

SUBJECT: Personally identifiable information under the Public Information Act

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Solomons, Menendez, Cook, Craddick, Farabee, Gallego,
Geren, Harless, Hilderbran, Jones, Maldonado, Oliveira, Swinford

0 nays

2 absent — Lucio, S. Turner

WITNESSES: (*On original version:*)

For — Andy Homer, Texas Public Employees Association; Paula Pierce, Texas Legal Services Center; (*Registered, but did not testify:* Jennifer Cutrer, Parkland Health and Hospital Systems; Dwight Harris, Texas American Federation of Teachers; Celeste May, Texas Bankers Association; Denise Rose, Texas Hospital Association; Steve Scurlock, Independent Bankers Association of Texas; Shanna Weisfeld, Texas State Teachers Association)

Against — Maud Beelman, Dallas Morning News; Keith Elkins, Freedom of Information Foundation of Texas; Joe Ellis, Texas Association of Broadcasters, KDFW Fox 4 Dallas/Fort Worth; Ryan McNeill, Dallas Morning News; Paul Watler, AM Belo Corporation, Texas Daily Newspaper Association; Texas Association of Broadcasters; Freedom of Information Foundation of Texas; (*Registered, but did not testify:* Brian Collister, Freedom of Information Foundation of Texas; Texas Association of Broadcasters; Keith Oakley, Texas Association of Licensed Investigators)

BACKGROUND: The Public Information Act, Government Code, ch. 552, requires governmental bodies to disclose public information upon request by the public, unless that information is excepted from disclosure by one of a number of enumerated exceptions. If a governmental body wishes to withhold information from a request for disclosure based on one of the exceptions, the body must ask for a decision from the attorney general about whether the information is within that exception, if there has not been a previous determination about whether the information falls within one of the exceptions.

DIGEST:

CSHB 4207 would amend the Public Information Act (PIA) by adding Government Code, sec. 552.150, which would add an exception to allow a governmental body to withhold from disclosure the date of birth of a current or former official or employee, but not the month or year, that was collected or maintained in a governmental body's personnel, payroll, or employment records. A governmental body could redact the date of birth without requesting a decision from the attorney general.

The bill would add Government Code, subch. J to require the comptroller to perform an analysis of the amount and type of personally identifiable information collected by each state governmental body. Subchapter J would expire September 1, 2011.

By providing public information that was confidential or otherwise excepted from required disclosure to the comptroller to perform the required analysis, a governmental body would not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. Neither the comptroller nor the task force could disclose to a requestor or the public any information submitted for analysis.

The comptroller would be required to file a report with the presiding officer of each house of the Legislature that identified the personally identifiable information collected by each governmental body by December 1, 2010. The report would have to contain the comptroller's recommendations for legislation regarding personally identifiable information collected by a governmental body, including:

- whether each body should continue to collect or maintain such information;
- whether to amend the public information law to further limit the types of personally identifiable information that could be withheld from disclosure; and
- the effect of such recommendations.

The comptroller could establish a task force to assist and advise the comptroller in performing the analysis and would have to adopt a plan of operation for the task force, including qualifications for the members. The comptroller could appoint as many members as the comptroller

determined necessary, and could consider any appropriate factor, including a person's expertise.

A task force would have to include:

- a member from the judiciary;
- a member from the Department of Information Resources;
- a member from the Department of Public Safety;
- a member from the Health and Human Services Commission;
- a member employed by an institution of higher education;
- a member employed by a financial institution; and
- a member employed by an information services company.

Two or more members of the task force could not be employees or officers of the same company or organization. A person could not be a public member of the task force if the person was required to register as a lobbyist or related to a person required to register as a lobbyist within the second degree of affinity or consanguinity.

"Personally identifiable information" would be defined to include any information about an individual collected by a state governmental body that could be used to distinguish or track the individual's identity or that could be linked to the individual, such as the individual's name, location of birth, or educational information.

"State governmental body" would be defined as a governmental body that was part of state government.

CSHB 4207 would take effect September 1, 2009, and would apply only to a request for information received on or after this date.

**SUPPORTERS
SAY:**

By allowing the day of birth to be withheld from requests under the Public Information Act, CSHB 4207 would help protect employees from identity theft. Identity theft is one of the fastest-growing, most expensive crimes, with far-reaching financial consequences for victims. A counterfeit driver's license can be obtained using a victim's name and birth date, then used to open checking accounts, and engage in other types of theft. Excepting birth dates from disclosure would create an obstacle for these criminals.

CSHB 4207 would protect employees and maintain government transparency. Records still would be accessible, and employees could be identified and distinguished through non-Social-Security-based unique numbers, as well as age, race, and other less sensitive identifying information. By releasing the month and year of an employees birth, and withholding only the day, this bill would not be an impediment to the public or media's access to information.

A review of the types of information collected by governmental bodies would provide the Legislature an in-depth understanding of this information and provide insight into any associated issues.

OPPONENTS
SAY:

CSHB 4207 would impede the public's right to know and the transparency of government. Excepting an employee's day of birth from disclosure would run counter to the cause of public scrutiny of government. The public deserves to know whose salaries are being funded by public tax dollars.

The bill would interfere with newsgathering. Date of birth is a key piece of information in confirming identity, and is important for accurate reporting. It can be the only way to distinguish between people with the same name. This information has proven critical and has been used to serve the public good by exposing corruption in government agencies, such as the Texas Youth Commission.

CSHB 4207 would not combat identity theft. The link between date of birth and identity theft has never been proven. Most identity theft results from a stolen credit card number, government ID, or bank statement, not a date of birth obtained through a public information request. In addition, dates of birth are already available on voter registration rolls, which are more accessible than information obtained via public information request.

NOTES:

The substitute differs from the original by excepting from disclosure the day of birth, but not the month and year; adding provisions applying the exception specifically to information collected or maintained in a governmental body's personnel, payroll, or employment records; adding provisions that a governmental body would not waive the right to except information from disclosure by providing it to the comptroller for analysis; prohibiting the comptroller and task force from disclosing information submitted for analysis; authorizing, rather than requiring, the comptroller to adopt a plan of operation for the task force and to consider all

appropriate factors; requiring a member employed by an information services company to be a member of the task force.

The companion bill, SB 1912 by Duncan, was reported favorably, as substituted, by the Senate State Affairs Committee on April 28.