



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 19, 2016

Mr. Jeffrey W. Giles
Assistant City Attorney
City of Houston
Post Office Box 368
Houston, Texas 77001-0368

OR2016-16281

Dear Mr. Giles:

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# 619003 (GC No. 23338). Because the ruling request involves litigation to which the Open Records Division is a party, preparation of this ruling has been assigned instead to the Opinion Committee.

The City of Houston ("City") received a request for fifteen categories of information regarding Vehicle for Hire Permitting and Enforcement during a specified time frame and relating to three named individuals and a specified company. The request for information also seeks information relating to the City's Vehicle for Hire permitting requirements and permitting maintenance requirements.¹ You tell us that the City will release a portion of the requested information. You also tell us that the City has no information responsive to

¹We note the City sought and received clarification of this request from the requestor. See TEX. GOV'T CODE § 552.222(b) (providing that if request for information is unclear, the governmental body may ask requestor to clarify the request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (recognizing that if a governmental body, acting in good faith, requests clarification of an unclear or over-broad request, the ten-day period to request an attorney general ruling is measured from the date the request is clarified).

portions of the request.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. You state that release of this information may implicate the proprietary interests of Uber Technologies, Inc. (“Uber”), and you indicate and provide documentation showing that you notified Uber of this request for information and its right to submit arguments to this office as to why the submitted information should not be released. *See* TEX. GOV’T CODE § 552.305(d); *see also* Tex. Att’y Gen. ORD-542 (1990) at 2-3 (recognizing that 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 considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we note that 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, why information relating to that party should be withheld from public disclosure. TEX. GOV’T CODE § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Uber explaining why the information should not be released. Therefore, we have no basis to conclude Uber has a protected proprietary interest in the submitted information. *See id.* 552.110; *see also* Tex. Att’y Gen. ORD-661 (1999) at 5-6 (recognizing that, 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), ORD-552 (1990) at 5 (stating that party must establish *prima facie* case that information is a trade secret), ORD-542 (1990) at 2-3 (noting that, under the Act, a governmental body may rely on the third party to raise applicable exceptions). Accordingly, the City may not withhold any of the information at issue on the basis of any proprietary interest Uber may have in it.

As a threshold matter, some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Tex. Att’y Gen. ORD-452 (1986) at 3, ORD-362 (1983) at 2.

³We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Tex. Att’y Gen. ORD-499 (1988) at 6, ORD-497 (1988) at 4. This open records letter ruling does not reach and therefore does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

TEX. GOV'T CODE § 552.022(a)(3), (17). The submitted information includes information relating to the receipt or expenditure of public or other funds by a governmental body, as well as court-filed documents. This information, which we have marked, must be released unless it is made confidential under the Act or other law. You raise section 552.103 of the Government Code; however, this exception is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (recognizing that governmental body may waive Texas Government Code section 552.103); Tex. Att'y Gen. ORD-665 (2000) at 2 n.5 (discussing discretionary exceptions generally). As a result, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the City may not withhold any of the information subject to section 552.022 under section 552.103 of the Government Code. In addition, you seek to withhold the information subject to section 552.022(a)(17) under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is not applicable to information contained in public records. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496 (1975) (recognizing that an action for invasion of privacy cannot be maintained where information is in public domain); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (“The law cannot recall information once it is in the public domain.”). Thus, the City may not withhold any portion of the court-filed documents under section 552.101 of the Government Code in conjunction with common-law privacy.

Yet, some of the information subject to disclosure under section 552.022 also includes information subject to sections 552.130 and 552.136. Because these sections make information confidential under the Act, we address their applicability to the information.⁴ Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or county is excepted from public release. *See* TEX. GOV'T CODE § 552.130(a). On those documents to be released under section 552.022, the City must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. Similarly,

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Tex. Att'y Gen. ORD-481 (1987) at 2, ORD-480 (1987) at 5, ORD-470 (1987) at 2.

section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the City must withhold from the documents to be released under section 552.022 the information we have marked under section 552.136 of the Government Code.

We next consider your argument under section 552.103 of the Government Code, which provides:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref’d n.r.e.); Tex. Att’y Gen. ORD-551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

You inform us and provide documentation showing that two lawsuits, styled *Raiser, LLC v. Paxton*, No. D-1-GN-15-001596 (353rd Dist. Ct., Travis Cty. Tex. Apr. 22, 2015) and *Raiser LLC v. Paxton*, No. D-1-GN-15-002860 (126th Dist Ct., Travis Cty. Tex. July 16, 2015), were pending against the City in the 353rd and 126th District Courts of Travis County, Texas, respectively, when the City received the request for information. You tell us the information sought in the instant request is directly related to the pending lawsuits. Therefore, we agree litigation was pending when the City received the request. We also find you have established the information at issue is related to the pending litigation for purposes

of section 552.103(a). Therefore, the City may withhold the information not subject to section 552.022 under section 552.103(a) of the Government Code.⁵

However, once the information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Tex. Att’y Gen. ORD-349 (1982) at 2. We also note the applicability of section 552.103(a) ends once the litigation has concluded. Tex. Att’y Gen. Op. No. MW-575 (1982) at 2; Tex. Att’y Gen. ORD-350 (1982) at 3.

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,



Charlotte M. Harper
Assistant Attorney General
Opinion Committee

CMH/sdk

Ref: ID# 619003

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive, we do not address your other arguments to withhold this information.