



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2012

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

OR2012-20609

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# 478236 (OOG ID #253-12).

The Office of the Governor (the "governor's office") received a request for five categories of information pertaining to Texas Emerging Technology Fund ("ETF") Awards to two named individuals for Ensysce Biosciences, Inc. ("Ensysce") and PHusis Corporation ("PHusis").¹ You state you do not possess some of the requested information.² You state the governor's office has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also believe release of the information may implicate the interests of Ensysce and

¹You state the governor's office sought and received clarification of the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d (Tex. Civ.App.—San Antonio 1978, writ dismissed).

PHusis. Accordingly, you state the governor's office has notified Ensysce and PHusis of the request and of their right to submit arguments to this office. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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 in certain circumstances). We have received comments from Ensysce and Phusis. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code exempts 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.

(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:

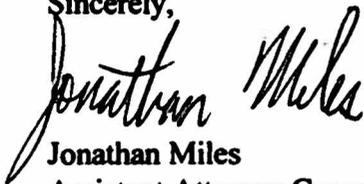
- (A) the individual or entity receiving or having received an award from the fund, as applicable;
- (B) the governor;
- (C) the lieutenant governor; and
- (D) the speaker of the house of representatives.

Id. § 490.057. You state the submitted information was collected by the governor's office and concerns the identity, background, finances, and marketing plans of ETF awardees. Accordingly, you assert the submitted information 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 the awardees have not consented to release of their information. Based upon your representations and our review, we find the information at issue concerns the identity, background, finance, and marketing plans of ETF awardees. However, we note, and you acknowledge, that any information listed in subsection 490.057(b) of the Government Code is public information and must be released. Therefore, with the exception of information that is subject to public release under subsection 490.057(b), which you state the governor's office has released, we conclude the governor's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with subsection 490.057(a).

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 478236

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**

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(w/o enclosures)**