March 23, 2017

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

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# 650893 (PIR# 31575).

The City of Austin (the "city") received a request for a list of all drivers in Austin who drive for a ride share company. You state the city will redact e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009). You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of the remaining submitted information may implicate the proprietary interests of ZTrip; Wingz, Inc. ("Wingz"); Tride; ScoopMe; RideAustin; Instaryde; GetMe, LLC. ("GetMe"); Fasten, Inc. ("Fasten"); and Fare-Rideshare, LLC. ("Fare"). Therefore, the city notified the specified 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(d); see also Open Records Decision No. 542 (1990) (statutory predecessor to

1Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

2Regardless of whether the city complied with section 552.301 of the Government Code, we note section 552.101 and third party interests can provide compelling reasons sufficient to overcome the presumption of non-disclosure. See Gov't Code § 552.302. Therefore, we will consider whether the submitted information must be withheld under the Act on those grounds.
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 considered the submitted arguments and reviewed the submitted information.

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 ZTrip, Tride, ScoopMe, RideAustin, Instaryde, GetMe, or Fare explaining why their information should not be released. Therefore, we have no basis to conclude ZTrip, Tride, ScoopMe, RideAustin, Instaryde, GetMe, or Fare has 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 of the information at issue on the basis of any proprietary interest ZTrip, Tride, ScoopMe, RideAustin, Instaryde, GetMe, or Fare may have in it.

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. Fasten and Wingz state they have competitors. In addition, they state release of the information at issue would provide competitors with an advantage in the form of direct insight into their businesses and an unfair tool for analyzing market share. After review of the information at issue and consideration of the arguments, we find Fasten and Wingz have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information pertaining to Wingz and Fasten under section 552.104(a).³

The city asserts the dates of birth are excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Section 552.101 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 encompasses the doctrine of common-law privacy. Indus. Found. v. Tex. Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. Id. at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in Texas Comptroller of

³As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.5 See Gov’t Code § 552.130. Accordingly, the city must withhold all the motor vehicle record information contained in the remaining information under section 552.130 of the Government Code.

In summary, the city may withhold the information pertaining to Wingz and Fasten under section 552.104(a). The city must withhold all remaining public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold all the motor vehicle record information contained in the remaining information under section 552.130 of the Government Code. The city must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. See Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the city to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. See Moore v. Charles B. Pierce Film Enters., Inc., 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the city to withhold public citizens’ dates of birth under section 552.101 of the Government Code.

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4 Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

5 The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).
to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. See Gov’t Code § 552.022(a)(17); Star-Telegram v. Walker, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document). Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the city need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).

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,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/nmd

Ref:  ID# 650893

Enc.  Submitted documents

c:  Requestor
   (w/o enclosures)

9 Third parties
   (w/o enclosures)