

By: Bonnen of Galveston

H.B. No. 2742

A BILL TO BE ENTITLED

AN ACT

relating to the right of members of the legislature, the lieutenant governor, committees of the legislature, and legislative agencies to access certain governmental information for legislative purposes; creating a criminal offense.

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

SECTION 1. Subtitle A, Title 3, Government Code, is amended by adding Chapter 307 to read as follows:

CHAPTER 307. RIGHT OF ACCESS TO GOVERNMENTAL INFORMATION FOR LEGISLATIVE PURPOSE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 307.001. SHORT TITLE. This chapter may be cited as the Legislative Disclosure Act.

Sec. 307.002. DEFINITION OF GOVERNMENTAL INFORMATION; MEDIA CONTAINING GOVERNMENTAL INFORMATION. (a) In this chapter, "governmental information" means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the

1 purpose of writing, producing, collecting, assembling, or
2 maintaining the information; or

3 (3) by an individual officer or employee of a
4 governmental body in the officer's or employee's official capacity
5 and the information pertains to official business of the
6 governmental body.

7 (b) Information is in connection with the transaction of
8 official business if the information is created by, transmitted to,
9 received by, or maintained by an officer or employee of the
10 governmental body in the officer's or employee's official capacity,
11 or a person or entity performing official business or a
12 governmental function on behalf of a governmental body, and
13 pertains to official business of the governmental body.

14 (c) The definition of "governmental information" provided
15 by Subsection (a) applies to and includes any electronic
16 communication created, transmitted, received, or maintained on any
17 device if the communication is in connection with the transaction
18 of official business.

19 (d) The media on which governmental information is recorded
20 include:

21 (1) paper;

22 (2) film;

23 (3) a magnetic, optical, solid state, or other device
24 that can store an electronic signal;

25 (4) tape;

26 (5) Mylar; and

27 (6) any physical material on which information may be

1 recorded, including linen, silk, and vellum.

2 (e) The general forms in which the media containing
3 governmental information exist include a book, paper, letter,
4 document, e-mail, Internet posting, text message, instant message,
5 other electronic communication, printout, photograph, film, tape,
6 microfiche, microfilm, photostat, sound recording, map, and
7 drawing and a voice, data, or video representation held in computer
8 memory.

9 Sec. 307.003. DEFINITIONS. In this chapter:

10 (1) "Governmental body," "official business," and
11 "public funds" have the meanings assigned by Section 552.003.

12 (2) "Legislative agency" means:

13 (A) the State Auditor's Office;

14 (B) the Legislative Budget Board;

15 (C) the Texas Legislative Council; or

16 (D) the Sunset Advisory Commission, including a
17 public member of the commission.

18 Sec. 307.004. FINDINGS. The legislature finds that the
19 ability of members of the legislature, the lieutenant governor,
20 committees of the legislature, and legislative agencies to access,
21 for legislative purposes, governmental information maintained by a
22 governmental body, including confidential information, is
23 consonant with the investigative authority delegated by the Texas
24 Constitution to the legislature and is essential to the legislative
25 deliberative process. Any impediment to legislative access to that
26 information is contrary to the expectations placed by the
27 constitution on the legislature and should be regarded as repugnant

1 to the essential principles of liberty and free government.

2 Sec. 307.005. POLICY. It is the policy of this state that a
3 member of the legislature, the lieutenant governor, a committee of
4 the legislature, or a legislative agency is entitled to access for
5 legislative purposes all governmental information maintained by
6 any governmental body, including confidential information.

7 Sec. 307.006. CONSTRUCTION OF CHAPTER. This chapter shall
8 be liberally construed in favor of granting a request for
9 governmental information.

10 Sec. 307.007. APPLICABILITY OF OTHER LAW. (a) Chapter 552
11 does not apply to a request for governmental information made under
12 this chapter.

