

By: Watson

S.B. No. 1646

A BILL TO BE ENTITLED

AN ACT

relating to the public information law; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 552.003, Government Code, is amended by adding Subdivision (7) to read as follows:

(7) "Temporary custodian" means an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer's agent. The term includes a former officer or employee of a governmental body who created or received public information in the officer's or employee's official capacity that has not been provided to the officer for public information of the governmental body or the officer's agent.

SECTION 2. Section 552.004, Government Code, is amended to read as follows:

Sec. 552.004. PRESERVATION OF INFORMATION. (a) A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which information that is not currently in use will be preserved, subject to Subsection (b) and to any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

1 (b) A current or former officer or employee of a
2 governmental body who maintains public information on a privately
3 owned device shall:

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

7 (2) preserve the public information in its original
8 form on the privately owned device for the time required under
9 Subsection (a).

10 SECTION 3. Subchapter B, Chapter 552, Government Code, is
11 amended by adding Section 552.0222 to read as follows:

12 Sec. 552.0222. DATES OF BIRTH. This chapter does not
13 authorize a governmental body to withhold a date of birth except as:

14 (1) permitted by Section 552.108; or

15 (2) otherwise provided by constitutional or statutory
16 law.

17 SECTION 4. Section 552.101, Government Code, is amended to
18 read as follows:

19 Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. (a)
20 Except as provided by Subsection (b), information ~~[Information]~~ is
21 excepted from the requirements of Section 552.021 if it is
22 information considered to be confidential by law, either
23 constitutional, statutory, or by judicial decision.

24 (b) The exception to disclosure provided by Subsection (a)
25 does not apply to a date of birth considered to be confidential by
26 judicial decision.

27 SECTION 5. Section 552.102, Government Code, is amended by

adding Subsection (c) to read as follows:

(c) The exceptions to disclosure provided by Subsections (a) and (b) do not apply to a date of birth.

SECTION 6. Section 552.203, Government Code, is amended to read as follows:

Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC INFORMATION. Each officer for public information, subject to penalties provided in this chapter, shall:

(1) make public information available for public inspection and copying;

(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; ~~and~~

(3) repair, renovate, or rebind public information as necessary to maintain it properly; 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

1 information to the officer for public information of the
2 governmental body or the officer's agent.

3 SECTION 7. Section 552.221, Government Code, is amended by
4 amending Subsections (b-1) and (b-2) and adding Subsections (e),
5 (f), and (g) to read as follows:

6 (b-1) In addition to the methods of production described by
7 Subsection (b), an officer for public information for a
8 governmental body [~~political subdivision of this state~~] complies
9 with Subsection (a) by referring a requestor to an exact Internet
10 location or uniform resource locator (URL) address on a website
11 maintained by the governmental body [~~political subdivision~~] and
12 accessible to the public if the requested information is
13 identifiable and readily available on that website. If the person
14 requesting the information prefers a manner other than access
15 through the URL, the governmental body [~~political subdivision~~] must
16 supply the information in the manner required by Subsection (b).

17 (b-2) If an officer for public information for a
18 governmental body [~~political subdivision~~] provides by e-mail an
19 Internet location or uniform resource locator (URL) address as
20 permitted by Subsection (b-1), the e-mail must contain a statement
21 in a conspicuous font clearly indicating that the requestor may
22 nonetheless access the requested information by inspection or
23 duplication or by receipt through United States mail, as provided
24 by Subsection (b).

25 (e) A request is considered to have been withdrawn if the
26 requestor fails to inspect or duplicate the public information in
27 the offices of the governmental body on or before the 60th day after

1 the date the information is made available or fails to pay the
2 postage and any other applicable charges accrued under Subchapter F
3 on or before the 60th day after the date the requestor is informed
4 of the charges.

5 (f) If the governmental body determines it has no
6 information responsive to a request for information, the officer
7 for public information shall notify the requestor in writing not
8 later than the 10th business day after the date the request is
9 received.

