



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2016

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

OR2016-27568

Dear Mr. Falgoust:

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# 637575 (PIR# 29480).

The City of Austin (the "city") received a request for copies of the monthly data reports for a specified month provided to the city by seven specified companies. You state the city has no information responsive to a portion of the request. Although the city takes no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of seven third parties.¹ Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.305 (providing that interested party may submit comments stating why information should or should not be released), .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 Wingz, Inc. ("Wingz"), Get Me, L.L.C. ("Get Me"), and Fasten, Inc. ("Fasten"). We have considered the submitted arguments and reviewed the submitted information.

¹You notified Wingz, Inc.; GetMe, L.L.C.; Fasten, Inc.; zTrip; RideAustin; InstaRyde; Fare-Ridshare, L.L.C.

We note 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 information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from RideAustin, Fare-Rideshare, L.L.C., zTrip, or InstaRyde explaining why the submitted information should be withheld. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; 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. Accordingly, the city may not withhold any portion of the submitted information on the basis of any proprietary interest these third parties may have in the information.

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. Wingz and Fasten state they have competitors. Wingz argues release of its information would provide competitors with direct insight into its business and could potentially give competitors a competitive advantage. Fasten argues release of its information would give competitors an unfair advantage by revealing the peak times of service allowing competitors to structure their own operations to maximize profit. After review of the information at issue and consideration of the arguments, we find Wingz and Fasten have established the release of their information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Wingz's and Fasten's information under section 552.104(a) of the Government Code.²

Next, we address Get Me's argument under section 552.110 of the Government Code. Section 552.110(b) of the Government Code 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 (1999) at 5 (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).

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

Get Me argues its information consists of commercial and financial information, the release of which would cause substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Get Me has demonstrated the information at issue consists of commercial or financial information, the disclosure of which would cause the company substantial competitive harm. Thus, the city must withhold Get Me's information under section 552.110(b).

In summary, the city may withhold Wingz's and Fasten's information under section 552.104(a) of the Government Code. The city must withhold Get Me's information under section 552.110(b). 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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 637575

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)