

SUBJECT: Exempting social security numbers held by government from disclosure

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 5 ayes — Swinford, B. Cook, Farrar, Villarreal, Wong

0 nays

4 absent — Miller, Gattis, J. Keffer, Martinez Fischer

WITNESSES: For — Linda Storey, Harris County Attorney's Office

Against — None

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 federal, state, or local government employees pursuant to any provision of law enacted on or after October 1, 1990.

DIGEST: HB 2191 would except social security numbers from disclosure under the Public Information Act and allow governmental bodies to redact the social security number of a living person from documents disclosed under the act without having to request an attorney general's decision.

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: 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 and 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. HB 2191 would help reduce the risk of identity theft by excepting social security numbers held by governmental bodies and thereby restricting the public availability of these numbers.

The bill also would clarify the confusion in current law about whether the social security numbers of citizens are confidential. 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. Because both releasing confidential information and not releasing public information carry criminal penalties, governmental entities often request attorney general letter opinions when requests are made for social security numbers. However, the Office of the Attorney General generally directs these bodies to examine whether the social security numbers were collected or maintained pursuant to a law passed after October 1, 1990 — a potentially time-consuming and costly process, and one that could carry

criminal penalties if an incorrect conclusion is reached. HB 2191 would simplify this process by clarifying that the social security numbers of all living persons are confidential, and by allowing governmental entities to redact these numbers from public records prior to their release without having to get an opinion from the attorney general.

Private data companies should not be excepted from the bill's provisions. Several recent reports of stolen data at these companies, including Choice Point and LexisNexis, have highlighted the insecurity of their information. Removing social security numbers from public records could decrease their reliance on these numbers and provide better safeguards for consumers in the event of future data theft.

**OPPONENTS
SAY:**

Exempting social security numbers from public information would make it more difficult for private data companies, such as credit reporting agencies and background information companies, to place certain public information, including bankruptcies, judgments, liens, and criminal records, in the correct individual's file. These data may be used to extend credit, to make hiring decisions, or to approve tenants, and consequently having the correct information in an individual's file is critical to that person's ability to conduct his or her life. The bill should except these necessary records from its provisions or should make an exception for data companies, which have strict systems for protecting the confidentiality of their information.

NOTES:

The companion bill, SB 1485 by Williams, was reported favorably, without amendment, by the Senate State Affairs Committee on April 5 and was placed on today's Senate Local and Uncontested Calendar.

During the 78th Legislature's regular session in 2003, a related bill, HB 1015 by Miller, would have required a person's consent before a governmental body could disclose that person's social security number. It would have created several exceptions, including disclosure to other governmental entities, to private vendors who need these numbers to provide a service to the government, to collect delinquent child support payments, and to confirm the identity of a felon. The bill died in the Calendars Committee. SB 405 by Hinojosa, which dealt with identity theft, also would have prohibited the disclosure of social security numbers by governmental entities and required these numbers to be redacted before a document could be released. The bill died in the House.

The 78th Legislature enacted several laws protecting the confidentiality of social security numbers, including:

- SB 473 by Ellis et al., which generally prohibits a person, other than a governmental entity, from making a person's social security number available to the general public;
- HB 500 by Goolsby, which prohibits public disclosure of certain personal information of disabled or elderly persons who request a tax exemption;
- HB 1027 by Hupp, which allows government employees who are also crime victims as defined by the Crime Victims Compensation laws to decide whether to allow public access to their identifying information held by the Attorney General's Office or other governmental bodies; and
- HB 2930 by Lewis, which prohibits county clerks from rejecting certain documents relating to transfers of property because the instruments do not contain social security numbers and requires that notice be given that the documents do not have to contain social security numbers.