



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 12, 2020

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78507

OR2019-34775A

Dear Mr. Kopp:

This office issued Open Records Letter No. 2019-34775 (2019) to the City of San Antonio (the “city”) on December 10, 2019. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the correct ruling and is a substitute for the letter issued on December 10, 2019. *See generally* Gov’t Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the “Act”), chapter 552 of the Government Code). This ruling was assigned ID# 816854 (COSA File No. W283955).

The city received a request for scooter company data shared with the city pursuant to specified data-sharing agreements. 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 Blue Duck; Bird; Lime; Lyft, Inc. (“Lyft”); Razor; and Social Bicycles, LLC d/b/a JUMP Bikes (“Jump”) and Spin.¹ 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 id.* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits

¹ Although you also raise sections 552.101 through 552.156 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claim that these sections apply to the submitted information. *See* Gov’t Code §§ 552.301, .302.

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 and Lyft. 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) 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 any of the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the remaining third parties has a protected proprietary interest in the submitted information, and the city may not withhold any portion of it on that basis. *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 the submitted information on the basis of any proprietary interest any remaining third party may have in the information.

Jump and Lyft assert their information 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 and Lyft state they have competitors. In addition, Jump and Lyft state release of their information at issue would provide an advantage to their competitors. After review of the information at issue and consideration of the arguments, we find Jump and Lyft have established the release of their information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information pertaining to Jump and Lyft under section 552.104(a) of the Government Code.² The city must release the remaining information.

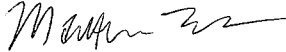
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

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

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# 816854

Enc. Submitted documents

c: Requestor
(w/o enclosures)

7 Third Parties
(w/o enclosures)