

BILL ANALYSIS

C.S.H.B. 767
By: Dutton
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

For many years Texas courts and the attorney general interpreted the open records law to only permit the withholding of active or pending law enforcement files. The open records law was interpreted to require the disclosure of information contained in closed files to the extent that release of such information would not unduly interfere with law enforcement. In 1996, the Texas Supreme Court rejected this interpretation, finding in *Holmes v. Morales*, 924 SW 2d. 920 (Tex. 1996) that the law enforcement exception in the open records law permitted law enforcement agencies to withhold both active and closed files. Consequently, law enforcement agencies are no longer required to permit inspection of such records, even if the case has been closed. The Supreme Court stated in its decision that it is the responsibility of the legislature to impose restrictions, if any, on the language of the open records law.

C.S.H.B.767 authorizes the release of information contained in closed files if the release of such information would not unduly interfere with law enforcement.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

- Section 1.** Amends Section 552.108 of the Government Code by removing (a)(2), (a)(3), (a)(4)(A), (a)(4)(B), (b)(2), (b)(3)(A)(B), and (c) which provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if release of the information would unduly interfere with the detection, investigation, or prosecution of crime or it is information relating to an ongoing investigation; or conduct that remains subject to prosecution and the matter is not considered closed or it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or it is attorney work product. An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 522.021 if the internal record or notation relates to an ongoing investigation or conduct that remains subject to prosecution and the matter is not considered closed.
- Section 2.** Amends Section 411.048 of the Government Code by adding Subsection (j) that provides information relating to a threat against a peace officer that is collected or disseminated under this section is excepted from required disclosure under the public information law Chapter 552.
- Section 3.** The changes in law made by this Act to Sections 411.048 and 552.108, Government Code, apply to information, records, and notations collected, made, assembled, or maintained on, before, or after the effective date of this Act.
- Section 4.** This Act takes effect September 1, 2007.

EFFECTIVE DATE

C.S.H.B. 767 80(R)

September 1, 2007.

COMPARISON OF THE ORIGINAL TO THE SUBSTITUTE

C.S.H.B.767 modifies the original H.B.767 by providing that information is excepted from the requirements of open records if the release of the information would unduly interfere with the detection, investigation, or prosecution of crime or it is information relating to an ongoing investigation; or conduct that remains subject to prosecution and the matter is not considered closed or it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or it is attorney work product or if the internal record or notation relates to an ongoing investigation or conduct that remains subject to prosecution and the matter is not considered closed.