

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Order Instituting Rulemaking on Regulations
Relating to Passenger Carriers, Ridesharing,
And New Online Enabled Transportation
Services

R.12-12-011

**REPLY COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY, SAN FRANCISCO CITY ATTORNEY'S OFFICE, SAN FRANCISCO
INTERNATIONAL AIRPORT, AND SAN FRANCISCO COUNTY TRANSPORTATION
AUTHORITY ON THE PROPOSED DECISION RE: DATA CONFIDENTIALITY ISSUES**

TRACK 3 – TNC DATA

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I. INTRODUCTION

Pursuant to the February 7, 2020 Proposed Decision of Commissioner Shiroma on Data Confidentiality, the San Francisco Municipal Transportation Agency, the San Francisco City Attorney's Office, and the San Francisco International Airport, collectively "the City", and the San Francisco County Transportation Authority (together, the "City and County") submit these joint reply comments. These comments respond to the opening comments filed by UC Berkeley Labor Center, the Los Angeles Department of Transportation ("LA DOT"), Lyft, Uber, and HopSkipDrive.

II. DISCUSSION

A. **The Commission Should Eliminate the Presumption of Confidentiality In Footnote 42, and the TNCs Should Be Required to File the Annual Reports In This Rulemaking.**

From the outset of its participation in this rulemaking, the City has argued that the confidentiality provision embedded in footnote 42 is contrary to the Constitution, and the California Public Records Act ("CPRA"). This position is supported by the UC Berkeley Labor Center, the Los Angeles Department of Transportation, and even Lyft.¹ It is telling that in its opening comments, Lyft states that it "does not oppose the repeal of footnote 42 going forward. In fact, in the time since the Commission adopted the new General Order 66-D ("GO"), Lyft states that it has followed the procedures set out therein with respect to its annual reports, and other responses and submissions to the Commission."² The presumption of confidentiality in footnote 42 is inconsistent with the policy of open and transparent government and should be deleted.

Lyft, Uber, and HopSkipDrive all take issue, however, with the Proposed Decision's requirement that the TNCs file and serve a motion for confidentiality 90 days prior to the submission of the annual reports. Lyft argues that requiring the TNCs to file and serve a motion for confidential

¹ UC Berkeley Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at pp. 3-6; LA DOT Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p.2; and Lyft Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p. 1.

² Lyft Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p. 1.

treatment creates “a ‘new protocol’ that applies only to TNC annual reports” and will “impose additional burdens.”³ This is not so.

GO 66-D provides a process for regulated entities to file and serve motions for confidential treatment of information filed in a formal proceeding.⁴ Footnote 42 required the annual reports to be “filed” in this proceeding.⁵ The Commission did not order the TNCs to submit or otherwise transmit the annual reports in a non-formal manner. By removing the unsupported veil of confidentiality and requiring the TNCs to file and serve a motion for confidentiality as part of their annual report filing, the Proposed Decision would simply track the requirements of GO 66-D for seeking confidential treatment of records filed in a formal proceeding. The requirement to file and serve a motion seeking confidential treatment of certain records, therefore, is not a “new” or “discriminatory”⁶ requirement for regulated entities submitting information to the Commission, and does not “single out TNCs for disparate treatment without explanation of justification.”⁷

The requirement to file a motion pursuant to section 3.3 of GO 66-D also ensures that stakeholders have the opportunity to respond to the motion and contest any unfounded assertions of confidentiality. Embedded in Lyft’s statement in support of deleting footnote 42 is the fact that apparently Lyft has been submitting annual reports, “and other responses and submissions to the Commission” without filing and serving those motions on the parties to the service list of this or other relevant proceedings. The Proposed Decision would make clear that TNCs must file the annual reports in a formal Commission proceeding, as well as file and serve a motion so that interested parties may respond.

This requirement to file the annual reports in the dockets also makes the information readily available outside of a Public Record Act request. Filing the actual reports (subject to any proper

³ *Id.* at p. 4.

⁴ General Order 66-D § 3.3.

⁵ D. 13-09-045, at p. 33, footnote 42.

⁶ Uber Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p. 12.

⁷ Lyft Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p. 2.

redactions or aggregation) also provides transparency in the nature of the reports and changes that may be made to the templates. The City and County note that there have been changes made to the reporting templates during the pendency of this phase of the rulemaking. It is not clear how those changes are noticed to the public.

B. The Proposed Decision Accurately Identifies Legitimate Public Interests In Disclosing the Information in the Annual Reports.

