



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2017

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

OR2017-08827

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# 654886 (PIR# 32298).

The City of Austin (the "city") received a request for all available TNC data. Although the city takes no position as to whether the submitted information is excepted under the Act, the city informs us release of this information may implicate the proprietary interests of Lyft, Inc. ("Lyft"); ZTrip 10/10; Get Me, L.L.C. ("Get Me"); Wingz, Inc. ("Wingz"); Fare-Rideshare, L.L.C.; Fasten; RideAustin; Instaryde; Tride; ReDriver Tech L.L.C.; Scoop Me; and a subsidiary of Uber, Rasier, L.L.C. ("Rasier"). Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their rights 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 Get Me, Wingz, Rasier, and Lyft. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2016-26395 (2016), 2017-00906 (2017), and 2017-05089 (2017). We have no indication the law, facts, or circumstances on which the prior rulings was based have changed. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, the city must continue to rely on Open Records Letter Nos. 2016-26395, 2017-00906, and 2017-05089 as previous determinations and withhold or release the information in accordance with those rulings. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to Open Records Letter Nos. 2016-26395, 2017-00906, or 2017-05089, we will address the submitted arguments against release of the submitted information.

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) of the Government Code 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest any of the remaining 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. Rasier, Wingz, and Lyft each state they have competitors. Wingz states release of its information would allow a competitor direct insight into its business and disclosure would cause substantial competitive harm. Rasier states release of its information would enable competitors to use its data to fine-tune business and marketing plans with precision and undercut Rasier. Lyft states disclosure of its information would clearly provide economic benefit and an unfair competitive advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Rasier, Wingz, and Lyft

have each 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 of Lyft we have indicated, and Rasier's and Wingz's information, under section 552.104(a) of the Government Code.<sup>1</sup>

Get Me asserts portions of its information are excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) 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* ORD 661 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).

Get Me argues portions of its information consist of commercial or financial information the release of which would cause the company substantial competitive harm under section 552.110(b) of the Government Code. Upon review, we find Get Me has demonstrated a portion of the information at issue constitutes commercial or financial information, the release of which would cause substantial competitive injury. Accordingly, the city must withhold this information, which we have marked, under section 552.110(b) of the Government Code. However, we find Get Me has failed to demonstrate the release of any of its remaining information would result in substantial harm to its competitive position. *See* Open Records Decision Nos. 661 (for information to be withheld under commercial or financial information prong of section 552.110, business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue), 509 at 5 (1988) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts is too speculative), 319 at 3 (1982) (information relating to organization and personnel, professional references, market studies, qualifications, and pricing are not ordinarily excepted from disclosure under statutory predecessor to section 552.110). Accordingly, the city may not withhold any of Get Me’s remaining information under section 552.110(b) of the Government Code.

Lyft raises section 552.137 of the Government Code for some of its remaining information. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body”

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<sup>1</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the city must withhold the e-mail addresses in Lyft's remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies.

In summary, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, the city must continue to rely on Open Records Letter Nos. 2016-26395, 2017-00906, and 2017-05089 as previous determinations and withhold or release the information in accordance with those rulings. The city may withhold the information of Lyft we have indicated, and Rasier's and Wingz's information, under section 552.104(a) of the Government Code. The city must withhold Get Me's marked information under section 552.110(b) of the Government Code. The city must withhold the e-mail addresses in Lyft's remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or subsection (c) applies. 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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 654886

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

12 Third Parties  
(w/o enclosures)