10 (g) If a governmental body determines the requested
11 information is subject to a previous determination that permits or
12 requires the governmental body to withhold the requested
13 information, the officer for public information shall, not later
14 than the 10th business day after the date the request is received:

15 (1) notify the requestor in writing that the
16 information is being withheld; and

17 (2) identify in the notice the specific previous
18 determination the governmental body is relying on to withhold the
19 requested information.

20 SECTION 8. Section 552.228(b), Government Code, is amended
21 to read as follows:

22 (b) If public information exists in an electronic or
23 magnetic medium, the requestor may request a copy in an electronic
24 medium, such as on diskette, ~~or~~ on magnetic tape, or on a portable
25 computer drive. A governmental body shall provide a copy in the
26 requested medium if:

27 (1) the governmental body has the technological

1 ability to produce a copy of the requested information in the
2 requested medium;

3 (2) the governmental body is not required to purchase
4 any software or hardware to accommodate the request; and

5 (3) provision of a copy of the information in the
6 requested medium will not violate the terms of any copyright
7 agreement between the governmental body and a third party.

8 SECTION 9. Subchapter E, Chapter 552, Government Code, is
9 amended by adding Section 552.234 to read as follows:

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

16 (b) A temporary custodian with possession, custody, or
17 control of public information shall surrender or return the
18 information to the governmental body not later than the 10th day
19 after the date the officer for public information of the
20 governmental body or the officer's agent requests the temporary
21 custodian to surrender or return the information.

22 (c) If a temporary custodian fails to surrender or return
23 public information to a governmental body as required by Subsection
24 (b), the officer for public information of the governmental body
25 shall, not later than the 10th business day after the deadline to
26 surrender or return information under Subsection (b), notify the
27 attorney general in writing of the facts related to the failure and

1 send a copy of the written notice to the requestor. On receipt of
2 written notice from an officer for public information as provided
3 by this subsection, the attorney general may sue for an injunction
4 or writ of mandamus to compel a temporary custodian with
5 possession, custody, or control of public information to surrender
6 or return the information as required by Subsection (b). A suit
7 filed under this subsection:

8 (1) must be filed in a district court for the county in
9 which the main offices of the governmental body are located;

10 (2) may not proceed, and process may not be issued,
11 until the court enters a written finding that the petition sets
12 forth facts sufficient to warrant probable cause that the current
13 or former officer or employee against whom the action is filed is in
14 possession, custody, or control of public information that has not
15 been made available to the governmental body that owns the
16 information; and

17 (3) shall be dismissed, with prejudice except as
18 provided by Subsection (e), if the current or former officer or
19 employee files an answer containing a general denial supported by a
20 sworn affidavit stating the current or former officer or employee
21 is not in possession, custody, or control of public information
22 responsive to the request at issue.

23 (d) The attorney general shall send a copy of a petition
24 filed under Subsection (c) to the requestor.

25 (e) A suit dismissed under Subsection (c)(3) is dismissed
26 without prejudice and may be refiled by the attorney general if the
27 current or former officer or employee, in providing the affidavit

1 authorized under Subsection (c)(3), engaged in conduct that is an
2 offense under Section 37.02 or 37.03, Penal Code, and is arrested,
3 charged, or indicted for that offense. Subsection (c)(3) does not
4 apply to a suit refiled under this subsection.

5 (f) For purposes of the application of Subchapter G to
6 information surrendered or returned to a governmental body by a
7 temporary custodian under Subsection (b) or as a result of a suit
8 under Subsection (c), the governmental body is considered to
9 receive the request for that information on the date the
10 information is surrendered or returned to the governmental body.

11 SECTION 10. Section 552.301(b), Government Code, is amended
12 to read as follows:

13 (b) The governmental body must ask for the attorney
14 general's decision and state the specific exceptions that apply
15 within a reasonable time but not later than the 10th business day
16 after the date of receiving the written request.

