



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2011

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

OR2011-12270

Dear Mr. Gordon:

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# 427995 (OOG# 232-11).

The Office of the Governor (the "governor") received a request for monitoring records, and all correspondence to and from a named individual, pertaining to Net Watch Solutions, Inc. ("Net Watch"). You also state the governor will release some of the requested information to the requestor. Although you take no position on the public availability of the submitted information, you state this information may implicate the proprietary interests of Net Watch. Accordingly, pursuant to section 552.305 of the Government Code, you state you have notified Net Watch of the request and of its right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); *see also* 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 to disclosure under Act in certain circumstances). We have received comments from Net Watch. We have considered the submitted arguments and reviewed the submitted information.

Initially, you inform us portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-04995A (2010). In this decision, we ruled, in part, the governor must withhold some of the information at issue under section 552.110 of the Government Code, and must release the remaining information. You state the law, facts, or circumstances on which the

prior ruling was based have not changed. Accordingly, the governor must continue to rely on Open Records Letter No. 2010-04995A as a previous determination and continue to withhold or release any previously ruled upon information in accordance with this 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).

Net Watch states it does not object to the release of its United States Patent and Trademark Office filings. Thus, we have no basis to conclude this information constitutes the proprietary information of Net Watch, and the governor may not withhold this information, which we have marked, on that basis. *See* 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, 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.

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. Section 552.101 encompasses information made confidential by other statutes. Net Watch claims its remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 490.057 of the Government Code. Section 490.057 addresses the confidentiality of certain information pertaining to the Emerging Technology Fund (the “fund”) and provides as follows:

Information collected by the governor’s office, 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 an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

Id. § 490.057. We note section 490.057 applies only to an entity “being considered for an award from the fund[.]” *Id.* Net Watch argues it is “actively under consideration for an award” from the fund. However, the information at issue relates to Net Watch’s compliance with a written agreement after receiving an award from the fund. *Id.* § 490.101(g) (before making award from fund, governor shall enter into written agreement with entity receiving award). The governor does not indicate any of the information relates to Net Watch as it was “being considered” for an award. Upon review, we find Net Watch has been approved for an award and is no longer “being considered” for an award for purposes of section 490.057 of the Government Code. Therefore, none of the submitted information confidential under

section 490.057, and the governor may not withhold it under section 552.101 of the Government Code on that basis.

In summary, the governor must continue to rely on Open Records Letter No. 2010-04995A as a previous determination and continue to withhold or release any previously ruled upon information in accordance with these prior rulings. The remaining requested information must be released.

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, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 427995

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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