

By: Hunter

H.B. No. 2670

A BILL TO BE ENTITLED

AN ACT

relating to public information in the possession, custody, or control of a current or former officer or employee of a governmental body; creating a criminal offense.

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

SECTION 1. 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 2. 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).

SECTION 3. 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

1 of facts sufficient to warrant a reasonable belief that the
2 temporary custodian has possession, custody, or control of the
3 information;

4 (C) the officer for public information is unable
5 to comply with the duties imposed by this chapter without obtaining
6 the information from the temporary custodian; and

7 (D) the temporary custodian has not provided the
8 information to the officer for public information of the
9 governmental body or the officer's agent.

10 SECTION 4. Subchapter E, Chapter 552, Government Code, is
11 amended by adding Section 552.234 to read as follows:

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

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

24 (c) If a temporary custodian fails to surrender or return
25 public information to a governmental body as required by Subsection
26 (b), the officer for public information of the governmental body
27 shall, not later than the 10th business day after the deadline to

1 surrender or return information under Subsection (b), notify the
2 attorney general in writing of the facts related to the failure and
3 send a copy of the written notice to the requestor. On receipt of
4 written notice from an officer for public information as provided
5 by this subsection, the attorney general may sue for an injunction
6 or writ of mandamus to compel a temporary custodian with
7 possession, custody, or control of public information to surrender
8 or return the information as required by Subsection (b). A suit
9 filed under this subsection:

10 (1) must be filed in a district court for the county in
11 which the main offices of the governmental body are located;

12 (2) may not proceed, and process may not be issued,
13 until the court enters a written finding that the petition sets
14 forth facts sufficient to warrant probable cause that the current
15 or former officer or employee against whom the action is filed is in
16 possession, custody, or control of public information that has not
17 been made available to the governmental body that owns the
18 information; and

19 (3) shall be dismissed, with prejudice except as
20 provided by Subsection (e), if the current or former officer or
21 employee files an answer containing a general denial supported by a
22 sworn affidavit stating the current or former officer or employee
23 is not in possession, custody, or control of public information
24 responsive to the request at issue.

25 (d) The attorney general shall send a copy of a petition
26 filed under Subsection (c) to the requestor.

27 (e) A suit dismissed under Subsection (c)(3) is dismissed

1 without prejudice and may be refiled by the attorney general if the
2 current or former officer or employee, in providing the affidavit
3 authorized under Subsection (c)(3), engaged in conduct that is an
4 offense under Section 37.02 or 37.03, Penal Code, and is arrested,
5 charged, or indicted for that offense. Subsection (c)(3) does not
6 apply to a suit refiled under this subsection.

7 (f) For purposes of the application of Subchapter G to
8 information surrendered or returned to a governmental body by a
9 temporary custodian under Subsection (b) or as a result of a suit
10 under Subsection (c), the governmental body is considered to
11 receive the request for that information on the date the
12 information is surrendered or returned to the governmental body.

13 SECTION 5. The heading to Section 552.353, Government Code,
14 is amended to read as follows:

15 Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC
16 INFORMATION OR TEMPORARY CUSTODIAN TO PROVIDE ACCESS TO OR COPYING
17 OF PUBLIC INFORMATION.

18 SECTION 6. Section 552.353, Government Code, is amended by
19 adding Subsection (a-1) to read as follows:

20 (a-1) A temporary custodian who has possession, custody, or
21 control of public information responsive to a request commits an
22 offense if, with criminal negligence, the temporary custodian fails
23 to surrender or return the information to the governmental body on
24 request of the officer for public information or the officer's
25 agent, as required by Section 552.234(b).

26 SECTION 7. This Act takes effect September 1, 2017.