

Memorandum

To: Appellate Rules Subcommittee, Texas Supreme Court Advisory Committee
Justice Nathan L. Hecht
Justice David Medina
Marisa Secco, Esquire

From: Bill Dorsaneo

Date: October 12, 2011

Re: Government Code § 660.2035 (revised)

As shown in Justice Hecht's July 13, 2011 letter to Charles L. "Chip" Babcock concerning Referral of Rules Issues, the subject entitled "Security Details" has been assigned to our subcommittee. As stated in Justice Hecht's letter:

"Security Details. SB 1 adds Government Code § 660.2035, which gives the Supreme Court 'original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of' provisions for the confidentiality of a 'voucher or other expense reimbursement form . . . for payment or reimbursement of a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family.'"

Government Code § 660.2035

Under Subsection (a) of Government Code § 660.2035 "a voucher or other expense reimbursement form, that is submitted [to the comptroller] under Section 660.027 is confidential under Chapter 552 [which contains the Public Information Act'] for a period of 18 months following the date of travel if [the reimbursement is for] a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family."

Subsection (b) of Government Code § 660.2035 states that: “At the expiration of the 18 month period, the voucher or expense reimbursement form and any supporting documents *become subject to disclosure under Chapter 552 and are not excepted from public disclosure or confidential under that chapter or other law*” except as provided in a number of sections of Chapter 552. (italics added)

Subsection (g) of Government Code § 660.2035 provides that “[a] state agency that receives a request for information *described by Subsection (a)* during the period provided by that subsection may withhold that information *without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552.*” (italics added) Subsection (g) also provides that: “The Supreme Court of Texas has original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality *of Subsection (a).* (italics added) The supreme court may appoint a master to assist in the resolution of *any such dispute* as provided in Rule 171, Texas Rules of Civil Procedure, and may adopt additional rules as necessary to govern procedures for the resolution of any such dispute.” (italics added)

The Dept. of Public Safety Case

In *Dept. of Public Safety v. Cox Texas*, 343 S.W.3d 112 (Tex. 2011) the Texas Supreme Court interpreted the Texas Public Information Act in connection with requests for information made to the Department of Public Safety for travel vouchers from Governor Perry’s “security detail” by reporters representing three newspapers. The DPS requested a ruling from the Attorney General’s office, which determined that the release of the information “would place the governor in imminent threat of physical danger.”

The Cox and Hearst publishers sued DPS seeking complete disclosure. The trial judge ordered complete disclosure after a bench trial, finding that “public disclosure . . . would not put any person in imminent threat of physical danger or create a substantial risk of serious bodily harm.” The court of appeals affirmed. The Texas Supreme Court granted review.

Among other things the Court's decision "recognizes, for the first time, a common law physical safety exception to the PIA." Because the Court had "never before addressed whether or how [the exception] applies to the PIA, the case was remanded to the trial court." 343 S.W.3d 118-121.

Statutory Interpretation

It is unclear to me whether the new legislation substitutes "exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of Subsection (a)" for all of the procedures employed in *Dept. of Public Safety v. Cox Texas*. But perhaps the limiting reference to "Subsection (a)" in subsection (g)'s rulemaking sentences has a more limited meaning and does not oust the lower courts' jurisdiction to adjudicate the factual issues and the legal issues arising under the PIA and "other law" in such cases. I mentioned this issue to Justice Hecht and Marisa Secco at our last meeting. Their view is that the legislature probably intended to give the supreme court the entire job. With that in mind, I plan to draft a rule for inclusion in Section 3 of the Appellate Rules for discussion purposes and to schedule a conference call to that end.

Please let me know what you think about the meaning of the statutory language.

Attachments

1 of 1 DOCUMENT

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TEXAS 82ND LEGISLATURE - 1ST CALLED SESSION

SENATE BILL 1

2011 Tex. SB 1

NOTICE: [A> Text within these symbols is added <A]

[D> Text within these symbols is deleted <D]

... [*79Ax01] SECTION 79A.01. Subchapter H, Chapter 660, Government Code, is amended by adding Section 660.2035 to read as follows:

[A> Sec. 660.2035. CONFIDENTIALITY OF CERTAIN PEACE OFFICER VOUCHERS; QUARTERLY SUMMARIES. (a) A voucher or other expense reimbursement form, and any receipt or ...

other document supporting that voucher or other expense reimbursement form, that is submitted or to be submitted under Section 660.027 is confidential under Chapter 552 for a period of 18 months following the date of travel if the voucher or other expense reimbursement form is submitted or is to be submitted for payment or reimbursement of a travel expense incurred by a peace officer while assigned to provide protection for an elected official of this state or a member of the elected official's family. <A]

