

By: Callegari

H.B. No. 43

A BILL TO BE ENTITLED

AN ACT

relating to the confidentiality of information held by a public retirement system.

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

SECTION 1. Section 552.0038, Government Code, is amended by adding Subsections (a-1) and (c-1) and amending Subsections (c), (d), (f), and (i) to read as follows:

(a-1) For the purposes of this section, "individual record" includes any information that could reasonably be expected to identify an individual, including the individual's name, address, telephone number, e-mail address, social security number, record of membership in the public retirement system, record of contributions or distributions, account balance, status of any application for benefits, medical records, financial records, beneficiary information, and communications with the retirement system.

(c) Except as provided by this section, unless written authorization for release is provided to the public retirement system by the individual or the individual's authorized representative, the following information is confidential and is not subject to public disclosure:

(1) an individual record, as defined by Subsection (a-1), of any person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or other person eligible for benefits from a public

1 retirement system under a retirement plan or program administered
2 by the public retirement system that is in the custody of the
3 retirement system or in the custody of an administering firm, a
4 carrier, or another governmental agency, including the
5 comptroller, acting in cooperation with or on behalf of the
6 retirement system; and

7 (2) any information identifying by name, address, age,
8 date of birth, employer, dates of employment, or dates of
9 participation the amount of a monthly allowance or benefit paid to
10 the individual [~~Records of individual members, annuitants,~~
11 ~~retirees, beneficiaries, alternate payees, program participants,~~
12 ~~or persons eligible for benefits from a retirement system under a~~
13 ~~retirement plan or program administered by the retirement system~~
14 ~~that are in the custody of the system or in the custody of an~~
15 ~~administering firm, a carrier, or another governmental agency,~~
16 ~~including the comptroller, acting in cooperation with or on behalf~~
17 ~~of the retirement system are confidential and not subject to public~~
18 ~~disclosure~~].

19 (c-1) Except as otherwise provided by this section, the
20 public [~~The~~] retirement system, administering firm, carrier, or
21 governmental agency is not required to accept or comply with a
22 request for [~~a record or~~] information determined to be confidential
23 under Subsection (c). This section should not be interpreted as
24 preventing disclosure of aggregate information that could not
25 reasonably be expected to identify an individual. An entity that
26 receives a request for the disclosure of information under this
27 section should consider the request in context with other publicly

1 available information in making the determination as to whether a
2 record could reasonably be expected to identify an individual
3 ~~[about a record or to seek an opinion from the attorney general~~
4 ~~because the records are exempt from the provisions of this chapter,~~
5 ~~except as otherwise provided by this section].~~

6 (d) A public retirement system may release individual
7 records, in accordance with the provisions of the statute or
8 ordinance establishing the system and the rules or policies of the
9 system, to the following entities:

10 (1) ~~[Records may be released to]~~ a member, annuitant,
11 retiree, beneficiary, alternate payee, program participant, or
12 person eligible for benefits from the retirement system;

13 (2) ~~[or to]~~ an authorized attorney, family member, or
14 representative acting on behalf of the member, annuitant, retiree,
15 beneficiary, alternate payee, program participant, or person
16 eligible for benefits;

17 (3) ~~[. The retirement system may release the records~~
18 ~~to:~~

19 ~~[(1)]~~ an administering firm, carrier, or agent or
20 attorney acting on behalf of the retirement system;

21 (4) ~~[(2)]~~ another governmental entity having a
22 legitimate need for the information to perform the purposes of the
23 retirement system; or

24 (5) ~~[(3)]~~ a party in response to a subpoena issued
25 under applicable law.

26 (f) The records of an individual member, annuitant,
27 retiree, beneficiary, alternate payee, program participant, or

1 person eligible for benefits from the retirement system remain
2 confidential after release to an individual or entity [~~a person~~] as
3 authorized by this section. The records may become part of the
4 public record of an administrative or judicial proceeding related
5 to a contested case, and the member, annuitant, retiree,
6 beneficiary, alternate payee, program participant, or person
7 eligible for benefits waives the confidentiality of the records,
8 including medical records, unless the records are closed to public
9 access by a protective order issued under applicable law.

10 (i) To the extent of a substantive or procedural conflict
11 between this section and any other law with respect to the
12 confidential information held by a public retirement system or
13 other entity described by Subsection (c) concerning an individual
14 member, annuitant, retiree, beneficiary, alternate payee, program
15 participant, or person eligible for benefits from the retirement
16 system:

17 (1) [~~7~~] the substantive [~~prevailing~~] provision [~~is the~~
18 ~~provision~~] that provides the greater [~~substantive and procedural~~]
19 protection for the privacy of information concerning that
20 individual member, annuitant, retiree, beneficiary, alternate
21 payee, program participant, or person eligible for benefits
22 prevails; and

23 (2) the procedural provision of this chapter prevails.

24 SECTION 2. Section 552.0038(h), Government Code, is
25 repealed.

26 SECTION 3. Section 552.0038, Government Code, as amended by
27 this Act, applies only to a request for information received by a

1 public retirement system or other entity described by Subsection
2 (c) of that section that is received on or after the effective date
3 of this Act. A request for information that is received before the
4 effective date of this Act is governed by the law in effect on the
5 date the request is received, and that law is continued in effect
6 for that purpose.

7 SECTION 4. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect on the 91st day after the last day of the
12 legislative session.