out their duties.

**OPPONENTS  
SAY:**

Exempting social security numbers with a person's written consent from the Open Records Act would make it more difficult for private data companies, such as credit reporting agencies and background information companies, to link certain public information, including bankruptcies, judgments, liens, and criminal records, with the correct individual. These data may be used to extend credit, to make hiring decisions, or to approve tenants. Consequently having the correct information with the correct individual can be critical to that person's ability to conduct his or her life. The bill should make an exception for data companies that have legitimate needs for social security numbers and have strict systems for protecting the confidentiality of their information.

**OTHER  
OPPONENTS  
SAY:**

CSHB 1952 should protect from disclosure social security numbers collected and maintained by governmental bodies prior to September 1, 2005. This exception is too broad, and as a result, the bill's written consent requirement would apply only to a small pool of government documents.

**NOTES:**

The bill as introduced did not specify circumstances in which social security numbers could have been obtained without a person's consent beyond a federal, state, or local governmental entity using the person's social security number for a legitimate governmental purpose. The original version specified that secs. 552.002, 552.024, 552.1175, and 552.132 would not specifically have allowed the disclosure of an individual's social security number by a governmental entity.

A related bill, HB 2191 by Wong, which would except social security numbers from disclosure and allow governmental bodies to redact such numbers of a living person from disclosed documents without having to request an attorney general's opinion, passed the House on April 14 and has been referred to the Senate State Affairs Committee. Its companion, SB 1485 by Williams, passed the Senate on the Local and Uncontested Calendar on April 14 and was reported favorably, without amendment, by the House State Affairs Committee on April 25.

HB 3278 by Isett, which also would limit disclosure of social security numbers under the Open Records Act, has been reported favorably by the House State Affairs Committee.