

# Details on execution drugs should remain secret, prison officials say

Security and privacy concerns cited

By Mike Ward

AMERICAN-STATESMAN STAFF

Published: 1:49 p.m. Friday, Oct. 22, 2010

Post a Comment | E-mail | Print | Share | Larger Type

In a new push to keep confidential details about the drugs used in Texas executions, state prison officials are asking Attorney General Greg Abbott to declare the information a state secret.

Details like how much of the three lethal drugs they keep on hand, whom the state buys the drugs from and how much taxpayers spend on them.

Their reasoning: Making that information public might trigger violent protests outside the execution chamber in Huntsville or even embolden death penalty opponents, if they knew the state was about to run short of the drugs.

"We submit that the release of any of the information would be akin to a local DPS office providing a requestor (a potential terrorist) with how much ammunition was stored in the office," states a letter to Abbott from Patricia Fleming, an assistant general counsel for the Texas Department of Criminal Justice.

"As to the amounts of state money paid to the individual suppliers, if this information were to be released, the requestor could determine the amounts of the products purchased simply by consulting his neighborhood pharmacist, or pharmaceutical wholesaler or retailer."

The latest secrecy bid was prompted by a request from the Austin American-Statesman for information about suppliers and costs of the three-drug cocktail used to execute condemned prisoners, following news reports last month that supplies of one drug — sodium thiopental — were running low in other states and executions were being delayed.

In years past, some of that information was released by prison officials — including that they usually kept enough drugs on hand to carry out two executions.

The agency's secrecy request, the latest move by several agencies to keep information confidential from taxpayers by citing security concerns, has raised eyebrows of some prison officials who acknowledge that some of the information had been disclosed previously without question.

But Melinda Bozarth, the prison system's general counsel, defended the request for secrecy as appropriate. "We want to err on the side of caution so that no one is put at risk, that there is not any disruption," she said.

In Fleming's filing with Abbott, the agency outlined its case for keeping secrets. Fleming wrote that "common law privacy" exempts the information from release under the Texas Public Information Act if its release could cause someone to "face an imminent threat of physical danger."

Fleming further argued that the release of details about the drugs could trigger violence.

"Executions are inherently volatile events," Fleming wrote. "The rhetoric of opponents of the death penalty has become increasingly

violent to the point where we not only had large crowds voicing their objections, but even had a group of militants outside the Huntsville Unit armed with various weapons, including assault rifles."

"The TDCJ has been lucky in that those gathered or picketing outside the Huntsville Unit on a scheduled execution date have never fired weapons or even used knives; but, both of these events are very real possibilities and amount to more than a generalized and speculative fear of harassment of retribution," she continued.

"If the (American-Statesman) published how much sodium thiopental we currently have and when it expires, this would operate to inflame an already volatile situation. People could get seriously injured or killed."

Two other prison officials said few protestors show up for most executions and there have been no threats or violence, even arrests, in years. The officials asked not to be identified because they are not authorized to speak about security issues.

Firearms are prohibited within 1,000 feet of the death chamber by a longtime state law.

Several protestors carried AK-47s when condemned murderer Gary Graham, 36, was executed in June 2000. But police said at the time they could not arrest them for carrying the weapons, since state law allows Texans to openly carry such weapons as long as they do not shoot them or threaten others with them.

On Thursday evening, as the state executed convicted killer Larry Wooten in Huntsville, 10 to 15 anti-death penalty protestors stood outside, about a block away from the prison that houses the execution chamber, according to the Associated Press. One woman used a bullhorn to say, "The state of Texas has committed another murder."

Bozarth said that security concerns could arise at any time, though she is not aware of any new threats or issues with protestors.

Death penalty opponents reacted to the secrecy bid with surprise and chagrin, insisting that Texans should have the right to know about all aspects of the state's execution process.

"These are extreme and unfounded allegations against Texans who oppose the death penalty," said Kristin Houle, executive director of the Texas Coalition to Abolish the Death Penalty, noting that opponents include former governors, lawmakers, law enforcement officials and religious leaders, among others.

Echoing that sentiment was Diann Rust-Tierney, executive director of the National Coalition to Abolish the Death Penalty, who characterized the state's arguments for secrecy as "absolutely wrong. The facts just don't support the claims they're making," she said.

In her letter, Fleming said that the disclosure of how much Texas is paying for the drugs could compromise security by allowing outsiders to calculate how much the prison system has on hand. Even so, the agency's public Web site says that the three drugs cost \$88.08 per execution.

Abbott in 2008 ruled that prison officials could keep secret the identities of the companies that supply the drugs, although sodium thiopental is available from only one manufacturer, Hospira Inc.

While 30 states employ the death penalty, Bozarth said Texas' concerns mirror those of officials in Ohio, whom she contacted before sending the letter to Abbott. Julie Walburn, communications director for the Ohio Department of Corrections, said her agency discloses the costs and the supplier — because Hospira is the only one — but not how much supply they have on hand.

Like other states, Oklahoma Department of Corrections spokesman Jerry Massie said the costs are disclosed, and he's never been asked about the supplier — a pharmacy.

"I'd sure try to (keep the supplier confidential), for obvious reasons," he said. "We don't keep a supply on hand we just get it when we need it."