

By: Hunter

H.B. No. 1764

A BILL TO BE ENTITLED

AN ACT

relating to the definition of, custody of, and access to public information; providing a criminal penalty.

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

SECTION 1. Section 552.002(a), Government Code, is amended to read as follows:

(a) In this chapter, "public information" means:

(1) a state record;

(2) a local government record; or

(3) information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(A) [~~(1)~~] by a governmental body;

(B) [~~(2)~~] for a governmental body and the governmental body:

(i) [~~(A)~~] owns the information;

(ii) [~~(B)~~] has a right of access to the information; or

(iii) [~~(C)~~] spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(C) [~~(3)~~] by an individual officer or employee of a governmental body [~~in the officer's or employee's official capacity and the information pertains to official business of the~~

1 ~~governmental body~~].

2           SECTION 2. Section 552.003, Government Code, is amended by  
3 amending Subdivision (1) and adding Subdivisions (1-a), (1-b), and  
4 (7) to read as follows:

5           (1) "Custodian" means a public officer or employee  
6 who:

7                       (A) by law, ordinance, or administrative policy  
8 is in charge of an office that creates or receives a state record or  
9 local government record; or

10                      (B) in the transaction of official business,  
11 creates or receives public information that the public officer or  
12 employee has not provided to the records management officer or the  
13 officer for public information of the governmental body.

14           (1-a) "Governmental body":

15                       (A) means:

16                               (i) a board, commission, department,  
17 committee, institution, agency, or office that is within or is  
18 created by the executive or legislative branch of state government  
19 and that is directed by one or more elected or appointed members;

20                               (ii) a county commissioners court in the  
21 state;

22                               (iii) a municipal governing body in the  
23 state;

24                               (iv) a deliberative body that has  
25 rulemaking or quasi-judicial power and that is classified as a  
26 department, agency, or political subdivision of a county or  
27 municipality;

1 (v) a school district board of trustees;  
2 (vi) a county board of school trustees;  
3 (vii) a county board of education;  
4 (viii) the governing board of a special  
5 district;

6 (ix) the governing body of a nonprofit  
7 corporation organized under Chapter 67, Water Code, that provides a  
8 water supply or wastewater service, or both, and is exempt from ad  
9 valorem taxation under Section 11.30, Tax Code;

10 (x) a local workforce development board  
11 created under Section 2308.253;

12 (xi) a nonprofit corporation that is  
13 eligible to receive funds under the federal community services  
14 block grant program and that is authorized by this state to serve a  
15 geographic area of the state; and

16 (xii) the part, section, or portion of an  
17 organization, corporation, commission, committee, institution, or  
18 agency that spends or that is supported in whole or in part by  
19 public funds; and

20 (B) does not include the judiciary.

21 (1-b) "Local government record" has the meaning  
22 assigned by Section 441.151.

23 (7) "State record" has the meaning assigned by Section  
24 441.031.

25 SECTION 3. Section 552.203, Government Code, is amended to  
26 read as follows:

27 Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC

1 INFORMATION. Each officer for public information, subject to  
2 penalties provided in this chapter, shall:

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

5 (2) carefully protect public information from  
6 deterioration, alteration, mutilation, loss, or unlawful removal;  
7 ~~[and]~~

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

10 (4) obtain information from a custodian who has access  
11 to public information being requested from the governmental body.

12 SECTION 4. Subchapter E, Chapter 552, Government Code, is  
13 amended by adding Section 552.233 to read as follows:

14 Sec. 552.233. OWNERSHIP OF PUBLIC INFORMATION. (a) A  
15 current or former officer or employee of a governmental body does  
16 not have, by virtue of the officer's or employee's position or  
17 former position, a personal or property right to public information  
18 the officer or employee created or received in the performance of  
19 the officer's or employee's duties.

20 (b) A current or former officer or employee with possession,  
21 custody, or control of public information shall surrender or return  
22 that public information to the governmental body on request or  
23 demand by the custodian or officer for public information of the  
24 governmental body.

25 (c) A requestor, custodian, or officer for public  
26 information may sue in district court for an injunction or mandamus  
27 to compel a current or former officer or employee of a governmental

1 body with possession, custody, or control of public information to  
2 surrender or return the public information as required by  
3 Subsection (b).

4 (d) A governmental body, custodian, or officer for public  
5 information shall obtain possession, custody, or control of public  
6 information from a current or former officer or employee to the  
7 extent necessary to comply with the governmental body's obligations  
8 under this chapter to produce public information for inspection or  
9 copying. A governmental body, custodian, or officer for public  
10 information who fails to comply with this subsection may be  
11 included in a suit under Subsection (c).

12 SECTION 5. Section 552.321(a), Government Code, is amended  
13 to read as follows:

14 (a) A requestor or the attorney general may file suit for a  
15 writ of mandamus compelling a governmental body or its officer for  
16 public information to obtain and ~~[to]~~ make information available  
17 for public inspection if the governmental body or its officer for  
18 public information fails ~~[refuses]~~ to request an attorney general's  
19 decision as provided by Subchapter G, fails to promptly ~~[or refuses~~  
20 ~~to]~~ supply public information, or fails to promptly supply  
21 information that the attorney general has determined is public  
22 information that is not excepted from disclosure under Subchapter  
23 C.

24 SECTION 6. The heading to Section 552.353, Government Code,  
25 is amended to read as follows:

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

1 INFORMATION.

2 SECTION 7. Sections 552.353(a) and (b), Government Code,  
3 are amended to read as follows:

4 (a) An officer for public information, ~~[or]~~ the officer's  
5 agent, or the custodian of the records at issue commits an offense  
6 if, with criminal negligence, the officer, ~~[or]~~ the officer's  
7 agent, or the custodian fails or refuses to give access to, or to  
8 permit or provide copying of, public information to a requestor as  
9 provided by this chapter.

10 (b) It is an affirmative defense to prosecution under  
11 Subsection (a) that the officer for public information or the  
12 custodian reasonably believed that public access to the requested  
13 information was not required and that:

14 (1) the officer or custodian acted in reasonable  
15 reliance on a court order or a written interpretation of this  
16 chapter contained in an opinion of a court of record or of the  
17 attorney general issued under Subchapter G;

18 (2) the officer or custodian requested a decision from  
19 the attorney general in accordance with Subchapter G, and the  
20 decision is pending; or

21 (3) not later than the 10th calendar day after the date  
22 of receipt of a decision by the attorney general that the  
23 information is public, the officer, the custodian, or the  
24 governmental body for whom the defendant is the officer for public  
25 information filed a petition for a declaratory judgment against the  
26 attorney general in a Travis County district court seeking relief  
27 from compliance with the decision of the attorney general, as

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1 provided by Section 552.324, and the cause is pending.

2 SECTION 8. This Act takes effect September 1, 2015.