



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 5, 2017

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

OR2017-27580

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# 686712 (PIR Nos. 36958 and 37310).

The City of Austin (the "city") received two requests for information concerning specified fees collected by the Austin-Bergstrom International Airport. The city states it released some information. The city claims some of the submitted information is excepted from disclosure under section 552.104 of the Government Code. Although the city takes no position regarding whether the remaining information is excepted from disclosure, it states release of the remaining information may implicate the proprietary interests of Airport Fast Park, LTD ("Fast Park"); Lyft Inc. ("Lyft"); Raiser d/b/a Uber ("Uber"); Scott Airport Parking LLC ("Scott"), and TPS Parking Austin, LLC d/b/a the Parking Spot ("TPS"). 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 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 received comments from Lyft. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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 Fast Park, Uber, TPS, or Scott. Thus, we have no basis to conclude these third parties have 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 city may not withhold any of the submitted information on the basis of any proprietary interest these third parties may have in the information.

Section 552.104 of the Government Code excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. 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." *Boeing Co. v. Paxton*, 466 S.W.3d 831 (Tex. 2015). The city states it has specific marketplace interests in the information it indicated because the city competes with other entities for parking at or near the airport. In addition, the city states release of the information at issue could cause harm by "provid[ing] competitors with information about the number of customers the [c]ity's parking facilities serve, the amount of revenue generated from those customers, and current marketplace conditions that would harm [its] ability to compete in this market." Based on these representations and our review, we find the city demonstrated it has specific marketplace interests and may be considered a "competitor" for purposes of section 552.104. Further, we find the city demonstrated release of the information it indicated would cause specific harm to the city's marketplace interests. We therefore conclude the city may withhold the information it indicated under section 552.104 of the Government Code.

A private third party may also invoke section 552.104(a). *Id.* at 831, 839. Lyft asserts its information is excepted from disclosure under section 552.104 of the Government Code. Lyft states it has competitors. In addition, Lyft states release of the information at issue would allow its competitors to "cross reference [Lyft's] data with Lyft's publicly available passenger promotions and better understand what strategies were effective." After review of

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

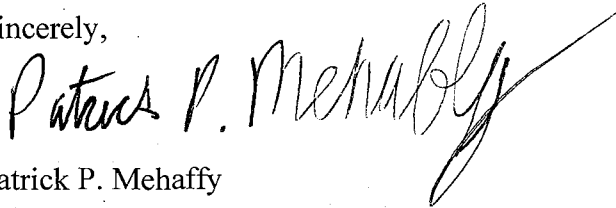
the information at issue and consideration of the arguments, we find Lyft established the release of its information would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Lyft's information under section 552.104(a) of the Government Code.

In summary, the city may withhold the information it indicated and Lyft's information under section 552.104 of the Government Code. The city must release 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,



Patrick P. Mehaffy
Attorney
Open Records Division

PPM/eb

Ref: ID# 686712

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

5 Third Parties
(w/o enclosures)