



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 26, 2010

Mr. Mark Adams  
Office of the General Counsel  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711

OR2010-04995A

Dear Mr. Adams:

This office issued Open Records Letter No. 2010-04995 (2010) on April 9, 2010. We have examined this ruling and determined that we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 9, 2010.

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# 373818.

The Office of the Governor (the "governor") received a request for Texas Emerging Technology Fund ("ETF") agreements, compliance verification reports, and any other compliance conducted.<sup>1</sup> You state you have released the ETF agreements to the requestor. Although the governor takes no position on whether the submitted information is excepted from disclosure, you state that release of this information may implicate the proprietary

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<sup>1</sup>You inform us that the requestor narrowed his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

interests of third parties.<sup>2</sup> Accordingly, you inform us, and provide documentation showing, that you notified the third parties of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). You state you do not maintain responsive information pertaining to iLearning Gateway.<sup>3</sup> You state Agile, Cormedics, Faradox, FutureGen, Gradalis, Image Trends, Mondria, NanoMedical, PLx, and Texas Tech do not object to release of their respective information, and therefore the governor is withdrawing the portion of its request that pertains to these parties.<sup>4</sup> We have received comments from Wham! stating it does not object to release of its information. We have also received arguments from representatives of Advitech, Alliance, Castle, Codekko, CyroPen, DNatrix, Enthuze, Macuclear, Mayan, Micropower,

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<sup>2</sup>The third parties are 21-Century Silicon, Inc.; Advitech; Agile Planet ("Agile"); Alliance for Higher Education d/b/a the North Texas Regional Center for Innovation and Commercialization ("Alliance"); Analogix dba Axelo; Animal Innovations; Bauhaus; Bellicum Pharmaceuticals; BetaBatt Inc.; BiO2 Medical fka Artificial Airways; CardioSpectra (Sold to Volcano Corp.); Castle Biosciences ("Castle"); Codekko Software, Inc. ("Codekko"); CorInnova; Cormedics; CryoPen LLC ("CyroPen"); DNatrix; Endothelix; Enthuze; Falcon International; Faradox; Fusion - University of Texas at Dallas; FutureGen Railroad Commission of Texas ("FutureGen"); Gradalis; Greater Austin Chamber of Commerce; Halsa Pharmaceuticals; Hanson; iLearning Gateway; Image Trends; Ironbridge Technologies, Inc.; itRobotics; Laser Tissue Welding; Lynntech; MacuCLEAR, INC. ("Macuclear"); Mayan Pigments, Inc. ("Mayan"); Merkatum Corporation; MicroTransponder Inc. ("Microtransponder"); Molecular Imprints; Molecular Logix, Inc; Mondria, Inc. ("Mondria"); Monebo; Mystic Pharmaceuticals ("Mystic"), Nanocomposites; Nanocoolers; NanoMedical Systems ("NanoMedical"); NanoSpectra; National Trauma Institute; NetWatch Solutions, Inc. ("NetWatch"); Optisense; OrthoAccel; Ortho Kinematics, Inc. ("Ortho Kinematics"); Photodigm; PLx Pharma ("PLx"); PrincipleSoft; Pronucleotein Biotechnologies, LLC ("Pronucleotein"); Pulmotect; Quantum Logic Devices; Receptor Logic; Resonant Sensors; RFMicron; Rio Grande Valley Regional CIC; Robotics; SATAI; Secure Origins; Sematech; Seno Medical ("Seno"); Seprox; Smooth-Stone; SNR Labs ("SNR"); StarVision Space; Stellarray; Inc.; Sunrise Ridge Algae Inc. ("Sunrise"); Syndiant, Inc. ("Syndiant"); Technology and Entrepreneurship Center of Houston, Inc.; Terapio; Texas Agriculture Experiment Station; Texas Life Science Regional Center of Innovation ("TLSCIC"); Texas Micropower, formerly Texas Piezoelectric ("Micropower"), Texas Tech University ("Texas Tech"); Thrombo Vision; TransPecos/El Paso Regional Center for Innovation ("TransPecos"); TXL Group Inc ("TXL"); University of North Texas Health Science Center; University of Texas at Austin; University of Texas San Antonio; University of Texas at Tyler; University of Texas Health Science Center at Houston; Visualase; West Texas Regional CIC; Wham! Inc. ("Wham!"); Xilas Medical, Inc.; Xitronix; and Xtreme Power.

