



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2017

Ms. Jelain Chubb
State Archivist & Director
Archives & Information Services Division
Texas State Library & Archives Commission
P.O. Box 12927
Austin, Texas 78711-2927

OR2017-11012

Dear Ms. Chubb:

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# 658890.

The Texas State Library and Archives Commission (the "commission") received a request for specified communications from the Office of the Governor (the governor's office). The commission states it will release some information with redactions made pursuant to sections 552.117, 552.130(c), 552.136(c), and Open Records Decision No. 684 (2009).¹

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including 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 opinion.

Although we understand the commission takes no position as to whether the submitted information is excepted under the Act, the commission states release of this information may implicate the interests of the governor's office.² Accordingly, the commission states it notified the governor's office of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). Additionally, the commission states release of the submitted information may implicate the proprietary interests of Targazyme, Inc. ("Targazyme"). Accordingly, the commission states it notified Targazyme 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 id.* § 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 received comments from the governor's office and Targazyme. We have considered the submitted arguments 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"). 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 26.2 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

²We note the commission did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, third-party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. Thus, we will consider whether the submitted information must be withheld under the Act on that ground.

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;

(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. The governor's office states the information it has marked was collected by the governor's office pursuant to the administration of the fund. The governor's office further states 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. Targazyme states it has not consented to release of its information. Further, the governor's office states the information it has marked is not subject to section 62.167(b) of the Education Code or section 490.105(b) of the Government Code. Based upon these representations and our review, we conclude the information the governor's office has marked concerns the identity, background, finance, and marketing plans of an entity that received a fund award. Therefore, the commission must withhold the information the governor's office has marked 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.³ The commission must release the remaining information.

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.

³As our ruling is dispositive, we do not address the remaining arguments against disclosure of this information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/sb

Ref: ID# 658890

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)