



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 17, 2014

Ms. Holly C. Lytle
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2014-12411

Dear Ms. Lytle:

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# 529692 (County File No. OP-14-215).

The El Paso County Sheriff's Office (the "sheriff's office") received a request for a list of all of the preferred or pre-approved drugs provided to inmates, including drug category, formulary agents, and non-formulary agents, and the annual budget of the county jail during specified years. We understand the sheriff's office has released some of the requested information. You claim the submitted information is not subject to the Act. In the alternative, you state release of the submitted information may implicate the interests of Corizon. Accordingly, you notified this third party of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). You have submitted comments from Corizon. We have considered the submitted arguments and reviewed the submitted information.

You contend the submitted information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You inform us the submitted drug formulary was created, produced, collected, assembled, and maintained by Corizon and, at the time of the request, the sheriff's office did not possess the information. However, we note the Act also encompasses information a governmental body does not physically possess, if the information is written, produced, collected, assembled, or maintained for the governmental body and the governmental body owns the information, has a right of access to it, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You state the sheriff's office neither owns nor spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the submitted information. However, you also inform us the contract between the sheriff's office and Corizon allows the sheriff's office access to those records necessary to the direct delivery of health care services to inmates. Further, you state Corizon provides guidance on and answers questions concerning the drug formulary. Additionally, as the sheriff's office is a client of Corizon, you indicate the drug formulary was developed, in part, for the sheriff's office. Based on your representations and our review, we find the submitted information was written, produced, collected, assembled, or maintained for the sheriff's office, and the sheriff's office has a right

of access to the information. Therefore, we find the submitted drug formulary is subject to the Act.

Section 552.028 of the Government Code provides, in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual's attorney when the attorney is requesting information that is subject to disclosure under [the Act].

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)-(b). Corizon argues the requestor is acting as an agent of an incarcerated individual. However, the requestor does not indicate, and Corizon has not otherwise established, the requestor is requesting information on behalf of any incarcerated individual. Therefore, we find Corizon has failed to demonstrate the request for information was submitted by an agent of an individual who is imprisoned or confined in a correctional facility. Thus, section 552.028 is not applicable in this instance. Accordingly, we will address Corizon's arguments against disclosure of the submitted information.

Corizon argues its information is confidential under section 552.110(a) of the Government Code. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates

or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.¹ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Corizon argues the submitted information constitutes a trade secret under section 552.110(a) of the Government Code. Upon review, we find Corizon has established a *prima facie* case the submitted information constitutes trade secret information for the purposes of section 552.110(a). Thus, the sheriff's office must withhold the submitted information under section 552.110(a) of the Government Code.

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

¹The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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 that reads "Megan G. Holloway". The signature is written in a cursive style with a large, looping "y" at the end.

Megan G. Holloway
Assistant Attorney General
Open Records Division

MGH/eb

Ref: ID# 529692

Enc. Submitted documents

c: Requestor
(w/o enclosures)