



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2019

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

OR2019-30275

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# 793489 (COA PIR# C037766).

The City of Austin (the "city") received a request for all communications between a specified company and the city's transportation department regarding specified rules and data. Although the city takes no position as to whether the submitted information is excepted under the Act, the city states release of the submitted information may implicate the proprietary interests of Lime and Social Bicycles LLC d/b/a JUMP Bikes ("Jump").¹ Accordingly, the city states, and provides documentation showing, it notified the interested third parties of the request for information and of the 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 from Jump. We have considered the submitted arguments and reviewed the submitted information.

¹ You acknowledge the city failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* § 552.302; Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake in this instance, we will consider the public availability of the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-27748 (2019). There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the submitted information that was ruled upon in the previous ruling, we conclude the city may continue to rely on Open Records Letter No. 2019-27748 as a previous determination and withhold the submitted information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously ruled on, we will address the submitted arguments.

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 only received comments from Jump. Thus, we have no basis to conclude Lime 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 city may not withhold any of the submitted information on the basis of any proprietary interest Lime may have in the information.

Jump asserts the information it indicated is protected under section 552.104 of the Government Code. 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. Jump states it has competitors. In addition, Jump argues release of the submitted information would provide an advantage to its competitors. After review of the submitted information and consideration of the arguments, we find Jump 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 we indicated under section 552.104(a) of the Government Code.²

In summary, for the submitted information that was ruled upon in the previous ruling, the city may continue to rely on Open Records Letter No. 2019-27748 as a previous

² As our ruling is dispositive, we need not address Jump's remaining arguments against disclosure of this information.

determination and withhold the submitted information in accordance with that ruling. The city may withhold the information we indicated under section 552.104(a) of the Government Code. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/jxd

Ref: ID# 793489

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)