

Amend HB 2328 (senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. 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 \_\_\_\_\_. 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.

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

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

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

(c) The provisions of Chapter 441 of this code and Title 6, Local Government Code, governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian.

SECTION \_\_\_\_\_. Subchapter B, Chapter 552, Government Code,

is amended by adding Section 552.0222 to read as follows:

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

- (1) permitted by Section 552.102(a) or 552.108; or
- (2) otherwise provided by constitutional or statutory law.

SECTION \_\_\_\_\_. Section 552.101, Government Code, is amended to read as follows:

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

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

SECTION \_\_\_\_\_. 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 information to the officer for public information of the governmental body or the officer's agent.

SECTION \_\_\_\_\_. Section 552.221, Government Code, is amended by adding Subsections (f) and (g) to read as follows:

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

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

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

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

SECTION \_\_\_\_\_. Section 552.228(b), Government Code, is amended to read as follows:

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

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

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

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

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

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

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

(c) A temporary custodian's failure to surrender or return public information as required by Subsection (b) is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by this chapter or other law.

(d) For purposes of the application of Subchapter G to information surrendered or returned to a governmental body by a temporary custodian under Subsection (b), the governmental body is considered to receive the request for that information on the date the information is surrendered or returned to the governmental body.

SECTION \_\_\_\_\_. Section 552.301(b), Government Code, is amended to read as follows:

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

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

Sec. 552.328. FAILURE TO RESPOND TO REQUESTOR. (a) If a governmental body fails to respond to a requestor as required by Section 552.221, the requestor may send a written complaint to the attorney general.

(b) The complaint must include:

(1) the original request for information; and

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

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

(1) the attorney general shall notify the governmental body and the complainant requestor in writing of the governmental body's failure to comply, including the total number of previous complaints made under Subsection (a) against the governmental body that the attorney general within the current calendar year has determined to be founded;

(2) the governmental body may assess costs to the complainant requestor for producing information in response to the request for which the complaint was made in an amount not to exceed:

(A) 75 percent of the amount of the allowable costs otherwise authorized under this chapter for producing the information, if the notice under Subdivision (1) indicates that fewer than 11 complaints have been determined to be founded; or

(B) 50 percent of the amount of the allowable costs otherwise authorized under this chapter for producing the information, if the notice under Subdivision (1) indicates that 11 or more complaints have been determined to be founded; and

(3) if the governmental body seeks to withhold information in response to the request for which the complaint was made, the governmental body must:

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

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

(d) The attorney general shall, in response to a second complaint made under Subsection (a) against a governmental body in a calendar year that the attorney general determines to be founded, require the public official, public information officer, or other

official or employee responsible for the governmental body's failure to comply to complete open records training under Section 552.012 not later than six months after the date the governmental body receives the notice and shall notify the governmental body of that requirement.