



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 4, 2014

Ms. Patricia Fleming
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2014-20030

Dear Ms. Fleming:

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# 542110.

The Texas Department of Criminal Justice (the "department") received a request for the details on the department's supply of pentobarbital and the purchase price. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

The department seeks to withhold the identifying information of the pharmacy that provided the pentobarbital used in executions because release of the information would jeopardize the safety of the persons associated with the pharmacy. The department notes "a very real threat of physical violence made to another compounding pharmacy" that supplied lethal injection

drugs and threats received by the previous provider of the drugs. Furthermore, the department submits a threat assessment from the Director of the Texas Department of Public Safety ("DPS") stating drug suppliers such as the pharmacy at issue face "a substantial threat of physical harm." As noted above, the supreme court stated, "deference must be afforded DPS officers and other law enforcement experts about the probability of harm." *Cox*, 343 S.W.3d at 119. Thus, in this instance and when analyzing the probability of harm, this office must defer to the representations of DPS, the law enforcement experts charged with assessing threats to public safety. Based on these representations and our review, we find the department must withhold the information we marked under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

The remaining information contains credit card numbers and other 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, the department must withhold the access device numbers we marked under section 552.136 of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 in conjunction with the common-law physical safety exception. The department must withhold the access device numbers we marked under section 552.136 of the Government Code. The remaining information must be released.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/dls

Ref: ID# 542110

Enc. Submitted documents

c: Requestor
(w/o enclosures)