



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 22, 2016

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

OR2016-16624

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# 619596 (GC No. 23352).

The City of Houston (the "city") received a request for seventeen categories of information pertaining to permitted for hire drivers and companies.¹ Although you take no position regarding whether the submitted information is excepted from disclosure, you state its release may implicate the proprietary interests of Uber Technologies, Inc. ("Uber"). Accordingly, you state, and provide documentation showing, you notified Uber of the request for information and of its right to submit arguments to this office as to why the submitted information 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 Uber. We have considered the submitted arguments and reviewed the submitted information.

Initially, Uber indicates some of the submitted information is the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-06177 (2015) and 2015-13240 (2015). In response to Open Records Letter Nos. 2015-06177

¹We note the city sought and received clarification of this request from the requestor. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

and 2015-13240, Rasier, LLC, a wholly owned subsidiary of Uber, has filed lawsuits against our office. *See Rasier LLC v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-001596 (353rd Dist. Ct., Travis County, Tex.) and *Rasier LLC v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-002860 (53rd Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in the lawsuits, we will allow the trial courts to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. To the extent the submitted information is not identical to the information in the pending litigation, we will address the submitted arguments against disclosure.

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. Uber states it has competitors. In addition, Uber states release of the information at issue would impose upon it “a serious competitive disadvantage.” Uber contends because its drivers are independent contractors, release of the personal driver information would allow a competitor to target “pre-qualified driver partners for recruitment.” After review of the information at issue and consideration of the arguments, we find Uber has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we marked under section 552.104(a) of the Government Code.²

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 of the Government Code also encompasses section 730.004 of the Transportation Code, which provides, “[n]otwithstanding any other provision of law to the contrary, including chapter 552, Government Code, 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). Uber has not established the city is an agency for purposes of chapter 730 that compiles or maintains motor vehicle records; therefore, section 730.004 does not apply to the city and the city may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by this state or another state or country. Gov’t Code § 552.130(a)(1), (2). However, we find Uber has failed to demonstrate any of the remaining information consists of motor

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

vehicle record information. Therefore, the city may not withhold any of the remaining information under section 552.130 of the Government Code.

In summary, with regard to the information at issue in the lawsuits, we will allow the trial courts to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. The city may withhold the information we marked under section 552.104(a) 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 619596

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)