

SUBJECT: Declaring confidential certain information involving terrorism

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis, Goodman

0 nays

2 absent — Lewis, Villarreal

WITNESSES: For — Donnis Baggett, Texas Press Association, Texas Daily Newspaper Association; Danny Chandler, Dallas County; Steve Collier, Emergency Management Association of Texas; Susan Horton, Texas Municipal League; *(Registered, but did not testify:)* Amy Beneski, Texas Association of School Administrators, Texas Association of School Boards; Donald Lee, Texas Conference of Urban Counties; Andrew Smith, San Antonio Water System; Tim Werner, Center Point Energy, Inc.; Suzy Woodford, Common Cause Texas

Against — Scott Henson, American Civil Liberties Union of Texas; Bryan Lawhorn; Kathy Mitchell, Consumers Union; Paul Watler, Texas Association of Broadcasters, Freedom of Information Foundation of Texas, Belo Corporation; *(Registered, but did not testify:)* Rachel Major, American Civil Liberties Union; Tom Smitty Smith, Public Citizen

On — *(Registered, but did not testify:)* Helen Bright, University of Texas System; H. Erle Janssen, Jr., University of Texas at Austin; Gary Stone, Texas Department of Public Safety

BACKGROUND: Information held by governmental entities or prepared by private entities for a governmental entity is subject to public disclosure under the public information provisions in Government Code, Ch. 552, unless excepted in statute. Information that is defined to be confidential by law also is exempt from public disclosure.

Chapter 418 of the Government Code defines the state's emergency management policies.

DIGEST:

CSHB 1191 would add sections to Government Code, Ch. 14, classifying as confidential certain categories of information involving terrorism or related criminal activity. Information collected, assembled, or maintained by a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity would become confidential if it related to emergency response providers. Such information would include phone and pager numbers, staffing requirements, or tactical plans of law enforcement, fire-fighting, and emergency services agencies. Also classified as confidential would be information related to risk and vulnerability assessments prepared by or for governmental entities, information related to the production or location of weapons of mass destruction or the raw materials used to create them, and information related to encryption codes and security keys for public communications systems.

During a state of disaster declared by the governor, CSHB 1191 would authorize the head of a governmental body to share the information made confidential by this bill with others on a need to know basis, but doing so would not alter the information's confidentiality.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

Terrorism is a new threat and governmental entities are concerned about the security of data and information, since government information is subject to disclosure under public information laws. After the terrorist attacks of September 11, 2001, governments have needed to reassess the openness of critical information to the public. Private entities share this concern because the information they transmit to government bodies becomes subject to disclosure as well. If current law is not changed, public information laws that were intended to protect the public instead will put them at greater risk by opening sensitive information to terrorists.

CSHB 1191 would increase public safety without violating the spirit of open government. It would define categories of confidential information very specifically so as not to hinder inappropriately the right of the public and the press to know.

The bill would accommodate the need for communication during a disaster by allowing an agency head to share confidential information, as needed, with other entities, who also would be required to keep the information confidential. This approach effectively would balance the need to keep sensitive information out of the public domain with the coordination needs of public entities during emergencies.

This bill would make sensitive security information confidential, rather than exempting it from public disclosure. The process of declaring an exception from public information is burdensome and open to interpretation, which makes it a weaker approach. Sensitive security information would be more strongly protected if defined as confidential.

CSHB 1191 addresses not only an acts of terrorism, but also “related criminal activity.” Terrorism is supported by various, otherwise unrelated criminal activities, such as identity theft, money laundering, and the illegal drug trade. Defining terrorism too narrowly inhibits its prevention.

**OPPONENTS
SAY:**

Exempting information from public disclosure gives agencies the discretion to share it, should they conclude that it is in the public interest to do so. Declaring a category of information to be confidential, however, prohibits the agency from sharing the information with other entities or the public, even if it is in the public’s interest and safety to do so, unless the governor has declared an emergency.

Waiting for the governor’s declaration actually could hinder emergency responders, who must take critical action in the first hours after a disaster, before the governor has had an opportunity to act. This bill could prevent the government from effectively communicating with the public about tactical plans for emergency response, thus potentially impairing public safety. While Government Code, sec. 418.108, allows the presiding officer of a local governing body (i.e. mayor, county judge) to declare a local state of disaster, it is unclear whether the bill would permit confidential information to be shared in such a situation.

The bill’s inclusion of “related criminal activity” is too broad and could be construed to include ordinary criminal activity such as drug enforcement and stalking. The Governor’s Task Force on Homeland Security has studied the state’s security needs thoroughly and has not suggested making security

information confidential. Lawmakers should focus resources on recommendations made by the task force rather than risk losing public accountability in critical areas of government operations.

**OTHER
OPPONENTS
SAY:**

The bill's specifications about staffing requirements, tactical plans, and contact information would apply only to law enforcement, fire-fighting, and emergency services agencies. This language is too narrow and would better protect public safety if expanded to include all government entities. Additionally, information such as blueprints of critical buildings, schematics of computer systems, and maps of optical networks would not be made confidential under CSHB 1191. Extending the bill's provisions to this category of information would strengthen the public's security against terrorism.

NOTES:

The committee substitute differs from the bill as introduced by removing a provision that would have exempted information about security systems protecting public or private property from Government Code, section 552.021. This section makes public information available to the public during normal business hours of the governmental body.