

By: Gooden

H.B. No. 4066

A BILL TO BE ENTITLED

AN ACT

relating to the right of certain elected public officers to information of certain governmental and public entities; creating a criminal offense.

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

SECTION 1. Subtitle A, Title 6, Government Code, is amended by adding Chapter 620 to read as follows:

CHAPTER 620. RIGHT TO INFORMATION BY ELECTED OFFICERS OF GOVERNING BODIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 620.001. DEFINITIONS. In this chapter:

(1) "Governmental entity" means a state governmental body or a political subdivision of this state.

(2) "Information" means information that is written, recorded, produced, collected, assembled, or maintained by or for a governmental entity or public entity that the governmental or public entity possesses or is authorized to possess, including:

(A) any physical or electronic document, message, report, book, photograph, recording, drawing, diagram, or item of data stored electronically; and

(B) any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business of the governmental or public entity.

1 (3) "Public entity" means an entity created by a
2 governmental entity.

3 (4) "Public officer" means an elected member of the
4 governing body of:

5 (A) a board, commission, or other body with more
6 than one member that supervises, manages, or controls a state
7 governmental body; or

8 (B) a political subdivision of this state.

9 (5) "State governmental body" means a board,
10 commission, department, committee, institution, agency, or office
11 that is within the executive branch of state government.

12 Sec. 620.002. APPLICABILITY OF OTHER LAW. (a) Chapter 552
13 does not apply to a request for information made under this chapter.

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

18 Sec. 620.003. EFFECT OF CHAPTER. (a) This chapter does not
19 affect:

20 (1) the right of a public officer to obtain
21 information under other law;

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

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

26 (b) This chapter does not grant authority to withhold
27 information from a public officer.

1 SUBCHAPTER B. RIGHT TO INFORMATION

2 Sec. 620.051. RIGHT TO INFORMATION FROM GOVERNMENTAL
3 ENTITY. (a) A public officer has a right of access to information
4 of the governmental entity to which the officer is elected.

5 (b) A public officer has a right to require the governmental
6 entity to which the officer is elected to compile, analyze,
7 describe, report, summarize, or otherwise manipulate and prepare
8 information of the governmental entity for the officer.

9 (c) This section does not affect the inherent oversight
10 authority that a member of a governing body has over the
11 governmental entity to which the officer is elected.

12 Sec. 620.052. RIGHT TO INFORMATION FROM PUBLIC ENTITY. (a)
13 A public officer has a right of access to information of a public
14 entity created by the governmental entity to which the officer is
15 elected.

16 (b) A public officer has a right to require a public entity
17 created by the governmental entity to which the officer is elected
18 to compile, analyze, describe, report, summarize, or otherwise
19 manipulate and prepare information of the public entity for the
20 officer.

21 Sec. 620.053. PROVISION OF INFORMATION. (a) Following a
22 request for information authorized by this subchapter, the
23 governmental or public entity that received the request shall
24 provide the requested information, including confidential
25 information or information otherwise excepted from disclosure, to
26 the requestor.

27 (b) The requestor is not required to specify the purpose for

1 which the information is requested.

2 (c) A governmental or public entity must provide requested
3 information to a requestor promptly, but not later than the seventh
4 day, or as soon as practicable as agreed to by the governmental or
5 public entity and the requestor, following the date the request is
6 received.

7 (d) A governmental or public entity must provide requested
8 information in the manner and format requested by the requestor,
9 including:

10 (1) by allowing the requestor unrestricted access to
11 any physical information of the governmental or public entity;

12 (2) by allowing the requestor to make copies or other
13 reproductions of the information; and

14 (3) by manipulating or preparing information as
15 authorized by Sections 620.051(b) and 620.052(b).

16 (e) A governmental or public entity must provide
17 information under this section without charge to the requestor.

18 (f) A governmental or public entity may not require a
19 requestor to sign a confidentiality agreement in order to receive
20 information requested under this subchapter.

21 (g) A public officer who receives confidential information
22 under this subchapter must use the information only in a manner that
23 maintains the confidential nature of the information and may not
24 disclose or release the information to the public.

25 Sec. 620.054. RELEASE OF CONFIDENTIAL INFORMATION TO
26 ATTORNEY OF PUBLIC OFFICER. (a) A public officer has the right to
27 release information received from a governmental or public entity

1 under this subchapter to the officer's attorney for the purpose of
2 receiving legal advice.

3 (b) A public officer may not release information to the
4 officer's attorney unless:

5 (1) the officer has notified the governmental or
6 public entity that provided the information to the officer that the
7 officer intends to release the information to the attorney; and

8 (2) the governmental or public entity has:

9 (A) authorized the release of the information; or

10 (B) received from the attorney an executed
11 confidentiality agreement authorized by Section 620.055.

