



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 25, 2015

Ms. Jordan Hale
Public Information Coordinator
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2015-20180

Dear Ms. Hale:

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# 580718 (OOG ID# 15-283).

The Office of the Governor (the "governor's office") received a request for all records related to Hydrologic Industries, Inc. ("Hydrologic"). You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the requested information may implicate the interests of Hydrologic. Accordingly, you state you notified Hydrologic of the request for information and of its right to submit arguments stating why its information should not be released. *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 exception you claim and reviewed the submitted 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, including section 62.167 of the Education Code and section 490.105 of the Government Code, which each provide for the confidentiality of certain information pertaining to an individual or entity that was considered for or received an award from the Texas Emerging

Technology Fund (the “fund”).¹ The Eighty-fourth Texas Legislature adopted the three following bills, which enacted section 62.167 of the Education Code and section 490.105 of the Government Code: Senate Bill 632, House Bill 7, and House Bill 26. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 323, § 1, 2015 Tex. Sess. Law Serv. 1468 (Vernon) (to be codified at Educ. Code § 62.167) (Senate Bill 632); Act of June 1, 2015, 84th Leg., R.S., ch. 448, § 17, 2015 Tex. Sess. Law Serv. 1740 (Vernon) (to be codified at Gov’t Code § 490.105) (House Bill 7); Act of June 1, 2015, 84th Leg., R.S., ch. 915, § 1.01, 2015 Tex. Sess. Law Serv. 3164 (Vernon) (to be codified at Educ. Code § 62.167) (House Bill 26). Because the amendments of the three bills at issue contain substantially the same language regarding the confidentiality of certain information, we find they do not conflict, and will address the confidentiality of the information at issue under both section 62.167 of the Education Code and section 490.105 of the Government Code. Section 62.167 of the Education Code provides:

(a) Except as provided by Subsection (b), information collected under former provisions of Chapter 490, Government Code, concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity that was considered for or received an award from [the fund] is confidential unless the individual or entity consents to disclosure of the information.

(b) The following information collected in connection with [the fund] is public information and may be disclosed under [the Act]:

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

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

(3) a brief description of the project funded under former provisions of Chapter 490, Government Code;

(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 that fund; and

(5) any other information with the consent of:

(A) the governor;

¹Although you raise section 490.057 of the Government Code, we note the fund was abolished and section 490.057 of the Government Code was repealed. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 323, § 4, 2015 Tex. Sess. Law Serv. 1468, 1471-73 (Vernon); Act of June 1, 2015, 84th Leg., R.S., ch. 448, § 48, 2015 Tex. Sess. Law Serv. 1740, 1757-59 (Vernon); Act of June 1, 2015, 84th Leg., R.S., ch. 915, § 1.04, 2015 Tex. Sess. Law Serv. 3164, 3168-69 (Vernon).

- (B) the lieutenant governor;
- (C) the speaker of the house of representatives; and
- (D) the individual or entity that received an award from that fund, if the information relates to that individual or entity.

See Act of June 1, 2015, 84th Leg., R.S., ch. 323, § 1, 2015 Tex. Sess. Law Serv. 1468, 1470 (Vernon) (to be codified at Educ. Code § 62.167); Act of June 1, 2015, 84th Leg., R.S., ch. 915, § 1.01, 2015 Tex. Sess. Law Serv. 3164, 3166 (Vernon) (to be codified at Educ. Code § 62.167).² In addition, section 490.105 of the Government Code provides:

(a) Except as provided by Subsection (b), information concerning the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an individual or entity that was considered for or received an award from [the fund] is confidential unless the individual or entity consents to disclosure of the information.

(b) The following information collected in connection with [the fund] is public information and may be disclosed under [the Act]:

- (1) the name and address of an individual or entity that received an award from that fund;
- (2) the amount of funding received by an award recipient;
- (3) a brief description of the project funded by the award;
- (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 that fund; and
- (5) any other information with the consent of:

- (A) the governor;
- (B) the lieutenant governor;
- (C) the speaker of the house of representatives; and

²The Eighty-fourth Legislature also enacted a bill that adds another version of section 62.167 to the Education Code. House Bill 7 provides, under section 62.167, the Governor's University Research Initiative Advisory board must meet to consider grant applications under subchapter H of chapter 62 of the Education Code within fourteen days of receiving the application. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 448, § 11, 2015 Tex. Sess. Law Serv. 1740, 1745 (Vernon) (to be codified at Educ. Code § 62.167)

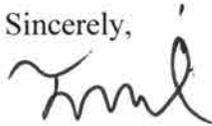
(D) the individual or entity that received an award from the fund, if the information relates to that individual or entity.

See Act of June 1, 2015, 84th Leg., R.S., ch. 448, § 17, 2015 Tex. Sess. Law Serv. 1740, 1748 (Vernon) (to be codified at Gov't Code § 490.105). You state the submitted information was collected by the governor's office pursuant to the administration of the fund. You further state the information concerns the identity, background, finance, and marketing plans of an entity that received a fund award and, therefore, is confidential under section 62.167(a) of the Education Code and section 490.105(a) of the Government Code and must be withheld from release pursuant to section 552.101 of the Government Code. You explain the entity has not consented to release of its information. Further, you state the submitted information is not subject to section 62.167(b) of the Education Code or section 490.105(b) of the Government Code.³ Based upon your representations and our review, we conclude the submitted information concerns the identity, background, finance, and marketing plans of an entity that received a fund award. Therefore, the governor's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 62.167(a) of the Education Code and section 490.105(a) of the Government Code.

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

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/bhf

³You inform us the governor's office is releasing the requested information subject to sections 62.167(b) and 490.105(b).

Ref: ID# 580718

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Christopher Rowan
CEO
Hydrologic Industries, Inc.
1817 North Kansas Street
El Paso, Texas 79902
(w/o enclosures)