13 (b) Notwithstanding any other provision of law, including
14 Section 552.0038(i) or a similar provision that provides a manner
15 by which to resolve a conflict between provisions of law, the
16 provisions of this chapter prevail to the extent of any conflict
17 with another provision of law.

18 Sec. 307.008. EFFECT OF CHAPTER. (a) This chapter does not
19 affect:

20 (1) the right of a member of the legislature, the
21 lieutenant governor, a committee of the legislature, or a
22 legislative agency to obtain information under other law;

23 (2) the procedures under which the information is
24 obtained under other law; or

25 (3) the use that may be made of the information
26 obtained under other law.

27 (b) This chapter does not grant authority to withhold

1 governmental information from a member of the legislature, the
2 lieutenant governor, a committee of the legislature, or a
3 legislative agency.

4 SUBCHAPTER B. RIGHT OF ACCESS TO INFORMATION FOR LEGISLATIVE
5 PURPOSE

6 Sec. 307.051. RIGHT OF ACCESS TO INFORMATION. (a) Except
7 as provided by Subsection (c), each member of the legislature, the
8 lieutenant governor, each committee of the legislature, and each
9 public member of a legislative agency has a right of access, for
10 legislative purposes, to governmental information of a
11 governmental body.

12 (b) Except for a public member described by Subsection (a)
13 and except as provided by Subsection (c), a legislative agency has a
14 right of access, for legislative purposes, to governmental
15 information of a governmental body other than another legislative
16 agency.

17 (c) A member of the legislature, the lieutenant governor, a
18 committee of the legislature, or a legislative agency is not
19 entitled to access to governmental information from:

- 20 (1) a member of the legislature;
21 (2) the lieutenant governor;
22 (3) a committee of the legislature;
23 (4) a public member of a legislative agency; or
24 (5) a legislative agency if the information relates
25 to:

26 (A) a request by a member of the legislature, the
27 lieutenant governor, a committee of the legislature, or a public

1 member of a legislative agency for information, advice, or opinions
2 from an officer or employee of the agency;

3 (B) information, advice, or opinions given
4 privately by an officer or employee of the agency to a member of the
5 legislature, the lieutenant governor, a committee of the
6 legislature, or a public member of a legislative agency; or

7 (C) information of a member of the legislature,
8 the lieutenant governor, a committee of the legislature, or a
9 public member of a legislative agency held by the agency.

10 Sec. 307.052. PROVISION OF INFORMATION. (a) Following a
11 request for access to information authorized by Section 307.051, a
12 governmental body shall provide the requested information,
13 including confidential information or information otherwise
14 excepted from disclosure, to the requestor.

15 (b) The requestor must state that the request is made for a
16 legislative purpose. The requestor is not required to specify the
17 legislative purpose for which the information is requested.

18 (c) A governmental body must provide the requested
19 information to the requestor promptly, but not later than:

20 (1) the fifth business day, or as soon as practicable
21 as agreed to by the governmental body and the requestor, following
22 the date the request is received if the request is received when the
23 legislature is convened in regular or special session; or

24 (2) the 10th business day following the date the
25 request is received if the request is received when the legislature
26 is not convened in regular or special session.

27 (d) A governmental body must provide the requested

1 information in the manner requested by the requestor.

2 (e) A governmental body must provide the requested
3 information without charge, except that a requestor is entitled to
4 only one paper copy of the information without charge.

5 Sec. 307.053. GOVERNMENTAL BODY GUIDANCE. On request of
6 the recipient of confidential information from a governmental body
7 under this subchapter, the governmental body shall provide guidance
8 to the recipient regarding how the information may be generalized
9 or modified so that the information as generalized or modified:

10 (1) is no longer confidential and subject to a
11 confidentiality agreement; and

12 (2) may be disclosed for a legislative purpose outside
13 the office of the recipient.

