

November 2, 2018

Mr. Justin Gordon
Chief, Open Government Division
Office of the Attorney General of Texas
209 West 14th St., 6th Floor
P.O. Box 12548
Austin, Texas 78701-2548

Re: City of Austin Open Records Request from Lucas Larson
(PIR # C010907)

Dear Mr. Gordon:

On behalf of Social Bicycles LLC, d/b/a JUMP Bikes (“Jump Bikes”), a subsidiary of Uber Technologies, Inc., we are responding to the letter from the City of Austin (“City” or “Austin”) notifying us of your review on whether the information responsive to Mr. Larson’s request is excepted from disclosure under the Texas Public Information Act (“PIA”), Texas Government Code Chapter 552. Jump Bikes objects to the release of the Requested Information for the reasons described below.

Jump Bikes provides electric bike-sharing and scooter-sharing in Austin. Bike- and scooter-sharing are environmentally-friendly responses to urban congestion. Jump Bikes places specially-designed electric bikes and scooters at locations around the City. Customers download the Jump or Uber application on their phone, make a reservation, unlock a bike or scooter at their starting point, and ride to their destination, where they return the bike or scooter to a rack. *See Exhibit 1*, Affidavit of Vincent Campo, General Manager of Jump Bikes, ¶ 2.

Jump Bikes is a dockless mobility or transportation system regulated and licensed under Chapter 14-9 of the Austin Municipal Code. *See* Section 14.9.23. *See also* **Ex.1**, Campo Aff., ¶ 4. Dockless mobility systems include electric bikes and scooters. *Id.* A license under this Chapter can be suspended if the licensee does not report and maintain correct and current information with the City regarding its operations. Section 174-9.25 (B)(1). *See also* **Ex. 1**, *id.* The City also enacted Emergency Rule No. R161-19.09(e) on May 7, 2018, which established additional, detailed rules for the operation of dockless systems. *See* **Ex.1**, Campo Aff., ¶ 4, and **Exhibit 1-A**. A Dockless Mobility License can be suspended if the licensee does not report and maintain correct and current information with the City regarding its operations. § 174-9.25 (B)(1); **Ex. 1-A**, p. 9, Section 7.G.

Mr. Larson has requested various information regarding electric scooters (e-scooters), including applications by electronic scooter companies to operate within city limits, with all attachments, data sharing agreements between the City and e-scooter operators, and scooter impound logs. Mr. Larson notes that dockless e-scooters are operated by “a variety of private companies, including but not limited to Bird Rides, Inc., Neutron Holdings Inc. dba Lime (formerly LimeBike), Spin, Scoot, Ofo, Razor, Hoppr (formerly CycleHop), USSCotter, JUMP (a subsidiary of Uber), Lyft, GOAT, and Ridecell.” He says his request is “not being made for commercial purposes,” but also states that “the requested documents will be made available to the general public....”

In response to Mr. Larson’s request, the City would produce the following documents:

1. Jump Bikes’ application to the City, with Jump Bikes’ cover letter summarizing its proposal and its operating relationship with Uber. The Application includes the following appendices:
 - A. Jump Bikes’ insurance policy, with insurer, policy number, amount of premium, and coverage information.
 - B. Hardware and software specifications, including design specifications for bikes, charging system, and docking station; a description and lay-out of the mobile application for using the units; and a description of the system’s abilities to monitor the units, evaluate data, and communicate with riders.
 - C. Unit inventory list, by unit identification number and serial number.
 - D. Jump Bikes’ safety plans and customer service features.
 - E. Jump Bikes’ marketing and outreach plans, including details on how it will identify communities for its bikes, address barriers, educate people on bike and scooter transportation, and provide equitable access to underserved communities, and photographs of its work on these plans.

- F. Details on Jump Bikes' maintenance, cleaning, repair, and waste management plans.
 - G. Jump Bikes' performance bond, with the name of the surety, the bond number and the premium amount.
 - H–J. The test results and certificate of conformance for Jump Bikes' Units on compliance with applicable regulations.
2. A two-page description of Jump Bikes' marketing and outreach plan.
 3. A three-page description of the design, mechanical and electronic specifications of Jump Bikes' e-scooter.
 4. A blank application for an Austin dockless mobility license.

