



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 1, 2015

Ms. Nneka Kanu
Assistant City Attorney
Legal Department
City of Houston
P. O. Box 368
Houston, Texas 77001-0368

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2015-13240

Dear Ms. Kanu:

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# 569442 (GC No. 22293).

The City of Houston (the "city") received a request for information pertaining to transportation hearings. You state you have released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified Uber Technologies, Inc. ("Uber") of the request for information and of the company's right to submit arguments to this office as to why the submitted information 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

¹We note Uber contends the city failed to notify its drivers of the request for information pursuant to section 552.305(d) of the Government Code. *See* Gov't Code § 552.305(d) (providing that "[i]f release of a person's proprietary information may be subject to exception under Section 552.101, 552.110, 552.113, or 552.131, the governmental body that requests an attorney general decision under Section 552.301 shall make a good faith attempt to notify that person of the request for the attorney general decision.") However, the city does not inform us, nor can we discern that, the drivers' proprietary interests would be implicated by the public release of the information at issue. Thus, we find this is not an instance where the city is required to notify the drivers pursuant to section 552.305 of the Government Code.

of exception in Act in certain circumstances). We have received comments from Uber. We have considered the submitted arguments and reviewed the submitted information.

Uber contends the city is prevented from releasing some of the information because of a temporary injunction. Uber argues the names of persons who have applied for licenses to be drivers with Uber are the subject of the temporary injunction issued by the 53rd Judicial District Court of Travis County in a lawsuit involving Uber styled *Rasier LLC v. Ken Paxton*, Cause No. D-1-GN-15-001098. We note the temporary injunction is limited to the facts and information at issue in the injunction and does not apply to the information currently at issue. Thus, the city may not withhold any portion of the submitted information based on the temporary injunction.

Both the city and Uber claim section 552.101 for some of the submitted information. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 411.083 of the Government Code which pertains to criminal history record information (“CHRI”). CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990); *see generally* Gov’t Code ch. 411 subch. F. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code §§ 411.083, .084(c)(governmental body may not confirm existence or nonexistence of CHRI to any person not eligible to receive the information). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F.

You assert some of the information at issue consists of CHRI obtained from DPS and the Federal Bureau of Investigation (the “FBI”). We note, however, some of the information consists of administrative violations, hearing testimony, evidence descriptions, and self-reported criminal history information. We find you have failed to demonstrate how the administrative violations, hearing testimony, evidence descriptions, and self-reported criminal history information constitute CHRI obtained from DPS or the FBI and none of

these types of information may be withheld under section 552.101 on this basis. Accordingly, the city must only withhold the portions of CHRI obtained directly from DPS and the FBI under section 552.101 in conjunction with federal law and chapter 411 of the Government Code.

Uber contends some of the submitted information is protected under section 552.101 of the Government Code in conjunction with chapter 730 of the Transportation Code. Section 552.101 encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including [the Act], except as provided by Sections 730.005-730.007, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.” Transp. Code § 730.004. Section 730.004 applies only to an “agency” that compiles or maintains motor vehicle records. *See id.* § 730.003(1). Upon review of Uber’s arguments and the submitted information, we find Uber has not established, and the city does not inform us, the city compiles or maintains motor vehicle records. Therefore, we find Uber has failed to demonstrate section 730.004 applies to the city. Consequently, the city may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 730.004 of the Transportation Code.

Uber and the city contend some of the remaining information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. We note the Texas Supreme Court has held the test for protection of information under privacy considerations is found in the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Further, this office has also found common-law privacy generally protects the identifying information of juvenile offenders and victims of child abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age when conduct occurred), 58.007(c), 261.201. We note an individual’s name, address, and telephone number are generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of person’s name, address, or telephone number not invasion of privacy). Upon review, we find portions of the remaining information meet the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, the city must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The city and Uber have failed to demonstrate the remaining information at issue is highly intimate or embarrassing

and not of legitimate public interest. Thus, the city may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Uber contends the remaining information is excepted from disclosure under section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Section 552.110(a) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . It may . . . relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim

²The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude section 552.110(a) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5 (1999) (to prevent disclosure of commercial or financial information, a party must show by specific factual evidence, not conclusory or generalized allegations, release of requested information would cause that party substantial competitive harm).

Uber argues the remaining information constitutes a trade secret. Upon review, we find Uber has failed to establish a *prima facie* case the information at issue meets the definition of a trade secret, nor has it demonstrated the necessary factors to establish a trade secret claim for this information. *See* ORD 402. Therefore, the information at issue may not be withheld under section 552.110(a).

