

## **BILL ANALYSIS**

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C.S.S.B. 1646  
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Business & Commerce  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

After the Sharpstown fraud scandal in the early 1970s, the Texas Legislature passed the Public Information Act (PIA) to ensure the public could obtain public information. Although the legislature regularly makes narrow changes to the PIA, it has not received a holistic update since 1999.

Since last session, open government advocates, governmental bodies, the Office of the Attorney General (OAG), and other interested stakeholders have worked together to identify potential updates to the PIA that would receive broad support. S.B. 1646 compiles these updates.

Among its changes, S.B. 1646 ensures governmental bodies have a mechanism to obtain public information on their officers' and employees' personal devices. This complements a bill passed in 2013 to clarify that the content and not the device on which it is stored determines whether information is subject to the PIA.

S.B. 1646 also requires governmental bodies to respond to a PIA request if they do not have responsive documents or if the responsive documents are covered by a previous OAG determination. Many governmental bodies already do this as a matter of good customer service, but when they do not, it creates confusion for requestors who have no idea why they have not received a response to their request.

S.B. 1646 also overturns a recent court decision by ensuring dates of birth are not protected by common law privacy. This helps members of the press and others avoid libel lawsuits by confirming that they are referencing the right individual.

In addition, S.B. 1646 codifies an OAG decision that storage devices like USBs do not qualify as hardware under the Act. S.B. 1646 also encourages governmental bodies to cooperate with requestors by clarifying that a requestor who sues for compliance may obtain litigation costs and reasonable attorney fees if the governmental body voluntarily turns over the requested information after it answers the lawsuit.

Finally, S.B. 1646 clarifies when a requestor may bring a PIA complaint to the OAG and specifies that requests are considered withdrawn if a requestor fails to pick up or pay the postage for requested information within 60 days.

Taken together, these provisions codify common-sense updates to the PIA that are designed to benefit requestors, governmental bodies, and the public at large. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1646 amends current law relating to the public information law.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 552.003, Government Code, by adding Subdivision (7) to define “temporary custodian.”

SECTION 2. Amends Section 552.004, Government Code, as follows:

Sec. 552.004. PRESERVATION OF INFORMATION. (a) Creates this subsection from existing text. Authorizes a governmental body or, for information of an elective county office, the elected county officer, to determine a time for which information that is not currently in use will be preserved, subject to Subsection (b) and to certain applicable rules or laws.

(b) Requires a current or former officer or employee of a governmental body who maintains public information on a privately owned device to:

(1) forward or transfer the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a); or

(2) preserve the public information in its original form on the privately owned device for the required time.

(c) Provides that the provisions of Chapter 441 (Libraries and Archives) of this code and Title 6 (Records), Local Government Code, governing the preservation, destruction, or other disposition of records or public information apply to records and public information held by a temporary custodian.

SECTION 3. Amends Subchapter B, Chapter 552, Government Code, by adding Section 552.0222, as follows:

Sec. 552.0222. DATES OF BIRTH. Provides that this chapter (Public Information) does not authorize a governmental body to withhold a date of birth except as permitted by Section 552.102(a) (relating to the exception of certain information from certain disclosure requirements) or 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information) or otherwise provided by constitutional or statutory law.

SECTION 4. Amends Section 552.101, Government Code, as follows:

Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. (a) Creates this subsection from existing text. Creates an exception as provided by Subsection (b) and makes a nonsubstantive change.

(b) Provides that the exception to disclosure provided by Subsection (a) does not apply to a date of birth considered to be confidential by judicial decision.

SECTION 5. Amends Section 552.203, Government Code, as follows:

Sec. 552. 203. GENERAL DUTIES OF OFFICER FOR PUBLIC INFORMATION. Requires each officer for public information, subject to penalties provided in this chapter, to:

(1) makes no changes to this subdivision;

(2) and (3) makes nonsubstantive changes; and

(4) make reasonable efforts to obtain public information from a temporary custodian if:

(A) the information has been requested from the governmental body;

(B) the officer for public information is aware of facts sufficient to warrant a reasonable belief that the temporary custodian has possession, custody, or control of the information;

(C) the officer for public information is unable to comply with the duties imposed by this chapter without obtaining the information from the temporary custodian; and

(D) the temporary custodian has not provided the information to the officer for public information of the governmental body or the officer's agent.

SECTION 6. Amends Section 552.221, Government Code, by adding Subsections (f) and (g), as follows:

(f) Requires the officer for public information, if the governmental body determines it has no information responsive to a request for information, to notify the requestor in writing not later than a certain date.

(g) Requires the officer for public information, if a governmental body determines the requested information is subject to a previous determination that permits or requires the governmental body to withhold the requested information, to take certain actions not later than a certain date.

SECTION 7. Amends Section 552.228(b), Government Code, as follows:

(b) Authorizes the requestor, if public information exists in an electronic or magnetic medium, to request a copy in an electronic medium, such as on diskette, on magnetic tape, or on a portable computer drive. Makes nonsubstantive changes.

SECTION 8. Amends Subchapter E, Chapter 552, Government Code, by adding Section 552.234, as follows:

Sec. 552.234. OWNERSHIP OF PUBLIC INFORMATION. (a) Provides that a current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

(b) Requires a temporary custodian with possession, custody, or control of public information to surrender or return the information to the governmental body not later than a certain date.

(c) Provides that a temporary custodian's failure to surrender or return public information as required by Subsection (b) is grounds for disciplinary action by the governmental body that employs the temporary custodian or any other applicable penalties provided by this chapter or other law.

(d) Provides that, for purposes of the application of Subchapter G (Attorney General Decisions) to information surrendered or returned to a governmental body by a temporary custodian under Subsection (b), the governmental body is considered to receive the request for that information on the date the information is surrendered or returned to the governmental body.

SECTION 9. Amends Section 552.301(b), Government Code, to require the governmental body to ask for the Texas attorney general's (attorney general's) decision and state the specific exceptions that apply within a reasonable time but not later than a certain date.

SECTION 10. Amends Subchapter H, Chapter 552, Government Code, by adding Section 552.328, as follows:

Sec. 552.328. FAILURE TO RESPOND TO REQUESTOR. (a) Authorizes the requestor, if a governmental body fails to respond to a requestor as required by Section 552.221 (Application for Public Information; Production of Public Information), to send a written complaint to the attorney general.

(b) Requires that the complaint include the original request for information and any correspondence received from the governmental body in response to the request.

(c) Provides that, if the attorney general determines the governmental body improperly failed to comply with Section 552.221 in connection with a request for which a complaint is made:

(1) the attorney general is required to notify the governmental body and the complainant requestor in writing of the governmental body's failure to comply, including the total number of previous complaints made under Subsection (a) against the governmental body that the attorney general within the current calendar year has determined to be founded;

(2) the governmental body is authorized to assess costs to the complainant requestor for producing information in response to the request for which the complaint was made, not to exceed a certain amount; and

(3) if the governmental body seeks to withhold information in response to the request for which the complaint was made, the governmental body is required to request an attorney general decision under Section 552.301 (Request for Attorney General Decision) not later than a certain date and to release the requested information unless there is a compelling reason to withhold the information.

(d) Requires the attorney general, in response to a second complaint made under Subsection (a) against a governmental body in a calendar year that the attorney general determines to be founded, to require the public official, public information officer, or other official or employee responsible for the governmental body's failure to comply to complete open records training under Section 552.012 (Open Records Training) not later than a certain date and to notify the governmental body of that requirement.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2017.