



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

May 7, 2015

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

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

OR2015-08936

Dear Ms. Nicholson:

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# 562863.

The City of Austin (the "city") received three requests for copies of the Transportation Network Company Reports demonstrating how specified companies have met the requirements of the city's ordinance number 2014 1016-038, the recommendations provided to the city council in relation to the specified ordinance, and taxi reports for a specified period of time. The city states it has released some information. Although the city takes no position as to whether the submitted information is excepted under the Act, it states release of the submitted information may implicate the proprietary interests of Lyft, Inc. ("Lyft") and Rasier, L.L.C./Uber ("Uber"). Accordingly, the city states, and provides documentation showing, it notified the third parties of the requests for information and of their 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 Lyft and Uber. We have reviewed the submitted information and the submitted arguments.¹

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-06144 (2015). In Open Records Letter No. 2015-06144 the city notified Lyft and Uber pursuant to section 552.305 when the city received the previous request for information, and the third parties failed to submit comments objecting to the release of their information. Accordingly, in our previous ruling, we ruled the city must release the third parties' information. However, Lyft and Uber now claim some of their information is excepted from disclosure under section 552.110 of the Government Code. Because the proprietary interests of third parties are at stake, we will consider Lyft's and Uber's claims under section 552.110 for any information subject to the previous ruling. Additionally, to the extent the submitted information is not subject to Open Records Letter No. 2015-06144, we will address the arguments against release of the submitted information.

Lyft and Uber argue some of their information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial 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. Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be

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

¹We note the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because the interests of a third party can provide a compelling reason to overcome the presumption of openness, we will consider Lyft's and Uber's arguments for the submitted information. *See id.* §§ 552.007, .302, .352.

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 Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958). 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.² RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[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). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999) (business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm).

As mentioned above, Lyft’s and Uber’s information may have been subject to Open Records Letter No. 2015-06144. In the prior ruling, the city notified the third parties of the request for information pursuant to section 552.305 of the Government Code. Lyft and Uber did not object to the release of their information. Since the issuance of the previous ruling on April 1, 2015, neither Lyft nor Uber has disputed this office’s conclusion regarding the release of the information. In this regard, we find Lyft and Uber have not taken any measures to protect their information in order for this office to conclude the information now either

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

- (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).

qualifies as a trade secret or commercial or financial information, the release of which would cause either third party substantial harm. *See* Gov't Code § 552.110; RESTATEMENT OF TORTS § 757 cmt. b; *see also* ORDs 661, 319 at 2, 306 at 2, 255 at 2. Accordingly, to the extent any of Lyft's or Uber's submitted information was the subject of Open Records Letter No. 2015-06144, we conclude the city may not withhold their information under section 552.110 of the Government Code. To the extent Lyft's or Uber's information was not the subject of the prior ruling, we will address their arguments for that information.

Lyft and Uber each argue some of their information consists of commercial information, the release of which would cause each company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Lyft and Uber have demonstrated the information we have marked constitutes commercial or financial information, the release of which would cause each company substantial competitive injury. Accordingly, the city must withhold this information under section 552.110(b) of the Government Code. However, we find Lyft and Uber have not made the specific factual or evidentiary showing required by section 552.110(b) that release of any of their remaining information would cause each company substantial competitive harm. *See* ORD 661. Therefore, none of Lyft's or Uber's remaining information may be withheld under section 552.110(b).

Lyft and Uber each argue some of their information constitutes trade secrets. Upon review, we find Lyft and Uber have failed to establish a *prima facie* case any portion of their remaining information meets the definition of a trade secret, nor have they demonstrated the necessary factors to establish a trade secret claim for their remaining information. *See* ORD 402. Therefore, none of Lyft's or Uber's remaining information may be withheld under section 552.110(a).

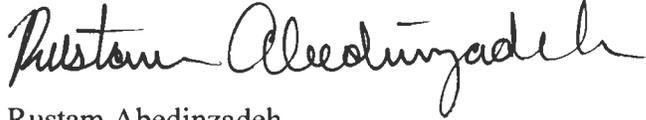
In summary, to the extent any of Lyft's or Uber's submitted information was the subject of Open Records Letter No. 2015-06144, we conclude the city may not withhold their information under section 552.110 of the Government Code and the information must be released. To the extent Lyft's or Uber's information was not the subject of the prior ruling, the city must withhold the information we have marked under section 552.110(b) of the Government Code. The remaining 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.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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 562863

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

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Policy Counsel
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2300 Harrison Street
San Francisco, California 94110
(w/o enclosures)

Rasier, L.L.C./Uber
c/o Ms. Lori Fixley Winland
Locke Lord, L.L.P.
600 Congress, Suite 2200
Austin, Texas 78701
(w/o enclosures)

MAR - 2 2016

At 3:49 P.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-001956

RASIER LLC	§	IN THE DISTRICT COURT OF
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
HON. KEN PAXTON, ATTORNEY	§	
GENERAL OF TEXAS, AND	§	
THE CITY OF AUSTIN	§	353rd JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

Came on to be heard in regular order the above-captioned and numbered cause, and due notice having been given, all parties appeared by and through their attorneys of record and announced to the Court that all matters in controversy herein had been settled and resolved by and between them, and the parties jointly moved for entry of this Agreed Final Judgment. The Court proceeded and considered the pleadings on file, the statements and arguments of counsel, and all other matters properly before it, and is of the opinion and finds that final judgment should be entered as set forth herein. It is accordingly

IT IS ORDERED AND DECLARED that Tex. Att'y Gen. Letter Ruling OR2015-08836 shall remain in effect. In accordance with the letter ruling, the following categories of information submitted by Rasier LLC to the City of Austin are excepted from disclosure and must be withheld by the City of Austin pursuant to TEX. GOV'T CODE § 552.110 and § 552.104(a): (a) the objective and quantifiable metrics included in Rasier's quarterly reports to the City of Austin, including (i) average trip time in minutes, (ii) average percentage of trip requests completed, (iii) average arrival time in minutes per rider request; (iv) average price multiples for surge pricing; and (b) specific trip data broken down by zip code, including number of trips, zip code maps showing trip originations and trip destinations, number of trip requests, average arrival time, peak request times and percentage of ride requests completed. It is further

08936
[Handwritten initials]

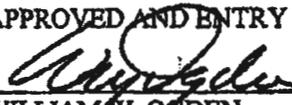
ORDERED, ADJUDGED and DECREED that each party shall bear its own fees and costs with regard to these proceedings. All relief not expressly granted is DENIED. THIS IS A FINAL JUDGMENT.

DATED and SIGNED at Austin, Texas this 2nd day of March, 2016.



JUDGE PRESIDING
TIM SULAK

APPROVED AND ENTRY REQUESTED:

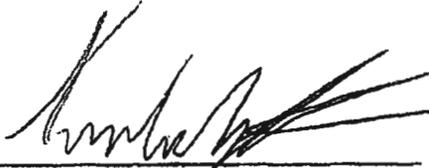


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