

**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
(Filed December 20, 2012)

**RESPONSE OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, SAN
FRANCISCO COUNTY TRANSPORTATION AUTHORITY, AND SAN FRANCISCO
INTERNATIONAL AIRPORT ON LYFT'S EMERGENCY MOTION FOR STAY OF THE
DECISION DENYING LYFT'S APPEAL OF THE RULING ON CONFIDENTIAL
TREATMENT OF CERTAIN INFORMATION IN LYFT AND UBER'S 2020 ANNUAL
REPORTS**

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Dated: May 23, 2022

Pursuant to the California Public Utilities Commission’s (“Commission” or “CPUC”) Rules of Practice and Procedure 11.1(e) and 1.15, the San Francisco Municipal Transportation Agency and the San Francisco International Airport, (collectively “the City”), and the San Francisco County Transportation Authority (“SFCTA”) (together, the “City and County”) submit these joint comments opposing Lyft, Inc.’s (“Lyft’s”) Emergency Motion for Stay of Decision 22-05-003, Decision Denying Appeal of Lyft Re: Ruling Denying, In Part, Motions by Uber Technologies, Inc. and Lyft for Confidential Treatment of Certain Information in Their 2020 Annual Reports (“Lyft’s Emergency Motion for Stay”) filed on May 6, 2022.

The City and County strongly urges the Commission to deny Lyft’s Emergency Motion for Stay and to make Lyft’s 2020 Annual Report, with the Trip Data at issue unredacted, available to the public in accordance with the Decision denying Lyft’s appeal.¹ As was decided in the Commission’s Decision (“D.”) 20-03-014, Transportation Network Company’s (“TNC’s”) Annual Reports are public records subject to disclosure under the California Public Records Act – the Commission should not allow Lyft to continue to frustrate the public’s constitutional right to access information concerning the conduct of the people’s business² by granting a stay predicated on trade secret and privacy arguments which have been exhaustively considered in this proceeding and repeatedly denied.³

Denying Lyft’s Emergency Motion for Stay is a decision solidly within the Commission’s broad discretion. Under Public Utilities Code Section 1735, the Commission has the authority to order

¹ Decision Denying Appeal of Lyft Re: Ruling Denying, in Part, Motions by Lyft for Confidential Treatment of Certain Information in Their 2020 Annual Reports (“D.22-05-003”), filed May 5, 2022 (ordering disclosure of the following categories of trip data for each ride provided in Lyft’s public version of its 2020 Annual Report: Census Block of Passenger Drop Off, Trip Requester Zip Code, Trip Requester Census Block, Driver Zip Code, Driver Census Block, Trip Request Date/Time (to the second), Miles Traveled (P1), Request Accepted Date/Time (to the second), Request Accepted Zip Code, Request Accepted Census Block, Passenger Pick Date/Time (to the second), Miles Traveled (P2), Passenger Pick Up Zip Code, Passenger Pick Up Census Block, Passenger Drop Off Date/Time (to the second), Passenger Drop Off Zip Code, Passenger Drop Off Census Block, Miles Traveled (P3), and Total Amount Paid).

² Cal. Const. art. I, § 3.

³ See Assigned Administrative Law Judge’s Ruling on Uber Technologies, Inc.’s and Lyft’s Motion for Confidential Treatment of Certain Information in Their 2020 Annual Reports (“2020 Confidentiality Ruling”), issued on December 21, 2020; D.22-05-003; *see also* Administrative Law Judge’s Ruling Granting, in Part, the Motions of Uber Technologies, Inc., Lyft, HopSkipDrive, Inc., and Nomad Transit, LLC for Confidential Treatment of Portions of Their 2021 Annual Reports issued on November 24, 2021, at 2 (rejecting largely identical claims from Lyft for confidential treatment of trip data because Lyft had “failed to meet their burden of proving that the information [was] protected from disclosure on either trade secret or privacy grounds.”)

a stay of its decisions when presented with an application for rehearing.⁴ However, Section 1735 makes clear that issuing a stay is entirely within the Commission’s discretion and the filing of an application for rehearing on its own will in no way excuse compliance with a Commission’s order or decision.⁵

The Commission normally considers four factors in deciding whether to exercise their discretion to grant a stay,⁶ and the Commission has made clear that they are “free to give more weight to any one factor that it deems appropriate depending on the circumstances.”⁷ Lyft has not made a sufficient showing as to any of the four factors to warrant a stay – all of Lyft’s arguments based on the four factors are premised on arguments which have been soundly rejected in this proceeding.⁸ In rejecting Lyft’s Motion for Emergency Stay, the City and County encourage the Commission to give great weight to the public’s interest in accessing the Trip Data – interests which include, but are not limited to, formulating data-informed policy to address equity concerns, such as fair and equal transportation access for people with disabilities, and to address the impact of TNC services on the environment, infrastructure, traffic patterns, and overall quiet enjoyment of cities and counties.⁹

⁴ Pub. Util. Code § 1735.

