

HB 394 -- PUBLIC RECORDS

SPONSOR: Falkner

The bill modifies the definitions of "public business", "public meeting", and "public record" and adds a definition for "transitory records" for the purposes of the Sunshine Law. "Transitory records" shall not be considered a public record. Currently, the definition of "public record" provides that personally identifiable student records maintained by a public educational institution may be viewed by a parent or guardian of the student, or by the student if over the age of 18. This bill modifies this provision to apply to all public governmental bodies rather than just public educational institutions. Also, the definition of "public record" excludes any internal memorandum received or prepared by a public body consisting of certain advisory material unless such record is retained by the public body. This bill repeals the requirement that such record was retained by the public body.

Bases for closing records and meetings are modified to include certain records relating to nonjudicial mental or physical health proceedings. The bill authorizes a public governmental body to close records and meetings relating to security measures, GPS data, and investigative and surveillance techniques of any law enforcement or public safety agency which, if disclosed, has the potential to endanger individual or public safety or health.

Currently, a public body may close records relating to operational guidelines, policies, and response plans for use in responding to a critical incident which is or appears to be terrorist in nature. This bill repeals the requirement that incidents be terrorist in nature to be considered to endanger individuals or public safety or health. The bill further authorizes the closure of existing and proposed security protocols of a public body.

A public governmental body is authorized to close records that are related to email addresses and telephone numbers submitted to a public governmental body by individuals or entities for the sole purpose of receiving electronic or other communications.

This bill authorizes the closure of public records that are retained by a public governmental body that are related to a constituent of the public body as well as records related to a dignitary or foreign leader. Medical and mental health records of a constituent may be closed in their entirety and other such records shall be redacted to remove individually identifiable information of the constituent. The bill defines the term "constituent" to exclude a lobbyist or lobbyist principal, a

statewide elected official, or an elected official of a political subdivision, or an employee of such elected official.

The bill authorizes the closure of inter-agency or intra-agency memoranda or letters that would not be available by state or federal law to a party other than an agency in litigation with the agency, provided that this exception shall not apply to records created 25 years or more before the date the records were requested or to records to or from a registered lobbyist or lobbyist principal.

Further, any record may be closed that is retained in the office of a member of the General Assembly, or employees of the General Assembly, that contain information regarding proposed legislation or the legislative process. These authorizations to close records shall not apply if the record has been offered in a public meeting of either house of the General Assembly or, for legislative records, to any record addressed to, or from, a lobbyist or lobbyist principal.

Currently, requests for records must be acted upon within three business days. This bill changes this requirement to five business days. Access to and production of records may be conditioned upon the receipt of payment of fees.

Where a single record contains both open and closed records, the public body shall make a redacted version of such record available. Current law authorizes a public body to charge for research time required to fulfill records requests. This bill authorizes the public body to also charge for the time needed to redact documents using employees of the body that result in the lowest charge.

Currently, payment of copying fees may be requested prior to the making of copies. This bill modifies this provision so that payment of any fees may be requested prior to fulfilling the request. Except as provided in the bill, a request for public records to a public governmental body shall be considered withdrawn if the requester fails to remit all fees within 30 days of a request for payment of the fees by the public governmental body. The public body shall include notice to the requester that the failure to remit the fees within 30 days shall result in the request being considered withdrawn. If a public body responds to a records request in order to seek clarification of the request and no response to the clarification request is received within 30 days, then such request shall be considered withdrawn. The request for clarification shall include notice to the requester that the request shall be considered withdrawn if there is no response within 30 days. If the same or a substantially similar request for records is made within six months of the expiration of the 30 day

period and no fee was remitted for the original request or no response to the request for clarification was received, then the public body can request payment of fees made for the original request.

This bill is similar to HB 1059 and the same as SB 174 (2023).