SUBJECT: Limits on inmate open records, discovery requests

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Hightower, Gray, Allen, Culberson, Farrar, Longoria, Pitts, Telford

0 nays

1 absent — Serna

WITNESSES: For — Lane A. Zivley, Texas Public Employees Association

Against — None

On — Carl Reynolds, Texas Board of Criminal Justice; Wayne Scott, Texas Department of Criminal Justice; Mark W. Majek, Texas Board of Nurse Examiners

BACKGROUND: The Texas Open Records Act, Chapter 52 of the Government Code, requires that information collected, assembled or maintained by or for governmental bodies be available to the general public. Twenty-three specific types of records are exempted. An exception added by the Legislature in 1993 applies to crime records, internal records and notations of law enforcement agencies and prosecutors and the home addresses, home telephone numbers, employment addresses and Social Security numbers of Texas Department of Criminal Justice (TDCJ) employees and their families.

DIGEST: CSHB 949 would exempt governmental bodies from complying with an Open Records Act request for information from a person in a correctional facility. Governmental bodies would be permitted to provide information to inmates about themselves.

CSHB 949 would make personal information about correctional facility employees and their families — including home address and telephone number and Social Security number — privileged from discovery in a civil proceeding if requested by a person confined in a correctional facility. The

information would be discoverable if the incarcerated person had just cause and a court ordered the disclosure.

SUPPORTERS SAY:

CSHB 949 would curb abuses of the Open Records Act and the trial discovery process by prison inmates and jail prisoners. The incarcerated often request personal information about correctional employees and their families, and about attorneys, judges, witnesses and others, then use the information for harassment, intimidation and blackmail.

The exception added last session for the home address, telephone and Social Security numbers of TDCJ employees and their families was a step in the right direction, but it has failed to stop abuses. Other state agencies must field open records requests from inmates, such as the Texas Board of Nurse Examiners, which had to disclose information about nurses working in the prison system. Correctional and other government employees have a right to keep such personal information private from inmates and prisoners.

About 70 percent of the Open Records requests received by TDCJ are from prison inmates, and the agency expends a lot of time and money fulfilling these requests. Examples of requested information that has been abused by inmates include information about the school that employees' children attend, disciplinary investigations about employees and employee payroll information. The state needs to protect correctional workers to help retain good workers and attract new ones.

A general prohibition on inmate Open Records requests, instead of numerous specific exceptions, is necessary because inmates often make frivolous blanket requests for large amounts of information that cause agencies to squander resources meeting them.

Inmates give up numerous rights that law-abiding citizens enjoy, and this bill proposes a reasonable and necessary restriction. Any information that an inmate or prisoner may be denied because of CSHB 949 could be obtained through other means, such as trial and pretrial discovery proceedings in a civil suit. Prisoners would retain full access to the civil courts, but the bill would assure that they have a legitimate reason before they could use certain information-gathering resources.

CSHB 949 would not apply to inmate requests for information about themselves, which is available through other channels as well. For example, inmates can easily obtain their medical records, classification records that detail their status, the disposition of their grievances and other information. Inmates also may turn to a well established grievance system if they feel they have been unfairly denied access to information.

CSHB 949 would limit access to information only by persons confined in correctional facilities. The Open Records Act was designed to preserve public access to governmental information, not access to private information held by a governmental agency. It is unlikely that persons in the free world would abet abusive information searches by prisoners.

CSHB 949 only would prohibit the release of certain information to persons confined in correctional facilities, not to their attorneys. Information such as guards' names or work schedules could still be obtained during a trial if necessary. However, CSHB 949 would allow attorneys to keep from disclosing to their inmate clients personal information about correctional employees or their families.

OPPONENTS SAY:

A blanket exemption allowing agencies to deny records requests from a particular class of persons would represent a dramatic and unfortunate new expansion of Opens Records Acts exceptions. The possibility that a few inmates or prisoners with criminal intent might obtain personal information through the Open Records Act does not justify the broad prohibition proposed by CSHB 949. While convicted criminals may lose some rights, they should not lose access to public information.

CSHB 949 could eliminate inmates' ability to gain legitimate information through the Open Records Act. When abuses occur, an inmate may need to know the identity of guards working a certain shift or information about a TDCJ board meeting. An inmate may want public information for a school paper or need their own children's school records or foster care information.

A blanket exclusion of a class of persons from gaining information through the open records act is contrary to the idea that the government should not

hide information and is a departure from other exceptions in the act that exempt specific *information* from disclosure.

Historically, the right to privacy has been seen as a right to be free from government intrusion, such as wiretaps and harassment, not as a right for the government to hide information, even from the incarcerated. Public employees already have the option of keeping confidential their home address and telephone number from their personnel files. Inmates using information to commit a crime should be prosecuted for the crime instead of restricting all inmates' access to public information.

Any limit on access to the courts imposed by CSHB 949's provisions on discovery could be attacked as unconstitutional. CSHB 949 could keep inmates from obtaining information from government agencies that is necessary to pursue legitimate court claims. It could be difficult for inmates, especially those without a lawyer, to meet the "just cause" threshold in CSHB 949 before getting information about prison employees. Also, CSHB 949 could violate inmates' limited First Amendment rights of association and communication.

OTHER OPPONENTS SAY:

A better way to address a problem of inmates abusing information about TDCJ employees would be to allow inmates to use the Open Records Act to obtain information about correctional employees only with court approval and after showing just cause. This would protect prison employees without preventing inmates from receiving legitimate, necessary information. CSHB 949 also should contain explicit authority for inmates' attorneys to obtain the information through discovery.

CSHB 949 would still leave a loophole for abusive inmates — they could still get an accomplice in the free world to request the records sought. CSHB 949 might even create a cottage industry of persons who could charge inmates to make Open Records Act requests.

NOTES:

The original bill would have exempted persons confined in correctional institutions from the Open Records Act instead of exempting agencies from complying with such requests. The committee substitute added the provisions on inmates getting information about themselves and the limits on obtaining information during discovery.

CSHB 949’s companion bill, SB 388 by Turner, has been referred to the Senate Criminal Justice Committee.