[A> (b) At the expiration of the period provided by Subsection (a), the voucher or other expense reimbursement form and any supporting documents become subject to disclosure under Chapter 552 and are not excepted from public disclosure or confidential under that chapter or other law, except that the following provisions of that chapter apply to the information in the voucher, reimbursement form, or supporting documents: <A]

[A> (1) Section 552.117; <A]

[A> (2) Section 552.1175; <A]

[A> (3) Section 552.119; <A]

[A> (4) Section 552.136; <A]

[A> (5) Section 552.137; <A]

[A> (6) Section 552.147; and <A]

[A> (7) Section 552.152. <A]

[A] (c) A state agency that submits vouchers or other expense reimbursement forms described by Subsection (a) shall prepare quarterly a summary of the amounts paid or reimbursed by the comptroller based on those vouchers or other expense reimbursement forms. Each summary must: <A]

[A] (1) list separately for each elected official the final travel destinations and the total amounts paid or reimbursed in connection with protection provided to each elected official and that elected official's family members; and <A]

[A] (2) itemize the amounts listed under Subdivision (1) by the categories of travel, fuel, food, lodging or rent, and other operating expenses. <A]

[A] (d) The itemized amounts under Subsection (c)(2) must equal the total amount listed under Subsection (c)(1) for each elected official for the applicable quarter. <A]

[A] (e) A summary prepared under Subsection (c) may not include: <A]

[A] (1) the number or names of the peace officers or elected official's family members identified in the vouchers, expense reimbursement forms, or supporting documents; <A]

[A] (2) the name of any business or vendor identified in the vouchers, expense reimbursement forms, or supporting documents; or <A]

[A] (3) the locations in which expenses were incurred, other than the city, state, and country in which incurred. <A]

[A] (f) A summary prepared under Subsection (c) is subject to disclosure under Chapter 552, except as otherwise excepted from disclosure under that chapter. <A]

[A] (g) A state agency that receives a request for information described by Subsection (a) during the period provided by that subsection may withhold that information without the necessity of requesting a decision from the attorney general under Subchapter G, Chapter 552. The Supreme Court of Texas has original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of Subsection (a). The supreme court may appoint a master to assist in the resolution of any such dispute as provided by Rule 171, Texas Rules of Civil Procedure, and

... [*79Ax01] may adopt additional rules as necessary to govern the procedures for the resolution of any such dispute. <A]

[*79Ax02] SECTION 79A.02. Section 660.2035, Government Code, as added by this article, applies according to its terms in relation to travel vouchers or other reimbursement form and any ...

supporting documents that pertain to expenses incurred or paid on or after the effective date of this article.

ARTICLE 80. EFFECTIVE DATE

[*80x01] SECTION 80.01. Except as otherwise provided by this Act:

(1) this Act takes effect September 1, 2011, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for effect on that date:

(A) this Act takes effect on the 91st day after the last day of the legislative session; and

(B) a provision of this Act that purports to take effect on September 1, 2011, takes effect on the date specified by Paragraph (A) of this subdivision.

Approved by the Governor: July 19, 2011

Duncan

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TOC: Texas Statutes and Codes > GOVERNMENT CODE > TITLE 6. PUBLIC OFFICERS AND EMPLOYEES > SUBTITLE B. STATE OFFICERS AND EMPLOYEES > CHAPTER 660. TRAVEL EXPENSES

Citation: **Tex. Gov. Code @ 660.027**

Tex. Gov't Code § 660.027

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*** Federal case annotations: July 14, 2011 postings on Lexis
*** State case annotations: July 2, 2011 postings on Lexis

GOVERNMENT CODE
TITLE 6. PUBLIC OFFICERS AND EMPLOYEES
SUBTITLE B. STATE OFFICERS AND EMPLOYEES
CHAPTER 660. TRAVEL EXPENSES
SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Gov't Code § 660.027 (2011)

§ 660.027. Vouchers

- (a) The comptroller may issue a warrant or initiate an electronic funds transfer to pay or reimburse a travel expense only if a state agency submits to the comptroller a voucher that meets the requirements of this section.
- (b) A voucher submitted under Subsection (a) is valid only if:
- (1) the state agency submitting the voucher approves it in accordance with Chapter 2103 and, if required by law, certifies the voucher; and
 - (2) the state employee who incurred the travel expense or, if the employee is unavailable, another individual acceptable to the comptroller approves the description of the travel expense.