

By: Hunter

H.B. No. 3848

A BILL TO BE ENTITLED

AN ACT

relating to the public information law; 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.

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

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

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

10 SECTION 3. Subchapter B, Chapter 552, Government Code, is
11 amended by adding Section 552.0222 to read as follows:

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

14 (1) permitted by Section 552.108; or

15 (2) otherwise provided by constitutional or statutory
16 law.

17 SECTION 4. Section 552.101, Government Code, is amended to
18 read as follows:

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

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

27 SECTION 5. Section 552.102, Government Code, is amended by

1 adding Subsection (c) to read as follows:

2 (c) The exceptions to disclosure provided by Subsections
3 (a) and (b) do not apply to a date of birth.

4 SECTION 6. Section 552.203, Government Code, is amended to
5 read as follows:

6 Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC
7 INFORMATION. Each officer for public information, subject to
8 penalties provided in this chapter, shall:

9 (1) make public information available for public
10 inspection and copying;

11 (2) carefully protect public information from
12 deterioration, alteration, mutilation, loss, or unlawful removal;
13 [~~and~~]

14 (3) repair, renovate, or rebind public information as
15 necessary to maintain it properly; and

16 (4) make reasonable efforts to obtain public
17 information from a temporary custodian if:

18 (A) the information has been requested from the
19 governmental body;

20 (B) the officer for public information is aware
21 of facts sufficient to warrant a reasonable belief that the
22 temporary custodian has possession, custody, or control of the
23 information;

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

27 (D) the temporary custodian has not provided the

1 information to the officer for public information of the
2 governmental body or the officer's agent.

3 SECTION 7. Section 552.221, Government Code, is amended by
4 amending Subsections (b-1) and (b-2) and adding Subsections (e) and
5 (f) to read as follows:

6 (b-1) In addition to the methods of production described by
7 Subsection (b), an officer for public information for a
8 governmental body [~~political subdivision of this state~~] complies
9 with Subsection (a) by referring a requestor to an exact Internet
10 location or uniform resource locator (URL) address on a website
11 maintained by the governmental body [~~political subdivision~~] and
12 accessible to the public if the requested information is
13 identifiable and readily available on that website. If the person
14 requesting the information prefers a manner other than access
15 through the URL, the governmental body [~~political subdivision~~] must
16 supply the information in the manner required by Subsection (b).

17 (b-2) If an officer for public information for a
18 governmental body [~~political subdivision~~] provides by e-mail an
19 Internet location or uniform resource locator (URL) address as
20 permitted by Subsection (b-1), the e-mail must contain a statement
21 in a conspicuous font clearly indicating that the requestor may
22 nonetheless access the requested information by inspection or
23 duplication or by receipt through United States mail, as provided
24 by Subsection (b).

25 (e) If the governmental body determines it has no
26 information responsive to a request for information, the officer
27 for public information shall notify the requestor in writing not

1 later than the 10th business day after the date the request is
2 received.

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

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

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

13 SECTION 8. Subchapter E, Chapter 552, Government Code, is
14 amended by adding Section 552.234 to read as follows:

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

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

27 (c) If a temporary custodian fails to surrender or return

1 public information to a governmental body as required by Subsection
2 (b), the officer for public information of the governmental body
3 shall, not later than the 10th business day after the deadline to
4 surrender or return information under Subsection (b), notify the
5 attorney general in writing of the facts related to the failure and
6 send a copy of the written notice to the requestor. On receipt of
7 written notice from an officer for public information as provided
8 by this subsection, the attorney general may sue for an injunction
9 or writ of mandamus to compel a temporary custodian with
10 possession, custody, or control of public information to surrender
11 or return the information as required by Subsection (b). A suit
12 filed under this subsection:

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

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

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

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

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

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

16 SECTION 9. Section 552.301(b), Government Code, is amended
17 to read as follows:

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

22 SECTION 10. The heading to Subchapter H, Chapter 552,
23 Government Code, is amended to read as follows:

24 SUBCHAPTER H. CIVIL ENFORCEMENT; COMPLAINT

25 SECTION 11. Subchapter H, Chapter 552, Government Code, is
26 amended by adding Section 552.328 to read as follows:

27 Sec. 552.328. FAILURE TO RESPOND TO REQUESTOR. (a) If a

1 governmental body fails to respond to a requestor as required by
2 Section 552.221, the requestor may send a written complaint to the
3 attorney general.

4 (b) The complaint must include:

5 (1) the original request for information; and

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

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

11 (1) the attorney general shall notify the governmental
12 body in writing and require the governmental body to complete open
13 records training not later than six months after receiving the
14 notification;

15 (2) the governmental body may not assess costs to the
16 requestor for producing information in response to the request; and

17 (3) if the governmental body seeks to withhold
18 information in response to the request, the governmental body must:

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

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

25 SECTION 12. The heading to Section 552.353, Government
26 Code, is amended to read as follows:

27 Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC

1 INFORMATION OR TEMPORARY CUSTODIAN TO PROVIDE ACCESS TO OR COPYING
2 OF PUBLIC INFORMATION.

3 SECTION 13. Section 552.353, Government Code, is amended by
4 adding Subsection (a-1) to read as follows:

5 (a-1) A temporary custodian who has possession, custody, or
6 control of public information responsive to a request commits an
7 offense if, with criminal negligence, the temporary custodian fails
8 to surrender or return the information to the governmental body on
9 request of the officer for public information or the officer's
10 agent, as required by Section 552.234(b).

11 SECTION 14. The change in law made by this Act applies only
12 to a request for public information received on or after the
13 effective date of this Act. A request for public information
14 received before the effective date of this Act is governed by the
15 law in effect when the request was received, and the former law is
16 continued in effect for that purpose.

17 SECTION 15. This Act takes effect September 1, 2017.