



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2016

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

OR2016-12319

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# 612296.

The City of Austin (the "city") received a request for all reports, databases, and spreadsheets submitted to the city by five named companies for specified time periods. Although you take no position as to whether the submitted information is excepted under the Act, 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 notified these third parties of the request for information and of their rights 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 GATC, Lyft, and Rasier. We have considered the submitted arguments and reviewed the submitted information.¹

Initially, you inform us some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter

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).

Nos. 2015-15679 (2015) and 2015-08936 (2015). In Open Records Letter No. 2015-15769, we ruled the city must rely on Open Records Letter No. 2015-08936 as a previous determination and withhold or release certain information in accordance with that ruling, and the city may withhold other information of Rasier under section 552.104(a). We note Open Records Letter No. 2015-08936 was subsequently modified on appeal by an Agreed Final Judgment in *Rasier, L.L.C. v. Hon. Ken Paxton, Attorney Gen. of Tex. & the City of Austin*, Cause No. D-1-GN-15-001956 (353rd Dist. Ct., Travis County, Tex.). With regard to the information in the current request that is identical to the information previously requested and ruled upon in Open Records Letter No. 2015-08936, the city must rely on the Agreed Final Judgment to withhold or release the information at issue. As we have no indication there has been any other change in the law, facts, or circumstances on which Open Records Letter No. 2015-15679 was based, we conclude the city must rely on Open Records Letter No. 2015-15679 as a previous determination and withhold or release the remaining information at issue in accordance with that ruling. *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 encompassed by the previous rulings and Agreed Final Judgment, we will consider the submitted 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) 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 Cab or Lone Star 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 Austin Cab or Lonestar may have in the information.

We note GATC, Lyft, 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 "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 its contracts are continually re-bid and that the information at issue

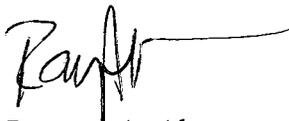
provides precise and detailed information regarding its business. GATC argues the release of the information at issue would give its competitors an advantage. Lyft states its information provides competitors with insight into its operation in the city. Lyft argues the disclosure of its information would provide economic benefit and an unfair competitive advantage to its competitors. 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 GATC, Lyft, and Rasier have established the release of their information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold GATC's, Lyft's and Rasier's information under section 552.104(a) of the Government Code.²

In summary, the city must rely on the Agreed Final Judgment that was issued as a result of Open Records Letter No. 2015-08936, as well as our ruling in Open Records Letter No. 2015-15679, and withhold or release the information previously ruled on in accordance with those rulings and Agreed Final Judgment. The city may withhold GATC's, Lyft's, and Rasier'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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

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

Ref: ID# 612296

Enc. Submitted documents

c: Requestor
(w/o enclosures)

5 Third Parties
(w/o enclosures)