Jump Bikes objects to the disclosure of items 1-3, above, collectively the “Requested Information,” which is excepted from disclosure under the Texas Public Information Act (“PIA”) for three reasons. **First**, disclosure of the Requested Information is prohibited under § 552.104 of the PIA and the opinion of the Texas Supreme Court in *Boeing v. Paxton*, 466 S.W.3d 831 (Tex. 2015). **Second**, the Requested Information is commercial or financial information the release of which would cause Jump Bikes substantial competitive harm, and so must be withheld under § 552.110(b) of the PIA. **Third**, the Requested Information constitutes Jump Bikes' trade secret information and is therefore excepted under § 552.110(a) of the PIA. We set forth these reasons in more detail below.

The Requested Information must be withheld under § 552.104(a) and *Boeing*.

The Requested Information is excepted from disclosure under *Boeing* and § 552.104(a). Section 552.104(a) of the PIA protects from disclosure information “that, if released, would give advantage to a competitor or bidder.” In *Boeing Co. v. Ken Paxton*, 466 S.W.3d 831 (Tex. 2015), Boeing raised this provision to prevent the disclosure of its lease with the Port of San Antonio. The Texas Supreme Court clarified the legal test for claiming this PIA exemption. First, the Court held that private parties have standing to assert this PIA exception. *Boeing*, 466 S.W.3d at 838-39. Second, the Court rejected the Attorney General's argument that § 552.104 requires a showing of specific competitive harm to a particular pending bid, finding that it was sufficient to make a broader showing that releasing financial details “would give advantage to a competitor or bidder.” *Id.* Third, the Court rejected the arguments that Boeing was not entitled

to assert § 552.104 because the presumptive misuse of the data was too speculative, and that Boeing had not proven that release of the data would trump other factors in causing a particular competitor's bid to prevail. 466 S.W.3d at 840-41. The Court declared that a private party has standing to invoke § 552.104 without having to prove it more likely than not that future business will actually be lost: **“the test under § 552.104 is whether knowing another bidder’s [information] would be an advantage, not whether it would be a decisive advantage.”** 466 S.W.3d at 838-39 at 841 (emphasis added).

The facts presented here are similar to those in *Boeing*, and strongly favor Jump Bikes in this case. First, Boeing competed in an “intensely” competitive industry, bidding on government contracts to maintain and overhaul older aircraft. *Boeing*, 466 S.W.3d at 839. As in Boeing’s industry, the market for bike-share and scooter-share riders in Austin is “extremely competitive.” See **Ex.1**, Campo Aff., ¶ 3. As explained by Vincent Campo, General Manager of Jump Bikes in Austin, two nation-wide competitors have established bike-share businesses in Austin, others are considering entering the market, and at least two scooter companies have plans to enter Austin. See **Ex.1**, Campo Aff., ¶ 3. Mr. Larson’s request confirms the competitive nature of the dockless mobility industry for e-scooters by naming 12 companies that operate around the country, two of which have already operate in Austin or have plans to enter the Austin market. See *supra*, p. 2.

Second, the Court held that information contained in Boeing’s lease would permit a competitor to reverse engineer bids by Boeing, and enable the competitor to undercut Boeing’s bids. 466 S.W.3d at 834, 839-40. In *Boeing*, this useful information included not just costs and overhead, but also provisions and details in the contract, such as the amount of Boeing’s insurance, the liquidated damages provision, details on shared costs, and contractual incentives. 466 S.W.3d at 834 n.2, 839. The Requested Information provides all the information a competitor would need to establish an e-bikes and e-scooter operation, or fine-tune their business plans for an existing operation: what kind of bikes and scooters to get; exactly how many they should buy; where to have them certified; what kind of app to develop and what features to provide to riders; what data sharing programs to offer to attract riders; what analytics to build into the system to monitor and evaluate system operations; where and how to market to attract riders; how to perform community outreach and education to capture underserved markets; unique ideas to expand ridership; what kind of safety and maintenance programs to set up; and where and how to acquire the financial responsibility instruments the City requires, and how much to expect to pay. See **Ex.1**, Campo Aff., ¶¶ 7-11. The marketing and community outreach plans would be especially valuable to competitors, enabling them to avoid the effort and expense of developing and trying their own such strategies. Moreover, by simply adopting Jump Bikes’ marketing and outreach plans, competitors would cause Jump Bikes to lose the

value of all its work on those plans, and force it to again incur costs of develop marketing plans. Competitors would thus cuts their own costs significantly and at the same time increase those of Jump Bikes, unfairly gaining a substantial advantage in a very competitive business. *See Ex.1, Campo Aff.*, ¶ 12. The Requested Information could also help competitors raise funds and attract investors more effectively, another way that the release of the Requested Information could reduce Jump Bikes' ability to compete in a competitive market. *See Ex.1, Campo Aff., id.*

