



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 28, 2012

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

OR2012-13602

Dear Mr. Sterner:

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# 464455 (OOG ID#: 159-12).

The Office of the Governor (the "governor's office") received a request for all documents related to the Emerging Technology Fund (the "ETF") award awarded to Palmaz Scientific, Inc. ("Palmaz"). You inform us that some of the requested information has been released. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. You also inform us that release of the submitted information may implicate the proprietary interests of Palmaz. Accordingly, you notified Palmaz of the request for information and of the company's 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 received comments from an attorney representing Palmaz. We have considered the submitted arguments and reviewed the submitted information.

Initially, you and Palmaz inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-04665A (2011). In that ruling, we determined that, among other things, certain information: (1) must be withheld under section 552.101 of the Government Code

in conjunction with common-law privacy; (2) must be withheld under section 552.110(b) of the Government Code; and (3) could not be withheld under section 552.101 of the Government Code in conjunction with section 490.057 of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed as to the information subject to section 552.101 in conjunction with common-law privacy or section 552.110(b), the governor's office must continue to rely on Open Records Letter No. 2011-04665A as a previous determination with respect to the information subject to section 552.101 in conjunction with common-law privacy and section 552.110(b) and withhold the information at issue in accordance with that ruling.¹ *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). However, you inform us section 490.057 of the Government Code has been amended since the issuance of the previous ruling. As such, because the law affecting the information at issue has changed, we agree the governor's office may not rely upon our previous ruling as a previous determination with regard to our analysis under section 490.057, and we will therefore address the submitted arguments under section 490.057 for the remaining information. We will also consider your other claims against disclosure of this 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. Section 490.057 of the Government Code addresses the confidentiality of certain information pertaining to the ETF. *See id.* § 490.057; *see generally id.* §§ 490.101-.103. Section 490.057 provides:

(a) Except as provided by Subsection (b), information collected by the governor's office, the [Texas Emerging Technology Advisory Committee (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, receiving, or having received an award from the fund is confidential unless the individual or entity consents to disclosure of the information.

¹As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.

(b) The following information collected by the governor's office, the committee, or the committee's advisory panels under this chapter is public information and may be disclosed under [the Act]:

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

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

(3) a brief description of the project that is funded under this chapter;

(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 the fund; and

(5) any other information designated by the committee with the consent of:

(A) the individual or entity receiving or having received an award from the fund, as applicable;

(B) the governor;

(C) the lieutenant governor; and

(D) the speaker of the house of representatives.

Id. § 490.057. You state the submitted information was collected by the governor's office. You inform us this information consists of documents pertaining to the negotiation of ETF contract terms, the disbursement of an ETF award, an awardee's continued compliance with an ETF contract, and enforcement of an ETF contract. Further, you assert the remaining information explicitly reveals the identity, background, finances, and marketing plans of an ETF applicant and awardee and, therefore, is confidential under subsection 490.057(a) and must be withheld from release pursuant to section 552.101 of the Government Code. Additionally, you inform us that Palmaz has not consented to the release of its information. Based upon your representations and our review, we find the remaining information concerns the identity, background, finance, and marketing plans of an entity that is being considered for, or has received, an ETF award. However, we note, and you acknowledge, that any information listed in subsection 490.057(b) is public information and must be released. Therefore, with the exception of information that is subject to public release under subsection 490.057(b) of the Government Code, which you state the governor's office has

released, we conclude the governor's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with subsection 490.057(a) of the Government Code.²

In summary, the governor's office must continue to rely on Open Records Letter No. 2011-04665A as a previous determination with respect to the information subject to section 552.101 of the Government Code in conjunction with common-law privacy and the information subject to section 552.110(b) and withhold the information at issue in accordance with that ruling. With the exception of information that is subject to public release under subsection 490.057(b) of the Government Code, which you state the governor's office has released, the governor's office must withhold the remaining information under section 552.101 of the Government Code in conjunction with subsection 490.057(a) of the Government Code.

Although you request for this ruling to serve as a previous determination as to the disclosure of information subject to subsection 490.057(a) of the Government Code, provided that all responsive information listed in subsection 490.057(b) of the Government Code is released, we decline to issue such a ruling at this time.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

²As our ruling is dispositive, we need not address the remaining arguments against disclosure.

Ref: ID# 464455

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Palmaz Scientific
c/o Mr. Rodrigo J. Figueroa
Cox Smith Matthews Incorporated
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205
(w/o enclosures)