

- SUBJECT:** Exception from civil discovery for certain law enforcement records
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 5 ayes — B. Cook, Strama, Madden, Raymond, Talton
0 nays
4 absent — P. King, Martinez Fischer, Miller, Woolley
- WITNESSES:** For —(*Registered, but did not testify*: James McLaughlin, Texas Police Chiefs Association; Tuan A. Mguyen, for Houston Police Department Chief Harold L. Hurtt; Peyton Peebles, Harris County District Attorney's Office; Rick A. Watson, for David Kunkle, Dallas Police Department Chief of Police)

Against — None
- BACKGROUND:** The Texas Rules of Evidence provide privileges that protect certain people from being compelled to testify or disclose certain information. Among the privileges granted under certain circumstances are the physician-patient privilege, attorney-client privilege, and communications to the clergy privilege. *Hobson v. Moore*, 734 S.W.2d 340 (Tex. 1987) and the Texas Public Information Act have been interpreted as establishing a law enforcement privilege in civil matters.
- DIGEST:** HB 1572 would amend Civil Practice and Remedies Code by adding sec. 30.006 to prohibit a court in a civil action from ordering discovery from a non-party law enforcement agency of information, records, documents, evidentiary materials, or tangible things if:
- the requested discovery dealt with the detection, investigation, or prosecution of crime or with an investigation by the non-party law enforcement agency that did not result in conviction or deferred adjudication; and
 - the release of the requested discovery would interfere with the detection, investigation, or prosecution of criminal acts.

On the motion of a party, the court could order discovery of the information, records, documents, evidentiary materials, or tangible things from a non-party law enforcement agency if the court determined, after a private inspection by the court, that:

- the discovery sought was relevant; and
- there was a specific need for the discovery.

The bill would take effect September 1, 2007. It would apply to an action commenced on or after the effective date, or pending on the effective date and in which the trial, on any new trial or retrial following motion, appeal, or otherwise, began on or after the effective date.

**SUPPORTERS
SAY:**

HB 1572 would codify a privilege to protect law enforcement from being ordered to release sensitive, confidential, and tactical information that was part of an ongoing criminal investigation. Law enforcement agencies receive civil subpoenas with broad discovery requests from civil plaintiffs suing on the same incident. The privilege provided by the bill would be needed to ensure officer and victim safety and to ensure that critical evidence gained by detective work was protected from release. The privilege would be a reasonable one – not an absolute privilege but one that allowed law enforcement to go before a judge to receive a hearing on the need for the evidence.

The committee substitute represents a compromise between law enforcement and civil attorneys. Codifying the privilege would ensure that changes in case law or the Public Information Act (formerly the Open Records Act) did not erode or dilute the law enforcement privilege.

**OPPONENTS
SAY:**

HB 1572 is not necessary because judges already protect law enforcement sensitive material. Well established case law provides a law enforcement privilege. Civil lawyers routinely present their case for relevancy and specific need in front of judges on all discovery requests involving open criminal cases. Once codified, the privilege is likely to be amended by subsequent legislatures to add exceptions.

NOTES:

The original version of the bill would have provided rulemaking authority to the Texas Supreme Court and guidelines for the court to use in promulgating the rules, including requiring that the party seeking discovery show relevancy, materiality, and a specific need in the interest of justice for the materials, as well as authority for a court to abate civil

proceedings. The committee substitute would not grant rulemaking authority or authority for abatement of civil proceedings, but would provide for a court, on the motion of a party, to order discovery if, after in camera inspection, it determined that discovery was relevant and based on a specific need.