



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2016

Ms. Nneka E. Kanu
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2016-12730

Dear Ms. Kanu:

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# 613154 (GC No. 23176).

The City of Houston (the "city") received a request for seven categories of information, including (1) the current city ordinances regulating companies under three specified categories of businesses; (2) the number of all companies operating in the city under three specified categories of businesses; (3) the name of all companies operating in the city under three specified categories of businesses; (4) the number of drivers registered to operate in the city under three specified categories of businesses; (5) the names of city departments responsible for compliance of three specified categories of businesses; (6) the number and types of reported crimes involving three specified categories of businesses; and (7) the number of traffic accidents involving drivers of three specified categories of businesses. You state you have released some information to the requestor. You further state you have no information responsive to a portion of the request.¹ 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 Rasier, LLC ("Rasier").

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Accordingly, you state, and provide documentation showing, you notified Rasier 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 received comments from Rasier. We have reviewed the submitted information and the submitted arguments.

Initially, we note some of the requested information was the subject of a previous requests for information, in response to which this office issued Open Records Letter Nos. 2015-10091 (2015) and 2015-06177 (2015). In response to Open Records Letter Nos. 2015-10091 and 2015-06177, Rasier has filed two lawsuits against our office. *See Rasier LLC v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-002404 (126th Dist. Ct., Travis County, Tex.); *Rasier LLC v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-15-001596 (353rd Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in these lawsuits, we will allow the trial court to resolve the issue of whether the information that is the subject of the pending litigation must be released to the public. To the extent the submitted information is not identical to the information at issue in the pending litigation, we will address Rasier's arguments against disclosure.

Rasier informs us the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-01651 (2016). In that ruling, we determined the city may withhold the information at issue under section 552.104(a) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the city may rely on Open Records Letter No. 2016-01651 as a previous determination and withhold the identical information in accordance with that ruling.² *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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/>

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

[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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 613154

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)