



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 15, 2016

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

OR2016-20899

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# 626491.

The City of Austin (the "city") received a request for certain reports and data submitted by transportation network companies. 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 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 Lyft and Rasier. We have considered the submitted arguments and reviewed the submitted information.¹

Initially, Rasier informs 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 Nos. 2016-14022 (2016), 2016-12319 (2016), 2016-01313 (2016), 2015-23851 (2015), 2015-19359 (2015), 2015-15679 (2015), and 2015-08936 (2015). We note some of the information pertaining to Lyft that was at issue in Open Records Letter No. 2016-01313 is

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 the arguments submitted by the third parties for the submitted information. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977).

currently the subject of pending litigation (the “pending litigation”) between Lyft and the Office of the Attorney General. *See Lyft, Inc. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-16-000487 (419th Dist. Ct., Travis County, Tex.). Accordingly, to the extent the submitted information is subject to the pending litigation, we are closing the portion of the file regarding this information without issuing a decision and will allow the court to determine whether such information must be released to the public. We note Open Records Letter No. 2015-08936 was subsequently modified on appeal by an Agreed Final Judgment in *Rasier, L.L.C. v. Honorable Ken Paxton, Attorney General of Texas*, 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. We have no indication there has been any other change in the law, facts, or circumstances on which Open Records Letter Nos. 2016-14022, 2016-12319, 2016-01313, 2015-23851, 2015-19359, and 2015-15679 were based. Therefore, to the extent the submitted information is not subject to the pending litigation, we conclude the city must rely on Open Records Letter Nos. 2016-14022, 2016-12319, 2016-01313, 2015-23851, 2015-19359, and 2015-15679 as previous determinations and withhold or release the remaining information at issue in accordance with those rulings. *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 pending litigation, the Agreed Final Judgment, or these rulings, we will consider the submitted arguments against disclosure.

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. 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 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 the submitted information under section 552.104(a) of the Government Code.²

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

In summary, to the extent the submitted information is subject to pending litigation, we are closing the portion of the file regarding this information without issuing a decision and will allow the court to determine whether such information must be released to the public. 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 rulings in Open Records Letter Nos. 2016-14022, 2016-12319, 2016-01313, 2015-23851, 2015-19359, and 2015-15679 and withhold or release the remaining information previously ruled on in accordance with those rulings and Agreed Final Judgment. The city may withhold the remaining information under section 552.104(a) of the Government Code.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 626491

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)