



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2012

Mr. Bob Davis
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2012-02556

Dear Mr. Davis:

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# 446446 (OOG ID# 699-11).

The Office of the Governor (the "governor's office") received a request for (1) letters summarizing the Texas Emerging Technology Fund's (the "ETF") advisory council meeting on a specified date and a specified conference call and (2) operating agreements with the regional centers of innovation and commercialization. You state you do not have any information responsive to a portion of the request.¹ You also state you are releasing a portion of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.104, and 552.131 of the Government Code. You also state that release of the submitted information may implicate the interests of third parties. Accordingly, you state the governor's office notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released.² 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). We have considered the exceptions you claim and reviewed the submitted information.

¹The 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).

²We understand you have notified MetronomX, Inc.; VisionBrite Technologies, Inc.; Encore Vision, Inc.; CerRx, Inc.; Cytimmune Sciences, Inc.; and Intertech Bio Corp.

Initially, you state that the information submitted as Exhibit C was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-00238 (2012). In that ruling, we determined that with the exception of information that is subject to public release under section 490.057(b) of the Government Code, the governor's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 490.057(a). As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the governor's office must continue to rely on Open Records Letter No. 2012-00238 as a previous determination and withhold or release Exhibit C in accordance with the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 490.057 of the Government Code addresses the confidentiality of certain information pertaining to the ETF. *See id.* § 490.057; *see generally id.* § 490.101; *id.* §§ 490.102-.103. Section 490.057 provides:

(a) Except as provided by Subsection (b), information collected by the governor's office, the [Texas Emerging Technology Advisory Committee (the "committee")], 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, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

Id. § 490.057(a). You state the information you have marked in Exhibit B consists of the identity and finance information about entities being considered for an award from the ETF. You inform us these entities have not consented to disclosure of the information at issue. Based upon your representations and our review, we conclude the information you have marked in Exhibit B is confidential under section 490.057 of the Government Code, and the governor's office must withhold it on that basis under section 552.101 of the Government Code.³

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See id.* § 552.305(d)(2)(B). As of the date of this letter,

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of the information at issue.

we have not received arguments from any of the third parties. Thus, none of the third parties has demonstrated it has a protected proprietary interest in any of the remaining information. *See id.* § 552.110(a)–(b); 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’s office may not withhold the remaining information on the basis of any proprietary interests any of the third parties may have in the information.

In summary, the governor’s office must continue to rely on Open Records Letter No. 2012-00238 as a previous determination and withhold or release Exhibit C in accordance with the prior ruling. The governor’s office must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 490.057 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.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/em

Ref: ID# 446446

Enc. Submitted documents

cc: Requestor
(w/o enclosures)