



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

June 30, 2015

Ms. Tiffany Evans
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.

OR2015-13040

Dear Ms. Evans:

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# 569258 (G.C. No. 22270).

The City of Houston (the "city") received a request for a spreadsheet listing all Uber Technologies, Inc. ("Uber") drivers permitted by the city. Although you take no position as to whether the submitted information is excepted from disclosure, you notified Uber 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.¹ 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 Act in certain circumstances). We have received comments from Uber. We have considered the submitted arguments and reviewed the submitted information.

¹We note Uber contends the city failed to notify its drivers of the request for information pursuant to section 552.305(d) of the Government Code. See Gov't Code § 552.305(d) (providing that "[i]f release of a person's proprietary information may be subject to exception under Sections 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision." However, the city does not inform us, nor can we discern that, the drivers' proprietary interests would be implicated by the public release of the information at issue. Thus, we find this is not an instance where the city is required to notify the drivers pursuant to section 552.305 of the Government Code.

Uber contends some of the submitted information is protected under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code. Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). Upon review of Uber’s arguments and the submitted information, we find Uber has not established, and the city does not inform us, the city compiles or maintains motor vehicle records. Therefore, we find Uber has failed to demonstrate section 730.004 applies to the city. Consequently, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code.

Uber also contends some of the submitted information is excepted from disclosure under section 552.101 of the Government Code pursuant to “privacy considerations” of its drivers. We note the Texas Supreme Court has held the test for protection of information under privacy considerations is found in 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. We note an individual’s name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not invasion of privacy). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Uber also contends 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)-(h). 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.² 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* Open Records Decision No. 552 at 5 (1990). 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(h) 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* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, party must show

²The 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).

by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Uber argues 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 not made the specific factual or evidentiary showing required by section 552.110(b) that release of the 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).

Uber also contends some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 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(a). Upon review, we find the submitted information does not contain motor vehicle record information. Therefore, the city may not withhold the submitted information under section 552.130 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). Some of the submitted e-mail addresses consist of fictitious addresses. The city may not withhold this information, which we have marked for release, under section 552.137 of the Government Code. Therefore, with the exception of the information we have marked for release, we find the city must withhold the e-mail addresses in the submitted information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure. As no other exceptions to disclosure have been raised, 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.

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/>

[ori_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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/ez

Ref: ID# 569258

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William W. Ogden
Counsel for Rasier, LLC
Ogden, Gibson, Broocks, Longoria & Hall, L.L.P.
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
(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.

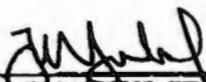
After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

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.

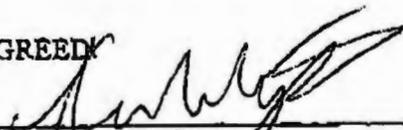
SIGNED the 21st day of April 2016.



PRESIDING JUDGE

TIM SULAK

AGREED



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Chief, Open Records Litigation
Administrative Law Division
P. O. Box 12548, Capitol Station
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ATTORNEY FOR DEFENDANT, KEN PAXTON



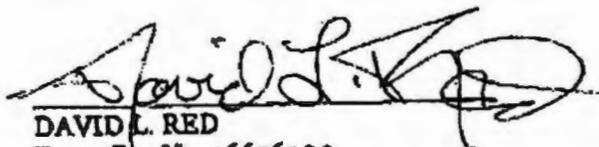
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Agreed Final Judgment
Cause No. D-1-GN-15-001098

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ATTORNEY FOR DEFENDANT, CITY OF HOUSTON

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.

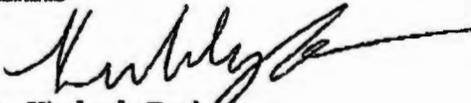
10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

RASIER, INC.

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

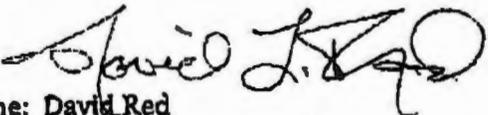
Date: 31 March 2016

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