

## **BILL ANALYSIS**

Senate Research Center

S.B. 944  
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Business & Commerce  
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Enrolled

### **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 optout from requesting confidential or otherwise excepted information, which would reduce the government's workload and result in a faster response to the requestor. (Original Author's/Sponsor's Statement of Intent)

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 552.002, Government Code, by adding Subsection (d) to define "protected health information."

SECTION 2. Amends Section 552.003, Government Code, by adding Subdivision (7) to define "temporary custodian."

SECTION 3. 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 to preserve the public information in its original form in a backup or archive and 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 4. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.159, as follows:

Sec. 552.159. EXCEPTION: CONFIDENTIALITY OF CERTAIN INFORMATION PROVIDED BY OUT-OF-STATE HEALTH CARE PROVIDERS. Provides that information obtained by a governmental body that was provided by an out-of-state health care provider in connection with a quality management, peer review, or best practices program that the out-of-state health care provider pays for is confidential and excepted from the requirements of Section 552.021 (Availability of Public Information).

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 (Public Information), to:

- (1) makes no changes to this subdivision;
- (2)–(3) makes nonsubstantive changes to these subdivisions; 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 or the officer's agent.

SECTION 6. 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. METHOD OF MAKING WRITTEN REQUEST FOR PUBLIC INFORMATION. (a) Authorizes a person to make a written request for public information under this chapter only by delivering the request by one of the following methods to the applicable officer for public information or a person designated by that officer:

(1) United States mail;

(2) electronic mail;

(3) hand delivery; or

(4) any other appropriate method approved by the governmental body, including facsimile transmission and electronic submission through the governmental body's Internet website.

(b) Provides that, for purposes of Subsection (a)(4), a governmental body is considered to have approved a method described by that subdivision only if the governmental body includes a statement that a request for public information is authorized to be made by that method on the sign required to be displayed by the governmental body under Section 522.205 (Informing Public of Basic Rights and Responsibilities Under This Chapter) or the governmental body's Internet website.

(c) 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 to provide the designated mailing address and electronic mailing address to any person on request.

(d) Provides that a governmental body that posts the mailing address and electronic mail address designated by the governmental body under Subsection (c) on the governmental body's Internet website or that prints those addresses on the sign required to be displayed by the governmental body under Section 522.205 is not required to respond to a written request for public information unless the request is received at one of those addresses, by hand delivery, or by a method described by Subsection (a)(4) that has been approved by the governmental body.

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 7. Repealer: Section 552.301(c) (relating to requests considered to be a written request), Government Code.

SECTION 8. Makes application of this Act prospective.

SECTION 9. 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 10. Effective date: September 1, 2019.