Uber further argues the information at issue consists of commercial information, the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Uber has not made the specific factual or evidentiary showing required by section 552.110(b) that release of the information at issue would cause the company substantial competitive harm. *See* ORD 661. Therefore, this information may not be withheld under section 552.110(b).

Uber also contends some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 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 country is excepted from public release. *See* Gov’t Code § 552.130(a). Upon review, we find the information we have marked constitutes motor vehicle record information. Therefore, the city must withhold the information we have marked under section 552.130 of the Government Code. However, we find no portion of the remaining information consists of motor vehicle record information. Thus, no portion of the remaining information may be withheld under section 552.130.

In summary, the city must only withhold the portions of CHRI obtained directly from DPS and the FBI under section 552.101 in conjunction with federal law and chapter 411 of the Government Code. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must

withhold the information we have marked under section 552.130 of the Government Code. The remaining 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, 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,

A handwritten signature in black ink that reads "Cole Hutchison". The signature is written in a cursive, slightly slanted style.

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/eb

Ref: ID# 569442

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William W. Ogden
Ogden, Gibson, Broocks, Longoria & Hall, L.L.P.
1900 Pennzoil South Tower
711 Louisiana
Houston, Texas 77002
(w/o enclosures)

JUN 12 2018

At 8:40 A.M.
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-15-002860

RASIER LLC	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
THE HONORABLE KEN PAXTON, Attorney General of Texas, and the CITY OF HOUSTON, TEXAS	§ § § § §	53RD JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

This is an action under the Public Information Act (PIA), TEX. GOV'T CODE ch. 552, in which Rasier LLC (Rasier) as Plaintiff sought to withhold certain information in the possession of the City of Houston (the City) from public disclosure. All matters in controversy between Plaintiff and Defendants, Ken Paxton, Attorney General of Texas (Attorney General), and the City arising out of this lawsuit have been resolved by settlement. A copy of the Settlement Agreement is attached hereto as Exhibit "A," and the parties agree to the entry and filing of this Agreed Final Judgment.

The Attorney General represents to the Court that, in compliance with TEX. GOV'T CODE § 552.325(c), the Attorney General sent certified letters to the requestor, Mr. Ted Oberg, on May 21, 2018, informing him of the setting of this matter on the uncontested docket on this date. The requestor was informed of the parties' agreement that the City will withhold the designated portions of the information at issue. The requestor was also informed of his right to intervene in the suit to contest the withholding of this information.



The requestor did not file a motion to intervene. Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period to intervene after notice is attempted by the Attorney General.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of this Agreed Final Judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

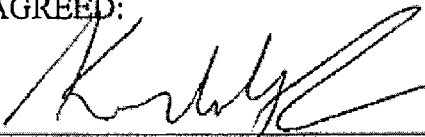
1. Rasier, the Attorney General, and the City have agreed that in accordance with the PIA and under the facts presented, the information at issue, specifically the Hearing Chart containing names and Criminal History Record Information of some 38 applicants for City-issued TNC driver's licenses (collectively the "Requested Information"), is excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with Texas Occupations Code § 2402.152(a). This information was not already determined to be confidential or exempted from disclosure by letter ruling OR 2015-13240. Pursuant to Texas Government Code section 552.101 in conjunction with Texas Occupations Code § 2402.152(a), the City will withhold the Requested Information.
2. Attorney General Letter Ruling OR 2015-13240 shall not be relied on as a previous determination.
3. All court costs and attorney fees are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims that are the subject of this lawsuit between Raiser, the Attorney General, and the City and is a final judgment.

SIGNED the 12 day of June, 2018.

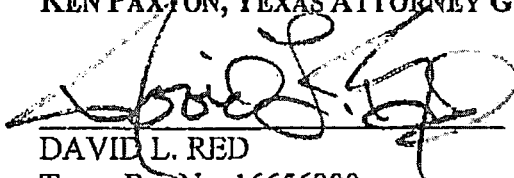

PRESIDING JUDGE

AGREED:



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ATTORNEYS FOR PLAINTIFF,
RASIER LLC

A

CAUSE NO. D-1-GN-15-002860

RASIER LLC	§	IN THE DISTRICT COURT OF
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
THE HONORABLE KEN PAXTON,	§	
Attorney General of Texas, and the	§	
CITY OF HOUSTON, TEXAS	§	53RD JUDICIAL DISTRICT

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Rasier, LLC, (“Rasier”), Plaintiff, and Ken Paxton, Attorney General of Texas (the “Attorney General”), and the City of Houston (the “City”). This Agreement is made on the terms set forth below.

