

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2017-27902
December 8, 2017

Ms. Laura Cedillo
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Dear Ms. Cedillo:

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# 687183 (COSA# W185202-092217).

The City of San Antonio (the "city") received a request for information pertaining to a specified request for proposals. 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 Alanis Wrecker Service; TEGSCO, LLC ("TEGSCO"); and Rod Robertson Enterprises, Inc. ("Robertson Enterprises"). Accordingly, you state, and provide documentation demonstrating, you notified the third parties of the request for information and of their 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 TEGSCO and Robertson Enterprises. We have also received and considered comments submitted by an interested third party. See [Gov't Code § 552.304](#) (providing that interested party may submit written comments regarding why information should or should not be released). We have reviewed the submitted information and considered the submitted arguments.

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\(d\) of the Government Code](#) 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 the remaining third party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the remaining third party has a protected proprietary interest in the submitted information. 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 the remaining third party may have in the information.

Next, we note TEGSCO seeks to withhold information not submitted to this office by the city. By statute, this office may only rule on the public availability of information submitted by the governmental body requesting the ruling. See [Gov't Code § 552.301\(e\)\(1\)\(D\)](#) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the city, this ruling does not address this information and is limited to the information submitted as responsive by the city.

[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](#). Robertson Enterprises states it has competitors. In addition, Robertson Enterprises states release of its information at issue would disclose its service delivery systems, strategy, methods of approach, and philosophy which provide Robertson Enterprises its uniquely developed competitive advantage. After review of the information at issue and consideration of the arguments, we find Robertson Enterprises has established the release of the information at issue would give advantage to a competitor or bidder. Thus, we conclude the city may withhold Robertson Enterprises’ information at issue under [section 552.104\(a\) of the Government Code](#).¹

TEGSCO claims its information is excepted from disclosure under [section 552.110 of the Government Code](#). [Section 552.110\(b\)](#) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” [Gov’t Code § 552.110\(b\)](#). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5-6.

Upon review, find TEGSCO has failed to demonstrate that release of any of its information would result in substantial damage to its competitive position. Thus, the third party has not demonstrated that substantial competitive injury would result from the release of any of its submitted information. *See* ORD 661. Accordingly, the city may not withhold any of TEGSCO’s information under [section 552.110\(b\) of the Government Code](#).

[Section 552.130 of the Government Code](#) provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² *See* [Gov’t Code § 552.130\(a\)](#). We find portions of the remaining information consist of motor vehicle record information. Accordingly, the city must withhold the motor vehicle record information under [section 552.130 of the Government Code](#).

[Section 552.136 of the Government Code](#) provides, “Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” [Gov’t Code § 552.136\(b\)](#); *see id.* [§ 552.136\(a\)](#) (defining “access device”). This office has determined insurance policy numbers are access device numbers for purposes of [section 552.136](#). We note the requestor has a right of access to the insurance policy numbers of United Road Towing and it may not be withheld from him under [section 552.136](#). *See* [Gov’t Code § 552.023\(a\)](#) (governmental body may not deny access to person to whom information relates or person’s agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, with the exception of United Road Towing’s insurance policy numbers, the city must withhold all insurance policy numbers within the remaining information under [section 552.136 of the Government Code](#).

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may withhold Robertson Enterprises' information at issue under [section 552.104 of the Government Code](#). With the exception of United Road Towing's insurance policy numbers, the city must withhold insurance policy numbers under [section 552.136 of the Government Code](#). The city must release the remaining information in accordance with copyright law.

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, 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,

April Philley
Assistant Attorney General
Open Records Division

Footnotes

- ¹ As our ruling for this information is dispositive, we need not address the remaining arguments against its disclosure.
- ² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2017-20491
September 7, 2017

Mr. Edward F. Guzman
Deputy City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283

Dear Mr. Guzman:

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#674382 (COSA File Nos. W172566-061517, W173615-062317, W174946-070517, W175007-070617, W175548-071017, W177450-072517)

The City of San Antonio (the "city") received six requests from different requestors for information pertaining to a specified request for proposals. You state you have released some information. You state release of the remaining information may implicate the proprietary interests of 1797 Creative; Chamoy Creative; Creative Noggin, LLC ("Creative Noggin"); ESD & Associates; GDC Marketing & Ideation ("GDC"); KGB Texas Communications; Market Vision; Opt In Experts; and The Social Being ("Social Being"). Accordingly, the city states, and provides documentation showing, it notified these third parties of the request for information and of their 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 Creative Noggin, GDC, and Social Being.¹ 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\(d\) of the Government Code](#) 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 the remaining third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude these third parties have a protected proprietary interest in the submitted information. 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, release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case information is trade secret), 542 at 3. Accordingly, the city may not withhold the submitted information on the basis of any proprietary interest these third parties may have in the information.

