



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 6, 2014

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

OR2014-20202

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# 540521.

The Texas Department of Criminal Justice (the "department") received a request for any correspondence between the department, or its contractor, the University of Texas Medical Branch, during a specified time period pertaining to five specified sterile compounding pharmacies. The department claims the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions the department claims.

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 asserts the wording of the instant request will allow the requestor to rule out, through the process of elimination, specific pharmacies as the department’s source of execution drugs. The Act prohibits inquiries into both a requestor’s motives for requesting information and a requestor’s subsequent use of information obtained under the Act. Gov’t Code §§ 552.222(a), .204. Thus, we do not consider any speculation as to why the requestor seeks the requested information. We understand you to argue that release of any information responsive to the instant request would tend to confirm or deny the identity of the pharmacy that provides execution drugs to the department. The department further asserts release of any responsive information would compromise the physical safety of the pharmacist, employees, and customers of the execution drug supplier. In support of its assertions, the department provides accounts of threatened violence towards other providers of execution 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 drug provider 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. We note the instant request specifically seeks information pertaining to five named compounding pharmacies and any response to this request would tend to confirm or deny the identity of the pharmacy that provides execution drugs to the department. Thus, we find release of any responsive information would tend to identify the department’s compounding pharmacy. Accordingly, to the extent the department maintains information responsive to the request, the department must withhold such information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.¹

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

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

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 cursive script, appearing to read "L. Dahlstein".

Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 540521

c: Requestor