

## **BILL ANALYSIS**

Senate Research Center

S.B. 944  
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Business & Commerce  
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### **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 Texans could hold their government accountable. Although the Legislature regularly makes narrow changes to the PIA, it has not received a holistic update since 1999.

S.B. 944 compiles various PIA improvements that have come out of recent stakeholder negotiations without known opposition. The overall focus is to address a common complaint—that the PIA process is bureaucratic and inefficient.

First, S.B. 944 closes a loophole by ensuring governmental bodies may obtain public information stored on their employees' private devices.

Second, S.B. 944 creates a new exception to disclosure for sensitive healthcare information. This language should address any concerns that an exception in HIPAA will lead to the release of private patient records in Texas.

Third, S.B. 944 allows governmental bodies to designate a single e-mail address and a single mailing address to receive PIA requests.

And fourth, S.B. 944 directs the Office of the Attorney General to promulgate a PIA request form that governmental bodies and requestors may use. This form must allow a requestor to opt-out from requesting confidential or otherwise excepted information, which would reduce the government's workload and result in a faster response to the requestor.

As proposed, S.B. 944 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 any applicable rule or law governing the destruction and other disposition of state and local government records or public information.

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

the public information to the governmental body or a governmental body server to be preserved as provided by Subsection (a) or preserve the public information in its original form on the privately owned device for the time described under Subsection (a).

(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 C, Chapter 552, Government Code, by adding Section 552.159, as follows:

Sec. 552.159. EXCEPTION: CONFIDENTIALITY OF CERTAIN HEALTHCARE INFORMATION. Provides that a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician or hospital that is created or maintained by a physician or hospital is confidential and excepted from the requirements of Section 552.021 (Availability of Public Information).

SECTION 4. 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)-(3) makes nonsubstantive changes;
- (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 or the officer's agent.

SECTION 5. Amends Subchapter E, Chapter 552, Government Code, by adding Sections 552.233, 552.234, and 552.235, as follows:

Sec. 552.233. 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 that a temporary custodian with possession, custody, or control of public information surrender or return the information to the governmental body not later than the 10th day after the date the officer for public information of the governmental body or the officer's agent requests the temporary custodian to surrender or return the information.

(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.

Sec. 552.234. DESIGNATED ELECTRONIC MAIL AND MAILING ADDRESSES FOR PUBLIC INFORMATION REQUESTS. Authorizes a governmental body to designate one electronic mail address and one mailing address for receiving written requests for public information. Requires the governmental body, if an inquiry is made to a governmental body regarding the procedures for requesting public information, to provide the designated electronic mail and mailing addresses. Provides that a governmental body that posts the designated electronic mail and mailing addresses on the governmental body's Internet website is not required to respond to a written request for public information that is not received at one of those addresses.

Sec. 552.235. PUBLIC INFORMATION REQUEST FORM. (a) Requires the Texas attorney general (attorney general) to create a public information request form that provides a requestor the option of excluding from a request information that the governmental body determines is confidential or subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

(b) Requires a governmental body that allows requestors to use the form described by Subsection (a) and maintains an Internet website to post the form on its website.

SECTION 6. Amends Section 552.301(c), Government Code, as follows:

(c) Provides that, for purposes of this subchapter and subject to Section 552.234, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.

SECTION 7. Requires the attorney general to create a public information request form under Section 552.235(a), Government Code, as added by this Act, not later than October 1, 2019.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2019.