



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 4, 2019

Mr. Erik Brown
Director of Legal Affairs
Office of General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2019-14717

Dear Mr. Brown:

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# 769747 (OGC# AL0117).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to certain lethal injection drugs or substances including the names, inventories or logs, expiration and beyond use dates, manufacture or compound information, correspondence related to the department acquiring or using the specified drugs, correspondence involving the refusal to produce substances for purposes of execution, DEA forms, chain of custody records, purchase orders, testing of the substances, execution protocols, Official Order Form Schedules I & II, controlled substance registrations held by the department, training related to execution procedures, prescriptions, import documents, and payment records. The department states it has released or will make available some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.1081 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.1081 of the Government Code states:

Information is excepted from the requirements of [the Act] if it contains identifying information under Article 43.14, Code of Criminal Procedure, including that of:

- (1) any person who participates in an execution procedure, including a person who uses, supplies, or administers a substance during the execution; and
- (2) any person or entity that manufactures, transports, tests, procures, compounds, prescribes, dispenses, or provides a substance or supplies used in an execution.

Gov't Code § 552.1081. Article 43.14(b) of the Code of Criminal Procedure states the name, address, and other identifying information of certain persons or entities involved in execution procedures are confidential. Crim. Proc. Code art. 43.14(b). The department states portions of the submitted information consist of the identifying information of entities used for the procurement of execution drugs. Upon review, we find the information we marked consists of the identifying information of entities that manufacture, transport, test, procure, compound, prescribe, or provide supplies or substances used in an execution. Thus, we conclude the department must withhold the information we marked under section 552.1081 of the Government Code. However, we find the department failed to demonstrate the remaining information at issue is confidential pursuant to section 552.1081, and the department may not withhold it on that basis.

The remaining information contains access device numbers subject to section 552.136 of the Government Code. Section 552.136 provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the department must withhold the access device numbers we marked under section 552.136 of the Government Code. However, upon review, we find the department failed to demonstrate the remaining information at issue is confidential under section 552.136. Consequently, the department may not withhold this information under section 552.136.

In summary, the department must withhold the information we marked under section 552.1081 of the Government Code. The department must withhold the access device numbers we marked under section 552.136 of the Government Code. The department must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "D. Michelle Case", with a decorative flourish extending to the right.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 769747

Enc. Submitted documents

c: Requestor
(w/o enclosures)