



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 22, 2016

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

OR2016-18933

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# 623510 (ORR# 26558, 26971).

The City of Austin (the "city") received two requests from the same requestor for (1) information that references GetMe, L.L.C. ("GetMe") for a specified period of time and (2) ridership data that Rasier, L.L.C., a subsidiary of Uber Technologies, Inc. ("Rasier") and Lyft, Inc. ("Lyft") provided to the city. The city does not take a position as to whether the submitted information is excepted from disclosure under the Act. However, the city states, and provides documentation showing, it notified GetMe, Lyft, and Rasier of the city's receipt of the request for information and of their right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 at 3 (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). In correspondence to this office, Lyft and Rasier object to the release of some of the information at issue. We have considered the submitted arguments and reviewed the submitted information.¹

¹The city acknowledges, and we agree, it did not comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Nevertheless, sections 552.136 and 552.137 of the Government Code and third-party interests can provide compelling reasons to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987). Thus, we will consider whether the submitted information must be withheld under the Act on those grounds.

Initially, we note some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-08936 (2015), 2015-15679 (2015), 2015-23851(2015), 2016-01313 (2016), 2016-12319 (2016), and 2016-14022 (2016). In Open Records Letter No. 2016-01313, we ruled the city (1) 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; (2) may withhold some information under section 552.104(a) of the Government Code; and (3) must release the remaining information. We note some of the information pertaining to Lyft that was at issue in Open Records Letter No. 2016-01313 is currently the subject of pending litigation (the “pending litigation”) between Lyft and the Office of the Attorney General. *See Lyft, Inc. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-16-000487 (419th Dist. Ct., Travis County, Tex.). Accordingly, to the extent the submitted information is subject to the pending litigation, we are closing the portion of the file regarding this information without issuing a decision and will allow the court to determine whether such information must be released to the public.

We also note Open Records Letter No. 2015-08936 was subsequently modified on appeal by an Agreed Final Judgment (the “Agreed Final Judgment”) in *Rasier, L.L.C. v. Honorable Ken Paxton, Attorney General of Texas*, Cause No. D-1-GN-15-001956 (353rd Dist. Ct., Travis County, Tex.). With regard to the information in the current request that is identical to the information previously requested and ruled upon in Open Records Letter No. 2015-08936, the city must rely on the Agreed Final Judgment to withhold or release the information at issue.

In Open Records Letter No. 2016-14022, we ruled the city(1) must rely on the Agreed Final Judgment that was issued as a result of Open Records Letter No. 2015-08936 and our rulings in Open Records Letter Nos. 2015-15679 and 2016-12319, and withhold or release the information previously ruled on in accordance with those rulings and Agreed Final Judgment; and (2) may withhold the remaining information under section 552.104(a) of the Government Code. In Open Records Letter No. 2016-12319, we ruled the city must rely on Open Records Letter No. 2015-15679 as a previous determination and withhold or release certain information in accordance with that ruling, and may withhold the remaining under section 552.104(a) of the Government Code. In Open Records Letter No. 2015-23851, we ruled the city (1) must rely on Open Records Letter Nos. 2015-08936 and 2015-15679 as previous determinations and withhold or release the information previously ruled on in accordance with those rulings; (2) may withhold some information under section 552.104(a) of the Government Code; and (3) must release the remaining information. And in Open Records Letter No. 2015-15679, we ruled the city (1) must rely on Open Records Letter No. 2015-08936 as a previous determination and withhold or release certain information in accordance with that ruling; (2) may withhold some information under section 552.104(a) of the Government Code; and (3) must release the remaining information. We have no indication there has been any other change in the law, facts, or circumstances on which these

rulings were based. Therefore, to the extent the submitted information is not subject to the pending litigation or Agreed Final Judgment, we conclude the city must rely on Open Records Letter Nos. 2015-15679, 2015-23851, 2016-01313, 2016-12319, and 2016-14022 as previous determinations and withhold or release the remaining information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). To the extent the submitted information is not encompassed by the pending litigation, the Agreed Final Judgment, or these rulings, we will consider the submitted arguments against disclosure.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to it should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, GetMe has not submitted to this office any reasons explaining why the requested information should not be released. Thus, we have no basis for concluding the submitted information constitutes proprietary information of that third party, and the city may not withhold any portion of it on that basis. *See* Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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. Lyft states its information provides competitors with insight into its operation in the city. Lyft argues the disclosure of its information would provide economic benefit and an unfair competitive advantage to its competitors. 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 Lyft and Rasier have established the release of their information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Lyft's and Rasier's information under section 552.104(a) of the Government Code.²

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

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The city does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the city must withhold the e-mail addresses of members of the public in the remaining information under section 552.137 of the Government Code.

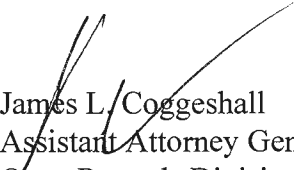
To conclude, to the extent the submitted information is subject to pending litigation, we are closing the portion of the file regarding this information without issuing a decision and will allow the court to determine whether such information must be released to the public. The city must rely on the Agreed Final Judgment that was issued as a result of Open Records Letter No. 2015-08936, as well as our rulings in Open Records Letter 2015-15679, 2015-23851, 2016-01313, 2016-12319, and 2016-14022, and withhold or release the information previously ruled on in accordance with the Agreed Final Judgment and those rulings. The city may withhold Lyft’s and Rasier’s information under section 552.104(a) of the Government Code. The city must withhold the insurance policy numbers in the remaining information under section 552.136 of the Government Code. The city must also withhold the e-mail addresses of members of the public in the remaining information under section 552.137 of the Government Code. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 623510

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)