



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2017

Mr. Jeffrey Giles
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-06329

Dear Mr. Giles:

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# 650811 (GC No. 24025).

The City of Houston (the "city") received a request for information regarding specified income generated by the city. You state the city will release some information to the requestor. Although you take no position as to whether the requested information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of Uber Technologies, Inc. ("Uber"). Accordingly, you state, and provide documentation demonstrating, you notified Uber of the request for information and of its right to submit arguments to this office as to why the information at issue 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 Rasier L.L.C. ("Rasier"), a wholly owned subsidiary of Uber. We have considered the submitted arguments and reviewed the submitted information.

Rasier informs us the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-06177 (2015). We note Open Records Letter No. 2015-06177 was subsequently modified on appeal by an Agreed Final Judgment in *Rasier, L.L.C. v. Honorable Ken Paxton, Attorney General of Texas*, Cause No. D-1-GN-15-001596 (353rd Dist. Ct., Travis County, Tex.). Accordingly, the city must rely on the Agreed Final Judgment and withhold or release the identical information in accordance with the Agreed Final Judgment.¹ To the extent the submitted information is not encompassed by the Agreed Final Judgment, we will consider the submitted arguments against disclosure.

Section 552.104(a) of the Government Code exempts 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. Rasier states it has competitors. In addition, Rasier states release of its information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Rasier has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Rasier’s information under section 552.104(a) of the Government Code.²

In summary, the city must rely on the Agreed Final Judgment and withhold or release the identical information in accordance with the Agreed Final Judgment. To the extent the submitted information is not encompassed by the Agreed Final Judgment, the city may withhold Rasier’s information under section 552.104(a) 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

¹As our ruling is dispositive, we need not address Rasier’s arguments against disclosure of this information.

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

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ian Lancaster', with a long horizontal flourish extending to the right.

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/sb

Ref: ID# 650817

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)