



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2020

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

OR2020-11450

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# 823757 (OGC# AL0135 and AL0136).

The Texas Department of Criminal Justice (the "department") received two requests from different requestors for information pertaining to certain lethal injection drugs or substances including inventories or logs, expiration dates and beyond-use dates, Drug Enforcement Agency ("DEA") forms, documents relating to testing including any testing of the quality or ingredients, documents related to the purchase, sale, or testing including invoices, receipts or purchase orders, and import documents including communications with or records related to the Food and Drug Administration, the DEA, and any agents or brokers. The department states it has released or will make available some information to the requestors. You claim some of the submitted information is excepted from disclosure under sections 552.1081 and 552.136 of the Government Code. We have also received and considered comments from the first requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments 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.

Id. § 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 procurement and 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. 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.

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 id.* § 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/be

Ref: ID# 823757

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)