



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2015

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

OR2015-19359

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# 579637.

The City of Austin (the "city") received a request for communications sent by named individuals or any other individuals employed by or associated with Uber Technologies, Inc. ("Uber") to city staff members and officials, excluding staff members of the city attorney's office, as well as certain communications sent to or from one of the named individuals regarding transportation network company data reporting requirements during a specified time period. 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 representatives of Rasier and Lyft. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

Initially, we note the information in Exhibit A was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-08936 (2015) and 2015-15679 (2015). In Open Records Letter No. 2015-08936, we held the city must release any of Rasier's and Lyft's information that was the subject of Open Records Letter No. 2015-06144 (2015), must withhold some of Rasier's and Lyft's information under section 552.110(b) of the Government Code, and must release the remaining information. In Open Records Letter No. 2015-15679, we held the city must continue to rely on Open Records Letter No. 2015-08936 as a previous determination with respect to some of the submitted information, may withhold some of Rasier's information under section 552.104 of the Government Code, and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which these rulings were based with respect to Rasier's information and some of Lyft's information. Accordingly, we conclude the city must continue to rely on these rulings as previous determinations and withhold or release this information in accordance with those rulings.<sup>2</sup> *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).

However, we note in Open Records Letter No. 2015-15679 the city notified Lyft pursuant to section 552.305 when the city received the previous request for information, and Lyft failed to submit comments objecting to the release of its information that was not subject to Open Records Letter No. 2015-08936. Accordingly, in our previous ruling, we ruled the city must release that information. However, Lyft now claims some of this information is excepted from disclosure under section 552.110 of the Government Code. Because the proprietary interests of a third party are at stake, we will consider Lyft's claims under section 552.110 for this information. As Lyft does not object to release of the information in Exhibit B, which was not subject to the previous rulings, the city must release Exhibit B to the requestor.

Lyft argues some of its 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

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<sup>1</sup>The 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).

<sup>2</sup>As we are able to make this determination, we need not address Rasier's and Lyft's arguments against disclosure of this information.

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 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.<sup>3</sup> RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that information subject to the Act is exempted 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

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<sup>3</sup>The 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).

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, the information Lyft now seeks to withhold under section 552.110 was the subject of Open Records Letter No. 2015-15679. In the prior ruling, the city notified Lyft of the request for information pursuant to section 552.305 of the Government Code. Lyft did not object to the release of its information. Since the issuance of the previous ruling on July 31, 2015, Lyft has not disputed this office’s conclusion regarding the release of the information. In this regard, we find Lyft has not taken any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Lyft 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, the city may not withhold any of Lyft’s information that was the subject of Open Records Letter No. 2015-15679 under section 552.110 of the Government Code.

In summary, the city must continue to rely on Open Records Letter Nos. 2015-08936 and 2015-15679 as previous determinations with respect to Rasier’s and some of Lyft’s information and withhold or release that information in accordance with those rulings. 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](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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLK/cz

Ref: ID# 579637

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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