

- SUBJECT:** Exempting commercial feed records or reports from open records
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 7 ayes — Swinford, Miller, B. Cook, Farrar, J. Keffer, Martinez Fischer, Wong  
0 nays  
2 absent — Gattis, Villarreal
- WITNESSES:** For — Burt Livengood, Texas Grain and Feed Association  
Against — Kathy Mitchell, Consumers Union
- BACKGROUND:** Agriculture Code, sec. 141.074, regulates commercial feed in Texas. To manufacture or distribute commercial feed in the state, a person must have a license from the Texas Feed and Fertilizer Control Service, adhere to certain labeling standards, and report the amount of feed manufactured or distributed. The service must publish an annual report on the production and sale of commercial feed in the state, but the publication may not disclose the scope of operations of any person.
- Government Code, ch. 552, also known as the Public Information Act, provides for public access to records maintained by state and local governments. Confidential information, trade secrets, and commercial information that would cause substantial competitive harm are excepted from disclosure under sections 552.101 and 552.110.
- DIGEST:** HB 1733 would exempt from open records requirements a record or report filed with the Texas Feed and Fertilizer Control Service specifying the amount of commercial feed manufactured or sold.
- 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, 2005.

**SUPPORTERS  
SAY:**

HB 1733 would restore the confidentiality of feed tonnage reports and protect the commercial interests of feed manufacturers and distributors in the state. Until 2004, these reports always had been confidential. However, in September 2004, following an open records request, the attorney general held in an open records letter ruling (OR 2004-7810) that these reports were not excepted from disclosure under open records statutes. As a result any person, including a company's competitor, may now request information about a specific company's production and sales. With this information, the competitor could then target those regions of the state in which the company had high sales. HB 1733 would protect this important commercial information by explicitly making this information confidential. The bill would not limit the public's access to information about what goes into commercial feed, and, by extension, what goes into the food we eat, but merely would limit access to the precise amounts sold per company.

**OPPONENTS  
SAY:**

Exceptions to open records requirements for commercial information generally have required that the company be able to provide a specific factual or evidentiary showing - not a generalized allegation - that a disclosure would cause substantial competitive harm. As the attorney general found, there is no evidence that disclosure of commercial feed reports would cause this harm. However, some members of the public have expressed interest in knowing how much feed is made or sold from different companies in order to determine what goes into the food we eat. Without a more substantial showing of harm, this important information should remain available to the public.