



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2022

Ms. Victoria Hayslett  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2022-37139

Dear Ms. Hayslett:

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# 987767 (PIR# X011629).

The City of Austin (the "city") received a request for all communications and information related to specified third parties during a specified time period and information to a specified trip. You state you will release some information to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of The Boring Company ("TBC"). Accordingly, the university states, and provides documentation showing, it notified TBC of the request for information and of its 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 reviewed the submitted information.

Initially, we note the requested information may have been the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2022-24781 (2022). In that ruling, we determined the city must withhold certain information under section 552.110(c) of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the city must continue to rely on Open Records Letter No. 2022-24781 as a previous determination and withhold or release the information at issue 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 at issue in the previous ruling, we will address its public availability.

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 TBC. Thus, we have no basis to conclude TBC has a protected proprietary interest in the submitted information. *See, e.g., id.* § 552.110 (requiring the provision of specific factual evidence demonstrating the applicability of the exception). Accordingly, to the extent the submitted information was not at issue in the previous ruling, the city may not withhold any of the submitted information on the basis of any proprietary interest TBC may have in the information.

In summary, the city must continue to rely on Open Records Letter No. 2022-24781 as a previous determination and withhold or release the information at issue in accordance with that ruling. To the extent the submitted information was not at issue in the previous ruling, the city must release the submitted 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,

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/pt

Ref: ID# 987767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)