

1-1 By: Watson S.B. No. 1646
 1-2 (In the Senate - Filed March 9, 2017; March 22, 2017, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 May 16, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; May 16, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1646 By: Campbell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the public information law.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 552.003, Government Code, is amended by
 1-24 adding Subdivision (7) to read as follows:

1-25 (7) "Temporary custodian" means an officer or employee
 1-26 of a governmental body who, in the transaction of official
 1-27 business, creates or receives public information that the officer
 1-28 or employee has not provided to the officer for public information
 1-29 of the governmental body or the officer's agent. The term includes
 1-30 a former officer or employee of a governmental body who created or
 1-31 received public information in the officer's or employee's official
 1-32 capacity that has not been provided to the officer for public
 1-33 information of the governmental body or the officer's agent.

1-34 SECTION 2. Section 552.004, Government Code, is amended to
 1-35 read as follows:

1-36 Sec. 552.004. PRESERVATION OF INFORMATION. (a) A
 1-37 governmental body or, for information of an elective county office,
 1-38 the elected county officer, may determine a time for which
 1-39 information that is not currently in use will be preserved, subject
 1-40 to Subsection (b) and to any applicable rule or law governing the
 1-41 destruction and other disposition of state and local government
 1-42 records or public information.

1-43 (b) A current or former officer or employee of a
 1-44 governmental body who maintains public information on a privately
 1-45 owned device shall:

1-46 (1) forward or transfer the public information to the
 1-47 governmental body or a governmental body server to be preserved as
 1-48 provided by Subsection (a); or

1-49 (2) preserve the public information in its original
 1-50 form on the privately owned device for the time required under
 1-51 Subsection (a).

1-52 (c) The provisions of Chapter 441 of this code and Title 6,
 1-53 Local Government Code, governing the preservation, destruction, or
 1-54 other disposition of records or public information apply to records
 1-55 and public information held by a temporary custodian.

1-56 SECTION 3. Subchapter B, Chapter 552, Government Code, is
 1-57 amended by adding Section 552.0222 to read as follows:

1-58 Sec. 552.0222. DATES OF BIRTH. This chapter does not
 1-59 authorize a governmental body to withhold a date of birth except as:

1-60 (1) permitted by Section 552.102(a) or 552.108; or

2-1 (2) otherwise provided by constitutional or statutory
2-2 law.

2-3 SECTION 4. Section 552.101, Government Code, is amended to
2-4 read as follows:

2-5 Sec. 552.101. EXCEPTION: CONFIDENTIAL INFORMATION. (a)
2-6 Except as provided by Subsection (b), information [Information] is
2-7 excepted from the requirements of Section 552.021 if it is
2-8 information considered to be confidential by law, either
2-9 constitutional, statutory, or by judicial decision.

2-10 (b) The exception to disclosure provided by Subsection (a)
2-11 does not apply to a date of birth considered to be confidential by
2-12 judicial decision.

2-13 SECTION 5. Section 552.203, Government Code, is amended to
2-14 read as follows:

2-15 Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC
2-16 INFORMATION. Each officer for public information, subject to
2-17 penalties provided in this chapter, shall:

2-18 (1) make public information available for public
2-19 inspection and copying;

2-20 (2) carefully protect public information from
2-21 deterioration, alteration, mutilation, loss, or unlawful removal;
2-22 [~~and~~]

2-23 (3) repair, renovate, or rebind public information as
2-24 necessary to maintain it properly; and

2-25 (4) make reasonable efforts to obtain public
2-26 information from a temporary custodian if:

2-27 (A) the information has been requested from the
2-28 governmental body;

2-29 (B) the officer for public information is aware
2-30 of facts sufficient to warrant a reasonable belief that the
2-31 temporary custodian has possession, custody, or control of the
2-32 information;

2-33 (C) the officer for public information is unable
2-34 to comply with the duties imposed by this chapter without obtaining
2-35 the information from the temporary custodian; and

2-36 (D) the temporary custodian has not provided the
2-37 information to the officer for public information of the
2-38 governmental body or the officer's agent.

2-39 SECTION 6. Section 552.221, Government Code, is amended by
2-40 adding Subsections (f) and (g) to read as follows:

2-41 (f) If the governmental body determines it has no
2-42 information responsive to a request for information, the officer
2-43 for public information shall notify the requestor in writing not
2-44 later than the 10th business day after the date the request is
2-45 received.

2-46 (g) If a governmental body determines the requested
2-47 information is subject to a previous determination that permits or
2-48 requires the governmental body to withhold the requested
2-49 information, the officer for public information shall, not later
2-50 than the 10th business day after the date the request is received:

2-51 (1) notify the requestor in writing that the
2-52 information is being withheld; and

2-53 (2) identify in the notice the specific previous
2-54 determination the governmental body is relying on to withhold the
2-55 requested information.

