



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 4, 2014

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

OR2014-05600

Dear Mr. Sterner:

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# 523434 (OOG ID# 044-14).

The Office of the Governor (the "governor's office") received a request for information related to a specified investment from the Texas Emerging Technology Fund (the "ETF") into America Stem Cell, Inc. ("ASC"). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of ASC. Accordingly, you state you notified ASC of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us some of the requested information 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 with the exception of information 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). You state the law, facts, and circumstances on

which the prior ruling was based have not changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the governor's office must continue to rely on Open Records Letter No. 2012-00238 as a previous determination and withhold or release the identical information 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). To the extent the submitted information was not previously ruled on, we will consider your argument, as well as any third-party arguments, against disclosure of the submitted information.

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) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from ASC explaining why the submitted information should not be released. Therefore, we have no basis to conclude ASC has a protected proprietary interest in the submitted 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's office may not withhold the submitted information on the basis of any proprietary interest ASC may have in the information.

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.

(b) The following information collected by the governor's office, the committee, or the committee's advisory panels under this chapter is public information and may be disclosed under [the Act]:

(1) the name and address of an individual or entity receiving or having received an award from the fund;

(2) the amount of funding received by an award recipient;

(3) a brief description of the project that is funded under this chapter;

(4) if applicable, a brief description of the equity position that the governor, on behalf of the state, has taken in an entity that has received an award from the fund; and

(5) any other information designated by the committee with the consent of:

(A) the individual or entity receiving or having received an award from the fund, as applicable;

(B) the governor;

(C) the lieutenant governor; and

(D) the speaker of the house of representatives.

*Id.* § 490.057. You state the submitted information was collected by the governor's office. You assert the information concerns and explicitly reveals the identity, background, finances, and marketing plans of an entity that has received an ETF award. Furthermore, you state the entity at issue has not consented to release of its information. Based upon your representations and our review, we find the information at issue concerns the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an entity that received an award from the ETF. However, we note any information listed in section 490.057(b) is public information and must be released. Therefore, with the exception of information that is subject to public release under section 490.057(b), we conclude the governor's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 490.057(a).

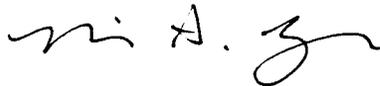
In summary, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the governor's office must continue to rely on Open Records Letter No. 2012-00238 as a previous determination and withhold or

release the identical information in accordance with the prior ruling. With the exception of information that is subject to public release under section 490.057(b), we conclude the governor's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 490.057(a).

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](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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bhf

Ref: ID# 523434

Enc. Submitted documents

c: Requestor  
(w/o enclosures)