



**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

OR2016-21016

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# 626555.

The City of Austin (the "city") received a request for franchise reports filed by companies who own cab permits with the city for a specified period of time.<sup>1</sup> You state some of the requested information will be released. 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 Greater Austin Transportation Company ("GATC"). Accordingly, you state, and provide documentation showing, you notified GATC of the request for information and of its 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

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<sup>1</sup>We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

exception in the Act in certain circumstances). We have received comments from GATC. We have considered the submitted arguments and reviewed the submitted information.<sup>2</sup>

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 release of its information would provide precise and detailed information regarding its business and give its competitors an advantage. After review of the information at issue and consideration of the arguments, we find GATC has established the release of its information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold GATC’s information under section 552.104(a) of the Government Code.<sup>3</sup> The remaining submitted information must be released.

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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>The 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), (e). 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).

<sup>3</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Ref: ID# 626555

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)