

SUBJECT: Redaction and required attorney general review of public information

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Cook, Menendez, Craddick, Frullo, Gallego, Harless, Hilderbran, Huberty, Oliveira, Smithee, Turner

0 nays

2 absent — Geren, Solomons

WITNESSES: For — (*Registered, but did not testify:* Steve Bresnen, El Paso County; Mark Mendez, Tarrant County Commissioners Court; Michael Vasquez, Texas Conference of Urban Counties; Andy Wilson, Public Citizen Inc.)

Against — None

BACKGROUND: The Public Information Act, Government Code, ch. 552, requires government bodies to disclose public information upon request, unless that information is exempt from disclosure by one of many exceptions. If a government body wishes to withhold information from a request for disclosure based on one of the exceptions, the body must ask for a decision from the attorney general about whether the information is within that exception within 10 business days of receiving the request. If the attorney general has previously determined that the item requested falls within an exception, the government body can redact the information and is not required to seek attorney general determination.

In December 2009, Attorney General Greg Abbott determined, in Open Records Decision #684, that there were numerous items allowing redaction, including a Texas driver's license number, a copy of a Texas driver's license, and credit card, debit card, and charge card numbers.

In some cases, the Legislature has specifically codified items that should be categorically redacted and not disclosed. Government Code, sec. 552.147 exempts social security numbers from disclosure under the Public Information Act and allows government 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.

Under sec. 552.263 of the Government Code, a government body that receives a Public Information Act request may require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information, if the public information officer has provided the requestor with the written itemized estimated charge for the copy and the charge is estimated at more than \$100 for a government body with more than 15 full-time employees or \$50 for a government body with fewer than 16 full-time employees.

DIGEST:

CSHB 1671 would allow a government body to redact the following information without requesting a decision from the attorney general:

- motor vehicle driver's license or permit information;
- personal identification document information issued by a state agency or a local agency authorized to issue an identification document; and
- credit card, debit card, charge card, or access device numbers collected, assembled, or maintained by or for a government body.

A government body that redacted or withheld this type of information would be required to provide the following information to the person requesting the information, on a form provided by the attorney general:

- a description of the redacted or withheld information;
- a citation to the bill's provisions; and
- instructions regarding how the person could seek a decision from the attorney general about whether the redacted or withheld information was exempt from required disclosure.

If the government body redacted this type of information, the party requesting information would be entitled to seek a decision from the attorney general about the matter. The attorney general would be required to establish procedures and deadlines by rule for receiving information necessary to decide the matter and for receiving briefs from the requestor, the government body, and any other interested party. The attorney general would be required to promptly make a decision, within 45 business days of receiving the request, on determining whether the redacted information was exempt from required disclosure. The attorney general would be required to issue a written decision on the matter and provide a copy of the decision to the requestor, the government body, and any interested party.

The requestor of information would be allowed to appeal the decision of the attorney general to the Travis County district court.

CSHB 1671 also would specify that if a person modified the request in response to the requirement of a deposit or bond, the modified request would be considered a separate request and would be considered received on the date the government body received the request.

If the government body received a written request by U.S. mail and could not establish an actual date received, the written request would be considered to have been received on the third business day after the date of the postmark on a properly addressed request.

The bill would take effect September 1, 2011, and would apply only to a request for information received on or after that date.

**SUPPORTERS
SAY:**

CSHB 1671 would correspond with the attorney general's determination that a Texas driver's license number, copy of a Texas driver's license, credit card, debit card, and charge card number can be withheld without seeking attorney general approval. This is necessary because sometimes a government body faces uncertainty over whether the information requested is covered by a previous determination, and it proceeds with the request to avoid breaking the law. CSHB 1671 would enable government bodies to be certain about what they can withhold or redact, resulting in increased efficiency and faster turnaround time to the requestor.

In addition, the bill would add protections to those requesting information by requiring the government body to notify the requestor about the redaction and explain that the person may seek a decision by the attorney general about whether the redaction was appropriate. If a person asked for a review by the attorney general, the attorney general would be required to make a decision within 45 days.

The bill also would codify a U.S. Supreme Court opinion that restarted the 10-day clock in the case of a person who modified a request for information based on the deposit or bond amount requirement. The bill would address this by making the modified request a separate request that would be considered received on the date the government body received the written modified request. The government body then would have 10 days from the modified request to seek approval from the attorney general for withholding or redacting any information requested in the modified

request. Since the Supreme Court decision, no documented complaints have been reported regarding government employees trying to use this timeline modification to delay production of public documents.

To clear up any potential confusion, the bill also would add that if a government agency did not stamp a request for information with the date received, then the law would presume it was received three business days after the postmarked date.

**OPPONENTS
SAY:**

CSHB 1671 inappropriately would allow the 10-day timeline to restart based on a modified request resulting from a bond or deposit requirement. The Supreme Court was misguided and mistaken on this issue. The purpose of the Public Information Act is to require prompt production of public documents, but CSHB 1671 could create a technical trap if government employees stop and restart the clock over and over again with the intention of delaying production of public documents.

NOTES:

The companion bill, SB 602 by Rodriguez, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 21 and was referred to the House State Affairs Committee on April 26.