



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2016

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

OR2016-11032

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# 610197.

The City of Austin (the "city") received a request for information pertaining to incentives offered by the city's airport to commercial airlines; amounts collected during a specified calendar year from ground transportation operators; and information pertaining to airport pickup and drop-off rates, registration fees, and tag fees for two specified years. You state you have released some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of Lyft, Inc. ("Lyft") and Rasier, L.L.C./Uber Technologies, Inc. ("Uber").¹ Accordingly, you state, and provide documentation showing, you notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue 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 Lyft and Uber. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered

¹We note, and you acknowledge, 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 third party interests for the submitted information. *See id.* §§ 552.007, .302, .352.

comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Lyft and Uber each raise section 552.104 of the Government Code, which 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. Lyft and Uber state they have competitors. Lyft states release of its information would “provide[] competitors with insight into its current market share at Austin Airport and can be used to gauge the efficacy of different marketing and promotional strategies directed at Austin Airport during various time periods.” Further, Lyft asserts that some of the submitted information reveals the focus of Lyft’s acquisition strategy, and release of that information would allow competitors to “run certain driver incentives and bonuses to undermine such strategy.” Uber contends release of its information would give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find Lyft and Uber have established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the submitted information under section 552.104(a).²

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

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

Ref: ID# 610197

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)