<sup>3</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>4</sup>We note that, as a result of the governor's partial withdrawal, the submitted information pertaining Agile, Cormedics, Faradox, FutureGen, Gradalis, Image Trends, Mondria, NanoMedical, PLx, and Texas Tech is not responsive to the present request for information.

Micro Transponder, Mystic, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, Receptor Logic, RFMicron, Seno, Smooth-Stone, SNR, Stellaray, Sunrise, Syndiant, Terapio, TLSCIC, TransPecos, TXL, and Xitronix. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note, and you acknowledge, that the governor failed to comply with section 552.301 of the Government Code in seeking an open records decision from this office. Gov't Code § 552.301(b),(e). A governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Because third-party interests can provide compelling reasons for non-disclosure of information under section 552.302, we will consider the arguments submitted by the third parties.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received arguments from Advitech, Alliance, Castle, Codekko, CyroPen, DNatrix, Enthuze, Macuclear, Mayan, Micropower, Micro Transponder, Mystic, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, Receptor Logic, RFMicron, Seno, Smooth-Stone, SNR, Stellaray, Sunrise, Syndiant, Terapio, TLSCIC, TransPecos, TXL, and Xitronix. We, thus, have no basis for concluding that any portion of the submitted information constitutes the other companies' proprietary information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the governor may not withhold any of the submitted information based on the proprietary interests of the non-briefing third parties.

SNR, Stellaray, Sunrise, and TXL assert that their respective information is confidential because their documents were marked as such when they were submitted to the governor. Further, we understand Castle and RFMicron to assert that portions of their information are confidential because the information was obtained through a non-disclosure or confidentiality agreement. We note that information is not confidential under the Act simply because the

party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Syndiant raises section 552.102(a) of the Government Code for a portion of its submitted information. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). Section 552.102(a) protects information relating to public officials and employees. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (addressing statutory predecessor). In this instance, the information at issue is related to a private entity, Syndiant. Therefore, the governor may not withhold any portion of Syndiant’s submitted information under section 552.102(a) of the Government Code.

Receptor Logic, SNR, Syndiant, and Xitronix argue that their respective reports are excepted from disclosure under section 552.104 of the Government Code, which excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). This section, however, is a discretionary exception that only protects the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766, 776 (Tex. App.—Austin 1999, pet. denied); Open Records Decision Nos. 592 (1991) (statutory predecessor to section 552.104 designed to protect interests of a governmental body in a competitive situation, and not interests of private parties submitting information to the government). As the governor does not seek to withhold any information pursuant to section 552.104, we find this section does not apply to the submitted information. Therefore, the governor may not withhold any of the submitted information pursuant to section 552.104.

Advitech, CyroPen, Mystic, Stellaray, TransPecos, and Xitronix claim that their respective information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 490.057 of the Government Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 490.057 of the Government Code addresses

the confidentiality of certain information pertaining to the fund. Section 490.057 provides as follows:

Information collected by the governor's office, the [Texas Emerging Technology Advisory C]ommittee, or the committee's advisory panels concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity being considered for an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

*Id.* § 490.057. Advitech, CyroPen, Mystic, Stellaray, TransPecos, and Xitronix indicate that portions of the submitted documents concern the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of their respective entities considered for an award from the fund. Advitech, CyroPen, Mystic, Stellaray, TransPecos, and Xitronix have not consented to disclosure of the submitted information. Based upon these representations and our review, we find the information we have marked concerns the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of entities considered for an award from the fund. Therefore, this information is confidential under section 490.057 of the Government Code and must be withheld from public disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 600 (1992), 545 (1990). We note that common-law privacy protects the interests of individuals, not those of corporate and other business entities. See Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); see also *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy). Upon review, we find that the personal financial information of individuals that we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the governor must withhold

the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information pertains to corporations, not individuals. Accordingly, the governor may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

SNR raises section 552.101 in conjunction with the holding in *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Because section 552.110 of the Government Code incorporates the holding in *National Parks*, we will address SNR's claim under section 552.101 with its claim under section 552.110.

