



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2017

Mr. Joseph R. Crawford
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-07895

Dear Mr. Crawford:

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# 653184 (GC No. 24072).

The City of Houston (the "city") received a request for information pertaining to the wheelchair accessibility of a specified company. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of Uber Technologies, Inc. ("Uber"). Accordingly, you state, and provide documentation showing, 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 Uber. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the requestor asks the city to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good-faith effort to relate a request to any responsive information that is within its possession or control. Open

Records Decision Nos. 561 at 8-9 (1990), 555 at 102. We assume the city has made a good-faith effort to do so.

Uber contends the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-08936 (2015). We note Open Records Letter No. 2015-08936 was subsequently modified on appeal by an Agreed Final Judgment in *Rasier, L.L.C. v. Honorable Ken Paxton, Attorney General of Texas and the City of Austin*, Cause No. D-1-GN-15-001956 (353rd Dist. Ct., Travis County, Tex.). Although Uber seeks to rely on this prior ruling for the information at issue in this request, we note the previous request for information was sent to the City of Austin, which is a different governmental body than the city. Therefore, the city may not rely on the Agreed Final Judgment in the case involving the City of Austin for any of the information at issue.

Next, Uber contends the requested information was the subject of another request for information sent to the city, as a result of which this office issued Open Records Letter No. 2015-10091 (2015). We note Open Records Letter No. 2015-10091 was also subsequently modified on appeal by an Agreed Final Judgment in *Rasier, L.L.C. v. Honorable Ken Paxton, Attorney General of Texas and the City of Houston*, Cause No. D-1-GN-15-02404. 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. 2015-10091, the city must rely on the Agreed Final Judgment to withhold or release the information at issue. 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 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. Uber states it has competitors. In addition, Uber states release of the information at issue would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Uber has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the remaining information under section 552.104(a) of the Government Code.¹

In summary, the city must rely on the Agreed Final Judgment that was issued as a result of Open Records Letter No. 2015-10091 and withhold or release the identical information


¹As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

previously ruled on in accordance with the Agreed Final Judgment. The city may withhold the remaining 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 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/sdk

Ref: ID# 653184

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)