



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2009

Ms. Katherine R. Fite
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2009-00693

Dear Ms. Fite:

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# 333682.

The Office of the Governor (the "governor") received a request for all information regarding Xitronix Corporation's ("Xitronix") recent award funded by the Texas Emerging Technology Fund. You state you have released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.104, 552.110, 552.111, and 552.131 of the Government Code. You also state the governor notified Xitronix of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ We received arguments under sections 552.101, 552.104, 552.107, and 552.110 of the Government Code from Xitronix. We have considered all of the submitted arguments and have 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." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. Section 490.057 of the Government Code addresses the confidentiality of certain information

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

pertaining to the Emerging Technology Fund (the "fund"). Section 490.057 provides as follows:

Information collected by the governor's office, the [Texas Emerging Technology Advisory C]ommittee, 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 an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

Id. § 490.057. The governor and Xitronix indicate the submitted documents concern the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of Xitronix, an entity considered for an award from the fund. Xitronix has not consented to disclosure of the submitted information. Based upon these representations and our review, we find the submitted information concerns the identity, background, finance, marketing plans, trade secrets, or other commercially or academically sensitive information of an entity considered for an award from the fund. Therefore, this information is confidential under section 490.057 of the Government Code and must be withheld from public disclosure under section 552.101 of the Government Code. Because our determination on this issue is dispositive, we need not address the remaining arguments against disclosure.

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 at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/eeg

Ref: ID# 333682

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Judd Chism
Xitronix Corporation
3925 West Braker Lane, 3rd Floor
Austin, Texas 78759
(w/o enclosures)