

#### Trends and Observations

- Privacy and security sometimes trump transparency
- Open government statutes are beginning to catch up to today's technology, but more work remains
- Increasing frequency of bills which would allow governmental bodies to withhold certain information without necessity of seeking Attorney General's opinion
- Increasing frequency of bills which make certain information available to some classes of persons but not others

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Texas Legislature Online



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#### Access to Information

##### *SB 1368—Electronic Communications and Third Party Contractor Information*

This bill expands the definition of public information in the Texas Public Information Act to include electronic communications created by, received by, or maintained by a public officer or employee in connection with the transaction of official business which are stored on any device. It provides that the forms in which public information may exist include email, text messaging, and internet posting.

This bill also requires contracts between a state governmental entity and a vendor involving the creation or exchange of public information to contain a provision that requires the vendor to make the information available in a specific format that is agreed upon in the contract and accessible to the public. Effective 9/1.

##### *SB 895—CPRIT Supporting Foundation Subject to PIA*

This bill provides that the records of a nonprofit organization established to provide support to the Cancer Prevention and Research Institute of Texas are subject to Public Information Act. Effective 6/14.

##### *SB 246—Electronic Request for AG Opinion*

This bill allows governmental bodies to submit requests for formal Attorney General opinions electronically. Effective 9/1.

##### *SB 457—Autopsy Reports, Photos, and X-Rays*

As a practical matter under current law, autopsy reports are often withheld because of the "law enforcement exception" in the Public Information Act. Current law allows withholding of autopsy photos and x-rays, except when individual died in law enforcement custody. SB 457 would allow governmental bodies to withhold those photos and x-rays without the necessity of seeking an Attorney General's opinion. Effective 9/1.

##### *SB 1512—"Sensitive" Crime Scene Photos and Video*

This bill makes "sensitive crime scene images"—those depicting a deceased individual in a mutilated or decapitated state—confidential, but allows certain persons the right to view or copy the images, including a person "who establishes to the governmental body an interest in a sensitive crime scene image that is based on, connected with or in support of...an expressive work."

An "expressive work" includes a "work the primary function of which is the delivery of news, information, current events, or other matters of public interest or concern." Effective 9/1.

##### *HB 2733—Law Enforcement Employees/Personal Information*

This bill adds three new classes of current or former law enforcement personnel whose home address, telephone number, emergency contact information, social security number and information which reveals if the person has family members to the list of those excepted from disclosure under the TPIA: juvenile probation and supervision officers certified by the Juvenile Justice Department; employees of a juvenile justice department, program or facility; and employees of the Juvenile Justice Department. Effective 9/1.

##### *SB 1896—Home Addresses of Judges in Tax Records*

This bill adds Probate Court judges, Municipal Court judges, and certain court magistrates to the list of judicial branch officials whose names can be shielded in property tax appraisal records. Effective 5/24.

##### *HB 2676—Appraisal District Records/Armed Forces Personnel*

This bill adds current or former members of the armed forces who have served in a combat zone to the list of individuals who can shield their home address information in appraisal district records. Effective 6/14.

#### Open Meetings Issues

##### *HB 2414—Meetings by Videoconference*

This bill allows any governmental body to meet by videoconference (prior law applied only to state boards and governmental bodies extending into at least three counties). There must be one physical "location" of the meeting that is equipped with suitable videoconference equipment and at which the public may participate by videoconference; and provides that only the presiding officer must be present at the physical "location" of the meeting (prior law required a quorum to be present at the physical "location"). Effective 6/14.

##### *SB 984—Technical Difficulty during Videoconference Meeting*

Provides that if technical difficulties make a videoconference meeting "no longer visible and audible" to the public, the meeting must be recessed until problem resolved; if problem cannot be resolved in six hours, meeting must be adjourned. The bill also does away with the requirement that the meeting notice specify the physical location of all members of the body who are participating in the meeting. Effective 9/1.

