



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 29, 2017

Mr. Zachary Brown
Assistant City Attorney
Law Department
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2017-14642

Dear Mr. Brown:

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# 664561 (PIR# 33766).

The City of Austin (the "city") received a request for ridership statistics for four named companies during a specified time period. 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 ATX Coop Taxi; Austin Cab; Lone Star Cab; and Greater Austin Transportation Company d/b/a Yellow Cab Co. ("Yellow Cab"). Accordingly, you state, and provide documentation showing, you 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 Yellow Cab. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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) 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 ATX Coop Taxi, Austin Cab, or Lone Star Cab explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the information at issue. *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

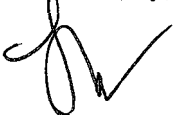
conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Accordingly, the city may not withhold any of the information at issue on the basis of any proprietary interest these third parties may have in the information.

Section 552.104(a) 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. Yellow Cab states it has competitors. In addition, Yellow Cab states the information at issue, if released, would give a competitor an advantage in submitting future competitive bids. Yellow Cab also states release of the information would allow competitors to undercut Yellow Cab’s bid to obtain a contract. After review of the information at issue and consideration of the arguments, we find Yellow Cab has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Yellow Cab’s information under section 552.104(a) of the Government Code.¹ As no other exceptions to disclosure are raised, the city must release the remaining information.

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,



Jahna Ward
Attorney
Open Records Division

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¹As our ruling is dispositive, we need not address Yellow Cab’s remaining arguments against disclosure of its information.

Ref: ID# 664561

Enc. Submitted documents

c: Requestor
(w/o enclosures)

4 Third Parties
(w/o enclosures)