



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 20, 2017

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

OR2017-16233

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# 667105 (HHSC Ref. No. 12689).

The Texas Health and Human Services Commission (the "commission") received a request for correspondence between commission employees and representatives of a named third party related to specified products during a specified time period. You state the commission will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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).

*Id.* § 531.071. You inform us sections 531.070 through 531.073 of the Government Code require 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 communications with the named third party “to assist in creating and updating the [preferred drug list]” and assert the information is subject to section 531.071(a) because it consists of “documents referencing rebate amounts, rebate percentages, and manufacturer or labeler pricing.” Based on your 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.<sup>1</sup>

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](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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 667105

Enc. Submitted documents

c: Requestor  
(w/o enclosures)