

## **BILL ANALYSIS**

H.B. 1700  
By: Hunter  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

There are concerns that the state's public information law has not been updated in a holistic manner in many years. Responding to these concerns, open government advocates, governmental entities, the Office of the Attorney General, and other interested stakeholders have worked together to recommend provisions of the act in need of updating. H.B. 1700 seeks to implement those recommendations.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 1700 amends the Government Code to establish that a current or former officer or employee of a governmental body does not have, by virtue of the person's position or former position, a personal or property right to public information the person created or received while acting in an official capacity. The bill requires such a person who, in the transaction of official business, creates or receives public information that the person has not provided to the governmental body's public information officer or the officer's agent and who has possession, custody, or control of the information to surrender or return the information to the governmental body not later than the 10th day after the date the officer or agent requests the person to surrender or return the information. The bill creates a misdemeanor offense for such a temporary custodian who, with criminal negligence, fails to surrender or return the applicable information to the governmental body on the public information officer's or agent's request. The bill requires the public information officer, not later than the 10th business day after the deadline to surrender or return information, to notify the attorney general in writing of the facts related to the temporary custodian's failure and to send a copy of the written notice to the requestor of the information. The bill authorizes the attorney general, on receipt of the notice, to sue for an injunction or writ of mandamus to compel the temporary custodian to surrender or return the information and sets out provisions relating to the filing and proceedings of the suit. The bill establishes that, for purposes of the application of state public information law regarding attorney general decisions to information surrendered or returned to the governmental body by a temporary custodian or as a result of the suit, 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.

H.B. 1700 requires a current or former officer or employee of a governmental body who maintains public information on a privately owned device to forward or transfer the information to the governmental body or a governmental body server for preservation as provided by state public information law or to preserve the information in its original form on the device for the requisite time. The bill requires each public information officer to make reasonable efforts to obtain public information from a temporary custodian if the following conditions exist:

- the information has been requested from the governmental body;
- the officer is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;
- the officer is unable to comply with the duties imposed by state public information law without obtaining the information from the temporary custodian; and
- the temporary custodian has not provided the information to the officer or the officer's agent.

**EFFECTIVE DATE**

September 1, 2019.