

**SUBJECT:** Defining business day for purposes of the Texas Public Information Act

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Slawson, Smithee

0 nays

1 absent — Shaheen

**WITNESSES:** For — James Quintero, Texas Public Policy Foundation; (*Registered, but did not testify*: Bill Kelly, City of Houston Mayor's Office; Kelley Shannon, Freedom of Information Foundation of Texas; Laura Prather, Freedom of Information Foundation of Texas and Transparent and Accountable Government Coalition; Joseph Coleman, Hill Country News; Russell Schaffner, Tarrant County; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Mike Hodges, Texas Press Association; Julie Campbell)

Against — (*Registered, but did not testify*: Daniel Collins, El Paso County; Will Holleman, Texas Association of School Boards; Sarah Murphy)

On — Jaie Avila, WOAI-TV, San Antonio; (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Justin Gordon, Office of Attorney General; Zenobia Joseph)

**BACKGROUND:** Government Code ch. 552, the Texas Public Information Act, requires governmental bodies to disclose information to the public upon request unless that information is excepted from disclosure.

Sec. 552.221 requires that a public information officer of a governmental body promptly produce public information for inspection and/or duplication when requested. If a public information officer cannot produce information for inspection or duplication within 10 business days after

requested, the officer must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Under sec. 552.301, if a governmental body wishes to withhold information from public disclosure under a statutory exception, it must ask within 10 business days after receiving the request for an attorney general decision about whether the information can be withheld and notify the requestor that the body wishes to withhold the requested information and has asked for an attorney general decision.

**DIGEST:**

CSHB 1416 would define "business day" for the purposes of the Texas Public Information Act to mean a day other than a Saturday or Sunday or a national or state holiday under state law governing holidays for state employees.

An optional holiday would not be a business day of a governmental body if the public information officer observed the optional holiday.

A holiday established by the governing body of an institution of higher education would not be a business day of the institution.

A day designated as a non-business day by the governing body of an independent school district or institution of higher education would not be a business day of the district or institution. A governing body could not designate more than 20 non-business days each calendar year, and the district or institution would have to post a list of the non-business days on its website by the first day of the school year.

The bill would take effect September 1, 2021, and would apply only to a request for public information received on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1416 would enhance government transparency by defining "business day" for the purposes of the Texas Public Information Act to address adequately modern-day work scenarios and ensure public information requests were responded to promptly and consistently.

Current attorney general guidance on the calculation of business days for the purposes of public information laws states that in addition to holidays and weekends, skeleton crew days and days on which a governmental body's administrative offices are closed are not business days. Some have raised concerns that this has resulted in a number of governmental bodies not responding to requestors during the COVID-19 pandemic, citing the physical closure of offices or skeleton crew with employees working remotely. However, since many requested records are accessible electronically, remote work should not preclude responding to certain information requests. Some have reported waiting months for responses to requests submitted throughout the pandemic. The bill would clarify and define a business day to update and help restore the spirit of the Texas Public Information Act.

Understanding differences in operations, the bill would give independent school districts and institutions of higher education the discretion to designate 20 extra days each school year to account for days that normally would be business days when the administrative offices were closed, including spring break, extra days surrounding national holidays, inclement weather days, and time taken during the summer. Schools and universities already would receive the same number of non-business days as other governmental bodies, and although some would like the cap increased, schools should be treated in a manner similar to other governmental bodies under public information laws.

CRITICS  
SAY:

The current attorney general guidance for the calculation of business days under the Texas Public Information Act should be retained, as it provides governmental bodies adequate time to respond to a public information request and the flexibility to respond to local emergencies, such as floods or power outages, or other unforeseen circumstances that result in the closure of administrative offices.

By capping the number of non-business days for independent school districts and institutions of higher education, CSHB 1416 could impose a burden and require schools to change procedures. School districts and

higher education institutions operate on a different calendar than other governmental entities, and the bill would not provide enough flexibility to respond to inclement weather days or adjust schedules during the summer months to save taxpayer money on utilities.