



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Ms. Danielle Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2015-10091

Dear Ms. Folsom:

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# 564756 (GC No. 22154).

The City of Houston (the "city") received a request for information pertaining to transportation services. You state the city will release some information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of AAA Corporate Car & Limo; Ambers Airport Limo; Carey of Houston; Corporate Transportation, Inc. d/b/a Corporate Limousines; Greater Houston Transportation Company; Gulf Coast Limousine Service, Inc.; Monarch British Limousines; Uber Technologies, Inc. ("Uber"); and United Transportation Services. Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their rights to submit arguments to this office as to why the information at issue 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 correspondence from Rasier LLC, a wholly owned subsidiary of Uber, objecting to the release of the submitted information under section 552.110 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have only received comments from Uber explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have any protected proprietary interests in the information. *See id.* § 552.110; 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, that 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. Consequently, the city may not withhold any of the submitted information on the basis of any proprietary interests the remaining third parties may have in the information.

Uber contends some of the submitted 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 the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). 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 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 776 (Tex. 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.¹ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude section 552.110(a) is applicable unless it has been shown 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 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, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD661 at 5.

Uber argues a portion of the submitted information constitutes a trade secret. Upon review, we find Uber has failed to establish a *prima facie* case the information at issue meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 402. Therefore, the information at issue may not be withheld under section 552.110(a).

Uber further argues the information at issue consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Uber has demonstrated a portion of its information consists of commercial or financial information, the release of which would cause substantial competitive harm. Therefore, the city must withhold the information we marked under section 552.110(b) of the Government Code. However, we find Uber has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the remaining information at issue would cause the company substantial competitive harm. *See* ORD 661. Therefore, this information may not be withheld under section 552.110(b).

¹The Restatement of Torts lists the following six factors 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 other 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).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² 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. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 600 (1992) (personal financial information includes choice of a particular insurance carrier). Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, the city must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See* Open Records Decision No. 684 at 9 (2009). Upon review, the city must withhold the insurance policy number we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its public disclosure or subsection (c) applies.

In summary, the city must withhold the information we marked under (1) section 552.110(b) of the Government Code, (2) section 552.101 of the Government Code in conjunction with common-law privacy, (3) section 552.130 of the Government Code, and (4) section 552.136 of the Government Code. The city must withhold the e-mail address we marked under section 552.137 of the Government Code, unless its owner affirmatively consents to its public disclosure or subsection (c) applies. The city must release the remaining information.³

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,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 564756

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to her client's e-mail address pursuant to section 552.137(b) of the Government Code. *See* Gov't Code § 552.137(b).

Rasier LLC, a wholly owned subsidiary of Uber Technologies, Inc.
c/o Ms. Lori Fixley Winland
Locke Lord, L.L.P.
600 Congress, Suite 2200
Austin, Texas 78701
(w/o enclosures)

Mr. Michael Holt
Ambers Airport Limo
444 Taxi Inc.
6002 Boness
Humble, Texas 77396
(w/o enclosures)

Mr. David Dillion
Carey of Houston
37 Lyerly Street
Houston, Texas 77022
(w/o enclosures)

Ms. Stephanie Cloud
Corporate Transportation, Inc. d/b/a Corporate Limousines
7 Switchbud Place, #192-411
The Woodlands, Texas 77380
(w/o enclosures)

Mr. Robert H. Pomerleau
Gulf Coast Limousine Service, Inc.
5218 Lacreek Lane
Spring, Texas 77379
(w/o enclosures)

Mr. Roman Martinez
Greater Houston Transportation Company
1406 Hayes Street
Houston, Texas 77009
(w/o enclosures)

Mr. Roman Martinez
United Transportation Services
1406 Hayes Street
Houston, Texas 77009
(w/o enclosures)

Ms. Crystal Martinez
AAA Corporate Car & Limo
18760 Hedgecroft Drive, Suite 614
Houston, Texas 77060
(w/o enclosures)

Mr. Thomas C. Durham
Monarch British Limousines
39 East Royal Mews
Conroe, Texas 77304
(w/o enclosures)