

SUBJECT: Making dates of birth generally available under public information laws

COMMITTEE: State Affairs — committee substitute recommended

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

0 nays

1 absent — Lucio

WITNESSES: For — Mary Ann Cavazos Beckett, Corpus Christi Caller-Times; Laura Prather, Transparent and Accountable Government Coalition; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Joe Ellis and Kelley Shannon, Freedom of Information Foundation of Texas; Joseph Coleman, Hill Country News; Adrian Shelley, Public Citizen; Jeff Heckler, PublicData.com; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett and Mike Hodges, Texas Press Association; Don Dixon; Terri Hall)

Against — (*Registered, but did not testify*: Melissa Shannon, Bexar County Commissioners Court; Daniel Collins, El Paso County; Ender Reed, Harris County Commissioners Court)

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. 552.102 excepts from public disclosure information in a personnel file the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the file of an employee of a governmental body is to be made available to that employee as public information.

DIGEST: CSHB 3535 would specify that the Texas Public Information Act would not authorize a governmental body to withhold a date of birth, except as

permitted by Government Code sec. 552.102, federal privacy requirements under the Health Insurance Portability and Accountability Act of 1996, or constitutional or statutory law.

The bill would apply only to a request for information that was received by a governmental body or an officer of public information on or after the bill's effective date.

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, 2021.

SUPPORTERS
SAY:

CSHB 3535 would enhance government transparency by restoring the ability of the public to obtain dates of birth under the Texas Public Information Act. Dates of birth in public records mostly have been closed off since the 2015 Third Court of Appeals ruling in *Paxton v. City of Dallas*. The ruling expanded on a prior Texas Supreme Court ruling in which dates of birth in public employees' personnel files were declared confidential and ruled that dates of birth of public citizens are also protected under common-law privacy.

CSHB 3535 would restore public access to important information for accuracy by clarifying dates of birth were accessible in public records except for under limited circumstances. Dates of birth are found in a variety of public records, including certain databases, jail records, civil legal findings, election candidate applications, and voter registration rolls. Access to dates of birth is vitally important for many purposes, including to monitor the actions of public officers, to ensure the accuracy of information, for news reporting, for business transactions, and for identity verification in the context of elections, credit checks, loan decisions, crime reporting, and employment.

Public access to dates of birth does not create significant privacy or security issues, as identity theft and fraud are not problems commonly associated with the release of a date of birth unaccompanied by other key identifiers. Dates of birth are listed on driver's licenses and often requested

in public settings, such as during bank transactions, hotel check-ins, and age verification for alcohol purchases. Also, many people voluntarily post their dates of birth on social media.

**CRITICS
SAY:**

CSHB 3535 would place an undue burden on local governments who wish to redact dates of birth from released records. Under the bill, governmental bodies always would be required to seek an attorney general decision prior to redacting dates of birth, rather than being able to act under current automatic redaction processes. This would reduce efficiency and tax local resources.

Further, since dates of birth are key components of the identification process of many governmental services, making them more easily accessible could make it easier for individuals to engage in identity theft. Any benefit of public disclosure would be outweighed by the negative impact of increasing identity theft.