



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2015

Ms. Nneka Kanu
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 368
Houston, Texas 77001-0368

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-02916A

Dear Ms. Kanu:

This office issued Open Records Letter No. 2015-02916 (2015), on February 13, 2015. We have determined the prior ruling should be corrected. *See* Gov't code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2015-02916 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 561862.

The City of Houston (the "city") received a request for the first two pages of applications for licenses or permits issued for a specified period of time for any company covered under chapter 46 of the city code and drivers required by article 1, division 2 of the city code to obtain a vehicle for hire license related to the use of their personal vehicles.¹ The city states it will withhold motor vehicle record information under section 552.130 of the Government Code, personal e-mail addresses under section 552.137 of the Government Code pursuant

¹The city informs us the requestor clarified his initial request for information, as a result of which the city sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You state the city received the deposit on December 17, 2014. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that governmental body receives deposit or bond).

to Open Records Decision No. 684 (2009), and social security numbers under section 552.147 of the Government Code.² The city claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. The city also states, and provides documentation showing, it notified Uber Technologies, Inc. (“Uber”) of the city’s receipt of the request for information and of Uber’s right to submit arguments to this office as to why the requested information should not be released. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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 correspondence from Rasier LLC, a wholly owned subsidiary of Uber, objecting to the release of the information under section 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the city informs us the requestor excluded from his request all but the first two pages of each application. Thus, the submitted information that does not consist of the first two pages of each application is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, the dates of birth of living members of the public are not protected by common-law privacy under section 552.101. *See* Open Records Decision No. 455 at 7 (1987) (home addresses, telephone numbers, and dates of birth not private). Upon review, we find the submitted dates of birth do not satisfy the standard articulated by the Texas Supreme Court in *Industrial*

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 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). 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 seeking a decision from this office. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See id.* § 552.147(b).

Foundation. Accordingly, this information is not confidential under common-law privacy, and the city may not withhold it under section 552.101 on that ground.

Section 552.110 of the Government Code protects the proprietary interests of private parties by excepting from disclosure two types of information: trade secrets and commercial or financial information the release of which would cause a third party substantial competitive harm. Section 552.110(a) of the Government Code excepts from disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” Gov’t Code § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides a trade secret is

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Huffines*, 314 S.W.2d at 776. In determining whether particular information constitutes a trade secret, this office considers the Restatement’s definition of trade secret as well as the Restatement’s list of six trade secret factors.³ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a private person’s claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. ORD 552 at 5-6. However, we cannot conclude section 552.110(a) applies unless it has been shown the information meets the definition of a trade secret and the necessary factors

³The following are the six factors that the Restatement gives as indicia of whether information constitutes a trade secret: (1) the extent to which the information is known outside of the company; (2) the extent to which it is known by employees and others involved in the company’s business; (3) the extent of measures taken by the company to guard the secrecy of the information; (4) the value of the information to the company and its competitors; (5) the amount of effort or money expended by the company in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

have been demonstrated to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the requested information. *See* Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence release of information would cause it substantial competitive harm).

Upon review, we find Uber has not shown any of the submitted information meets the definition of a trade secret or demonstrated the necessary factors to establish a trade secret claim. *See* Gov’t Code § 552.110(a). We also find Uber has failed to establish release of the information at issue would cause it substantial competitive injury. *See id.* § 552.110(b). Therefore, the city may not withhold any of the information pursuant to section 552.110.

Section 552.1175 of the Government Code may be applicable to some of the submitted information.⁴ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. Section 552.1175 applies to peace officers as defined by Article 2.12 of the Code of Criminal Procedure and current or former employees of the Texas Department of Criminal Justice. *Id.* § 552.1175(a)(1), (3). Some of the submitted information pertains to individuals who may be subject to section 552.1175. Thus, the city must withhold the information we have marked under section 552.1175 if it pertains to individuals who are subject to section 552.1175(a) and they elect to restrict access to this information in accordance with section 552.1175(b). However, if the individuals at issue are not subject to section 552.1175(a) or they do not elect to restrict access to this information in accordance with section 552.1175(b), then the city may not withhold this information under section 552.1175. The city 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.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 561862

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Lori Fixley Windland
Counsel for Rasier, LLC
Locke Lord, LLP
600 Congress, Suite 2200
Austin, Texas 78701
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

APR 21 2016

At 4:30 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-001098

RASIER LLC,
Plaintiff,

v.

THE HONORABLE KEN PAXTON,
Attorney General of Texas, and the
CITY OF HOUSTON, TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

53rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Rasier LLC (Rasier), sought to withhold certain information which is in the possession of the City of Houston (the City) from public disclosure. All matters in controversy between Plaintiff, Rasier, and Defendants, Ken Paxton, Attorney General of Texas (Attorney General), and the City arising out of this lawsuit have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent certified letters to each of three requestors, Mr. Dug Begley, Ms. Mary Vaught, and Ms. Lauren Sweeney, on April 1, 2016, informing them of the setting of this matter on the uncontested docket on this date. The requestors were informed of the parties' agreement that the City will withhold the designated portions of the information at issue. The requestors were also informed of their right to intervene in the suit to contest

the withholding of this information. A copy of the certified mail receipt is attached to this motion.

