



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2015

Mr. Robert Davis
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-8828

OR2015-25322

Dear Mr. Davis:

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# 589296.

The City of Austin (the "city") received a request for the monthly performance reports, and any other available data reported to the city's Transportation Department, of three specified taxi companies for four specified months. The city states it will release most of the requested information. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of this information may implicate the proprietary interests of third parties.¹ Accordingly, the city states, and provides documentation showing, the city notified Austin Cab; Lone Star-ABCABCO, Inc. d/b/a Lone Star Cab Company; and Greater Austin Transportation Company d/b/a Yellow Cab ("GATC") of the request for information and of the companies' right to submit arguments to this office as to why the submitted information should not be released. *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 the Act in certain circumstances). We have received comments from GATC. We have reviewed the submitted information and considered the submitted arguments.

Initially, we note portions of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter

¹ We note, and the city acknowledges, the city did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nevertheless, because the interests of third parties can provide a compelling reason to overcome the presumption of openness, we will consider the third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

No. 2015-23851 (2015). We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Therefore, to the extent the submitted information is identical to the information submitted to this office and ruled on in Open Records Letter No. 2015-23851, we conclude the city must rely on this ruling as a previous determination and withhold or release the identical information in accordance with it. *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). To the extent the submitted information is not the same as the information previously submitted to this office and ruled upon in the previous ruling, we will address your arguments against 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) 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third parties have a protected proprietary interest in the submitted information. *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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest the remaining third parties may have in the information.

GATC argues its information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. Section 552.104(a) of the Government Code 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 "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. GATC states it has competitors in a market where there are a very limited number of providers. In addition, GATC states its contracts are continually rebid and the information at issue provides precise and detailed information regarding its business. GATC argues release of the information would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find GATC has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold GATC's submitted information under section 552.104(a).²

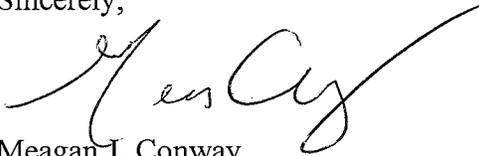
²As our ruling is dispositive, we need not address GATC's remaining arguments against disclosure of this information.

In summary, we conclude the city must rely on Open Records Letter No. 2015-23851 as a previous determination and withhold or release the information previously ruled on in accordance with that ruling. The city may withhold 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/eb

Ref: ID# 589296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Bertha and Ron Means
Austin Cab
1135 Gunter Street, Suite 101
Austin, Texas 78702
(w/o enclosures)

Mr. Solomon Kassa
Lone Star-ABCABCO, Inc. Dba Lone Star Cab Company
6721 North Lamar Boulevard, Suite 200
Austin, Texas 78752
(w/o enclosures)

Mr. Brian O'Toole
Yellow Cab
504 Lavaca, Suite 945
Austin, Texas 78701
(w/o enclosures)