

SUBJECT: Disclosure of social security numbers by a governmental body

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 7 ayes — Hardcastle, Farabee, Chisum, Corte, Crabb, Crownover,
Gonzalez Toureilles

0 nays

WITNESSES: No public hearing.

BACKGROUND: Government Code, ch. 552, also known as the Public Information Act, provides for public access to records maintained by state and local governments. Sec. 552.101 exempts *confidential* information from disclosure. Sec. 552.352 imposes criminal penalties for the release of confidential information, while sec. 552.353 imposes criminal penalties for failing to release public information.

Historically, attorneys general had ruled in open records opinions that social security numbers collected by government agencies were not protected from public disclosure by the Public Information Act or by a constitutional or common-law right to privacy. In January 1994, Atty. Gen. Dan Morales stated in Open Records Decision 622 that social security numbers are excepted from public disclosure under the Public Information Act only if obtained or maintained by a governmental body pursuant to a law enacted on or after October 1, 1990, incorporating federal changes to the Social Security Act.

In 2005, the 79th Legislature enacted SB 1485 by Williams, which added Government Code, sec. 552.147 to except social security numbers from disclosure under the Public Information Act and allow governmental bodies to redact the social security number of a living person from documents disclosed under the act without having to request an attorney general's decision.

On February 21, 2007, Atty. Gen. Greg Abbott issued Opinion No. GA-0519 stating that the social security number of a living person in all county and district clerk records is confidential and protected from disclosure under the federal Social Security Act and Government Code, sec.

552.147(a). The opinion holds that county and district clerks must redact social security numbers from copies of documents disclosed to the public and posted on the Internet or face criminal penalties.

On February 28, the attorney general abated his opinion for 60 days, citing concerns about logistical problems faced by county clerks in rapidly implementing the confidentiality of social security numbers as interpreted by the opinion and to allow the Legislature time for deliberation and action. The opinion will have no force or effect during the abeyance period.

DIGEST:

CSHB 2061 would amend sec. 552.147 of the Public Information Act to specify that social security numbers maintained by governmental bodies are not confidential. The bill would allow a county or district clerk during the normal course of business to disclose public information containing social security numbers without being liable for civil or criminal penalties.

CSHB 2061 would require clerks' offices to establish a plan to redact social security numbers from all forms made public, including those available on the Internet. It also would enable an individual to file a written request to have his or her social security information removed from any specific public document.

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, 2007.

SUPPORTERS
SAY:

CSHB 2061 would allow county and district clerks to resume the performance of their ordinary duties without fear of criminal punishment simply for releasing records that include social security numbers. Historically, clerks have not been responsible for policing the content of public records but rather are the public stewards of this information. The attorney general's recent opinion seriously curtailed public information access at county and district clerk offices because clerks had to individually inspect each record before releasing it to the public. In addition, clerks who attempt to protect themselves from criminal liability by restricting public access to information also risk penalties under state law for improperly *failing* to disclose public information. The Legislature should take advantage of the 60-day abatement of the opinion issued by the attorney general by acting to ensure that clerks can do their jobs without risking criminal fines or jail time.

The attorney general's recent opinion has created serious disruptions in business and commerce around the state. As district clerks' offices have moved to deny or limit access to public records, businesses that rely on access to these documents — including the mortgage, title insurance, oil and gas, banking, and real estate industries — are losing time and money attempting to work around these new conditions.

Unless the Legislature takes advantage of the 60-day abatement period to clarify current law, the attorney general's opinion essentially will impose a substantial unfunded mandate on Texas counties. Clerks do not have the staff, funding, or software to manually scour thousands — and in some cases millions — of documents in their possession for mandatory redaction of every social security number on file dating back to 1935. Redaction software is no panacea because county records are not uniform, and the software cannot identify all occurrences of social security information. Harris County alone estimates a full-scale redaction could cost as much as \$17 million. Instead of mandating redaction, CSHB 2061 would reduce these costs to local governments by requiring redaction of social security numbers in public records only if requested by the person in question. The clerks also would retain the authority to redact social security number from disclosure without having to request an attorney general's opinion because the numbers would continue to be excepted from the Public Information Act.

