



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 15, 2016

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

OR2016-01313

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# 594607.

The City of Austin (the "city") received a request for (1) ridership data from Uber Technologies, Inc. ("Uber") and Lyft, Inc. ("Lyft") related to pick-up and drop-off locations; (2) a list of data sets currently provided by the city's taxi franchises; (3) correspondence between city officials and Uber and Lyft regarding the companies' refusal to adhere to the data-reporting requirement. You state you will release some information to the requestors. 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 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 Lyft and a representative of Rasier. We have considered the submitted arguments and reviewed the submitted information.¹

Initially, we note most of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-08936 (2015), 2015-15679 (2015), and 2015-23851 (2015). We have no indication the law, facts, and circumstances on which the prior ruling was based have changed with respect to the information of Rasier. Accordingly, the city must continue to rely on Open Records Letter Nos. 2015-08936, 2015-15679, and 2015-23851 as previous determinations and withhold or release the information of Rasier in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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, in Open Records Letter Nos. 2015-15679 and 2015-23851, the city notified Lyft pursuant to section 552.305 when the city received the previous requests for information, and Lyft failed to submit comments objecting to the release of its information. Accordingly, in our previous rulings, we ruled the city must release Lyft's information. Lyft now claims some of this information is excepted from disclosure under section 552.110 of the Government Code. Because information subject to section 552.110 is deemed confidential by law, we will address Lyft's claim regarding some of its information under this exception. Additionally, we will consider Rasier's claim under section 552.104 of the Government Code for its remaining information.

Next, we note Rasier objects to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information submitted as responsive by the city.² *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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).

²As we are able to make this determination, we need not address Rasier's arguments against disclosure of the information at issue.

Rasier raises section 552.104 of the Government Code for its remaining information. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” *Id.* § 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. 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 remaining information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Rasier’s remaining information, which we have marked, under section 552.104(a).

Lyft claims some of its information is excepted from disclosure under section 552.110 of the Government Code, which 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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552 at 2. Section 757 provides that a trade secret is:

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 Huffines*, 314 S.W.2d at 776. 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.³ RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that 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 as a matter of law. *See* Open Records Decision No. 552 at 5 (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. *See* 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 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.*; *see also* Open Records Decision No. 661 at 5-6 (1999).

As mentioned above, Lyft’s information was subject to Open Records Letter Nos. 2015-15679 and 2015-23851. In the prior rulings, the city notified Lyft of the requests 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 rulings on July 31 and November 12, 2015, Lyft has not disputed this office’s conclusions 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* Open Records Decision Nos. 661, 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). Accordingly, we conclude the city may not withhold Lyft’s information under section 552.110 of the Government Code.

³The 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.

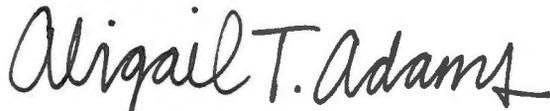
RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

In summary, the city must continue to rely on Open Records Letter Nos. 2015-08936, 2015-15679, and 2015-23851 as previous determinations and withhold or release the submitted information in accordance with those rulings. The city may withhold Rasier's remaining information, which we have marked, 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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 594607

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Candice Plotkin
Lyft
2300 Harrison Street
San Francisco, California 94110
(w/o enclosures)

Mr. William W. Ogden
For Rasier, LLC
Ogden, Gibson, Broocks, Longoria &
Hall, L.L.P.
711 Louisiana
Houston, Texas 77002
(w/o enclosures)

Ms. Molly Buck
Uber Technologies
400 West 15th Street, Suite 200
Austin, Texas 78701
(w/o enclosures)