⁵ *Id.* In full, section 1735 states: “An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.” *See also* Utility Consumers’ Action Network v. Pacific Bell, No. 98-04-004, 2001 WL 34356623 (CPUC Nov. 29, 2001) (“...the Commission’s authority to stay a decision is discretionary.”)

⁶ *See* Pac-West Telecomm, Inc. (U5266C), Complainant, v. Pacific Centrex Services, Inc. (U5998C), Defendant., No. 07-08-026, 2008 WL 1841051 (CPUC Apr. 10, 2008). The factors are: “(1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to the other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case.”

⁷ TC Telephone LLC (U6875C) Application for Rehearing of Resolution T-17687., No. 20-04-011, 2021 WL 2143639 (CPUC May 20, 2021), at *2.

⁸ *Supra*, note 3.

⁹ *See* Opening Comments of the City and County on the Proposed Decision Denying Lyft’s Appeal of the Ruling on Confidential Treatment of Certain Information in Lyft and Uber’s 2020 Annual Reports, filed on April 21, 2022, at 3; D.22-05-003 Denying Appeal of Lyft, at 72-77 (finding that the public’s interest in disclosure of the trip data to be so strong as to amount an injustice which would preclude concealment of a trade secret).

Additionally, Lyft continues to cite to a study undertaken by the SFCTA in 2018 to estimate the effects of TNCs on congestion in San Francisco to claim that local governments already have access to the Trip Data at issue and therefore local agencies will not suffer irreparable harm by not having access to the Trip Data.¹⁰ As the City and County has said in prior comments, this argument rings hollow.¹¹ As the City and County have mentioned in the record of this proceeding on many occasions, this study, TNCs and Congestion, used partial one-time only data available for a single county, San Francisco, to conduct a snapshot analysis. The study that Lyft cites was developed at extraordinary expense with specialized knowledge and skills and expressly decried the limitations of the available data.¹² All jurisdictions should have access to the data collected by the CPUC on an ongoing basis in order to facilitate understanding of changes in TNC use over time. Additionally, Lyft's assertion that the Trip Data at issue is already accessible to local governments directly flies in the face of Lyft's trade secret arguments and should be taken as evidence of the disingenuous nature of those assertions.¹³ Moreover, Lyft's argument that local agencies will not suffer immediate or irreparable harm if the Trip Data is not disclosed is not true – continued delay in release of the Trip Data actively hampers local agency's ability to serve their residents and the public interest.

It also bears repeating that the Commission is considering Lyft's confidentiality arguments in the context of exemptions to disclosure under the California Public Records Act ("CPRA").¹⁴ "The exemptions in Government Code Section 6254 'are permissive, not mandatory: They allow

¹⁰ Lyft's Emergency Motion for Stay, at 4-5.

¹¹ Reply Comments of the City and County on the Proposed Decision Denying Lyft's Appeal of the Ruling on Confidential Treatment of Certain Information in Lyft and Uber's 2020 Annual Reports, at 3.

¹² See SFCTA, *TNCs & Congestion Final Report* (October 2018), at 14, https://www.sfcta.org/sites/default/files/2019-05/TNCs_Congestion_Report_181015_Finals.pdf ("Note that, due to the data collection methodology, estimates of TNC volumes and pickups and drop off reflect only intra-SF TNC trips, and are thus an underestimate of total TNC activity.")

¹³ See Comments of Lyft on Proposed Decision Denying Appeal of Lyft Re: Ruling Denying, in part, Motions by Uber Technologies, Inc. and Lyft for Confidential Treatment of Certain Information in Their 2020 Annual Reports filed April 21, 2022, at 8 ("...local agencies have access to alternative data but would prefer to have the Commission seize Lyft's data and turn it over to them at no cost."); Cal. Civ. Code § 3426.1(d)(1) (a trade secret is information that derives economic value from not being generally known to other persons who can obtain economic value from its disclosure).

¹⁴ See D.20-03-014, at 28 (explaining that a TNC wishing to claim information contained in its annual reports should be protected from public disclosure must cite to an applicable provision of the CPRA).

nondisclosure but do not prohibit disclosure.”¹⁵ Even if a record may properly be said to fall within an exemption, such an exemption would not preclude an agency from disclosing the record if the agency believes disclosure is in the public interest.¹⁶

For all these reasons, the City and County urge the Commission to reject Lyft’s Emergency Motion for Stay so that the Trip Data can be made available and utilized by the public as soon as possible.

Dated: May 23, 2022

Respectfully submitted,

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By: _____ /s/
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On behalf of: THE, SAN FRANCISCO MUNICIPAL
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INTERNATIONAL AIRPORT

¹⁵ Amgen Inc. v. Health Care Services (2020) 47 Cal.App.5th 716, 722, review denied (Aug. 26, 2020).

¹⁶ See D.20-03-014 (“The CPRA favors disclosure, and CPRA exemptions must be narrowly construed, meaning the fact that a record may fall within a CPRA exemption does not preclude the agency from disclosing the record if the agency believes disclosure is in the public interest.”)