14 Sec. 307.054. CONFIDENTIALITY NOT WAIVED. A governmental
15 body, by providing governmental information under this subchapter
16 that is confidential or otherwise excepted from disclosure under
17 law, does not waive or affect the confidentiality of the
18 information for purposes of state or federal law or waive the right
19 of the governmental body to assert exceptions to disclosure of the
20 information in the future.

21 Sec. 307.055. CONFIDENTIALITY AGREEMENT. (a) A
22 governmental body may require a requestor of information under this
23 subchapter or a designated employee of the requestor who will view
24 or handle information that is received under this subchapter and
25 that is confidential or otherwise excepted from disclosure under
26 law to sign a confidentiality agreement that covers the
27 information.

1 (b) Except for a requirement prescribed by federal law, a
2 confidentiality agreement may only require that:

3 (1) the information not be disclosed outside the
4 office of the requestor unless the information is generalized or
5 modified in accordance with the guidance provided by the
6 governmental body under Section 307.053;

7 (2) the information be labeled as confidential;

8 (3) the information be kept securely; or

9 (4) the number of copies made of the information or the
10 notes taken from the information that implicate the confidential
11 nature of the information be controlled, with all copies or notes
12 that are not destroyed or returned remaining confidential and
13 subject to the confidentiality agreement.

14 (c) A governmental body must submit a confidentiality
15 agreement authorized by this section to the requestor not later
16 than the third business day following the date the request is
17 received or the governmental body waives the right to require the
18 requestor to sign the agreement.

19 (d) A confidentiality agreement signed under Subsection (a)
20 is void to the extent that the agreement covers information that is
21 finally determined under Section 307.056 to not be confidential or
22 otherwise excepted from disclosure under law.

23 Sec. 307.056. DECISION BY ATTORNEY GENERAL REGARDING
24 CONFIDENTIALITY OR DISCLOSURE. (a) A requestor of information
25 under this subchapter who is required to sign a confidentiality
26 agreement under Section 307.055 may seek a decision from the
27 attorney general about whether the information covered by the

1 agreement is confidential or otherwise excepted from disclosure
2 under law.

3 (b) The attorney general by rule shall establish procedures
4 and deadlines for:

5 (1) receiving information necessary to determine
6 whether the information covered by a confidentiality agreement is
7 confidential or otherwise excepted from disclosure under law; and

8 (2) receiving briefs from the requestor, a
9 governmental body providing information under this subchapter, and
10 any other interested person.

11 (c) The attorney general shall render the decision not later
12 than the 45th business day after the date the attorney general
13 receives the request for a decision. If the attorney general is
14 unable to issue the decision within the 45-day period, the attorney
15 general may during that 45-day period extend the period for issuing
16 the decision by an additional 10 business days by informing the
17 requestor, the governmental body, and any interested person who
18 submitted necessary information or a brief to the attorney general
19 of the reason for the delay.

20 (d) The attorney general shall issue a written decision and
21 provide a copy of the decision to the requestor, the governmental
22 body, and any interested person who submitted necessary information
23 or a brief to the attorney general under this section.

24 (e) The requestor or the governmental body may appeal a
25 decision of the attorney general under Subsection (d) to a district
26 court of Travis County. A person may appeal a decision of the
27 attorney general under Subsection (d) to a district court of Travis

1 County if the person claims a proprietary interest in the
2 information affected by the decision or a privacy interest in the
3 information that a confidentiality law or judicial decision is
4 designed to protect.

5 SUBCHAPTER C. ENFORCEMENT

6 Sec. 307.101. SUIT FOR WRIT OF MANDAMUS. (a) A requestor
7 of information under this chapter, or the attorney general on
8 request of the requestor, may file suit for a writ of mandamus
9 compelling a governmental body to provide information requested
10 under this chapter to which the requestor has a right of access.

11 (b) A suit filed by a requestor under this section to compel
12 the provision of information must be filed in a district court of
13 the county in which the main offices of the governmental body are
14 located. A suit filed by the attorney general under this section
15 must be filed in a district court of Travis County.

