

PUBLIC COMMENTS

HB 3435

HOUSE COMMITTEE ON STATE AFFAIRS

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Hearing Date: April 8, 2021 8:00 AM

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Donnis Baggett

Texas Press Association

Bryan, TX

The Texas Press Association takes no position on HB 3435 as it is currently worded. We are actively involved in discussions with the author and the Texas Attorney General's office and hope to reach consensus that will lead to a stronger committee substitute substitute in the next few days. We appreciate Rep. Smithee filing this legislation to address the issue.

Kelley Shannon

Freedom of Information Foundation of Texas

Austin, TX

The Freedom of Information Foundation of Texas at this point opposes HB 3435, although we are working with legislative offices and the Texas Attorney General's Office to try to find common ground on this bill. We understand the attorney general office's desire to reduce the number of Texas Public Information Act ruling requests flowing into their office from governments across the state. However, we believe the answer is not to give governmental entities the power to deny any information they wish when citizens request it. We believe the attorney general's office and its trained open government attorneys are best equipped to rule on whether information can be withheld under the law. We recognize minor or even unfounded requests often make their way to the AG's office. The answer is to address this with incentive and enforcement mechanisms directed at the governmental entities who are seeking the requests - not to punish the public by making citizens have to initiate an appeals process for denied information.

Zenobia Joseph, U.S. Citizen

Self

Austin, TX

Position: Against HB 3435

1. Gratitude: Let me thank Vice Chair Ana Hernandez for permitting me to share my state action experience in requesting my PhD education records from The University of Texas at Austin. I truly appreciated all State Affairs members listening so attentively. Special thanks to Rep. Raymond for recommending I resubmit my open records request and copy the committee. He strengthened my resolve to keep fighting the good fight! Thanks, too, to Rep. Deshotel and Rep. Howard for support over the years, and Rep. Hunter for reiterating that the law is clear. The need to balance competing interests (compliance, bad actors, and excessive requests) exists.

2. Special Right of Access: I thank Rep. Smithee for his questions. Sec. 552.114, Education Records, is germane as it relates to bad actors. UT-Austin Records Coordinator Annela Lopez arbitrarily redacted my records in 2010 without an Attorney General ruling—much like HB 3435 (Sec. 552.402) would do. If governmental bodies complied with state law, the Education Records provision would likely not apply. I recommend linking bill text to “Sec. 552.023. SPECIAL RIGHT OF ACCESS TO CONFIDENTIAL INFORMATION. (a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.”

3. Pilot Recommendation: To address the unintended consequences of bad actors, I recommend U.T. System and UT-Austin's

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previous model—posting past open records requests online. Amend HB 3435 as a pilot to narrowly focus on governmental entities with the most excessive requests. Open Records Coordinator(s) could then work with the requestor in the initial 10 business days to ask if a previous request meets the request in whole or part. If so, the requestor could then agree in writing to amend the request for remaining existing documents. I recommend a pilot considering U.T. System discontinued the practice due to “little traffic ... administrative burden.”

4. Reference: The Daily Texan, “UT, UT System institutions remove online open records request logs” by Maria Mendez January 29, 2018. “The UT System added that each UT System institution and administration 'must maintain a publicly-accessible (sic) website dedicated to displaying public information requests it has received and responsive information' per UTS139 in May 2015. UT System spokeswoman Karen Adler said the System’s executive officers and chancellor reviewed this policy and updated UTS139 on Sept. 21, 2017. “The policy that required institutions to post open records requests online was initially established as a benefit to the public,' Adler said in an email. 'The UT System changed the policy because the websites received little traffic from the public but had a very high administrative burden to maintain.'” Good start! ~zcyj