

SUBJECT: Prohibiting release of some government-operated utility company records

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Seidlits, T. Hunter, Black, Danburg, Denton, Eckels, Erickson,
Goodman, D. Jones, Marchant, Tallas, S. Turner

0 nays

3 absent — Saunders, Wilson, Wolens

WITNESSES: For — Orlinda L. Naranjo, Austin, Womens Political Caucus; David Mintz,
Texas Apartment Association; Vincent M. Torres, People Against Violent
Crime; Shelia Enid Cheaney, ACLU of Texas; Mark Zion, Laura R. Doll,
Texas Public Power Association; Suzy Woodford, Common Cause of
Texas; Dale Goodman, City of Austin, Utility Customer Service Office;
Jordan Faires, Texas Council on Family Violence; Chris Glen, Elizabeth
Trower

Against — Tony Pederson, Texas Media

On — None

BACKGROUND: The Texas Open Records Act, VACS art. 6252-17a, requires that
information collected, assembled or maintained by or for governmental
bodies be available to the general public. There are 23 specific exceptions,
including records of the judiciary, certain personnel files, drafts of proposed
legislation, records of law enforcement agencies, information that would
give advantages to competitors or bidders, information relating to litigation
and certain private correspondence of elected officeholders.

The maximum penalty for releasing information deemed confidential by the
Texas Open Records Act is six months in jail and a \$1,000 fine.

DIGEST: CSHB 859 would prohibit government-operated utilities (water, wastewater,
sewer, gas, garbage, electricity and drainage) from disclosing an
individual's address, telephone number or social security number if the
individual has requested that the information be kept confidential. Persons

could request confidentiality by filling out a form provided by the utility or by any other written means, and utilities could charge individuals a monthly fee, not to exceed the administrative cost of complying with a confidentiality request.

Utilities would have to include in a bill sent to each customer notice that the information could be kept confidential, the amount of any fee and a form to request confidentiality.

The following would be excepted from the confidentiality requirement: local, state or federal government employees acting in an official capacity; utility employees acting as part of their duties; consumer reporting agencies; contractors or subcontractors providing services to the utility or the government; a person approved by the individual requesting confidentiality; and other utilities.

Government utilities and their employees would be immune from civil liability for violating CSHB 54.

CSHB 54 would take effect September 1, 1993.

**SUPPORTERS
SAY:**

The Open Records Act was designed to preserve public access to governmental information, not public access to private information accumulated by a governmental body or agency. CSHB 859 would not be a sweeping change in the Open Records Act or the availability of information. It is limited to government-operated utilities and would require a person to request that information be confidential, similar to unlisted telephone numbers.

No one should not be able to force a government-operated utility to reveal a person's home address, phone number or Social Security number without a good reason. Such action constitutes an unwarranted invasion of privacy that is unrelated to the purpose of the Open Records Act.

CSHB 859 really involves an issue of personal safety. Personal information can be used to harass persons, invade their privacy and even harm them. For example, stalkers and other criminals can easily obtain a person's home address and phone number from a publicly owned utility.

Social Security numbers can be used to pry into a person's finances by tapping into information about bank accounts and credit accounts. Restricting release of this information would in no way hurt the public's right to know about governmental institutions or decisions. Addresses and phone numbers of witnesses or victims sought by the news media or others could be obtained through means other than utility records.

CSHB 859 also provides for equal protection for all utility customers. Currently, investor-owned utilities do not have to release information to the public, while those operated by government entities must release it. CSHB 859 would give all utility customers the same privacy protection.

CSHB 859 would not be costly or an administrative burden on utilities because they would be able to choose how to keep information confidential. They would have the flexibility to do it manually, through computers or other means.

The bill is narrowly constructed, would not affect legitimate uses of utility records and would make exceptions for all legitimate users of utility information including other governmental agencies, contractors and consumer reporting agencies. Consumer reporting agencies could need addresses and phone numbers to verify information on credit applications. These agencies give information to other businesses, not individuals, and generally are authorized to look into a person's credit. Utility records would remain accessible for legitimate uses such as prospective home buyers looking into a property's utility usage; only an individual's address, phone number and social security number could be kept confidential.

**OPPONENTS
SAY:**

The Texas Open Records Act should not be eroded with exceptions that keep government information confidential and closed to public scrutiny. The Open Records Act gives citizens a firm statutory commitment to openness in government and access to information, which should not be closed off without strong justification.

Allowing individuals to choose whether certain information about them should be public or private in effect would create a third category of documents that are neither public or private. This could become a black hole for information that are necessary and vital to an open, democratic society.

Basic information such as addresses and telephone numbers is important to news reporters, nonprofit organizations and others. For example, the *Minneapolis Star Tribune* recently used drivers license and motor vehicles records for an article showing how many licensed airline pilots had violated drunken-driving laws. Addresses and phone numbers are also used to identify witnesses, victims and persons accused of crimes. Also, nonprofit organizations sometimes obtain mailing lists from government agencies such as utilities, and some telephone directories are compiled this way.

Information on individuals should not become the sole property of the government, and the government should not be able to keep information secret from the public. Historically, the right to privacy has been seen as a right to be free from government intrusion, such as telephone wiretaps and harassment and as a guarantee of physical safety from law enforcement officials, not as a right for the government to hide information. The concept of keeping documents open to all is to preclude this type of invasion from government and ensure there are no secrets that government can hold and abuse.

The possibility that a few persons with criminal intent might obtain personal information from utility companies does not justify such an increase in secrecy. CSHB 859 also could become an administrative burden for the utilities that would have to painstakingly expunge the exempt information.

The bill could also result in government agencies charging persons large fees for expunging exempted information from utility records. Government entities can set charges for information obtained under the Open Records Act, including costs of materials, labor and overhead. This could put the cost of obtaining some records beyond the means of many citizens.

CSHB 859 would not stop stalking or any other crimes. There are other measures, such as the legislation creating a stalking offense already enacted this session, that can be taken to address these problem that would not be a retreat from the spirit of the Open Records Act.

NOTES:

The committee substitute would exempt a person's name from what would be considered personal information; change the fee that can be charged to

keep information confidential from \$5 to a fee to not to exceed administrative costs; add exceptions for consumer reporting agencies, contractors and subcontractors, persons approved by the consumer and other utilities; and eliminated a provision making the disclosure of information a Class C misdemeanor.

HB 2206 by Hightower, approved by the House on second reading on May 8, would make the home address, home phone and Social Security number of an individual confidential under the Open Records Act. The bill also would keep confidential any information requested from the Texas Department of Criminal Justice, the Texas Board of Criminal Justice and the Texas Board of Pardons and Paroles by persons in their custody.

A related bill, HB 858 by Greenberg, would prohibit the release of individuals' addresses from vehicle registration and driver's license records if the person had filed a statement keeping the information confidential. A House floor amendment by Rep. Greenberg to SB 510 by Moncrief, the Department of Public Safety sunset bill, currently in conference committee, would prohibit the release of personal information from driver's license records.