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ATTORNEY GENERAL OF TEXAS

February 10, 2017

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2017-03052

Dear Mr. Kopp:

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# 646423 (COSA File No. W147278).

The City of San Antonio (the "city") received a request for "a list of assaults/incidents between [U]ber and [L]yft drivers and their customers" since August of 2015. The city states it is withholding or releasing some of the requested information in accordance with Open Records Letter No. 2016-24713 (2016). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). The city claims the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the claimed exceptions.

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-06513 (2016). In that ruling, we determined the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the city must continue to rely on Open Records Letter No. 2016-06513 as a previous determination and withhold the information in accordance with that ruling. *See* ORD 673. To the extent the requested information is not subject to

Open Records Letter No. 2016-06513, we will address the city's arguments against disclosure.

We must next address the procedural obligations of the city under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Pursuant to section 552.301(e)(1)(D), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). The city received the request for information on November 22, 2016. However, as of the date of this letter, the city has not submitted a copy or representative sample of the requested information. Therefore, the city failed to comply with the procedural requirements mandated by section 552.301(e).

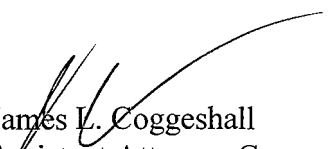
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). By failing to comply with section 552.301, the city has waived the discretionary exception raised. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Furthermore, because the city has not submitted the information to this office for our review, we have no basis for finding it confidential under the claimed mandatory exception. Therefore, to the extent the requested information is not subject to Open Records Letter No. 2016-06513 or 2016-24713, we have no choice but to order the city to release the information in accordance with section 552.302 of the Government Code. If the city believes the information is confidential and may not lawfully be released, then it must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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/bw

Ref: ID# 646423

c: Requestor