

BILL ANALYSIS

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S.B. 1646
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After the Sharpstown fraud scandal in the early 1970s, the Texas Legislature passed the Public Information Act (PIA) to ensure the public could obtain public information. Although the legislature regularly makes narrow changes to the PIA, it has not received a holistic update since 1999.

Since last session, open government advocates, governmental bodies, the Office of the Attorney General (OAG), and other interested stakeholders have worked together to identify potential updates to the PIA that would receive broad support. S.B. 1646 compiles these updates.

Among its changes, S.B. 1646 ensures governmental bodies have a mechanism to obtain public information on their officers' and employees' personal devices. This complements a bill passed in 2013 to clarify that the content and not the device on which it is stored determines whether information is subject to the PIA.

S.B. 1646 also requires governmental bodies to respond to a PIA request if they do not have responsive documents or if the responsive documents are covered by a previous OAG determination. Many governmental bodies already do this as a matter of good customer service, but when they do not, it creates confusion for requestors who have no idea why they have not received a response to their request.

S.B. 1646 also overturns a recent court decision by ensuring dates of birth are not protected by common law privacy. This helps members of the press and others avoid libel lawsuits by confirming that they are referencing the right individual.

In addition, S.B. 1646 codifies an OAG decision that storage devices like USBs do not qualify as hardware under the Act. S.B. 1646 also encourages governmental bodies to cooperate with requestors by clarifying that a requestor who sues for compliance may obtain litigation costs and reasonable attorney fees if the governmental body voluntarily turns over the requested information after it answers the lawsuit.

Finally, S.B. 1646 clarifies when a requestor may bring a PIA complaint to the OAG and specifies that requests are considered withdrawn if a requestor fails to pick up or pay the postage for requested information within 60 days.

Taken together, these provisions codify common-sense updates to the PIA that are designed to benefit requestors, governmental bodies, and the public at large.

As proposed, S.B. 1646 amends current law relating to the public information law and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 552.003, Government Code, by adding Subdivision (7) to define “temporary custodian.”

SECTION 2. Amends Section 552.004, Government Code, as follows:

Sec. 552.004. PRESERVATION OF INFORMATION. (a) Creates this subsection from existing text. Authorizes a governmental body or, for information of an elective county office, the elected county officer, to determine a time for which information that is not currently in use will be preserved, subject to Subsection (b) and to certain applicable rules or laws.

(b) Requires a current or former officer or employee of a governmental body who maintains public information on a privately owned device to:

(1) forward or transfer the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a); or

(2) preserve the public information in its original form on the privately owned device for the required time.

SECTION 3. Amends Subchapter B, Chapter 552, Government Code, by adding Section 552.0222, as follows:

Sec. 552.0222. DATES OF BIRTH. Provides that this chapter (Public Information) does not authorize a governmental body to withhold a date of birth except as permitted by Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information) or otherwise provided by constitutional or statutory law.

SECTION 4. Amends Section 552.101, Government Code, as follows:

Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. (a) Creates this subsection from existing text. Creates an exception as provided by Subsection (b) and makes a nonsubstantive change.

(b) Provides that the exception to disclosure provided by Subsection (a) does not apply to a date of birth considered to be confidential by judicial decision.

SECTION 5. Amends Section 552.102, Government Code, by adding Subsection (c), to provide that the exceptions to disclosure provided by Subsections (a) (relating to providing that certain information is excepted from certain disclosure requirements and that public access to certain personnel information is denied to a certain extent) and (b) (relating to providing that certain information is excepted from certain disclosure requirements) do not apply to a date of birth.

SECTION 6. Amends Section 552.203, Government Code, as follows:

Sec. 552. 203. GENERAL DUTIES OF OFFICER FOR PUBLIC INFORMATION. Requires each officer for public information, subject to penalties provided in this chapter, to:

(1) makes no changes to this subdivision;

(2) and (3) makes nonsubstantive changes; and

(4) make reasonable efforts to obtain public information from a temporary custodian if:

(A) the information has been requested from the governmental body;

(B) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;

(C) the officer for public information is unable to comply with the duties imposed by this chapter without obtaining the information from the temporary custodian; and

(D) the temporary custodian has not provided the information to the officer for public information of the governmental body or the officer's agent.

SECTION 7. Amends Section 552.221, Government Code, by amending Subsections (b-1) and (b-2) and adding Subsections (e), (f), and (g), as follows:

(b-1) Provides that, in addition to certain methods of production, an officer for public information for a governmental body, rather than an officer for public information for a political subdivision of this state, complies with Subsection (a) (relating to requiring an officer for public information of a governmental body to promptly produce public information for certain purposes) by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body, rather than on a website maintained by the political subdivision, and accessible to the public if the requested information is identifiable and readily available on that website. Makes a conforming change.

(b-2) Makes a conforming change.

(e) Provides that a request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the offices of the governmental body on or before a certain date or fails to pay the postage and any other applicable charges accrued under Subchapter F (Charges for Providing Copies of Public Information) on or before a certain date.

(f) Requires the officer for public information, if the governmental body determines it has no information responsive to a request for information, to notify the requestor in writing not later than a certain date.

(g) Requires the officer for public information, if a governmental body determines the requested information is subject to a previous determination that permits or requires the governmental body to withhold the requested information, to take certain actions not later than a certain date.