To address legitimate business concerns about the need for identifying characteristics on public records, a proposed floor substitute would amend CSHB 2061 to require a clerk, on request, to redact all but the last four digits of a social security number on a document prior to public disclosure. The floor substitute also would clarify that clerks have no criminal or civil liability for the disclosure of social security numbers that appear on property deeds. These documents do not require social security numbers, and it would be up to the person who filed them with the clerk to ensure that they did not contain social security data.

**OPPONENTS
SAY:**

This bill would be a step backward from the Legislature's concerted efforts in recent years to prohibit the disclosure of social security numbers by governmental entities. By not requiring social security numbers to be redacted from public records, the bill would facilitate access by identity thieves to this confidential information. Texas ranks fourth in incidence of identity theft in the United States, with 26,000 Texans filing identity theft complaints with the Federal Trade Commission in 2005. The social

security number is central to committing this type of fraud. It plays such a key role in identification that there are numerous cases where impostors were able to obtain credit using their own name and a victim's social security number. Victims often do not discover the crime until many months after its occurrence and may spend hundreds of hours and substantial amounts of money attempting to fix ruined credit or expunge a criminal record that another committed in their name. The Legislature should continue enacting laws that protect — rather than compromise — the privacy of its citizens.

By removing civil and criminal liability, this bill would provide no incentive for county and district clerks to redact social security information. Instead, it would place the burden on individual citizens to discover which documents at the clerk's office or on the Internet contain sensitive social security information and request in writing that such information not be released. Most citizens understandably assume that the government keeps their social security information confidential, and by diluting the duty not to release this information, the bill would leave such people more vulnerable to identity theft.

OTHER
OPPONENTS
SAY:

This bill would go further than necessary in responding to an attorney general's opinion that has been temporarily abated, giving the Legislature time to consider this issue more thoroughly. Aspects of the attorney general's opinion are debatable. In dealing with social security information, for example, a clerk exercises a ministerial rather than a discretionary function — in other words, the clerk merely files public records that may or may not contain social security numbers. As such, clerks might not be subject to the same disclosure requirements and restrictions as other entities that handle social security data. The Legislature has nearly two months to craft a solution that would resolve the concerns of governmental entities and the business community without compromising the privacy of citizens.

While appropriately addressing many legitimate concerns, the bill could be crafted to include stricter privacy protections. For example, while full-scale redaction is untenable in the immediate future, CSHB 2061 at least should require redaction of social security numbers on all documents filed in the future. Alternately, the bill could allow county and district clerks to make the last four digits of a social security number available on a public record for the benefit of legitimate business enterprises that require such information. Finally, the bill could strike a blow at identity criminals,

while remaining cost effective for local governments to implement, by requiring redaction of social security information at least on all documents posted online. This would thwart online thieves who seek to obtain social security data instantly and anonymously while allowing legitimate businesses, such as title companies, to get the information they need.

NOTES:

The bill as introduced would have repealed Government Code, sec. 552.147, which excepts social security numbers from disclosure under the Public Information Act and allows governmental bodies to redact the social security number of living persons. The committee substitute instead would amend sec. 552.147 to specify that social security numbers, while still excepted from the Public Information Act, are not confidential, would immunize county and district clerks from civil or criminal liability for disclosing information containing social security numbers, and would require the clerks to establish a procedure for redacting social security numbers upon request.

A proposed floor substitute for CSHB 2061 would require county or district clerks, upon written request and within a reasonable amount of time, to redact all but the last four digits of a social security number on a specifically identified document prior to public disclosure, unless another law required the number to be maintained on the document. It also would amend the Property Code to specify that social security numbers are not required on deeds or deeds of trust submitted for recording and that preparers of those documents would be responsible for removing social security numbers before submitting them to the county clerk. The clerk would not be responsible for ensuring that such deeds did not contain social security numbers prior to disclosure unless an individual specifically requested partial redaction of this information. Also, clerks would have no criminal or civil liability for the disclosure of social security numbers that appear on property deeds.

Related bills that also would amend Government Code, sec. 552.147 include SB 434 by Shapiro, which would require governmental bodies to redact social security numbers of living persons, and SB 1005 by Janek, which would immunize county clerks from liability under the Public Information for making available a social security number while carrying out their official duties, with the immunity expiring on September 1, 2009.

On March 1, the House by 145-0 suspended Art. 3, sec. 5(b), the constitutional order-of-business provision, to allow consideration of HB 2061 during the second 30 days of the regular session.