The Requested Information is the product of all of Jump Bikes' experience, obtained through the commitment of significant money and effort, distilled into its business plan for the competitive Austin market. *See Ex.1, Campo Aff.*, ¶¶ 13-14. Jump Bikes has competitors in Austin, and more competitors are considering establishing operations in Austin. *See Ex.1, Campo Aff.*, ¶ 3. *See also* Lucas statement, *supra* p. 2. Release of the Requested Information would provide competitors with a blue-print for competing with Jump Bikes. *See Ex.1, Campo Aff.*, ¶¶ 13-14. Competitors would use the Requested Information as free market research to jumpstart an entry into the Austin market or fine-tune their operating and marketing plans, while avoiding the considerable time and expense that Jump Bikes has invested to develop its business in Austin. *Id.* Jump Bikes would have done all the work and its competitors would reap the benefit, and take Jump Bikes' business. *Id.*

In short, as in *Boeing*, competitors could use the Requested Information to reverse engineer their own successful bike and scooter share program, undercut the effect of Jump Bikes' efforts in the Austin market, and take business away from Jump Bikes.

Third, at issue in *Boeing* was not simply that Boeing's competitor would take away its lease with the Port of San Antonio, but that another city or state would lease premises to a competitor at a rate that undercut Boeing's lease at the Port, enabling Boeing's competitor to gain an advantage in this way also. *Boeing*, 466 S.W.3d at 840. The same issue is presented here: the City of Austin can limit the number of dockless mobility units, can reduce the number of units in an area, and **will reduce the number of units if each unit does not have 2 rides per day**. **Ex. 1-A**, Rule Section 3.A – E; Chapter 14-9-23(C). Thus, every ride that a competitor takes from Jump Bikes could force the reduction of Jump Bikes' fleets and its business, and increase the fleet of a competitor, further damaging Jump Bikes' business.

As the *Boeing* Court noted, it is not necessary to show specific competitive harm to a particular pending bid in order to invoke § 552.10, nor is the possibility of future misuse of the data too speculative to support application of the exception. *See supra*, pp. 2-3. The Texas Supreme Court found that the very same types of information as that contained in the Requested Information would give an advantage to a competitor, and so constitute information "that, if released, would give advantage to a competitor or bidder" under § 552.104(a). The Court's

reasoning applies with equal force to Jump Bikes' arguments against disclosure in this case. Release of Jump Bikes' Requested Information would enable its competitors to start or fine-tune a competing business without the expenditure of money and effort invested by Jump Bikes, obtain bikes, set up an application, program data analyses, market and conduct community outreach. The Requested Information would give competitors an advantage over knowing none of that information, so this information must be withheld from disclosure under § 552.110(a).

The Requested Information must be withheld under § 552.110(b) because the release of that information would cause substantial competitive harm to Jump Bikes.

Section 552.110(b) excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm.” TEX. GOV'T. CODE § 552.110(b). In *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 602 (Tex.App.—Amarillo 1995, no writ), the court identified competitive harm in plain terms: **when a competitor “could easily start a new company” with the plaintiff’s information, or use the information to grow their company at the plaintiff’s expense, then the information is confidential or a trade secret, and an injunction prohibiting the disclosure of the information is proper. A company’s governmental filings that would enable a competitor to evaluate the company’s “strengths and weaknesses” in a given area, to “inform the competitor’s decision to do business in that area,” and to “use this information in their marketing strategies,” is exempt from release under the PIA.** *Center for Economic Justice v. Am. Ins. Ass’n*, 39 S.W.3d 337, 345 (Tex.App.—Austin 2001, no pet.).

The Requested Information constitutes Jump Bikes' business plan for the Austin area, and is the very type of information protected by Texas courts, for the very reason it demands protection here: as described by Mr. Campo, a competitor could copy or use Jump Bikes' plans to take business away from Jump Bikes. This is the “substantial competitive harm” identified in § 552.110(b) of the PIA, and the Trip Data must be withheld.

The Requested Information is Jump Bikes' trade secrets under § 552.110(a).

