

BILL ANALYSIS

S.B. 331
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, certain provisions of the Government Code allow a public employee or official to choose whether to allow public access to information in the custody of a governmental body that relates to the person's home address, home telephone number, social security number, or whether the employee or official has family members.

S.B. 331 amends current law relating to the public availability, under the open records law, of certain information concerning public officers and employees. The bill provides protection for public employees from public disclosure of information that may put the employee at risk or compromise the employee's safety.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTION 1 of this bill.

ANALYSIS

S.B. 331 amends the Government Code to authorize a member, committee, or agency of the legislature, when required by a governmental body to sign a confidentiality agreement covering information requested for legislative purposes, to seek a decision from the attorney general whether the information covered by the agreement is indeed confidential under law. The bill establishes that such an agreement is void to the extent that the agreement covers information that is finally determined to not be confidential under law. The bill requires the attorney general by rule to establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The bill requires the attorney general to promptly render a decision, determining whether the information covered by the confidentiality agreement is confidential under law, not later than the 45th business day after the date the attorney general receives the request for a decision. The bill requires the attorney general to issue a written decision on the matter and to provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief. The bill authorizes the requestor or the governmental body to appeal a decision of the attorney general to a Travis County district court. The bill authorizes a person to appeal a decision of the attorney general to a Travis County district court if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect. The bill makes the above provisions effective September 1, 2010.

S.B. 331 provides that information in the custody of a governmental body that relates to the home address, home telephone number, or social security number of an employee or official of a governmental body or a former employee or official of a governmental body, or that reveals whether the person has family members, is excepted from public availability under the open records law. The bill removes provisions of existing law that require each employee, official, or former employee or official of a governmental body to choose to deny public access to such

information, but allows the employee, official, or former employee or official by written request to the governmental body to reverse the exception established by the bill and to open public access to the information. The bill makes conforming changes relating to peace officers, commissioned security officers, officers and employees of a community supervision and corrections department, current or former employees of the Texas Department of Criminal Justice or a predecessor entity, and employees, volunteer workers, and members of the board of directors or the board of trustees of a family violence center. The bill, for purposes of the open records law, replaces the definition of "family violence shelter center" with a definition of "family violence center," and makes additional related conforming changes.

S.B. 331 adopts a temporary provision, set to expire September 1, 2013, establishing that other information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from public availability under the open records law if the employer or officer requests that it be withheld and it is information that, if disclosed under the specific circumstances pertaining to the individual, could reasonably be expected to compromise the safety of the individual. The bill cites, as examples, information that describes or depicts the likeness of the individual and information that states the times that the individual arrives at or departs from work, a description of the individual's automobile, or the location where the individual works or parks. The bill makes the exception contingent on a written application by the employee or officer to the governmental body's officer for public information to have the information withheld from public disclosure, and the inclusion in the application of a description of the information and the specific circumstances pertaining to the individual that demonstrate why disclosure of the information could reasonably be expected to compromise the safety of the individual. The bill requires a governmental body's officer for public information, on receiving a written request for information described in such an application, to request an open records decision from the attorney general regarding withholding the information, and to include with that request a copy of the application. The bill establishes a presumption that disclosure of information that pertains to a biological agent or toxin identified or listed as a select agent under federal law, and to which access is restricted under federal law, would compromise the safety of an individual authorized to possess, use, or access such information.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.