By:  Watson S.B. No. 944

(In the Senate - Filed February 21, 2019; March 1, 2019, read first time and referred to Committee on Business & Commerce; April 8, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire             X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR S.B. No. 944 By:  Nichols

A BILL TO BE ENTITLED

AN ACT

relating to the public information law.

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

SECTION 1.  Section 552.002, Government Code, is amended by adding Subsection (d) to read as follows:

(d)  "Protected health information" as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

SECTION 2.  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 3.  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.

(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 in a backup or archive and on the privately owned device for the time described 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.

SECTION 4.  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 or the officer's agent.

SECTION 5.  Subchapter E, Chapter 552, Government Code, is amended by adding Sections 552.233, 552.234, and 552.235 to read as follows:

Sec. 552.233.  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.

Sec. 552.234.  METHOD OF MAKING WRITTEN REQUEST FOR PUBLIC INFORMATION. (a)  A person may make a written request for public information under this chapter only by delivering the request by one of the following methods to the applicable officer for public information or a person designated by that officer:

(1)  United States mail;

(2)  electronic mail;

(3)  hand delivery; or

(4)  any other appropriate method approved by the governmental body, including:

(A)  facsimile transmission; and

(B)  electronic submission through the governmental body's Internet website.

(b)  For the purpose of Subsection (a)(4), a governmental body is considered to have approved a method described by that subdivision only if the governmental body includes a statement that a request for public information may be made by that method on:

(1)  the sign required to be displayed by the governmental body under Section 552.205; or

(2)  the governmental body's Internet website.

(c)  A governmental body may designate one mailing address and one electronic mail address for receiving written requests for public information. The governmental body shall provide the designated mailing address and electronic mailing address to any person on request.

(d)  A governmental body that posts the mailing address and electronic mail address designated by the governmental body under Subsection (c) on the governmental body's Internet website or that prints those addresses on the sign required to be displayed by the governmental body under Section 552.205 is not required to respond to a written request for public information unless the request is received:

(1)  at one of those addresses;

(2)  by hand delivery; or

(3)  by a method described by Subsection (a)(4) that has been approved by the governmental body.

Sec. 552.235.  PUBLIC INFORMATION REQUEST FORM. (a)  The attorney general shall create a public information request form that provides a requestor the option of excluding from a request information that the governmental body determines is:

(1)  confidential; or

(2)  subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

(b)  A governmental body that allows requestors to use the form described by Subsection (a) and maintains an Internet website shall post the form on its website.

SECTION 6.  Section 552.301(c), Government Code, is repealed.

SECTION 7.  The changes in law made by this Act apply only to a request for public information received on or after the effective date of this Act. A request for public information received before the effective date of this Act is governed by the law in effect when the request was received, and the former law is continued in effect for that purpose.

SECTION 8.  The attorney general shall create a public information request form under Section 552.235(a), Government Code, as added by this Act, not later than October 1, 2019.

SECTION 9.  This Act takes effect September 1, 2019.

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