Background

This case is a challenge to Open Records ruling OR 2015-13240 (July 1, 2015) which was issued in response to an open records request made pursuant to the Texas Public Information Act, TEX. GOV. CODE § 552.001 *et seq.* (the “PIA”): specifically, a request dated April 9, 2015 (the “Request”) from Mr. Ted Oberg (the “Requestor”). In this request, the responsive information belonged to Plaintiff. After the letter ruling was issued, Plaintiff disputed the ruling and filed the above styled lawsuit to preserve its rights under the PIA.

Plaintiff submitted information and briefing to the Attorney General establishing that their information is excepted from disclosure under Texas Government Code section 552.101 in conjunction with Chapter 2402 of the Occupations Code. The City and the Attorney General have reviewed Plaintiff’s request and agree to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into a settlement pursuant to which the information at issue in this lawsuit may be withheld. The parties wish to resolve this matter without further litigation.

Terms

For good and sufficient consideration, the receipt of which is acknowledged, the parties to this Agreement agree and stipulate that:

1. Rasier, the Attorney General, and the City have agreed that in accordance with the PIA and under the facts presented, the information at issue, specifically the Hearing Chart containing names and Criminal History Record Information of some 38 applicants for City issued TNC driver's licenses (collectively the "Requested Information"), is excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with Texas Occupations Code § 2402.152(a). (This information was not already determined to be confidential or exempted from disclosure by Letter Ruling OR 2015-13240). Pursuant to Texas Government Code section 552.101 in conjunction with Texas Occupation Code § 2402.152(a), the City will withhold the above described records.

2. Rasier, the City, and the Attorney General agree to the entry of an agreed final judgment, the form of which has been approved by each party's attorney. The agreed final judgment will be presented to the court for approval, on the uncontested docket, with at least 15 days prior notice to the Requestor.

3. The Attorney General agrees that he will also notify the Requestor, as required by Tex. Gov't Code § 552.325(c), of the proposed settlement and of his rights to intervene to contest Plaintiff's right to have the City withhold the information.

4. A final judgment entered in this lawsuit after a requestor intervenes prevails over this Agreement to the extent of any conflict.

5. Each party to this Agreement will bear their own costs, including attorney fees relating to this litigation.

6. The terms of this Agreement are contractual and not mere recitals, and the agreements contained herein and the mutual consideration transferred are to compromise disputed claims fully, and nothing in this Agreement shall be construed as an admission of fault or liability, all fault and liability being expressly denied by all parties to this Agreement.

7. Rasier warrants that its undersigned representative is duly authorized to execute this Agreement on its behalf and that its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that Plaintiff has against the Attorney General and/or the City arising out of the matters described in this Agreement.

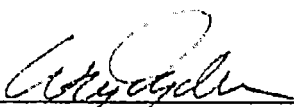
8. The Attorney General warrants that his undersigned representative is duly authorized to execute this Agreement on behalf of the Attorney General and his representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the Attorney General has against Rasier and/or the City arising out of the matters described in this Agreement.

9. The City warrants that its undersigned representative is duly authorized to execute this Agreement on behalf of the City and its representative has read this Agreement and fully understands it to be a compromise and settlement and release of all claims that the

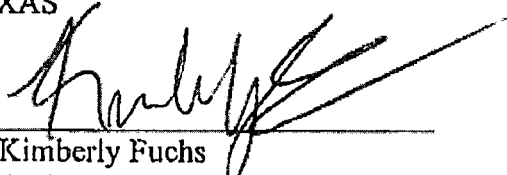
City has against Rasier and/or the Attorney General arising out of the matters described in this Agreement.

10. This Agreement shall become effective, and be deemed to have been executed, on the date on which the last of the undersigned parties sign this Agreement.

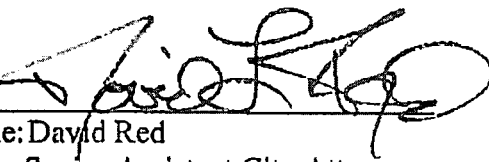
RASIER, LLC

By: 
Name: William W. Ogden
Firm: Kean Miller LLP
Email: bill.ogden@keanmiller.com
Date: 5/18/18

KEN PAXTON, ATTORNEY GENERAL
OF TEXAS

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Date: 5/21/18

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Date: 18 May 18