



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 9, 2016

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2016-25018

Dear Mr. Miles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 633807.

The Health and Human Services Commission (the "commission") received a request for five categories of information pertaining to a specified request for information to the commission. You state the commission has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office. Additionally, we note the information at issue was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-16919 (2016). Although we concluded in that ruling that the information at issue is generally confidential under section 531.071(a) of the Government Code, we determined the commission must release the information at issue to the requestor, a member of the Texas Legislature, pursuant to section 552.008 of the Government Code. In response to Open Records Letter No. 2016-16919, the instant requestor's client, Pfizer, Inc., filed a lawsuit against our office. *See Pfizer, Inc. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-16-003858 (250th Dist. Ct., Travis County, Tex.). However, because the instant requestor is not an individual member, agency, or committee of the Texas Legislature, we will address the commission's arguments against disclosure of the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 531.071 of the Government Code, which provides the following:

(a) Notwithstanding any other state law, information obtained or maintained by the commission regarding prescription drug rebate negotiations or a supplemental Medicaid or other rebate agreement, including trade secrets, rebate amount, rebate percentage, and manufacturer or labeler pricing, is confidential and not subject to disclosure under [the Act.]

(b) Information that is confidential under Subsection (a) includes information described by Subsection (a) that is obtained or maintained by the commission in connection with the Medicaid vendor drug program, the child health plan program, the kidney health care program, the children with special health care needs program, or another state program administered by the commission or a health and human services agency.

(c) General information about the aggregate costs of different classes of drugs is not confidential under Subsection (a), except that a drug name or information that could reveal a drug name is confidential.

(d) Information about whether the commission and a manufacturer or labeler reached or did not reach a supplemental rebate agreement under Section 531.070 for a particular drug is not confidential under Subsection (a).

Gov’t Code § 531.071. You inform us sections 531.070 through 531.073 of the Government Code requires the commission to establish a preferred drug list for the Texas Medicaid program and other medical assistance programs administered by the commission and the health and human services agencies. You state the submitted information “consists of the federal and state rebate amounts for all drugs listed on the Texas Medicaid Preferred Drug List” and assert the information “is subject to section 531.071(a) as information regarding prescription drug rebate amounts.” Based on the commission’s representations and our review, we agree the submitted information is confidential pursuant to section 531.071(a) of the Government Code, and the commission must withhold it under section 552.101 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <http://www.texasattorneygeneral.gov/open/>

[orl\\_ruling\\_info.shtml](#), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 633807

Enc. Submitted documents

c: Requestor  
(w/o enclosures)