[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. Creative Noggin states it has competitors. In addition, Creative Noggin states release of the information at issue would give competitors an unfair competitive advantage over the company in future

competitive scenarios. For many years, this office concluded the terms of a contract and especially the pricing of a winning bidder are public and generally not excepted from disclosure. [Gov't Code § 552.022\(a\)\(3\)](#) (contract involving receipt or expenditure of public funds expressly made public); Open Records Decision Nos. 541 at 8 (1990) (public has interest in knowing terms of contract with state agency), 514 (1988) (public has interest in knowing prices charged by government contractors), 494 (1988) (requiring balancing of public interest in disclosure with competitive injury to company). *See generally* Freedom of Information Act Guide & Privacy Act Overview, 219 (2000) (federal cases applying analogous Freedom of Information Act reasoning that disclosure of prices charged government is a cost of doing business with government). However, now, pursuant to *Boeing*, [section 552.104](#) is not limited to only ongoing competitive situations, and a third party need only show release of its competitively sensitive information would give an advantage to a competitor even after a contract is executed. *Boeing*, 466 S.W.3d at 841. After review of the information at issue and consideration of the arguments, we find Creative Noggin 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 marked under [section 552.104\(a\) of the Government Code](#).

[Section 552.110 of the Government Code](#) protects (1) trade secrets and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code § 552.110(a)-(b)*. [Section 552.110\(a\)](#) protects trade secrets obtained from a person and privileged or confidential by statute or judicial decision. *Id.* [§ 552.110\(a\)](#). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which holds a trade secret to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business ... in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business.... [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

[RESTATEMENT OF TORTS § 757](#) cmt. b (1939); *see also Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² [RESTATEMENT OF TORTS § 757](#) cmt. b. This office must accept a claim that information subject to the Act is excepted as a trade secret if a *prima facie* case for the exception is made and no argument is submitted that rebuts the claim as a matter of law. *See* ORD 552 at 5. However, we cannot conclude [section 552.110\(a\)](#) is applicable unless it has been shown the information meets the definition of a trade secret and the necessary factors have been demonstrated to establish a trade secret claim. Open Records Decision No. 402 (1983).

[Section 552.110\(b\)](#) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" [Gov't Code § 552.110\(b\)](#). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; *see also* ORD 661 at 5 (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).

GDC asserts some of its information and Social Being asserts all of its information at issue is excepted from disclosure under [section 552.110\(b\) of the Government Code](#). Upon review, we find GDC has established the release of its pricing information and client information constitutes commercial or financial information, the release of which would cause substantial competitive injury to GDC. Therefore, the city must withhold GDC's pricing information, which we marked, and GDC's client information, to the extent the client information is not publicly available on GDC's website, under [section 552.110\(b\) of the Government Code](#).³ However, upon review, we find GDC and Social Being have failed to demonstrate by specific factual evidence the release of the remaining information at issue would result in substantial harm to their competitive positions. See ORD 661 (for information to be withheld under commercial or financial information prong of [section 552.110](#), business must show by specific factual evidence that substantial competitive injury would result from release of particular information at issue); see also ORD 319 at 3 (information relating to organization and personnel, market studies, professional references, qualifications and experience, and pricing is not ordinarily excepted from disclosure under statutory predecessor to [section 552.110](#)). Accordingly, the city may not withhold any portion of the remaining information under [section 552.110\(b\) of the Government Code](#).

GDC also asserts its client information and Social Being asserts all of its information at issue constitutes trade secrets. To the extent GDC's client information is publicly available on its website, it may not be withheld under [section 552.110\(a\)](#). Furthermore, upon review, we find GDC and Social Being have failed to demonstrate a *prima facie* case any portion of the information at issue meets the definition of a trade secret and has not demonstrated the necessary factors to establish a trade secret claim for this information. See ORD 402. Therefore, the city may not withhold any of the remaining information at issue under [section 552.110\(a\)](#).

Creative Noggin raises common-law privacy for some of its remaining information. [Section 552.101 of the Government Code](#) excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." [Gov't Code § 552.101](#). [Section 552.101](#) encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the city may not withhold any of the remaining responsive information under [section 552.101 of the Government Code](#) on this basis.