The PIA also provides that trade secrets are excepted from disclosure. TEX. GOV'T. CODE § 552.110(a). Trade secrets may consist of any formula, pattern or compilation of information which is used in a person's business, and which gives him a competitive advantage. *In re Bass*, 113 S.W.3d 735, 739-40 (Tex. 2003); *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958), *cert. denied*, 358 U.S. 898 (1958). Any data about a company's business can be a trade secret. For example, **when a competitor could learn from information in a report filed**

with a governmental body whether the company's business was growing or declining, make inferences about profitability, and use this information in preparing its own marketing strategy, the information is valuable to competitors and is a trade secret. *Center for Economic Justice*, 39 S.W.3d at 345. Jump Bikes' competitors could use the Requested Information in just this manner.

The Texas Supreme Court has identified six factors to be considered in determining whether data constitutes a trade secret.¹ The factors must be weighed in the context of the surrounding circumstances, and a plaintiff need not satisfy all six elements to show that information is a trade secret. *In re Bass*, at 739. Rasier's affidavits set forth specific factual details addressing all six of the RESTATEMENT factors used to determine whether information constitutes a trade secret, as set forth in *Hyde Corp v. Huffines*:

(1-2) The extent to which the information is known outside the company's business, and the extent to which the information is known by employees and others involved in the company's business.² The Requested Information is stored only on a secured server, is password protected, is not known to most of the company personnel, and is not revealed outside the company. This Information is restricted to a very small number of employees, and is not generally available to most employees in the Austin office, or in other offices. *See Ex. 1, Campo Aff.*, ¶ 15.

(3) The extent of measures taken by the company to guard the secrecy of the information. Access to the Requested Information is restricted to a very small number of employees, and is not generally available to most employees in Austin or elsewhere. *See Ex. 1, Campo Aff.*, ¶ 15. This Information is stored securely, and

¹ The factors are: (1) the extent to which the information is known outside of the owner's business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of the measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Bass*, at 739, citing RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 39, cmt. D (formerly RESTATEMENT OF TORTS § 757, cmt. B).

² Providing information to a governmental body as required does not waive the trade secret status of the information. *Waste Management*, 406 S.W.3d at 635-36; *Center for Economic Justice*, 39 S.W.3d at 346; *Taco Cabana Int'l Inc. v. Two Pesos, Inc.*, 931 F.2d 113, 1124 (5th Cir. 1991).

password protected. *Id.* By limiting access to the Requested Information, storing it on secured servers, and requiring password protection, Jump Bikes guards the secrecy of this Information. *Id.*

(4) **The value of the information to the company and to its competitors.** By limiting access to the Requested Information, storing it on secured servers, and requiring password protection, Jump Bikes guards the secrecy of this Information and other performance data. *See Ex. 1, Campo Aff.*, ¶ 11. This Information constitutes Jump Bikes' business plan and market strategy for Austin. Release of this Information would outline in detail Jump Bikes' business and permit a competitor to fine-tune a competing business plan that would take Jump Bikes' customers and limit its growth. *See Ex. 1, Campo Aff.*, ¶¶ 7-12.

(5) **The amount of effort or money expended by the company in developing the information.** Jump Bikes has invested significant money and employee hours to build its business and its customer base in Austin. *See Ex. 1, Campo Aff.*, ¶ 14.

(6) **The ease or difficulty with which the information could be properly acquired or duplicated by others.** The Requested Information is a blue-print for competitors seeking to enter the dockless mobility market. *See Ex. 1, Campo Aff.*, ¶¶ 7-114.

Under Texas law, these facts are sufficient to demonstrate that the information is a trade secret.³ *See, e.g., Waste Management*, 406 S.W.3d at 636; *Center for Economic Justice*, 39 S.W.3d at 345; *T-N-T Motorsports, Inc. v. Hennessy Motorsports, Inc.*, 965 S.W.2d 18, 23 (Tex.App.—Houston [1st Dist.] 1998, no pet).

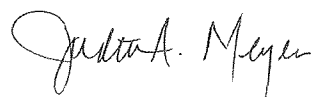
³ As noted above, an Austin court entered a judgment, agreed to by the City and your office, holding that trip origination data submitted to the City of Austin is exempt from disclosure under § 552.110(a). *See supra*, p. 4.

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CONCLUSION

We appreciate your consideration of our concerns about the potential release of this information, and the potential harm that would ensue. If you require additional information from us, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Judith A. Meyer". The signature is written in a cursive style with a large initial "J".

Judith A. Meyer

JAM:pmt

cc: (w/o attachments): 61817-70173261@requests.muckrock.com