



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 3, 2019

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

OR2019-27777

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# 789629 (OGC# AL0129).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the execution of a named inmate and lethal injection drugs including expiration dates, beyond use dates, testing documents, documents relating to the quality, functionality, or effectiveness stability, dates for order and delivery, records relating to the laboratory or facility performing any tests or analyses, state license of any pharmacy preparing, compounding, or supplying the drugs at issue, chain of custody records, storage and transportation records, and any correspondence with pharmacists regarding the named inmate. 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 and persons used for the testing of execution drugs. Upon review, we find the information we marked consists of the identifying information of entities and persons 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.<sup>1</sup> 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.

You also ask this office to issue a previous determination permitting the department to withhold certain information under section 552.1081 of the Government Code without the necessity of requesting a decision under section 552.301 of the Government Code. *See* Gov't Code § 552.301(a) (allowing a governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMC/rm

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

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)