Some of the remaining information is subject to [section 552.136 of the Government Code](#).⁴ [Section 552.136](#) provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." [Gov't Code § 552.136\(b\)](#); see *id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of [section 552.136](#). Accordingly, the city must withhold the insurance policy numbers in the remaining information under [section 552.136 of the Government Code](#). However, upon review, we find Creative Noggin has failed to demonstrate the applicability of [section 552.136](#) to the remaining information at issue. Therefore, the city may not withhold this information under [section 552.136 of the Government Code](#).

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109(1975). If a member of

the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may withhold the information we marked under [section 552.104\(a\) of the Government Code](#). The city must withhold GDC's pricing information we marked and GDC's client information, to the extent the client information is not publicly available on GDC's website, under [section 552.110\(b\) of the Government Code](#). The city must withhold the insurance policy numbers in the remaining information under [section 552.136 of the Government Code](#). The city must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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, 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,

*5 D. Michelle Case
Attorney
Open Records Division

Footnotes

- ¹ Although Social Being raises [sections 552.101, 552.102, 552.103, 552.104, 552.105, 552.106, 552.107, 552.111, 552.117, 552.128, 552.131, 552.137, and 552.139](#), it has not submitted arguments in support of these exceptions; therefore, we assume Social Being has withdrawn its claim these exceptions apply to the information at issue. See [Gov't Code §§ 552.301, .302](#).
- ² The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:
 - (1) the extent to which the information is known outside of [the company];
 - (2) the extent to which it is known by employees and other involved in [the company's] business;
 - (3) the extent of measures taken by [the company] to guard the secrecy of the information;
 - (4) the value of the information to [the company] and [its] competitors;
 - (5) the amount of effort or money expended by [the company] in developing the information;
 - (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.[RESTATEMENT OF TORTS § 757](#) cmt. b; see also Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).
- ³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

4 The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Office of the Attorney General
State of Texas
Informal Letter Ruling No. OR2016-21679
September 26, 2016

Mr. James Kopp
Assistant City Attorney
Office of the City Attorney
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Dear Mr. Kopp:

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# 625973 (ORR ID#s W128217, W128313, W128316, W128474, W128500, and W129434, W131489, W133655).

The City of San Antonio (the "city") received several requests from different requestors for communications between city council members, named individuals, and Uber Technologies, Inc. ("Uber") and several categories of information pertaining to transportation network companies. You state the city will release some information. You also state the city does not maintain information responsive to some of the requests.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the proprietary interests of third parties.² Accordingly, you state, and provide documentation showing, you notified Bid My Ride; Get Me; Lyft; and Uber of the requests for information and of their rights 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 Get Me, Lyft, and Rasier LLC, a wholly owned subsidiary of Uber, on behalf of Uber. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, we note you have marked a portion of the submitted information as not responsive to the instant requests for information. We have marked additional information that is not responsive. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestors.

We note some of the submitted information may have been the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2016-19913 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the city may continue to rely on Open Records Letter No. 2016-19913 as a previous determination and withhold or release the information in accordance with that ruling. See Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to Open Records Letter No. 2016-19913, we will consider the arguments against release of the submitted information.

Next, 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 Bid My Ride explaining why its information should not be released. Therefore, we have no basis to conclude Bid My Ride has a protected proprietary interests in the submitted responsive information. 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 any of the information at issue on the basis of any proprietary interest Bid My Ride may have in it.

We understand Lyft to assert that some of its submitted information is confidential because it was given to the city in confidence or it is confidential pursuant to a contract with the city. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. See [Indus. Found. v. Tex. Indus. Accident Bd.](#), 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. See [Attorney General Opinion JM-672 \(1987\)](#); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

[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, 842 (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. Lyft and Uber state they have competitors. In addition, Lyft states release of some of its information would provide competitors with insight into Lyft's current market share in the city, the efficacy of its marketing and promotional policies, and Lyft's driver acquisition strategy. Uber states release of some of its information would allow its competitors to lure driver partners from Uber, to measure and assess the size of Uber's market share, and undermine one of Uber's key competitive advantages in the marketplace. After review of the information at issue and consideration of the arguments, we find Lyft and Uber have established the release of the information at issue, which we have marked, would give advantage to a competitor or bidder. Thus, we conclude the city may withhold the information we have marked and indicated under [section 552.104\(a\) of the Government Code](#).⁴

Get Me claims its information is excepted from disclosure under [section 552.110\(b\) of the Government Code](#). [Section 552.110\(b\)](#) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” [Gov't Code § 552.110\(b\)](#). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, substantial competitive injury would likely result from release of the information at issue. *Id.*; see also ORD 661 at 5.

