



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2015

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

OR2015-15679

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# 573672.

The City of Austin (the "city") received a request for (1) any regular or quarterly reports submitted to the city by any transportation network company registered to do business in the city and (2) any documents, letters, memoranda, reports, and e-mails exchanged between the city and Uber Technologies, Inc. ("Uber") from a specified time period. You state the city will release some of the requested information. Although you take no position with regard to the release of the submitted information, you state release of the submitted information may implicate the proprietary interests of Lyft, Inc. ("Lyft") and a subsidiary of Uber, Rasier, L.L.C. ("Rasier"). Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from a representative of Rasier. We have considered the submitted arguments and reviewed the submitted information.¹

¹The city acknowledges it did not comply with section 552.301 of the Government Code when it requested a ruling from this office. *See* Gov't Code § 552.301(b). Nevertheless, because third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301, we will consider any arguments submitted by the third parties for the submitted information. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

Initially, we note Exhibits A, B, and C were the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-08936 (2015). We have no indication there has been any change in the law, facts, or circumstances on which this previous ruling was based. Accordingly, we conclude the city must rely on Open Records Letter No. 2015-08936 as a previous determination and withhold or release this information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Lyft explaining why the submitted information should not be released. Therefore, we have no basis to conclude Lyft has a protected proprietary interest in the remaining information at issue. *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. Accordingly, the city may not withhold any of the remaining information at issue on the basis of any proprietary interest Lyft may have in the information.

We note Rasier raises section 552.104 of the Government Code for its information in Exhibit D. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104(a). A private third party may invoke this exception. *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at *7 (Tex. June 19, 2015). The "test under section 552.104 is whether knowing another bidder's [or competitor's information] would be an advantage, not whether it would be a decisive advantage." *Id.* at *9. Rasier states release of the information at issue would enable Rasier's competitors to reverse engineer an accurate picture of Rasier's operating costs and profit margin and enable its competitors to undercut Rasier's position in the market. After review of the information at issue and consideration of the arguments, we find Rasier has established the release of its information in Exhibit D would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Rasier's information in Exhibit D under section 552.104(a).

In summary, the city must rely on Open Records Letter No. 2015-08936 as a previous determination and withhold or release the information in Exhibits A, B, and C in accordance with that ruling. The city may withhold Rasier's information in Exhibit D under section 552.104(a). 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/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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/cbz

Ref: ID# 573672

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. April Mims
Lyft, Inc.
548 Market Street, Suite 68514
San Francisco, California 94104
(w/o enclosures)

Mr. William W. Ogden
Counsel for Razier, LLC
Ogden, Gibson, Broocks, Longoria & Hall, L.L.P.
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
(w/o enclosures)