



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 18, 2017

Mr. Paul Tomme
Legal Counsel
Dallas/Fort Worth International Airport Board
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2017-23866

Dear Mr. Tomme:

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# 680423.

The Dallas/Fort Worth International Airport Board (the "board") received a request for specified audit reports of named entities. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state you notified Lyft, Inc. ("Lyft") and Uber Technologies, Inc. ("Uber") 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 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 on behalf of Raiser, LLC ("Raiser"), a wholly owned subsidiary of Uber. We have considered the submitted arguments and reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received comments from Lyft. Thus, we have no basis to conclude Lyft has a protected proprietary interest in the submitted information. *See id.* § 552.110(a)-(b); 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 board may not withhold any of the submitted information on the basis of any proprietary interest Lyft 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. Uber states it has competitors. In addition, Uber states release of its information would allow competitors to “fine-tune a business plan, raise funds and attract investors, and take business away,” and reap the benefit of the work Uber has done. 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 board may withhold the submitted information pertaining to Uber under section 552.104(a).¹

Section 552.101 of the Government Code 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 information made confidential by other statutes, such as section 2402.152 of the Occupations Code. Section 2402.152 provides, in relevant part:

(a) Any records, data, or other information disclosed to a public entity in this state, including the [Texas Department of Licensing and Regulation (the “department”)], by a transportation network company, including names, addresses, and any other personally identifiable information of drivers is not subject to disclosure under [the Act].

(b) A public entity, including the department, may not disclose any records, data, or other information provided by a transportation network company under this chapter to a third party except in compliance with a court order or subpoena. If information provided under this chapter is sought through a court order or subpoena, the public entity shall promptly notify the transportation network company to afford the company the opportunity to take actions to prevent disclosure.

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

See Act of May 18, 2017, 85th Leg., R.S., ch. 231 § 1, 2017 Tex. Sess. Law Serv. 440, 446 (Vernon) (to be codified at Occ. Code § 2402.152(a)-(b)). Section 2402.001(5) defines a “transportation network company” as

a corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a passenger to prearrange with a driver, exclusively through the entity’s digital network, a digitally prearranged ride. The term does not include an entity that provides:

- (A) street-hail taxicab services;
- (B) limousine or other car services arranged by a method other than through a digital network;
- (C) shared expense carpool or vanpool arrangements; or
- (D) a type of ride service for which:
 - (i) the fee received by the driver does not exceed the driver’s costs of providing the ride; or
 - (ii) the driver receives a fee that exceeds the driver’s costs associated with providing the ride but makes not more than three round-trips per day between the driver’s or passenger’s place of employment and the driver’s or passenger’s home.

See Act of May 18, 2017, 85th Leg., R.S., ch. 231 § 1, 2017 Tex. Sess. Law Serv. 440, 440-41 (Vernon) (to be codified at Occ. Code § 2402.001(5)). You inform us the remaining information consists of an audit report of a transportation network company operating in the airport. You also represent the remaining information you marked consists of records, data, or other information disclosed to a public entity, the board, by a transportation network company. Based on these representations, we find the board must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 2402.152(a) of the Occupations Code.

In summary, the board may withhold the submitted information pertaining to Uber under section 552.104(a) of the Government Code. The board must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 2402.152(a) of the Occupations Code. The board 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,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/tdw

Ref: ID# 680423

Enc. Submitted documents

c: Requestor
(w/o enclosures)

3 Third Parties
(w/o enclosures)