Get Me argues its information consists of commercial information, the release of which would cause the company substantial competitive harm under [section 552.110\(b\) of the Government Code](#). Upon review, we find Get Me has demonstrated the information at issue, which we have marked and indicated, constitutes commercial or financial information, the release of which would cause substantial competitive injury.

Accordingly, the city must withhold the information we have marked under [section 552.110\(b\) of the Government Code](#).⁵

Some of the submitted information may be subject to [section 552.117 of the Government Code](#).⁶ [Section 552.117\(a\)\(1\)](#) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under [section 552.024 of the Government Code](#). See [Gov't Code § 552.117\(a\)\(1\)](#). [Section 552.117](#) is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) ([section 552.117](#) not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by [section 552.117\(a\)\(1\)](#) must be determined at the time of the governmental body's receipt of the request for the information. See Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under [section 552.117\(a\)\(1\)](#) only on behalf of a current or former employee or official who made a request for confidentiality under [section 552.024](#) prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under [section 552.117\(a\)\(1\)](#) on behalf of a current or former employee or official who did not timely request under [section 552.024](#) the information be kept confidential. Therefore, to the extent the individuals whose information we have marked timely requested confidentiality under [section 552.024 of the Government Code](#), the city must withhold the information we marked under [section 552.117\(a\)\(1\) of the Government Code](#); however, the city may only withhold the cellular telephone numbers at issue if the service is not paid for by a governmental body. Conversely, to the extent the individuals at issue did not timely request confidentiality under [section 552.024](#), the city may not withhold the marked information under [section 552.117\(a\)\(1\)](#).

[Section 552.136 of the Government Code](#) states “[notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” [Gov't Code § 552.136](#); see also *id.* [§ 552.136\(a\)](#) (defining “access device”). This office has concluded insurance policy numbers constitute access device numbers for purposes of [section 552.136](#). Upon review, the city must withhold the insurance policy numbers in the remaining information under [section 552.136 of the Government Code](#).

[Section 552.137 of the Government Code](#) excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See *id.* [§ 552.137\(a\)-\(c\)](#). However, [section 552.137](#) does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. See *id.* [§ 552.137\(c\)](#). Additionally, [section 552.137](#) does not apply to the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *Austin Bulldog v. Leffingwell*, 490 S.W. 3d 240 (Tex. App.-Austin no pet.) (mem. op.). Therefore, the city must withhold the personal e-mail addresses we have marked under [section 552.137 of the Government Code](#), unless the owners affirmatively consent to their public disclosure.

In summary, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the city may continue to rely on Open Records Letter No. 2016-19913 as a previous determination and withhold or release the information in accordance with that ruling. The city may withhold the information we have marked and indicated under [section 552.104\(a\) of the Government Code](#). The

city must withhold the information we have marked under [section 552.110\(b\) of the Government Code](#). To the extent the individuals whose information we have marked timely requested confidentiality under [section 552.024 of the Government Code](#), the city must withhold the information we marked under [section 552.117\(a\)\(1\) of the Government Code](#); however, the city may only withhold the cellular telephone numbers at issue if the service is not paid for by a governmental body. The city must withhold the insurance policy numbers in the remaining responsive information under [section 552.136 of the Government Code](#). The city must withhold the personal e-mail addresses we have marked under [section 552.137 of the Government Code](#), unless the owners affirmatively consent to their public disclosure. The city must release the remaining responsive information.

You also ask this office to issue a previous determination that would permit the city to withhold the types of information that are at issue in this decision without the necessity of again requesting a decision by this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a decision at this time. 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, 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,

Paige Lay
Assistant Attorney General
Open Records Division

Footnotes

- ¹ The 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 *dism'd*); 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).
- ² We note the city did not comply with [section 552.301 of the Government Code](#) in requesting this decision. *See Gov't Code § 552.301(e)*. Nonetheless, because third party interests are at stake, and thus constitute a compelling reason to overcome the presumption of openness, we will consider whether the submitted information must be withheld under the Act based on third party interests. *See id.* §§ 552.001, .302, .352.
- ³ We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- 4 As our ruling on this information is dispositive, we need not address the remaining arguments against its disclosure.
- 5 As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.
- 6 The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).