

SUBJECT: Producing copies of electronic information under public information laws

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

1 absent — Hernandez

WITNESSES: For — Andrew Chavez; (*Registered, but did not testify:* Kelley Shannon, Freedom of Information Foundation of Texas; Adrian Shelley, Public Citizen; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett, Mike Hodges, and Bill Patterson, Texas Press Association; Ash Hall; Vanessa MacDougal; Robert Norris; Arthur Simon)

Against — None

BACKGROUND: Government Code ch. 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request, unless that information is excepted from disclosure.

Some have suggested that clearer statutory guidance for the maintenance and production of electronic public information under the Public Information Act would help both governmental bodies and requestors.

DIGEST: CSHB 4132 would prohibit a governmental body's use of an electronic recordkeeping system from eroding the public's right of access to public information under Government Code sec. 552.

The bill would define "electronic public information" as public information maintained in electronic form by a governmental body, including electronic records and data from database files.

If a request for information applied to electronic public information, a

governmental body would have to provide an electronic copy using computer software it had in its possession. The governmental body would have to provide a paper copy if the requestor preferred.

A governmental body could not refuse to provide a copy of electronic public information on the grounds that exporting it or redacting excepted information would require inputting range, search, filter, report parameters, or similar commands into the computer system if the commands could be executed with software used by the governmental body in the ordinary course of managing the information.

A requestor could request a copy of electronic public information be provided in the format the information was maintained or in a standard export format, if supported by the governmental body's computer programs.

If requested electronic public information was maintained in a format that was:

- neither searchable nor sortable, the electronic copy would have to be in a format that complied with the bill;
- searchable but not sortable, the electronic copy would have to be in a searchable format;
- sortable, the electronic copy would have to be in a sortable format.

The governmental body would be required to provide the copy in the requested format or another format acceptable to the requestor and on suitable electronic media.

A governmental body would have to ensure that a contract for the creation and maintenance of electronic public information did not impair the public's ability to inspect or copy it or make the information more difficult to inspect or copy than records maintained by the governmental body.

The bill would apply to public information for which a third party was the custodian for the governmental body.

CSHB 4132 would not affect the applicability to electronic public information of a confidentiality provision or other exception from required disclosure.

Current law governing the charges for providing copies of public information would apply to an electronic copy or paper printout of electronic public information.

The bill would take effect September 1, 2019, and would apply only to a public information request received on or after that date.