16 Sec. 307.102. DISTRIBUTION OR MISUSE OF CONFIDENTIAL
17 INFORMATION. (a) A person who is a recipient of confidential
18 information under Subchapter B commits an offense if the person
19 knowingly:

20 (1) uses the confidential information for a purpose
21 other than the purpose for which the information was received or for
22 a purpose unrelated to the law that permitted the person to obtain
23 access to the information, including solicitation of political
24 contributions or solicitation of clients;

25 (2) permits inspection of the confidential
26 information by a person who is not authorized to inspect the
27 information; or

1 (3) discloses the confidential information to a person
2 who is not authorized to receive the information.

3 (b) An offense under this section is a misdemeanor
4 punishable by:

5 (1) a fine of not more than \$1,000;

6 (2) confinement in the county jail for not more than
7 six months; or

8 (3) both the fine and confinement.

9 (c) A violation under this section constitutes official
10 misconduct.

11 (d) It is a defense to prosecution for an offense under this
12 section that the information the actor used, permitted inspection
13 of, or disclosed was generalized or modified in accordance with the
14 guidance provided by a governmental body under Section 307.053.

15 SECTION 2. Section 58.0072(e), Family Code, is amended to
16 read as follows:

17 (e) The Texas Juvenile Justice Department shall grant
18 access to juvenile justice information for legislative purposes
19 under Chapter 307 [~~Section 552.008~~], Government Code.

20 SECTION 3. Section 321.0138(g), Government Code, is amended
21 to read as follows:

22 (g) This section does not affect any other law relating to
23 release of information for legislative purposes, including Chapter
24 307 [~~Section 552.008, Government Code~~].

25 SECTION 4. Section 552.012(d), Government Code, is amended
26 to read as follows:

27 (d) The attorney general shall ensure that the training is

1 made available. The office of the attorney general may provide the
2 training and may also approve any acceptable course of training
3 offered by a governmental body or other entity. The attorney
4 general shall ensure that at least one course of training approved
5 or provided by the attorney general is available on videotape or a
6 functionally similar and widely available medium at no cost. The
7 training must include instruction in:

8 (1) the general background of the legal requirements
9 for open records and public information;

10 (2) the applicability of this chapter to governmental
11 bodies;

12 (3) procedures and requirements regarding complying
13 with a request for information under this chapter;

14 (4) the role of the attorney general under this
15 chapter; ~~and~~

16 (5) penalties and other consequences for failure to
17 comply with this chapter; and

18 (6) the requirements of Chapter 307.

19 SECTION 5. The following provisions of the Government Code
20 are repealed:

21 (1) Section 552.008;

22 (2) Section 552.264; and

23 (3) Sections 552.352(a-1) and (a-2).

24 SECTION 6. Not later than January 1, 2018, the attorney
25 general shall adopt rules establishing the procedures and deadlines
26 required by Section 307.056(b), Government Code, as added by this
27 Act.

1 SECTION 7. A request for information under Section 552.008,
2 Government Code, that is pending on December 31, 2017, is governed
3 by the applicable law in effect at the time the request was
4 received, and that law is continued in effect for that purpose.

5 SECTION 8. The repeal by this Act of Sections 552.352(a-1)
6 and (a-2), Government Code, does not apply to an offense committed
7 under those provisions before the effective date of the repeal. An
8 offense committed before the effective date of the repeal is
9 governed by Sections 552.352(a-1) and (a-2), Government Code, as
10 they existed on the date the offense was committed, and the former
11 law is continued in effect for that purpose. For purposes of this
12 section, an offense was committed before the effective date of the
13 repeal if any element of the offense, including obtaining access to
14 confidential information under former Section 552.008, Government
15 Code, occurred before that date.

16 SECTION 9. (a) Except as provided by Subsection (b) of this
17 section, this Act takes effect January 1, 2018.

18 (b) Section 6 of this Act takes effect immediately if this
19 Act receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, Section 6 of this Act takes effect September 1, 2017.