



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 31, 2016

Ms. Tiffany Evans  
Assistant City Attorney  
City of Houston  
P.O. Box 368  
Houston, Texas 77001-0368

OR2016-24202

Dear Ms. Evans:

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# 632545 (Houston GC No. 23667).

The City of Houston (the "city") received a request for four categories of information pertaining to parking revenue and airport access fees collected from taxis, limousines, Uber Technologies, Inc. ("Uber"), and Lyft, Inc. at George Bush Intercontinental Airport. You state you will make some information available to the requestor. Although you take no position as to whether the submitted information is excepted under the Act, you state release of some of this information may implicate the proprietary interests of Uber. Accordingly, you state you notified Uber of the request for information and of its right to submit arguments to this office as to why the information at issue 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 L.L.C. ("Rasier"), a wholly owned subsidiary of Uber, on behalf of Uber. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have indicated a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestor.

Next, you state some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-06177 (2015). In that ruling, we determined (1) to the extent the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the city must

withhold the cellular telephone numbers we marked under section 552.117(a)(1) of the Government Code; (2) the city must withhold the insurance policy numbers we marked under section 552.136 of the Government Code; (3) the city must withhold the e-mail addresses in the remaining information under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or section 552.137(c) of the Government Code applies; and (4) the city must release the remaining information pursuant to copyright law. In response to Open Records Letter No. 2015-06177, Rasier has filed a lawsuit against our office. *See Rasier, L.L.C. 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 this lawsuit, 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.<sup>1</sup>

With regard to any responsive information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, there is no indication the law, facts, and circumstances on which Open Records Letter No. 2015-06177 was based have changed. Accordingly, with regard to any responsive information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, the city must continue to rely on Open Records Letter No. 2015-06177 as a previous determination and withhold or release the identical 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address the submitted arguments for the remaining responsive information not encompassed by Open Records Letter No. 2015-06177.

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). 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. Uber states it has competitors. In addition, Uber states release of its remaining information would give advantage to its competitors. After review of the information at issue and consideration of the arguments, we find Uber has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude city may withhold Uber’s remaining information under section 552.104(a) of the Government Code.<sup>2</sup>

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<sup>1</sup>As we are able to make this determination, we need not address the submitted arguments against disclosure of this information.

<sup>2</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

In summary, we will allow the trial court to resolve the issue of whether the information that is the subject of Cause No. D-1-GN-15-001596 must be released to the public. With regard to any responsive information in the current request that is identical to information previously ruled upon by this office and is not at issue in the aforementioned lawsuit, the city must continue to rely on Open Records Letter No. 2015-06177 as a previous determination and withhold or release the identical information in accordance with that ruling. The city may withhold Uber's remaining information 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](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/akg

Ref: ID# 632545

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)