Uber and HopSkipDrive each take issue with the Proposed Decision’s extensive findings regarding the public interest in sharing the information in the annual reports. Uber asserts that the government entities “describe no particularized need for the data in the TNC annual reports.”⁸ Uber misrepresents the record. Throughout this proceeding, the City and County, as well as other entities, have articulated the many ways that public interest would be served by disclosing the data. In fact, the Proposed Decision extensively quotes the record supporting this policy.⁹

HopSkipDrive asserts that it is error to consider “the needs of other government entities that do not have the authority to obtain the confidential information they seek from TNCs.” This argument conflates the public policy served by sharing the data with interested government entities with the respective regulatory authorities of the Commission and other government entities. Whether the government entities have jurisdiction to obtain the annual reports from the TNCs does not bear on the question of whether the annual reports are regulatory reports subject to the CPRA, or whether sharing those reports would serve the public interest. Further, as discussed in the City and County’s opening comments, local jurisdictions in fact do have the authority to subpoena these documents.¹⁰

Neither HopSkipDrive nor Uber offer any reason to change the finding in the Proposed Decision that “[a]s public policy decisions tend to be data driven, it stands to reason that giving access to government entities, and nonprofit entities that provide support for government entities, may assist them in developing policy programs to aid the riding public, reduce traffic congestion, reduce GHG

⁸ Uber Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p. 7.

⁹ Proposed Decision at pp. 24-26.

¹⁰ City and County Opening Comments To Phase III.C Scoping Memo And Ruling Of Assigned Commissioner, at p. 20.

emissions, and make the necessary infrastructure improvements so that transportation is a safe and accessible experience for all riders.”¹¹

C. The Commission Should Instruct the Assigned Commissioner and Administrative Law Judge to Create a Process to Disclose the Prior Annual Reports, and Review and Enhance its Data Requirements.

HopSkipDrive asserts that even if the confidentiality captured in footnote 42 is deleted, the Commission should still keep the previously submitted annual reports confidential.¹² This assertion is not supported by the record. The City and County support comments from LA DOT, and the UC Berkeley Labor Center that the Commission “should make retroactive data available to local governments, other state agencies and researchers.”¹³

We also support LA DOT’s suggestion to reevaluate and “establish clear data requirements that support the Commission’s regulatory and enforcement obligations, and that also enable it to achieve state transportation safety, equity, and sustainability goals.”¹⁴ The City and County in its Opening Comments suggested a workshop for this purpose.¹⁵

The City and County also note that the templates for the TNC Report on Providing Service were revised after the deadline for parties to submit opening comments, on December 3, 2019. The revised templates significantly expand the information reported by TNCs to the Commission, and potentially raise new privacy issues that were not relevant to the previous template and thus to the City and County’s opening comments. Until it can be determined what level of location specificity could reveal personally identifiable information, minor additions to the template, combined with redaction of fields involving specific trip start and end points for individual trips, would allow the Commission and

¹¹ Proposed Decision at p. 26.

¹² Uber Opening Comments on the Proposed Decision of Commissioner Shiroma on Data Confidentiality – Track 3, at p. 10.

¹³ Opening Comments of UC Berkeley Labor Center to Commissioner Shiroma’s Proposed Decision on Data Confidentiality Issues Track 3, at p. 3.

¹⁴ Opening Comments of the Los Angeles Department of Transportation to Commissioner Shiroma’s Proposed Decision on Data Confidentiality Issues Track 3, at p. 6.

¹⁵ City and County Opening Comments To Phase III.C Scoping Memo And Ruling Of Assigned Commissioner, at p. 18.

other public agencies to fulfill their statutory obligations and planning roles without revealing personally identifiable information. The City and County propose the following changes.

The following fields should be added to the 'Requests Accepted' report template:

- Whether Passenger Requested a Wheelchair Access Vehicle ("WAV") for the Trip (Yes/No)
- Census Tract of Driver When Driver App is Turned on or Last Passenger is Dropped off
- Census Tract of Requester (at time of trip request)
- Census Tract of Driver (at time of trip request)
- Census Tract of Driver (at time trip request was accepted)
- Census Tract of Passenger Pick-up
- Census Tract of Passenger Drop-off

The following fields should be added to the 'Requests Not Accepted' report template:

- Whether Passenger Requested to Fare-Split ("Shared/Poolled") Trip (Yes/No)
- Whether Passenger Requested a Wheelchair Access Vehicle ("WAV") for the Trip (Yes/No)
- Census Tract of Requester (at the time of trip request)
- Census Tract of Driver (at the time trip request was not accepted)

Incorporating these data items would both support the Commission's enforcement of current and future expectations related to the delivery of wheelchair accessible service as mandated by SB1376, and protect the privacy interests of drivers and riders by including location information at the Census tract level as well as the zip code level, and allow for analysis of service consistent with the many public and academic research resources that rely on census tracts.

III. CONCLUSION

The Commission should adopt the Proposed Decision as drafted.

Dated: March 3, 2020

Respectfully submitted,

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On behalf of:

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