



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 11, 2016

Mr. James G. Nolan
Associate Deputy General Counsel
Open Records Division
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2016-18133

Dear Mr. Nolan:

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# 622190 (CPA ORTS# 12475628479).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information related to the Texas Emerging Technology Fund (the "fund") and Palmaz Scientific, Inc. ("Palmaz"), including (1) contracts; (2) payments; (3) refunds; and (4) investment returns. You inform us you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.143 of the Government Code. You state release of the submitted information may implicate the proprietary interests of Palmaz. Accordingly, you state, and provide documentation showing, you notified Palmaz 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 submitted arguments and reviewed the submitted representative sample of information.¹

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 fund. The Eighty-fourth Texas Legislature adopted the following three 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 26.² See Act of June 1, 2015, 84th Leg., R.S., ch. 323, § 1, 2015 Tex. Sess. Law Serv. 1468 (Vernon) (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) (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) (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]:

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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) (codified at Educ. Code § 62.167)

- (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;
 - (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.

Educ. Code § 62.167. 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

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

Gov't Code § 490.105. You state the submitted information was collected by the Office of the Governor pursuant to the administration of the fund and was transferred to the Texas Treasury Safekeeping Trust Company (the "trust company") which is managed by the comptroller's office. *See id.* § 490.104(b) (authorizing the trust company to "manage and wind up the state's emerging technology investment portfolio"); *see also id.* § 404.104 ("the comptroller's office shall manage the trust company"). 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 comptroller'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.⁴

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.

³We understand the comptroller's office is releasing the requested information subject to sections 62.167(b) and 490.105(b).

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 622190

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)