

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

Order Instituting Rulemaking to Implement  
Senate Bill 1376 Requiring Transportation  
Network Companies to Provide Access for  
Persons with Disabilities, Including Wheelchair  
Users who need a Wheelchair Accessible  
Vehicle

R.19-02-012  
(Filed February 21, 2019)

**COMMENTS OF SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN  
FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO  
MAYOR'S OFFICE ON DISABILITY ON DRAFT RESOLUTION ALJ-388- RESOLUTION  
DENYING THE APPEALS BY UBER TECHNOLOGIES, INC. AND LYFT INC. OF THE  
CONSUMER PROTECTION AND ENFORCEMENT DIVISION'S CONFIDENTIALITY  
DETERMINATION IN ADVICE LETTERS 1, 2, AND 3.**

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October 20, 2020

## **I. INTRODUCTION**

In accordance with Rule 14.5 of the Commission’s Rules of Practice and Procedure, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor’s Office on Disability (collectively “San Francisco”) submit comments on the Draft Resolution ALJ-388- Resolution Denying The Appeals By Uber Technologies, Inc. (“Uber”) and Lyft Inc. (“Lyft”) of the Consumer Protection And Enforcement Division’s Confidentiality Determination in Advice Letters 1, 2, and 3 (“Draft Resolution”).

The Draft Resolution rejects both Uber’s and Lyft’s appeals on all grounds, and directs Uber and Lyft to each serve unredacted versions of their respective Advice Letters 1, 2, and 3 within 10 business days from the issuance of the Resolution. San Francisco is in complete agreement with the ALJ’s decision that neither Lyft, nor Uber had any basis to withhold any of the redacted information. As noted below, San Francisco strongly urges the Commission to adopt the resolution in its entirety.

## **II. DISCUSSION**

### **A. Trade Secrets.**

In Section 2 of the Draft Resolution, the ALJ analyzed Lyft and Uber’s claims that the respective redacted information is entitled to trade secret protection. The Draft Resolution aptly found that Lyft and Uber failed to satisfy the first element of Civil Code § 3426.1(d), which requires a showing that the information at issue is “a formula, pattern, compilation, program, device, method, technique, or process.”<sup>1</sup> The ALJ also held that the claims fail because at least some categories of WAV information is already publicly available, as required by D.13-09-045. The ALJ ruled that Lyft and Uber failed to identify with reasonable particularity the boundaries within which the purported trade secrets lie, and thus failed to satisfy their respective burdens to establish that a trade secret exemption applies to any of the categories of redacted information.<sup>2</sup> San Francisco agrees with this ruling and strongly urges the Commission to adopt the Draft Resolution.

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<sup>1</sup> Draft Resolution at 12.

<sup>2</sup> *Ibid.*

## **B. Privacy**

Next, Section 3 of the Draft Resolution addresses Uber's failure to meet its burden to demonstrate a sufficient basis to support its claim that any of the redacted information implicates privacy protection, as well as Lyft's failure to raise a privacy claim in its Advice Letters at all.<sup>3</sup> The Draft Resolution analyzed both Lyft and Uber's arguments, some of which were made late in the appeal process, and found none were persuasive to support a privacy claim on the facts at issue.<sup>4</sup> San Francisco agrees with this ruling and strongly urges the Commission to adopt the Draft Resolution.

## **C. Investigatory Files**

In Section 4, the Draft Resolution rejects Lyft's claims that any of the redacted WAV complaint data is exempt from disclosure as "investigatory or security files" subject to protection under Government Code § 6254(f), reasoning that the WAV complaint data at issue does not contain the type of investigatory or security files that fall under section 6254(f).<sup>5</sup> Moreover, the exemption does not apply because the data is not submitted as an "investigatory or security file" compiled by the Commission for "correctional, law enforcement, or licensing purposes."<sup>6</sup> San Francisco agrees and strongly urges the Commission to adopt the Draft Resolution.

## **D. California Public Records Act Exemption.**

In Section 5, the Draft Resolution reviewed Lyft's conclusory arguments that 11 categories of redacted information should be protected from disclosure under Government Code § 6255(a), the "public interest balancing test," again finding that Lyft failed to meet its burden under the Commission's governing rules and procedures.<sup>7</sup> In doing so, the ALJ rejected Lyft's section 6255(a) claim that the public interest served by keeping the WAV information confidential clearly outweighs the public interest that would be served by disclosure.<sup>8</sup> The ALJ also rejected the claim that disclosure of the redacted information would reveal competitively sensitive information, or that revealing the

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<sup>3</sup> *Id.* at 13.

<sup>4</sup> *Id.* at 13-15.

<sup>5</sup> *Id.* at 15.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at 17.

<sup>8</sup> *Id.* at 20.

data would harm competition in the TNC marketplace.<sup>9</sup> San Francisco agrees and strongly urges the Commission to adopt the Draft Resolution.

**E. D. 20-03-007 Did Not Modify the Governing Confidentiality Requirements.**

Finally, the Draft Resolution rejected Uber and Lyft’s procedural arguments that disclosure of the redacted information would contradict D.20-03-007. Instead, the ALJ rightly found that there is no language in D. 20-03-007 that supports this argument.<sup>10</sup> The ALJ held that nothing in D.20-03-007 modified any of GO 96-B’s requirements concerning the confidentiality of Advice Letter filings or the public’s right to access information submitted in an Advice Letter, and thus does not have any effect on Rule 10.<sup>11</sup> San Francisco agrees with the Draft Resolution and strongly urges the Commission to adopt the Draft Resolution.

**III. CONCLUSION**

It is clear that the ALJ carefully reviewed each of Uber and Lyft’s claims for exemption from disclosure of certain WAV information provided in their respective Advice Letters, and that after doing so, found that neither party presented any compelling legal authority or factual basis to withhold any categories of WAV information. The ALJ correctly denied Uber’s and Lyft’s respective appeals of CPED’s determination on all grounds. San Francisco strongly supports the ALJ’s rulings, and looks forward to the opportunity to review the information Uber and Lyft redacted in their respective Advice Letters 1, 2, and 3 to ensure the offset requests meet the requirements of the TNC Access for All Act, and this Commission’s decisions regarding the same. San Francisco urges the Commission to adopt the Draft Resolution in its entirety.

Dated: October 20, 2020

Respectfully submitted,

By: \_\_\_\_\_/s/\_\_\_\_\_  
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<sup>9</sup> *Id.* at 17-18.

<sup>10</sup> *Id.* 20.

<sup>11</sup> *Ibid.*

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