



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2022

Mr. Eric Miller
Deputy General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2022-36989

Dear Mr. Miller:

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# 986621 (PIA Nos. 0249-09-2022; 0739-09-2022; and 0848-09-2022).

The Texas Department of Criminal Justice (the "department") received three requests from different requestors for inventories, logs, expiration dates, DEA 222 forms, testing documentation, the execution protocol, and other information pertaining to the currently supply of execution drugs, including those to be used in specified executions. You claim portions of the submitted information are 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. We have also received and considered comments from two of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 who participated in the procurement of execution drugs. Upon review, we find most of the information you 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, the department must withhold the information we marked under section 552.1081 of the Government Code.¹ However, we find the department failed to demonstrate the remaining information you marked 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, “[notwithstanding 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 number we marked under section 552.136 of the Government Code.

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 number we marked under section 552.136 of the Government Code. The department must release the remaining information.

You request that this office issue a “previous determination” that would permit the department in the future to withhold from disclosure “execution related vendor information” under section 552.1081 of the Government Code without the need of requesting a ruling from our office regarding whether such information can be withheld from disclosure. *See* Gov’t Code § 552.301 (a) (allowing 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

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

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

DMH/pt

Ref: ID# 986621

Enc. Submitted documents

c: Requestor
(w/o enclosures)