

- SUBJECT:** Excepting birth date, personal email, and cell phone numbers from PIA
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 9 ayes — Cook, Menendez, Craddick, Frullo, Geren, Harless, Hilderbran, Huberty, Smithee
- 0 nays
- 4 absent — Gallego, Oliveira, Solomons, Turner
- WITNESSES:** For — Susan Fillion, Harris County Attorney’s Office for Harris County; Cathy Sisk, Harris County; (*Registered, but did not testify:* Chris Jones, Combined Law Enforcement Associations of Texas; Donald Lee, Texas Conference of Urban Counties; Josh Sanderson, Association of Texas Professional Educators)
- Against — Keith Elkins, Freedom of Information Foundation of Texas; Ryan McNeill, The Dallas Morning News; Doug Toney, Texas Daily Newspaper Association, Texas Press Association, New Braunfels Herald-Zeitung; Paul Watler, AH Belo Corporation, Texas Association of Broadcasters, Freedom of Information Foundation of Texas; (*Registered, but did not testify:* Janet Ahmad, Home Owner for Better Building, President; Keith Oakley, Carl Weeks, Texas Association of Licensed Investigators; Michael Schneider, Texas Association of Broadcasters)
- BACKGROUND:** The Public Information Act (PIA), 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, it 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 an attorney general determination.
- 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 PIA 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.

A government entity also may redact information related to each former or current government employee or official that relates to the person's home address, home telephone number, or Social Security number or that reveals whether the person has family members, if that person chooses to not allow disclosure in writing by the 14th day after beginning employment or taking office or 14 days after leaving employment or office.

**DIGEST:**

HB 3801 would exempt birth dates, personal email addresses, and personal cellular telephone numbers of government employees and officials from public information required to be made available to the public under the PIA.

The date of birth of a living person would be excepted from the requirement that it be made available to the public under the PIA, but would not be confidential under the bill or any other law. A governmental body could redact the date of birth of a living person from any information the governmental body disclosed without the necessity of requesting a decision from the attorney general.

A county or district clerk could disclose in the ordinary course of business a date of birth that was contained in information held by the clerk's office, and that disclosure would not be official misconduct and would not subject the clerk to civil or criminal liability of any kind. Unless another law required a date of birth to be maintained in a government document, on written request from an individual the clerk would be required to redact within a reasonable amount of time the individual's date of birth from information maintained in the clerk's official public records, including electronically stored information maintained by or under the control of the clerk.

HB 3801 would change provisions relating to a former or current government employee's or official's election on disclosure of personal information. The bill would allow that for all personal information, including personal email addresses and personal cellular telephone numbers, the employee or official could choose to allow public access to

the information in writing at any time during the employee's or official's service with the governmental body. Each former employee or former official would have to state that person's choice not later than 14 days after leaving employment or office. A choice made under this provision would remain valid until rescinded in writing by the individual.

HB 3801 also would incorporate birth dates, personal email addresses, and personal cellular telephone numbers into the section establishing confidential information for peace officers, county jailers, security officers, and employees of the Texas Department of Criminal Justice or a prosecutor's office.

The bill would state that the section on confidentiality of email addresses sent by a member of the public to a governmental body did not apply to personal email addresses added to the exceptions by this bill.

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

**SUPPORTERS  
SAY:**

HB 3801 would create an exception to disclosure in public information laws for birth dates, with automatic redaction allowed. The bill would conform the PIA to a recent Texas Supreme Court decision, *Texas Comptroller of Public Accounts v. Attorney General of Texas*, that held that birth dates were protected from disclosure under the PIA. Birth dates are vulnerable to being used for identity theft, so it makes sense to make birth dates an exception to disclosure.

The Texas Supreme Court had to balance privacy interests of individuals against the right of the public, including the media, to know. Privacy interests won out, as they should. The press might have legitimate reasons to see a government employee's birth date, but once that information is out, anyone can see it, and the harm could be great. Just because information about the date of birth is out there already from other sources does not mean it should not be protected from this source. The Legislature made Social Security numbers an exception and allowed automatic redaction of them for the same reason. We should not wait until major problems start before protecting birth dates. The potential for abuse of the information is too great. It also is often difficult to figure out how someone stole an identity. It is possible that government disclosure of a birth date has been at the root of identity thefts in the past.

The bill also would bring the PIA exceptions to personal information disclosure up to date by including personal email addresses and personal cell phone numbers. The PIA statute was adopted by the 73rd Legislature in 1993, well before the wide use of cell phones and email.

The bill also would change a government employee's or official's responsibility to elect not to disclose personal information within 14 days of employment, to a responsibility to elect to disclose if they wished at any time during employment to do that, or within 14 days after leaving employment. In essence, an employee would have to act to allow personal information to be disclosed, rather than acting to stop the disclosure of public information. For specific individuals, such as for someone who becomes the victim of stalking during their government employment, this change could make all the difference in personal safety. It is safe to assume that most government employees and officials want their personal information to stay private, so the law should reflect that reality.

**OPPONENTS  
SAY:**

CSHB 3801 would impede the public's right to know and the transparency of government. The Texas Supreme Court got this one wrong. Excepting an employee's date of birth from disclosure would run counter to the cause of public scrutiny of government.

The bill would interfere with newsgathering. Date of birth is a key piece of information in confirming identity, and is important for accurate reporting. It can be the only way to distinguish between people with the same name. This information has proven critical and has been used to serve the public good by exposing corruption in government agencies, such as the Texas Youth Commission (TYC). The Dallas Morning News, using date of birth information, was able to piece together that 266 convicted criminals were working at TYC. This kind of investigative journalism keeps the public safer, and access to date of birth information is critical.

CSHB 3801 would not combat identity theft. The link between date of birth and identity theft has never been proven. No single witness has come forward to testify that their identity was stolen as a result of a disclosed birth date. Most identity theft results from a stolen credit card number, government ID, or bank statement, not a date of birth obtained through a public information request. Dates of birth already are available on voter registration rolls, which are more accessible than information obtained via public information request. Dates of birth also are included in driver's license information sold every year by the Department of Public Safety for

many millions of dollars. For the state to sell date of birth information related to driver's licenses but not to allow its disclosure for government employees would be completely inconsistent.