



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2019

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

OR2019-05622

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# 754102 (PIR No. C015390).

The City of Austin (the "city") received a request for information pertaining to the Austin-Bergstrom International Airport.¹ We understand you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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:

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

(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.

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.

Id. § 2402.001(5). The information you indicated consists of records submitted by a transportation network company to the city for the purposes of complying with a municipal ordinance. Upon review, we find the information you indicated consists of records, data, or other information disclosed to a public entity, the city, by a transportation network company. Accordingly, we find the city must withhold the information you indicated under

section 552.101 of the Government Code in conjunction with section 2402.152(a) of the Occupations Code.

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). 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 at issue because the city is competing in the airport parking market with other nearby parking facilities. In addition, the city states release of the information at issue “would provide the city’s 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 market conditions, which would harm the city’s ability to compete in this market.” After review of the information at issue and consideration of the arguments, we find city 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 information you indicated under section 552.104(a) of the Government Code.

In summary, the city must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 2402.152(a) of the Occupations Code. The city may withhold the information you indicated 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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/jxd

Ref: ID# 754102

Enc. Submitted documents

c: Requestor
(w/o enclosures)