House Bill 2328
Senate Amendments
Section-by-Section Analysis

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No equivalent provision.	SECTION __. Section 552.002, Government Code, is amended by adding Subsection (d) to read as follows: (d) Information maintained by a governmental body described by Section 552.003(1)(A)(xii) is public information and subject to this chapter only to the extent the information relates to the part, section, or portion of an entity that receives or spends public funds or uses real or personal property owned or leased by the state or a political subdivision of the state as established in Section 552.003(1)(A)(xii)(a), (b), or (c). [FA2]	
No equivalent provision.	SECTION __. Section 552.003(1), Government Code, is amended to read as follows: (1) "Governmental body": (A) means: (i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members; (ii) a county commissioners court in the state; (iii) a municipal governing body in the state; (iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality; (v) a school district board of trustees; (vi) a county board of school trustees; (vii) a county board of education; (viii) the governing board of a special district; (ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;	

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	(x) a local workforce development board created under Section 2308.253; (xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and (xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that: (a) receives or spends public funds, if the receipt or expenditure does not impose a specific and definite obligation on the entity to provide a measurable amount of goods, services, benefits, or insurance in exchange for the public funds as would be expected in an arms-length transaction or quid pro quo agreement for goods, services, benefits, or insurance between a vendor and purchaser; (b) receives or spends [~~or that is supported in whole or in part by~~] public funds under an agreement to provide a traditional governmental service, which does not include a utility service, that the state or the political subdivision providing the funds will not provide under the agreement; or (c) uses real or personal property owned or leased by the state or a political subdivision of the state that is not generally available to the public under an agreement that provides for no or nominal consideration in return for the use; and (B) does not include the judiciary. [FA2]	
No equivalent provision.	SECTION __. Section 552.101, Government Code, is amended to read as follows: Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. (a) Information is excepted from the requirements of Section 552.021 if it is information	

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	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 information considered to be: (1) privileged under an evidentiary privilege created by the Texas Rules of Civil Procedure, the Texas Rules of Evidence, the Texas Disciplinary Rules of Professional Conduct, the Federal Rules of Evidence, or the Federal Rules of Civil Procedure, including the attorney-client privilege, the attorney work product privilege, or any other state or federal discovery privilege; or (2) excepted from required disclosure under another provision of this chapter. [FA3(3)]	
No equivalent provision.	SECTION __. Section 552.104, Government Code, is amended to read as follows: Sec. 552.104. EXCEPTION: INFORMATION RELATED TO COMPETITION OR BIDDING. (a) Except as provided by Subsection (c), information [~~Information~~] is excepted from the requirements of Section 552.021 if a governmental body demonstrates that release of the [~~it is~~] information [~~that, if released,~~] would harm its interests by providing an [~~give~~] advantage to a competitor or bidder in a particular competitive situation. (b) Except as provided by Subsection (c), the [~~The~~] requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section. (c) The exception to disclosure provided by Subsection (a) does not apply to:	

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	(1) a bid or proposal, or information contained in a bid or proposal, after the governmental body executes or awards the contract to which the bid or proposal relates; or (2) an account, voucher, or contract, or information contained in or describing an account, voucher, or contract. (d) Section 552.305 does not apply to the exception under this section. (e) Subsection (c) does not apply to programs established under Section 67(b), Article XVI, Texas Constitution. [FA1]	
SECTION 1. Section 552.2615(g), Government Code, is amended to read as follows: (g) The time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G or J.	SECTION 1. Same as House version.	
SECTION 2. Section 552.263(e), Government Code, is amended to read as follows: (e) For purposes of Subchapters F, [~~and~~] G, and J, a request for a copy of public information is considered to have been received by a governmental body on the date the governmental body receives the deposit or bond for payment of anticipated costs or unpaid amounts if the governmental body's officer for public information or the officer's agent requires a deposit or bond in accordance with this section.	SECTION 2. Same as House version.	
SECTION 3. Section 552.302, Government Code, is amended to read as follows: Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC. If a governmental body does not request an attorney general decision as provided by	SECTION 3. Section 552.302, Government Code, is amended to read as follows: Sec. 552.302. FAILURE TO MAKE TIMELY REQUEST FOR ATTORNEY GENERAL DECISION; PRESUMPTION THAT INFORMATION IS PUBLIC. (a) If a governmental body does not request an attorney general decision as	

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Section 552.301 or in response to an appeal under Subchapter J and provide the requestor with the information required by Sections 552.301(d) and (e-1) or Section 552.404(b), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.	provided by Section 552.301 or in response to an appeal under Subchapter J and provide the requestor with the information required by Sections 552.301(d) and (e-1) or Section 552.404(b), the information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. [FA3(1)] (b) Sections 552.103, 552.104, 552.105, 552.106, 552.108, 552.111, 552.112, 552.116, 552.122, 552.125, 552.144, 552.146, 552.153, and 552.154 do not constitute compelling reasons to withhold information under Subsection (a) for a governmental body that fails to comply with the requirements of Section 552.301. [FA3(2)]	
No equivalent provision.	SECTION __. Section 552.305(a), Government Code, is amended to read as follows: (a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section 552.101, [~~552.104,~~] 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision. [FA1]	
No equivalent provision.	SECTION __. Section 552.305, Government Code, is amended by adding Subsection (f) to read as follows: (f) A governmental body's failure to comply with the requirements of Section 552.301 does not affect another person's privacy or property interests or the person's ability under this section to submit a letter, memorandum, or brief in support of each reason why the information should be withheld. [FA3(3)]	