SECTION 8. Amends Section 552.228(b), Government Code, as follows:

(b) Authorizes the requestor, if public information exists in an electronic or magnetic medium, to request a copy in an electronic medium, such as on diskette, on magnetic tape, or on a portable computer drive. Makes nonsubstantive changes.

SECTION 9. Amends Subchapter E, Chapter 552, Government Code, by adding Section 552.234, as follows:

Sec. 552.234. OWNERSHIP OF PUBLIC INFORMATION. (a) Provides that a current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

(b) Requires a temporary custodian with possession, custody, or control of public information to surrender or return the information to the governmental body not later than a certain date.

(c) Requires the officer for public information of the governmental body, if a temporary custodian fails to surrender or return public information to a governmental body as required by Subsection (b), to, not later than a certain date, notify the Texas attorney general (attorney general) in writing of the facts related to the failure and send a copy of the written notice to the requestor. Authorizes the attorney general, on receipt of written notice from an officer for public information, to sue for an injunction or writ of mandamus to compel a temporary custodian with possession, custody, or control of public information to surrender or return the information as required by Subsection (b). Requires that a filed suit be filed in a district court for the county in which the main offices of the governmental body are located. Prohibits a filed suit from proceeding, and process from being issued, until the court enters a certain written finding relating to facts set forth by the petition. Requires that a filed suit be dismissed, with prejudice except as provided by Subsection (e), if the current or former officer or employee files an answer containing a general denial supported by a sworn affidavit stating the current or former officer or employee is not in possession, custody, or control of public information responsive to the request at issue.

(d) Requires the attorney general to send a copy of a petition filed under Subsection (c) to the requestor.

(e) Provides that a suit dismissed under Subsection (c)(3) (relating to requiring that a filed suit be dismissed, with prejudice except as provided by Subsection (e), under certain circumstances) is dismissed without prejudice and authorizes it to be refiled by the attorney general if the current or former officer or employee, in providing the affidavit authorized under Subsection (c)(3), engaged in conduct that is an offense under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury), Penal Code, and is arrested, charged, or indicted for that offense. Provides that Subsection (c)(3) does not apply to a suit refiled under this subsection.

(f) Provides that, for purposes of the application of Subchapter G (Attorney General Decisions) to information surrendered or returned to a governmental body by a temporary custodian under Subsection (b) or as a result of a suit under Subsection (c), the governmental body is considered to receive the request for that information on the date the information is surrendered or returned to the governmental body.

SECTION 10. Amends Section 552.301(b), Government Code, to require the governmental body to ask for the attorney general's decision and state the specific exceptions that apply within a reasonable time but not later than a certain date.

SECTION 11. Amends the heading to Subchapter H, Chapter 552, Government Code, to read as follows:

SUBCHAPTER H. CIVIL ENFORCEMENT; COMPLAINT

SECTION 12. Amends Section 552.3215(i), Government Code, to provide that a complainant is entitled to file a complaint with the attorney general on or after the 90th day after the date the complainant files the complaint with a district or county attorney if the district or county attorney has not brought an action under this section (Declaratory Judgment or Injunctive Relief).

SECTION 13. Amends Section 552.323(a), Government Code, to require the court, in an action brought under Section 552.321 or 552.3215, to assess certain costs and fees incurred by a plaintiff who substantially prevails or to whom a governmental body voluntarily releases the requested information after filing an answer to the suit, except that the court is prohibited from assessing those costs and fees against a governmental body if the court makes certain findings.

SECTION 14. Amends Subchapter H, Chapter 552, Government Code, by adding Section 552.328, as follows:

Sec. 552.328. FAILURE TO RESPOND TO REQUESTOR. (a) Authorizes the requestor, if a governmental body fails to respond to a requestor as required by Section 552.221 (Application for Public Information; Production of Public Information), to send a written complaint to the attorney general.

(b) Requires that the complaint include the original request for information and any correspondence received from the governmental body in response to the request.

(c) Requires the attorney general, if the attorney general determines the governmental body improperly failed to comply with Section 552.221 in connection with a request for which a complaint is made, to notify the governmental body in writing and require the governmental body to complete open records training not later than a certain period. Prohibits the governmental body, if the attorney general determines the governmental body improperly failed to comply with Section 552.221 in connection with a request for which a complaint is made, from assessing costs to the requestor for producing information in response to the request. Requires the governmental body to take certain actions if the attorney general determines the governmental body improperly failed to comply with Section 552.221 in connection with a request for which a complaint is made and the governmental body seeks to withhold information in response to the request.

SECTION 15. Amends the heading to Section 552.353, Government Code, to read as follows:

Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC INFORMATION OR TEMPORARY CUSTODIAN TO PROVIDE ACCESS TO OR COPYING OF PUBLIC INFORMATION.

SECTION 16. Amends Section 552.353, Government Code, by adding Subsection (a-1), to provide that a temporary custodian who has possession, custody, or control of public information responsive to a request commits an offense if, with criminal negligence, the temporary custodian fails to surrender or return the information to the governmental body on request of the officer for public information or the officer's agent, as requested by Section 552.234(b).

SECTION 17. Makes application of this Act prospective.

SECTION 18. Effective date: September 1, 2017.