2-56 SECTION 7. Section 552.228(b), Government Code, is amended
2-57 to read as follows:

2-58 (b) If public information exists in an electronic or
2-59 magnetic medium, the requestor may request a copy in an electronic
2-60 medium, such as on diskette, [~~or~~] on magnetic tape, or on a portable
2-61 computer drive. A governmental body shall provide a copy in the
2-62 requested medium if:

2-63 (1) the governmental body has the technological
2-64 ability to produce a copy of the requested information in the
2-65 requested medium;

2-66 (2) the governmental body is not required to purchase
2-67 any software or hardware to accommodate the request; and

2-68 (3) provision of a copy of the information in the
2-69 requested medium will not violate the terms of any copyright

3-1 agreement between the governmental body and a third party.

3-2 SECTION 8. Subchapter E, Chapter 552, Government Code, is
3-3 amended by adding Section 552.234 to read as follows:

3-4 Sec. 552.234. OWNERSHIP OF PUBLIC INFORMATION. (a) A
3-5 current or former officer or employee of a governmental body does
3-6 not have, by virtue of the officer's or employee's position or
3-7 former position, a personal or property right to public information
3-8 the officer or employee created or received while acting in an
3-9 official capacity.

3-10 (b) A temporary custodian with possession, custody, or
3-11 control of public information shall surrender or return the
3-12 information to the governmental body not later than the 10th day
3-13 after the date the officer for public information of the
3-14 governmental body or the officer's agent requests the temporary
3-15 custodian to surrender or return the information.

3-16 (c) A temporary custodian's failure to surrender or return
3-17 public information as required by Subsection (b) is grounds for
3-18 disciplinary action by the governmental body that employs the
3-19 temporary custodian or any other applicable penalties provided by
3-20 this chapter or other law.

3-21 (d) For purposes of the application of Subchapter G to
3-22 information surrendered or returned to a governmental body by a
3-23 temporary custodian under Subsection (b), the governmental body is
3-24 considered to receive the request for that information on the date
3-25 the information is surrendered or returned to the governmental
3-26 body.

3-27 SECTION 9. Section 552.301(b), Government Code, is amended
3-28 to read as follows:

3-29 (b) The governmental body must ask for the attorney
3-30 general's decision and state the specific exceptions that apply
3-31 within a reasonable time but not later than the 10th business day
3-32 after the date of receiving the written request.

3-33 SECTION 10. Subchapter H, Chapter 552, Government Code, is
3-34 amended by adding Section 552.328 to read as follows:

3-35 Sec. 552.328. FAILURE TO RESPOND TO REQUESTOR. (a) If a
3-36 governmental body fails to respond to a requestor as required by
3-37 Section 552.221, the requestor may send a written complaint to the
3-38 attorney general.

3-39 (b) The complaint must include:

- 3-40 (1) the original request for information; and
- 3-41 (2) any correspondence received from the governmental
3-42 body in response to the request.

3-43 (c) If the attorney general determines the governmental
3-44 body improperly failed to comply with Section 552.221 in connection
3-45 with a request for which a complaint is made under this section:

3-46 (1) the attorney general shall notify the governmental
3-47 body and the complainant requestor in writing of the governmental
3-48 body's failure to comply, including the total number of previous
3-49 complaints made under Subsection (a) against the governmental body
3-50 that the attorney general within the current calendar year has
3-51 determined to be founded;

3-52 (2) the governmental body may assess costs to the
3-53 complainant requestor for producing information in response to the
3-54 request for which the complaint was made in an amount not to exceed:

3-55 (A) 75 percent of the amount of the allowable
3-56 costs otherwise authorized under this chapter for producing the
3-57 information, if the notice under Subdivision (1) indicates that
3-58 fewer than 11 complaints have been determined to be founded; or

3-59 (B) 50 percent of the amount of the allowable
3-60 costs otherwise authorized under this chapter for producing the
3-61 information, if the notice under Subdivision (1) indicates that 11
3-62 or more complaints have been determined to be founded; and

3-63 (3) if the governmental body seeks to withhold
3-64 information in response to the request for which the complaint was
3-65 made, the governmental body must:

3-66 (A) request an attorney general decision under
3-67 Section 552.301 not later than the fifth business day after the date
3-68 the governmental body receives the notice under Subdivision (1);
3-69 and

4-1 (B) release the requested information unless
4-2 there is a compelling reason to withhold the information.

4-3 (d) The attorney general shall, in response to a second
4-4 complaint made under Subsection (a) against a governmental body in
4-5 a calendar year that the attorney general determines to be founded,
4-6 require the public official, public information officer, or other
4-7 official or employee responsible for the governmental body's
4-8 failure to comply to complete open records training under Section
4-9 552.012 not later than six months after the date the governmental
4-10 body receives the notice and shall notify the governmental body of
4-11 that requirement.

4-12 SECTION 11. The change in law made by this Act applies only
4-13 to a request for public information received on or after the
4-14 effective date of this Act. A request for public information
4-15 received before the effective date of this Act is governed by the
4-16 law in effect when the request was received, and the former law is
4-17 continued in effect for that purpose.

4-18 SECTION 12. This Act takes effect September 1, 2017.

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