

- SUBJECT:** Revising processes by which public information is requested, released
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King, Parker, Raymond, Smithee, Springer
- 0 nays
- 2 absent — Hernandez, E. Rodriguez
- SENATE VOTE:** On final passage, April 10 — 29-1 (Creighton)
- WITNESSES:** *On House companion bill, HB 2191:*  
For — Rob Johnson, Clients of the firm Foley Gardere; James Hemphill, Freedom of Information Foundation of Texas; (*Registered, but did not testify*: Matt Simpson, American Civil Liberties Union of Texas; John Bridges, Austin American-Statesman, Freedom of Information Foundation of Texas, Texas Press Association; Adam Cahn, Cahnman's Musings; Dick Lavine, Center for Public Policy Priorities; Dave Jones, Clean Elections Texas; Anthony Gutierrez, Common Cause Texas; Kelley Shannon, Freedom of Information Foundation of Texas; Tom Oney, Lower Colorado River Authority; Michael Coleman, Public Citizen; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Bill Patterson, Texas Press Association; Bay Scoggin, Texas Public Interest Research Group; Stephanie Ingersoll)
- Against — None
- On — Zenobia Joseph; (*Registered, but did not testify*: Justin Gordon, Office of the Attorney General; Troy Alexander, Texas Medical Association)
- BACKGROUND:** Government Code ch. 552, the Public Information Act, requires governmental bodies to disclose information to the public upon request unless that information is excepted from disclosure. Subch. G

establishes the process by which a governmental body must request an attorney general decision if it wishes to withhold information from public disclosure under a statutory exception.

Sec. 552.205 requires an officer for public information to prominently display a plainly visible sign in a governmental body's administrative offices that contains basic information about the rights of a requestor, the responsibilities of a governmental body, and the procedures for inspecting or obtaining a copy of public information.

Observers have noted that some of the procedures related to requesting public information are inefficient, including processes for governmental bodies to receive and respond to requests that include confidential or otherwise excepted information. Others also have raised concerns about access to public information stored on privately owned devices.

**DIGEST:**

SB 944 would revise the Public Information Act to provide a process for a governmental body to retrieve public information held by a temporary custodian, specify the procedure for making a written request, require the attorney general to create a request form, and create an exception for certain health information.

**Temporary custodian.** The bill would require a current or former officer or employee of a governmental body who maintained public information on a privately owned device to:

- forward or transfer the information to the governmental body or a governmental body server to be preserved; or
- preserve the public information in its original form in a backup or archive on the privately owned device for a period of time determined by the governmental body.

Current law governing the preservation, destruction, or other disposition of records or public information would apply to records and public information held by a temporary custodian.

The bill would define "temporary custodian" as an officer or employee of a governmental body who, in the transaction of official business, created or received public information that the officer or employee had not provided to the governmental body's officer for public information. The term would include a former employee or officer.

**Ownership of public information.** A current or former officer or employee of a governmental body would 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.

A temporary custodian with possession, custody, or control of public information would have to surrender or return the information within 10 days after the governmental body's officer for public information requested it.

A temporary custodian's failure to surrender or return the information as required would be grounds for disciplinary action by the governmental body that employed the temporary custodian or any other applicable penalties provided by the Public Information Act or other law.

An officer for public information would be required to make reasonable efforts to obtain public information from a temporary custodian if:

- the information had been requested from the governmental body;
- the officer was aware of facts sufficient to warrant a reasonable belief that the temporary custodian had possession, custody, or control of the information;
- the officer was unable to comply with the duties imposed by the Public Information Act without obtaining the information; and
- the temporary custodian had not provided the information to the officer.

For the purposes of Government Code ch. 552, subch. G relating to information surrendered or returned by a temporary custodian, the

governmental body would be considered to have received the request for that information on the date the information was surrendered or returned.

**Written requests.** A person could make a written request for public information only by delivering the request to the officer for public information by U.S. mail, email, hand delivery, or any other method approved by the governmental body, including by fax and through the governmental body's website. A statement on a governmental body's approved methods would have to be included on the sign required under Government Code sec. 552.205 or the governmental body's website.

A governmental body could designate one mailing address and one email address for receiving written requests for public information and would have to provide the addresses to any person on request. A governmental body that posted the mailing and email addresses on its website or on the displayed sign would not be required to respond to a written request for public information unless it was received at one of those addresses, by hand delivery, or by another approved method.

**Public information request form.** The bill would require the attorney general to create a request form that provided a requestor the option of excluding from a request information that the governmental body determined was confidential or subject to an exception to disclosure that the governmental body would assert if the information were subject to the request.

The attorney general would have to create the form by October 1, 2019. A governmental body that maintained a website and allowed requestors to use the form would have to post the form on its website.

**Health information.** The bill would specify that protected health information, including any information that reflected that an individual received health care from a covered entity that was a governmental unit, was not public information and not subject to disclosure.

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 provider paid for would be confidential and excepted from disclosure under public information laws.

The bill would take effect September 1, 2019, and would apply only to a public information request received on or after that date.