None of the requestors have filed motions to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

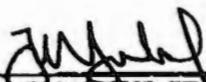
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Rasler, the Attorney General, and the City have agreed that in accordance with the PIA and under the facts presented, the information at issue, which includes the portions of the following documents not already made confidential or exempted from disclosure by letter rulings OR2015-02916A, OR2015-08271, or OR2015-13040, specifically the driver records and the motor vehicle records relating to the Transportation Network Company, (TNC), which include (a) the first two pages of the City of Houston's TNC Vehicle-for-Hire Driver's License Applications for all TNC drivers licensed by the City, (b) a list of all TNC drivers licensed by the City and make/model of all licensed vehicles, and (c) a City database spreadsheet listing all TNC drivers licensed by the City, with names, addresses, telephone numbers and email addresses (collectively the "Requested Information"), are excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, the City will withhold the Requested Information.

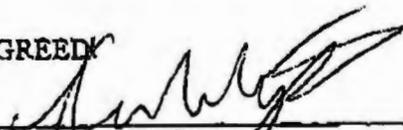
- 2. Attorney General Letter Rulings OR2015-02916A, OR2015-08271, and OR2015-13040 shall not be relied on as previous determinations.
- 3. All court cost and attorney fees are taxed against the parties incurring the same;
- 4. All relief not expressly granted is denied; and
- 5. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Rasler, the Attorney General, and the City and is a final judgment.

SIGNED the 21st day of April, 2016.



 PRESIDING JUDGE
TIM SULAK

AGREED



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 Chief, Open Records Litigation
 Administrative Law Division
 P. O. Box 12548, Capitol Station
 Austin, Texas 78711-2548
 Telephone: (512) 475-4195
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ATTORNEY FOR DEFENDANT, KEN PAXTON



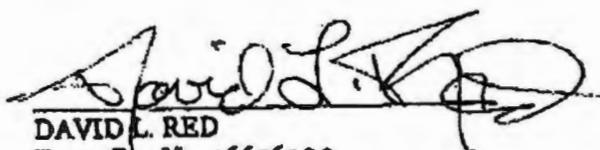
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Agreed Final Judgment
Cause No. D-1-GN-15-001098

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A

CAUSE NO. D-1-GN-15-001098

RASIER LLC,
Plaintiff,

v.

THE HONORABLE KEN PAXTON,
Attorney General of Texas, and the
CITY OF HOUSTON, TEXAS,
Defendant.

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IN THE DISTRICT COURT OF

53rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Rasier, LLC, (Rasier), Ken Paxton, Attorney General of Texas (the Attorney General), and the City of Houston (the City). This Agreement is made on the terms set forth below.

Background

The above captioned cause of action is a consolidated case and includes previous cause numbers D-1-GN-15-001788 and D-1-GN-15-002904. The consolidated case includes challenges to three Open Records Letters rulings which were issued in response to three separate open records requests. At issue are: 1) OR2015-02916A, which resulted from Dug Begley's November 19, 2014 request for information from the City of Houston; 2) OR2015-08271, which resulted from Mary Vaught's February 3, 2015 request for information from the City of Houston; and 3) OR2015-13040, which resulted from Lauren Sweeney's March 8, 2015 request for information. In each of these requests, some of the responsive information belonged to Rasier. After the letter rulings were issued, Rasier disputed the rulings and filed the above styled and earlier mentioned lawsuits to preserve its rights under the PIA.

Rasier submitted information and briefing to the Attorney General establishing that its information is excepted from disclosure under Texas Government Code section 552.104. The City and the Attorney General have reviewed Rasier's request and agree to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Rasier, the Attorney General, and the City have agreed that in accordance with the PIA and under the facts presented, the information at issue, which includes the portions of the following documents not already made confidential or exempted from disclosure by the letter rulings listed above, specifically the driver records and the motor vehicle records relating to the Transportation Network Company (TNC), which include (a) the first two pages of the City of Houston's TNC Vehicle for Hire License Applications for all TNC drivers licensed by the City, (b) a list of all TNC drivers licensed by the City and the make/model of all licensed vehicles, and (c) a City database spreadsheet listing all TNC drivers licensed by the City, with names, addresses, telephone numbers and email addresses (collectively the "Requested Information"), are excepted from disclosure pursuant to Texas Government Code section 552.104. Pursuant to Texas Government Code section 552.104, the City will withhold the above described records.

2. Rasier, the City, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to each of the requestors.

3. The Attorney General agrees that he will also notify the requestors, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of their rights to intervene to contest Rasier's right to have the City withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred is to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. Rasier warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Rasier has against the Attorney General and/or the City arising out of the matters described in this Agreement.

8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and

settlement and release of all claims that the Attorney General has against Rasier and/or the City arising out of the matters described in this Agreement.

9. The City of Houston warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of the City and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the City has against Rasier and/or the Attorney General arising out of the matters described in this Agreement.

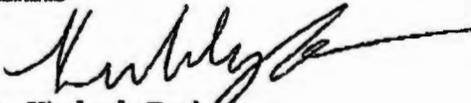
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

RASIER, INC.

By: 
name: William Ogden
firm: Ogden, Brooks & Hall, L.L.P.

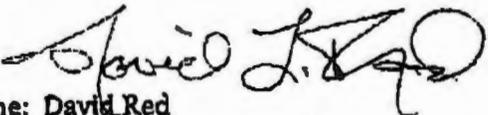
Date: 31 March 2016

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

By: 
name: Kimberly Fuchs
title: Assistant Attorney General,
Administrative Law Division

Date: 1 April 2016

CITY OF HOUSTON

By: 
name: David Red
title: Senior Assistant City Attorney,
General Litigation Section

Date: 31 March 2016