12 (c) A governmental or public entity must authorize the
13 release of information or submit a confidentiality agreement
14 authorized by Section 620.055 to the public officer's attorney not
15 later than the third business day following the date the officer
16 notifies the governmental or public entity that the officer intends
17 to release the information or the governmental or public entity
18 waives the right to require the attorney to sign the agreement.

19 (d) An attorney who receives confidential information under
20 this section, including information excepted from disclosure under
21 law and covered by a confidentiality agreement, must use the
22 information only in a manner that maintains the confidential nature
23 of the information and may not disclose or release the information
24 to the public.

25 Sec. 620.055. CONFIDENTIALITY AGREEMENT. (a) A
26 governmental or public entity may require an attorney who receives
27 information from a public officer under this subchapter that is

1 confidential or otherwise excepted from disclosure under law to
2 sign a confidentiality agreement that covers the information.

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

5 (1) the information not be disclosed by the public
6 officer's attorney;

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 confidentiality agreement signed under Subsection (a)
15 is void to the extent that the agreement covers information that is
16 finally determined under Section 620.056 to not be confidential or
17 otherwise excepted from disclosure under law.

18 Sec. 620.056. DECISION BY ATTORNEY GENERAL REGARDING
19 CONFIDENTIALITY OR DISCLOSURE. (a) An attorney who is required to
20 sign a confidentiality agreement under Section 620.055 may seek a
21 decision from the attorney general about whether the information
22 covered by the agreement is confidential or otherwise excepted from
23 disclosure under law.

24 (b) The attorney general by rule shall establish procedures
25 and deadlines for:

26 (1) receiving information necessary to determine
27 whether the information covered by a confidentiality agreement is

1 confidential or otherwise excepted from disclosure under law; and
2 (2) receiving briefs from the public officer who
3 requested the information, the officer's attorney, a governmental
4 or public entity providing information under this subchapter, and
5 any other interested person.

6 (c) The attorney general shall render the decision not later
7 than the 45th business day after the date the attorney general
8 receives the request for a decision. If the attorney general is
9 unable to issue the decision within the 45-day period, the attorney
10 general may during that 45-day period extend the period for issuing
11 the decision by an additional 10 business days by informing the
12 public officer who requested the information, the officer's
13 attorney, the governmental or public entity, and any interested
14 person who submitted necessary information or a brief to the
15 attorney general of the reason for the delay.

16 (d) The attorney general shall issue a written decision and
17 provide a copy of the decision to the public officer who requested
18 the information, the officer's attorney, the governmental or public
19 entity, and any interested person who submitted necessary
20 information or a brief to the attorney general under this section.

21 (e) The public officer's attorney or the governmental or
22 public entity may appeal a decision of the attorney general under
23 Subsection (d) to a district court of Travis County.

24 Sec. 620.057. CONFIDENTIALITY NOT WAIVED. A governmental
25 or public entity, by providing information under this subchapter
26 that is confidential or otherwise excepted from disclosure under
27 law, does not waive or affect the confidentiality of the

1 information for purposes of state or federal law or waive the right
2 of the governmental or public entity to assert exceptions to
3 disclosure of the information in the future.

4 SUBCHAPTER C. ENFORCEMENT

5 Sec. 620.101. SUIT FOR WRIT OF MANDAMUS. (a) A person , or
6 the attorney general on request of the person, may file suit for a
7 writ of mandamus compelling a governmental or public entity to
8 provide information requested under this chapter to which the
9 person has a right.

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

15 Sec. 620.102. FAILURE OR REFUSAL TO PROVIDE INFORMATION.

16 (a) A person who is an officer for public information under Chapter
17 552 for a governmental or public entity, or the officer's agent,
18 commits an offense if, with criminal negligence, the officer or the
19 officer's agent fails or refuses to provide information to a public
20 officer as provided by this chapter.

21 (b) An offense under this section is a Class A misdemeanor.

22 SECTION 2. Not later than January 1, 2018, the attorney
23 general shall adopt rules establishing the procedures and deadlines
24 required by Section 620.056(b), Government Code, as added by this
25 Act.

26 SECTION 3. (a) Except as provided by Subsection (b) of this
27 section, this Act takes effect January 1, 2018.

1 (b) Section 2 of this Act takes effect immediately if this
2 Act receives a vote of two-thirds of all the members elected to each
3 house, as provided by Section 39, Article III, Texas Constitution.
4 If this Act does not receive the vote necessary for immediate
5 effect, Section 2 of this Act takes effect September 1, 2017.