Castle, Codekko, DNatrix, Enthuze, Macuclear, Mayan, Micropower, Micro Transponder, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, RFMicron, Seno, Smooth-Stone, SNR, Syndiant, Sunrise, Terapio, TLSCIC, and TXL claim that portions of their respective information are exempted from disclosure under section 552.110 of the Government Code. Section 552.110 protects the proprietary interests of private parties with respect to two types of information: "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." Gov't Code § 552.110(a)-(b).

The Supreme Court of Texas has adopted the definition of a "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 [one] 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, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees . . . . A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, 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 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978). 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.<sup>5</sup> RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* ORD 232. This office will accept a private person's claim for exception as valid under section 552.110(a) if the person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law. ORD 552. However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that 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). We note that pricing information pertaining to a particular contract is generally not a trade secret because it is "simply information as to single or ephemeral events in the conduct of the business," rather than "a process or device for continuous use in the operation of the business." RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Huffines*, 314 S.W.2d at 776; Open Records Decision Nos. 319 at 3, 306 at 3.

Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

In asserting that its information should be excepted from disclosure, SNR relies on the test pertaining to the applicability of the section 552(b)(4) exemption under the federal Freedom of Information Act to third-party information held by a federal agency, as announced in *National Parks & Conservation Association v Morton*, 498 F.2d 765 (D.C. Cir. 1974). The *National Parks* test provides that commercial or financial information is confidential if disclosure of information is likely to impair a governmental body's ability to obtain necessary information in the future. *National Parks*, 498 F.2d at 770. Although this office once applied the *National Parks* test under the statutory predecessor to section 552.110, that standard was overturned by the Third Court of Appeals when it held *National Parks* was not a judicial decision within the meaning of former section 552.110. *See Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. denied). Section 552.110(b) now expressly states the standard to be applied and requires a specific factual demonstration that the release of the information in question would cause the business enterprise that

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<sup>5</sup>The following are the six factors that the Restatement gives 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 others 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 (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2.

submitted the information substantial competitive harm. *See* ORD 661 at 5-6 (discussing enactment of section 552.110(b) by Seventy-sixth Legislature). The ability of a governmental body to continue to obtain information from private parties is not a relevant consideration under section 552.110(b). *Id.* Therefore, in making our determinations under section 552.110, we will consider only SNR's interest in its information.

Castle, Codekko, Macuclear, Mayan, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, RFMicron, Seno, and Smooth-Stone contend that portions of their respective information consist of trade secrets excepted under section 552.110(a). Having reviewed Macuclear, Mayan, Netwatch, OrthoAccel, and RFMircron's arguments and the submitted information, we conclude they have demonstrated the information we have marked constitutes a trade secret. Thus, the governor must withhold the information we have marked under section 552.110(a) of the Government Code. However, Castle, Codekko, Mayan, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, RFMicron, Seno, and Smooth-Stone have failed to demonstrate any portion of the remaining information constitutes a trade secret. Accordingly, the governor must only withhold the information we have marked pursuant to section 552.110(a) of the Government Code. We determine that no portion of the remaining information is excepted from disclosure under section 552.110(a) of the Government Code.

Castle, Codekko, DNatrix, Enthuze, Macuclear, Mayan, Micropower, Micro Transponder, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, RFMicron, Seno, Smooth-Stone, SNR, Syndiant, Sunrise, Terapio, TLSCIC, and TXL argue that portions of the remaining information are excepted from disclosure under section 552.110(b) of the Government Code. Upon review of their arguments and the submitted information, we find Castle, Codekko, DNatrix, Enthuze, Mayan, Micropower, Micro Transponder, NetWatch, Ortho Kinematics, Pronucleotein, RFMicron, Seno, Smooth-Stone, SNR, Terapio, TLSCIC, and TXL have established that the release of portions of their respective information, which we have marked, would cause them substantial competitive injury. However, we find Castle, Codekko, Macuclear, Mayan, Micropower, Micro Transponder, NetWatch, OrthoAccel, Ortho Kinematics, Pronucleotein, Seno, Smooth-Stone, Syndiant, Sunrise, and TXL have made only general conclusory allegations that release of the remaining information would cause substantial competitive injury and have provided no specific factual or evidentiary showing to support such allegations. *See* Gov't Code § 552.110; ORD Nos. 661 at 5-6 (business entity must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 319 at 3 (information relating to organization and personnel, market studies, experience, and qualifications not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the governor must withhold only the information we have marked under section 552.110(b) of the Government Code.