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SECTION 4. Section 552.352, Government Code, is amended by adding Subsection (d) to read as follows: (d) It is an affirmative defense to prosecution under Subsection (a) that the defendant released information under Subchapter J and did not release confidential information intentionally, as defined by Section 6.03, Penal Code.	SECTION 4. Same as House version.	
SECTION 5. Chapter 552, Government Code, is amended by adding Subchapter J to read as follows: SUBCHAPTER J. EXPEDITED RESPONSE PROCEDURE Sec. 552.401. REQUEST FOR ATTORNEY GENERAL DECISION NOT REQUIRED. (a) Subject to Subsection (b) and Sections 552.403 and 552.405, a governmental body that receives a written request for information and complies with the requirements of this subchapter may withhold any information it makes a good faith determination is excepted from required public disclosure under this chapter without the necessity of requesting a decision from the attorney general under Subchapter G. (b) If the requested information may involve a person's interests as provided by Section 552.305, the governmental body may not respond to the request under Subsection (a). Sec. 552.402. RESPONSE REQUIREMENTS. (a) A governmental body that withholds information under this subchapter must respond to the requestor not later than the fifth business day after the date the governmental body receives a written request for that information by providing the requestor with: (1) a list of the exceptions under Subchapter C and, if applicable, the judicial decisions or constitutional or statutory laws the governmental body determines are applicable to the information being withheld;	SECTION 5. Same as House version.	

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(2) all information the governmental body determines is not excepted from disclosure, including, if applicable, partially redacted information with the redacted portions clearly marked and labeled with the exceptions the governmental body relied on to redact the information; (3) a description of the volume and type of information withheld; and (4) a notice form promulgated by the attorney general that includes, at a minimum: (A) a unique identification number assigned by the governmental body; (B) a description of the appeal procedure; (C) an appeal form the requestor must use to appeal the withholding of information under this subchapter; (D) a reference to the requestor's rights under this chapter; and (E) the name of an individual who holds an active training certificate issued under Section 552.406 and a confirmation by that individual that the individual reviewed and approved the response. (b) The governmental body shall retain, at a minimum, an electronic or paper copy of the notice it provides to the requestor under Subsection (a)(4) for the length of time the governmental body retains the request for information. Sec. 552.403. APPEAL. (a) On receipt of a response by a governmental body under this subchapter, the requestor may appeal the withholding of information in the response not later than the 30th calendar day after the date the requestor receives the response. (b) The requestor must submit the appeal to the governmental body that responded under this subchapter on the appeal form provided to the requestor by the governmental body under		

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Section 552.402(a)(4). (c) The appeal is considered a new request and is subject to the procedural requirements of Section 552.404. (d) A governmental body may not seek to narrow or clarify an appeal made under this subchapter under Section 552.222(b). (e) A governmental body may not respond to a requestor under Section 552.232 in response to an appeal made under this subchapter. (f) Notwithstanding Sections 552.024(c)(2), 552.1175(f), 552.130(c), 552.136(c), and 552.138(c), a governmental body must request an attorney general decision to withhold information described by those provisions in response to an appeal. Sec. 552.404. REQUEST FOR ATTORNEY GENERAL DECISION IN RESPONSE TO APPEAL. (a) Except as otherwise provided by this subchapter: (1) the appeal is subject to the provisions of this chapter; and (2) an attorney general's decision that was requested under this section is considered to be a decision under Subchapter G. (b) A governmental body that receives an appeal under Section 552.403 shall, within a reasonable time, but not later than the 10th business day after the date the governmental body receives the appeal, submit to the attorney general: (1) a request for the attorney general's decision; (2) a copy of the original written request for information; (3) a copy of the appeal form received by the governmental body; (4) a signed statement as to the date on which the appeal was received by the governmental body or evidence sufficient to establish the date; (5) the exceptions that apply and written comments stating		

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the reasons why the stated exceptions apply that would allow the information to be withheld; (6) if the governmental body provided partially redacted information to the requestor in its initial response under this subchapter, an unredacted copy of the information the governmental body provided to the requestor with the copy clearly marked indicating the released portions and the withheld portions labeled with the exceptions the governmental body relied on to withhold the information; and (7) a copy of the specific information the governmental body seeks to withhold, or representative samples of the information, labeled to indicate which exceptions apply to which parts of the copy. (c) A governmental body that receives an appeal under Section 552.403 shall, within a reasonable time, but not later than the 10th business day after the date the governmental body receives the appeal, send a copy of the comments submitted under Subsection (b)(5) to the requestor. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the requestor must be a redacted copy. Sec. 552.405. ELIGIBILITY. Before a governmental body may respond to a request under this subchapter: (1) the governmental body's public information officer or the officer's designee must hold an active training certificate issued under Section 552.406; and (2) the governmental body may not have had its authorization to rely on this subchapter revoked under Section 552.407. Sec. 552.406. TRAINING. (a) The public information officer for a governmental body that responds to a request under this subchapter or the officer's designee must have completed in the four years preceding the response a course of		