*SB 1297—Permissive Communications among Public Officials on Electronic Bulletin Boards*

The Open Meetings Act currently prohibits electronic “discussion” among a quorum of members of a public body. SB 1297 allows discussions in an online forum outside a meeting provided that the following requirements are met: the writing must be posted to an online message board owned or controlled by a governmental body; the message board must be viewable by the public and easily accessible from the governmental body’s website; only elected members of the governmental body or certain staff may use the message board; the messages must be displayed in real time for at least 30 days after first posted, must be searchable, and must be archived for six years after removal. Note: the bill does not require a governmental body to maintain this electronic bulletin board. Effective 9/1.

**First Amendment Bills**

*HB 1759—Retraction Statute*

This bill establishes a uniform process for request and issuance of retractions, clarifications or corrections. Key provisions for publishers are:

A publisher receiving a timely request for retraction may, but is not required to, publish a correction, an apology, or the requestor’s own statement.

- If the publisher chooses to make the correction or retraction, then to obtain the benefits of the statute it must be made within 30 days after receiving the request and be published in the same medium or, if that is not possible, in a prominent manner and medium intended to reach the same audience as the original publication.
- The complainant may still sue even after a correction or retraction is published, but if the correction or retraction is published in accordance with the statute the plaintiff may not recover punitive damages without a showing of actual malice.
- If a complainant sues without first giving notice and an opportunity to cure to the publisher, then the publisher can obtain a 60 day stay of the proceedings during which time the retraction process can take place.

Effective 6/14.

*HB 2935—Anti-SLAPP/Interlocutory Appeals*

This bill clarifies the right to an interlocutory appeal for cases brought under the anti-SLAPP law if a motion to dismiss is denied either by a ruling of the court or under operation of law. It also:

- Provides more latitude with regard to deadlines for the hearing on the motion to dismiss
- Provides that an anti-SLAPP motion shall be granted if the movant can establish an affirmative defense by a preponderance of the evidence
- Adds “insurance services” to the commercial speech exemption and indicates that the anti-SLAPP statute does not apply to lawsuits brought under the Insurance Code or arising out of an insurance contract

Effective 6/14.

*HB 912—Drones*

Subject to numerous exceptions, this bill bans the use of unmanned aircraft to “capture an image of an individual or privately owned real property...with the intent to conduct surveillance,” and creates civil and criminal penalties for doing so. Newsgathering is not expressly included in the long “laundry list” of permissible uses of drones. Effective 9/1.

*HB 3164—Search Warrants/Email*

This bill requires search warrants for access to email or other electronic messages or data stored by Internet service providers and “cloud” type services. Effective 6/14.

**A Few Dead Bills**

*HB 382—Publicly Funded Legal Settlements*

This bill would have prohibited governmental bodies settling civil claims for \$30,000 or more from requiring the opposing party, as a condition of settlement, to maintain confidentiality of any aspect of the case.

*HB 526/HB 973/HB 2432—Public Retirement Systems*

This bill would have repealed a provision in the Texas Public Information Act giving public retirement systems “sole discretion” to determine if requested records are subject to disclosure, without necessity of seeking Attorney General opinion. It would have made various other changes to provisions concerning confidentiality of public employee pension records.

*HB 2934—Electronic Communications During Public Meetings*

This bill would have generally prohibited electronic communications (texts, instant message, emails, etc.) during a public meeting by those serving on the governing body. Permitted communications would be administrative or ministerial, or to a family member about a family matter not relating to the transaction of official business; or in relation to an emergency situation.

*HB 1439—Sealing of Arrest Warrant Affidavits*

This bill would have allowed a judge to seal an arrest warrant affidavit for up to 30 days, with one possible 30 day extension, if disclosure would jeopardize the safety of a victim, witness, or confidential informant, or cause the destruction of evidence. A similar sealing procedure currently applies to search warrant affidavits.

*HB 3200—TPIA Mandamus Suits*

This bill would have delayed the public’s ability to seek a mandamus proceeding when a governmental body refused to disclose information until after an Attorney General opinion was issued.

**Vetoed Bills**

*SB 219—Texas Ethics Commission Sunset*

This bill contained a provision which would have made the journalist’s privilege unavailable in civil cases to a person who made a direct campaign expenditure of \$100 or more, or is employed by one who did. Governor Perry’s veto message cited this provision as one of his reasons to veto the bill.