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

January 15, 2016

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

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

OR2016-01313

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# 594607.

The City of Austin (the "city") received a request for (1) ridership data from Uber Technologies, Inc. ("Uber") and Lyft, Inc. ("Lyft") related to pick-up and drop-off locations; (2) a list of data sets currently provided by the city's taxi franchises; (3) correspondence between city officials and Uber and Lyft regarding the companies' refusal to adhere to the data-reporting requirement. You state you will release some information to the requestors. Although you take no position with regard to the release of the submitted information, you state release of the submitted information may implicate the proprietary interests of Lyft and a subsidiary of Uber, Rasier, L.L.C. ("Rasier"). Accordingly, you notified these third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be

released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received comments from Lyft and a representative of Rasier. We have considered the submitted arguments and reviewed the submitted information.[1]

Initially, we note most of the submitted information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-08936 (2015), 2015-15679 (2015), and 2015-23851 (2015). We have no indication the law, facts, and circumstances on which the prior ruling was based have changed with respect to the information of Rasier. Accordingly, the city must continue to rely on Open Records Letter Nos. 2015-08936, 2015-15679, and 2015-23851 as previous determinations and withhold or release the information of Rasier in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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). However, in Open Records Letter Nos. 2015-15679 and 2015-23851, the city notified Lyft pursuant to section 552.305 when the city received the previous requests for information, and Lyft failed to submit comments objecting to the release of its information. Accordingly, in our previous rulings, we ruled the city must release Lyft's information. Lyft now claims some of this information is excepted from disclosure under section 552.110 of the Government Code. Because information subject to section 552.110 is deemed confidential by law, we will address Lyft's claim regarding some of its information under this exception. Additionally, we will consider Rasier's claim under section 552.104 of the Government Code for its remaining information.

Next, we note Rasier objects to disclosure of information the department has not submitted to this office for review. This ruling does not address information that was not submitted by the city and is limited to the information submitted as responsive by the city.[2] *See* Gov't Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested).

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[1]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). 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).

[2]As we are able to make this determination, we need not address Rasier's arguments against disclosure of the information at issue.

Rasier raises section 552.104 of the Government Code for its remaining information. Section 552.104(a) excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." *Id.* § 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. 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 Rasier has established the release of its remaining information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Rasier's remaining information, which we have marked, under section 552.104(a).

Lyft claims some of its information is excepted from disclosure under section 552.110 of the Government Code, which 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. *See Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex. 1957); *see also* ORD 552 at 2. Section 757 provides that a trade secret is:

> 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 Huffines*, 314 S.W.2d at 776. 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.[3] RESTATEMENT OF TORTS § 757 cmt. b. This office must accept a claim that 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 as a matter of law. *See* Open Records Decision No. 552 at 5 (1990). However, we cannot conclude that section 552.110(a) is applicable unless it has been shown that the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. *See* 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 that 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, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* Open Records Decision No. 661 at 5-6 (1999).

As mentioned above, Lyft's information was subject to Open Records Letter Nos. 2015-15679 and 2015-23851. In the prior rulings, the city notified Lyft of the requests for information pursuant to section 552.305 of the Government Code. Lyft did not object to the release of its information. Since the issuance of the previous rulings on July 31 and November 12, 2015, Lyft has not disputed this office's conclusions regarding the release of the information. In this regard, we find Lyft has not taken any measures to protect its information in order for this office to conclude the information now either qualifies as a trade secret or commercial or financial information, the release of which would cause Lyft substantial harm. *See* Gov't Code § 552.110; RESTATEMENT OF TORTS § 757 cmt. b; *see also* Open Records Decision Nos. 661, 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980). Accordingly, we conclude the city may not withhold Lyft's information under section 552.110 of the Government Code.

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[3]The 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).

In summary, the city must continue to rely on Open Records Letter Nos. 2015-08936, 2015-15679, and 2015-23851 as previous determinations and withhold or release the submitted information in accordance with those rulings. The city may withhold Rasier's remaining information, which we have marked, under section 552.104(a). The city must release the remaining information.

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,

Abigail T. Adams

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/akg

Ref: ID# 594607

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Candice Plotkin
Lyft
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San Francisco, California 94110
(w/o enclosures)

Mr. William W. Ogden
For Rasier, LLC
Ogden, Gibson, Broocks, Longoria & Hall, L.L.P.
711 Louisiana
Houston, Texas 77002
(w/o enclosures)

Ms. Molly Buck
Uber Technologies
400 West 15th Street, Suite 200
Austin, Texas 78701
(w/o enclosures)

CAUSE NO. D-1-GN-16-000487

LYFT, INC., *Plaintiff,*	§	IN THE DISTRICT COURT OF
v.	§	419th JUDICIAL DISTRICT
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552, in which Lyft, Inc. (Lyft) sought to withhold certain information which is in the possession of the City of Austin (the "City"). All matters in controversy between Plaintiff, Lyft, and Defendant, Ken Paxton, Attorney General of Texas (Attorney General), have been resolved by settlement, a copy of which is attached hereto as Exhibit "A", and the parties agree to the entry and filing of an Agreed Final Judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent an email, read receipt requested[1], to Mr. Jeff Kirk, on Feb. 5, 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 be told to 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. Verification of the sending of this letter is attached to this motion as Exhibit "B".

[1] Mr. Kirk did not provide a mailing address to the Attorney General.

The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Lyft and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information at issue is excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with section 2402.152(a) of the Texas Occupations Code.

2. All court cost and attorney fees are taxed against the parties incurring the same;

3. All relief not expressly granted is denied; and

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

SIGNED the 28 day of February, 2018.

PRESIDING JUDGE

Scott H. Jenkins

A

CAUSE NO. D-1-GN-16-000487

LYFT, INC., *Plaintiff,*	§ § §	IN THE DISTRICT COURT OF
v.	§ §	419th JUDICIAL DISTRICT
KEN PAXTON, ATTORNEY GENERAL OF TEXAS, *Defendant.*	§ § §	TRAVIS COUNTY, TEXAS

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is made by and between Lyft, Inc. (Lyft) and Ken Paxton, Attorney General of Texas (the Attorney General). This Agreement is made on the terms set forth below.

Background

In August 2015, a request was made to the City of Austin (the "City") under the Public Information Act (PIA) for information related to Transportation Network Companies ("TNCs"). The City asked for an Attorney General decision on whether this information could be withheld.

In Letter Ruling OR2016-01313, the Open Records Division of the Attorney General (ORD) required the City to release some information Lyft claims is proprietary and confidential.

The Legislature then enacted section 2402.152(a) of the Texas Occupations Code, which makes all of the information at issue confidential. The Attorney General has reviewed Lyft's request and agrees to the settlement.

Texas Government Code section 552.325(c) allows the Attorney General to enter into settlement under 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. Lyft and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information at issue is excepted from disclosure pursuant to Texas Government Code section 552.101 in conjunction with section 2402.152(a) of the Texas Occupations Code.

2. Lyft 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 right to intervene to contest Lyft'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 is 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. Lyft 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 Lyft has against the Attorney General 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 Lyft arising out of the matters described in this Agreement.

9. 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.

BAKER BOTTS L.L.P.

By: _____

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ATTORNEYS FOR PLAINTIFF LYFT, INC.

Date: 02-05-2018

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

By: _____

name: Kimberly Fuchs
title: Assistant Attorney General, Administrative Law Division

Date: 2-5-18

AGREED:

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