Stellarray, SNR, and TransPecos assert that portions of their respective information are excepted under section 552.131 of the Government Code. Section 552.131 relates to economic development information and provides in part:

(a) Information is excepted from [required public disclosure] if the information relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to:

(1) a trade secret of the business prospect; or

(2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

(b) Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to the business prospect by the governmental body or by another person is excepted from [required public disclosure].

Gov't Code § 552.131. Section 552.131(a) excepts from disclosure only "trade secret[s] of [a] business prospect" and "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained." *Id.* This aspect of section 552.131 is co-extensive with section 552.110 of the Government Code. *See id.* § 552.110(a)-(b). Because we have already disposed of Stellarray, SNR, and TransPecos' claims under section 552.110, the governor may not withhold any of the remaining information under section 552.131(a) of the Government Code.

We note that section 552.131(b) is designed to protect the interests of governmental bodies, not third parties. As the governor does not assert section 552.131(b) as an exception to disclosure, we conclude that no portion of the submitted information is excepted under section 552.131(b) of the Government Code.

Alliance asserts that its submitted information is excepted under section 552.143 of the Government Code, which provides in relevant part the following:

(c) All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), (13)-(16) is confidential and excepted from the requirements of Section 552.021. This Subsection does not apply to a

governmental body's purchase, holding, or disposal of, restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities.

Gov't Code § 552.143(c). Alliance generally states the "ETF is a governmental body or is part of a governmental body" that directly purchases, holds, or disposes of restricted securities of start-ups. Alliance also asserts that its activities are an integral part of the ETF process, and therefore intertwined with a governmental body's purchase of restricted securities. However, the information that Alliance seeks to withhold only pertains to Alliance's activities and includes compliance information, operating expenses, press releases, and accounting information. Alliance has provided no arguments establishing, and our review does not reveal, that any of this information regards the direct purchase, holding, or disposal of restricted securities by a governmental body. Thus, we find that Alliance has failed to establish that subsection 552.143(c) is applicable to any of its information. Accordingly, the governor may not withhold any of the submitted information on that basis.

TransPecos also raises section 552.117 of the Government Code for information pertaining to its independent contractors. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. By its terms, the protection of section 552.117 is applicable only to personal information of an employee or official of a governmental body. *See id.* § 552.024 (establishing procedure for the election of personal information by employees and officials of a governmental body). The submitted information indicates that TransPecos is a nonprofit section 501(c)(3) corporation. *See* 26 U.S.C. § 501(c)(3). Further, the information TransPecos seeks to withhold pertains to independent contractors who have contracted with TransPecos. Thus, we conclude TransPecos has failed to establish that the individuals at issue are employees or officials of a governmental body for purposes of section 552.117. Accordingly, the governor may not withhold any of the submitted information on that basis.

We note portions of the remaining information are subject to sections 552.136 and 552.137 of the Government Code. Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of this chapter, 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. Accordingly, the governor must withhold the account numbers and bank routing numbers we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Subsection 552.137(c)(1) states that subsection 552.137(a) does not apply to an e-mail address “provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor’s agent[.]” *Id.* § 552.137(c)(1). We note that section 552.137 is not applicable to an e-mail address that a governmental entity maintains for one of its officials or employees. The e-mail addresses we have marked in the remaining information are not specifically excluded by section 552.137(c). As such, these marked e-mail addresses must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).<sup>6</sup>

We note that a portion of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the governor must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 490.057 of the Government Code. The governor must withhold the information we have marked under 552.101 in conjunction with common-law privacy. The governor must withhold the information we have marked under sections 552.110(a) and 552.110(b) of the Government Code. The governor must withhold the information we have marked under section 552.136 of the Government Code. The governor must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining information must be released, but any information subject to copyright may only be released in accordance with federal copyright law.

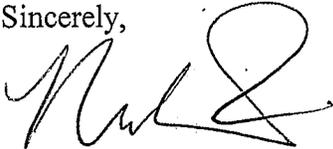
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>6</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account and routing numbers under section 552.136 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/jb

Ref: ID# 373818

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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