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training of not less than four hours or more than six hours regarding the responsibilities of the governmental body under this subchapter. (b) The attorney general shall ensure that the training is made available. The attorney general shall prepare and from time to time revise at least one course of training that is available in an online presentation format. The online training may be broken into separate sections. The online training must provide a means to verify that the trainee observed and comprehended the full online training session or, if applicable, each section of the training. (c) At a minimum, the training must include instruction in: (1) the general background of the legal requirements for the governmental body's use of this subchapter and related law; (2) the applicability of this subchapter to governmental bodies; (3) the procedures and requirements for complying with an appeal under this subchapter; (4) the role of the attorney general under this subchapter; and (5) penalties and other consequences for failing to comply with this subchapter. (d) For a governmental body with its main offices located in a county with a population of 250,000 or less, the public information officer or the officer's designee must complete the training in person or online. For a governmental body with its main offices located in a county with a population of more than 250,000, the public information officer or the officer's designee must complete the training in person from the office of the attorney general. (e) The office of the attorney general shall provide a certificate to a person who completes the training required by this section and keep records of the training certificates issued.		

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A governmental body shall maintain the training certificate of any individual who provides a confirmation under Section 552.402(a)(4)(E) and make the certificate available for public inspection. Sec. 552.407. REVOCATION. (a) If the attorney general determines that a governmental body failed to comply with the requirements of this chapter, the office of the attorney general, in its sole discretion, may revoke the governmental body's authorization to respond under this subchapter or the training certificate issued to an individual responsible for the governmental body's failure. (b) The attorney general shall create a notice of revocation form. The attorney general shall inform a governmental body that the attorney general has revoked the governmental body's eligibility under Subsection (a) or an individual that the attorney general has revoked the individual's training certificate by sending the notice of revocation form by certified mail or by another written method of notice that requires the return of a receipt. (c) The notice of revocation provided to a governmental body must inform the governmental body of the length of time the revocation is in effect. The length of time the governmental body's revocation is in effect may not exceed six months from the date the governmental body receives the notice of revocation form. (d) The notice of revocation form provided to an individual must inform the individual that the attorney general has revoked the individual's training certificate under Subsection (a). The individual must repeat the course of training under Section 552.406 to obtain a new training certificate. (e) If an individual is employed by a governmental body when the governmental body's authorization to respond under		

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this subchapter is revoked under Subsection (a), and the individual obtains employment at a different governmental body with authorization to respond under this subchapter, the individual may not provide a confirmation under Section 552.402(a)(4)(E) until the revocation period for the initial governmental body has expired. (f) The office of the attorney general shall publish on its Internet website: (1) a list that provides the first and last names of individuals who hold an active training certificate issued under Section 552.406, the date each individual's training was completed, and the date each individual's training certificate expires; and (2) a list of the governmental bodies that are not authorized to respond to a request under this subchapter because their authorization has been revoked under Subsection (a). Sec. 552.408. REPORT ON IMPLEMENTATION OF SUBCHAPTER. (a) For the state fiscal biennium beginning September 1, 2017, the attorney general shall collect data detailing the number of: (1) requests for decisions in response to appeals the attorney general receives under Section 552.404; (2) individuals who complete training under Section 552.406; (3) governmental bodies that have their authorization to respond under this subchapter revoked under Section 552.407; and (4) individuals who have their training certificates revoked under Section 552.407. (b) Not later than February 1, 2019, the attorney general shall make the data collected under Subsection (a) available on the attorney general's Internet website for open records. (c) This section expires September 1, 2019.		

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SECTION 6. The changes in law made by this Act apply only to a request for information that is received by a governmental body on or after the effective date of this Act. A request for information that was received before the effective date of this Act is governed by the law that was in effect on the date the request was received, and the former law is continued in effect for that purpose.	SECTION 6. Same as House version.	
SECTION 7. This Act takes effect September 1, 2017.	SECTION 7. Same as House version.	
No equivalent provision.	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. [FA4]	
No equivalent provision.	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.	

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	(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. [FA4]	
No equivalent provision.	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: [FA4] (1) permitted by Section 552.102(a) or 552.108; (2) listed on voter registration rolls; or (3) otherwise provided by constitutional or statutory law. [FA4,FA5]	
No equivalent provision.	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	

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	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. [FA4]	
No equivalent provision.	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. [FA4]	

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No equivalent provision.	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. [FA4]	
No equivalent provision.	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	

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	between the governmental body and a third party. [FA4]	
No equivalent provision.	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. [FA4]	
No equivalent provision.	SECTION __. Section 552.301(b), Government Code, is amended to read as follows: (b) The governmental body must ask for the attorney	

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	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. [FA4]	
No equivalent provision.	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	

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	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. [FA4]	