



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 12, 2015

Ms. Elaine Nicholson
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-23851

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# 587123.

The City of Austin (the "city") received three requests from different requestors for reports provided by transportation network companies or the city's licensed taxi providers over a specified period of time; specified datasets provided by the taxi franchises to the city which were referenced at the Urban Transportation Commission meeting; and a specified company's quarterly submissions and various categories of information and statistics pertaining to the use of taxis in the city.¹ Although you take no position with respect to the public availability of the requested information, you state release of this information may implicate the proprietary interests of Austin Cab I, Inc. ("Austin Cab"); Greater Austin Transportation Company ("GATC"); Lone Star Cab Company ("Lone Star"); Lyft, Inc. ("Lyft"); and a subsidiary of Uber, Rasier, L.L.C. ("Rasier"). Accordingly, you state and provide documentation showing, you have notified these third parties of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the circumstances). We have received comments from GATC and Rasier. We have considered the submitted arguments and reviewed the submitted information.²

Initially, you inform us some of the submitted information 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). As we have no indication there has been any change in the law, facts, or circumstances on which these previous rulings were based, we conclude the city must rely on Open Records Letter Nos. 2015-08936 and 2015-15679 as previous determinations and withhold or release the information at issue in accordance with these rulings. *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 Austin, Lone Star, or Lyft explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the 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 information at issue on the basis of any proprietary interest these third parties may have in the information.

We note GATC and Rasier raise section 552.104 of the Government Code for their information. 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*, 466 S.W.3d 831 (Tex. 2015). The

²The 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).

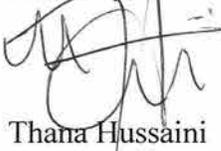
“test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Id.* at 841. Rasier states release of the information at issue would enable Rasier’s competitors to reverse engineer an accurate picture of Rasier’s operating costs and profit margin and enable its competitors to undercut Rasier’s position in the market. GATC states its contracts are continually re-bid and that the information at issue provides precise and detailed information regarding its business. GATC argues the release of the information at issue would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Rasier and GATC have established the release of their information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Rasier’s and GATC’s information under section 552.104(a) of the Government Code.³

In summary, we conclude the city must rely on Open Records Letter Nos. 2015-08936 and 2015-15679 as previous determinations and withhold or release the information previously ruled on in accordance with those rulings. The city may withhold Rasier’s and GATC’s information under section 552.104(a) of the Government Code. 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

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³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 587123

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

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