

- SUBJECT:** Determinations to disclose information under the Public Information Act
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 8 ayes — Swinford, Paxton, Van Arsdale, Christian, B. Cook, Flynn, Parker, Veasey
- 0 nays
- 1 absent — Farrar
- WITNESSES:** For — None
- Against — None
- On — (*Registered, but did not testify:* Amanda Crawford and June Harden, Office of the Attorney General)
- BACKGROUND:** The Public Information Act (Government Code, ch. 552) ensures public access to records and other material maintained by government bodies, including local governments. The act provides exceptions for certain types of records, including personal information, litigation or settlement negotiations, private communications, trade secrets, student records, and audit working papers.
- Under current law, when a record is requested of a governmental body and that body believes that the record may contain material that is not a public record, the agency must request a ruling from the Attorney General's Office. The Attorney General has 45 days to render an opinion, but may extend that time by an additional 10 days. If the attorney general determines that the information is public, the governmental body cannot ask for a redetermination, but may sue the attorney general to keep the information from being disclosed.
- DIGEST:** HB 2248 would amend Government code, ch. 552 to allow for the dismissal of a suit when a requestor withdrew a request for information under the Public Information Act.
- If, while a suit was pending against the attorney general, a requestor voluntarily and expressly withdrew or abandoned the request for

information, a court could dismiss the suit if all parties agreed to the dismissal. The attorney general would determine whether the request was voluntarily withdrawn or was abandoned. This determination then would be represented to a court, and if the court consented to the dismissal, a governmental body could ask for new decision, or reconsideration, of the attorney general concerning the same information that was at issue.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

HB 2248 would free up state and local resources. Litigation can be costly as well as time consuming. If a requestor voluntarily withdraws or abandons a public information request because the requestor is unreachable, continuing litigation is meaningless because the root of the controversy no longer exists. A governmental body that agreed to dismiss the suit would gain the opportunity to ask for a new determination on the precise information formally at issue if a new request was brought forward. While it is highly unlikely that another member of the public would seek the exact same information, if it happened, it would be a better use of resources to litigate the issues of disclosure in the presence of a live requestor.

**OPPONENTS
SAY:**

The matters addressed in HB 2248 do not need statutory codification. If one or both parties to litigation of any kind determine that a case has become moot, the parties may present this determination to a judge. At this point, a judge can determine whether or not the case contains a live controversy. Further, a plaintiff in a lawsuit, as a matter of right, may request a suit be dismissed. While parties may confer on whether or not a case should be dismissed or has become moot, these determinations ultimately rest with a judicial body, not the Attorney General's Office or the governmental body plaintiff. These procedural rights are established in U.S. law, and HB 2248 would serve to intrude in matters already vested in the courts.

**OTHER
OPPONENTS
SAY:**

The bill would go too far by making the Attorney General's Office the unilateral authority on when a case would be considered voluntarily withdrawn or abandoned. Requests for information in this context are made of governmental bodies, not the Attorney General's Office. Therefore, the attorney general should not be allowed to make a unilateral determination that the request had been withdrawn. The determination

should be afforded to either party along with the opportunity for a court to review and make a decision on the issue.