17 SECTION 11. The heading to Subchapter H, Chapter 552,
18 Government Code, is amended to read as follows:

19 SUBCHAPTER H. CIVIL ENFORCEMENT; COMPLAINT

20 SECTION 12. Section 552.3215(i), Government Code, is
21 amended to read as follows:

22 (i) If the district or county attorney determines not to
23 bring an action under this section, the complainant is entitled to
24 file the complaint with the attorney general before the 31st day
25 after the date the complaint is returned to the complainant. A
26 complainant is entitled to file a complaint with the attorney
27 general on or after the 90th day after the date the complainant

1 files the complaint with a district or county attorney if the
2 district or county attorney has not brought an action under this
3 section. On receipt of the written complaint, the attorney general
4 shall comply with each requirement in Subsections (g) and (h) in the
5 time required by those subsections. If the attorney general
6 decides to bring an action under this section against a
7 governmental body located only in one county in response to the
8 complaint, the attorney general must comply with Subsection (c).

9 SECTION 13. Section 552.323(a), Government Code, is amended
10 to read as follows:

11 (a) In an action brought under Section 552.321 or 552.3215,
12 the court shall assess costs of litigation and reasonable attorney
13 fees incurred by a plaintiff who substantially prevails or to whom a
14 governmental body voluntarily releases the requested information
15 after filing an answer to the suit, except that the court may not
16 assess those costs and fees against a governmental body if the court
17 finds that the governmental body acted in reasonable reliance on:

18 (1) a judgment or an order of a court applicable to the
19 governmental body;

20 (2) the published opinion of an appellate court; or

21 (3) a written decision of the attorney general,
22 including a decision issued under Subchapter G or an opinion issued
23 under Section 402.042.

24 SECTION 14. Subchapter H, Chapter 552, Government Code, is
25 amended by adding Section 552.328 to read as follows:

26 Sec. 552.328. FAILURE TO RESPOND TO REQUESTOR. (a) If a
27 governmental body fails to respond to a requestor as required by

1 Section 552.221, the requestor may send a written complaint to the
2 attorney general.

3 (b) The complaint must include:

4 (1) the original request for information; and

5 (2) any correspondence received from the governmental
6 body in response to the request.

7 (c) If the attorney general determines the governmental
8 body improperly failed to comply with Section 552.221 in connection
9 with a request for which a complaint is made under this section:

10 (1) the attorney general shall notify the governmental
11 body in writing and require the governmental body to complete open
12 records training not later than six months after receiving the
13 notification;

14 (2) the governmental body may not assess costs to the
15 requestor for producing information in response to the request; and

16 (3) if the governmental body seeks to withhold
17 information in response to the request, the governmental body must:

18 (A) request an attorney general decision under
19 Section 552.301 not later than the fifth business day after the date
20 the governmental body receives the notification under Subdivision
21 (1); and

22 (B) release the requested information unless
23 there is a compelling reason to withhold the information.

24 SECTION 15. The heading to Section 552.353, Government
25 Code, is amended to read as follows:

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

1 OF PUBLIC INFORMATION.

2 SECTION 16. Section 552.353, Government Code, is amended by
3 adding Subsection (a-1) to read as follows:

4 (a-1) A temporary custodian who has possession, custody, or
5 control of public information responsive to a request commits an
6 offense if, with criminal negligence, the temporary custodian fails
7 to surrender or return the information to the governmental body on
8 request of the officer for public information or the officer's
9 agent, as required by Section 552.234(b).

10 SECTION 17. The change in law made by this Act applies only
11 to a request for public information received on or after the
12 effective date of this Act. A request for public information
13 received before the effective date of this Act is governed by the
14 law in effect when the request was received, and the former law is
15 continued in effect for that purpose.

16 SECTION 18. This Act takes effect September 1, 2017.