



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 16, 2016

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

OR2016-20978

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# 626814.

The City of Austin (the "city") received a request for the number of passenger trips served during a specified time period by all traditional taxicab companies licensed to operate in the city. You state you will release some information. 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 interest of Yellow Cab. Accordingly, you state you notified Yellow Cab of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released.¹ *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 Yellow Cab. We have considered and reviewed the submitted arguments and information.

¹You 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 interest of a third party 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.

Initially, we note you have submitted information that does not pertain to the time period specified by the requestor. Thus, this information is not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release such information, which we have marked, in response to this request.

Section 552.104(a) of the Government Code 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. Yellow Cab states it has competitors. In addition, Yellow Cab states release of the information at issue would give an advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Yellow Cab has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude city may withhold the responsive 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

²As our ruling is dispositive, we need not address Yellow Cab’s remaining argument against disclosure of this information.

Ref: ID# 626814

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)