



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2015

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

OR2015-13240

Dear Ms. Kanu:

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# 569442 (GC No. 22293).

The City of Houston (the "city") received a request for information pertaining to transportation hearings. You state you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified Uber Technologies, Inc. ("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.<sup>1</sup> *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

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<sup>1</sup>We 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 Section 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.

of exception in Act in certain circumstances). We have received comments from Uber. We have considered the submitted arguments and reviewed the submitted information.

Uber contends the city is prevented from releasing some of the information because of a temporary injunction. Uber argues the names of persons who have applied for licenses to be drivers with Uber are the subject of the temporary injunction issued by the 53rd Judicial District Court of Travis County in a lawsuit involving Uber styled *Rasier LLC v. Ken Paxton*, Cause No. D-1-GN-15-001098. We note the temporary injunction is limited to the facts and information at issue in the injunction and does not apply to the information currently at issue. Thus, the city may not withhold any portion of the submitted information based on the temporary injunction.

Both the city and Uber claim section 552.101 for some of the submitted 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 section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code §§ 411.083, .084(c)(governmental body may not confirm existence or nonexistence of CHRI to any person not eligible to receive the information). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

You assert some of the information at issue consists of CHRI obtained from DPS and the Federal Bureau of Investigation (the “FBI”). We note, however, some of the information consists of administrative violations, hearing testimony, evidence descriptions, and self-reported criminal history information. We find you have failed to demonstrate how the administrative violations, hearing testimony, evidence descriptions, and self-reported criminal history information constitute CHRI obtained from DPS or the FBI and none of

these types of information may be withheld under section 552.101 on this basis. Accordingly, the city must only withhold the portions of CHRI obtained directly from DPS and the FBI under section 552.101 in conjunction with federal law and chapter 411 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 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 and the city contend some of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has also found common-law privacy generally protects the identifying information of juvenile offenders and victims of child abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age when conduct occurred), 58.007(c), 261.201. 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 portions of the remaining information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The city and Uber have failed to demonstrate the remaining information at issue is highly intimate or embarrassing

and not of legitimate public interest. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Uber contends the remaining 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.<sup>2</sup> 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

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<sup>2</sup>The 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).

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(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* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, a party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Uber argues the remaining 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 information we have marked constitutes motor vehicle record information. Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code. However, we find no portion of the remaining information consists of motor vehicle record information. Thus, no portion of the remaining information may be withheld under section 552.130.

In summary, the city must only withhold the portions of CHRI obtained directly from DPS and the FBI under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must

withhold the information we have marked under section 552.130 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/eb

Ref: ID# 569442

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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