

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

Order Instituting Rulemaking on Regulations
Relating to Passenger Carriers, Ridesharing, And
New On-Line-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 TO MOTIONS OF UBER TECHNOLOGIES, INC., LYFT,
INC., NOMAD TRANSIT, LLC'S, AND HOPSKIPDRIVE, INC. FOR CONFIDENTIAL
TREATMENT OF CERTAIN DATA IN THEIR 2022 ANNUAL REPORTS**

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Pursuant to California Public Utilities Commission (“Commission” or “CPUC”) Rule of Practice and Procedure 11.4(b), the San Francisco Municipal Transportation Agency and the San Francisco International Airport, collectively “the City,” and the San Francisco County Transportation Authority (together, the “City and County” or “San Francisco”) submit this joint response (“Response”) to (1) the Motion of Lyft, Inc. (“Lyft”) for Confidential Treatment of Certain Data in Its 2022 Annual Report (“Lyft’s Motion”), (2) the Motion of Uber Technologies, Inc. (“Uber”) for Confidential Treatment of Certain Types of Data and Information Requested in the Annual Report 2022 (“Uber’s Motion”), (3) the Motion of Nomad Transit, LLC’s (“Nomad”) for Confidential Treatment of Portions of Its 2022 Annual TNC Report (“Nomad’s Motion”), all filed on June 21, 2022, and (4) the Motion of HopSkipDrive, Inc. (“HSD”) for Confidential Treatment of Certain Types of Data and Information Requested in the Annual Report 2022, filed on June 22, 2022 (“HSD’s Motion”).¹

INTRODUCTION

In Decision (“D.”) 20-03-014, the Commission overturned D. 13-09-045’s footnote 42 and removed the presumption of confidentiality which concealed Transportation Network Company’s (“TNC’s”) annual reports from the public, establishing the annual reports as public records subject to disclosure under the California Public Records Act (“CPRA”).² For years, footnote 42 obscured from the general public and from other public entities essential information about the use, delivery, and impacts of TNC services. The Commission has now rejected numerous attempts by the TNCs to block disclosure of data and other information regarding their operations in the state from public disclosure: (1) the Assigned Administrative Law Judge’s (“ALJ”) Ruling on Uber and Lyft’s Motions for Confidential Treatment of Certain Information in Their 2020 Annual Reports issued on December 21, 2020 (“2020 Ruling”); (2) the ALJ’s Ruling on Uber, Lyft, Nomad, HSD’s Motions for Confidential Treatment of Portions of Their 2021 Annual Reports (“2021 Ruling”); (3) Decision 21-06-023 (“D. 21-06-023”) Modifying Decision 20-03-014 and Denying Rehearing of Decision, As Modified on June

¹ We collectively reference Lyft, Uber, Nomad, and HopSkipDrive as “the TNCs.”

² D.20-03-014 at 11-12 (“Since records received by a state regulatory agency from regulated entities relate to the agency’s conduct of the people’s regulatory business, the CPRA definition of public records includes records received by, as well as generated by, the agency.”)

4, 2021 (“Order Modifying Decision 20-03-014”); and (4) the Decision Denying the Appeal of Lyft, Inc. Re: Ruling: Denying, in Part, Motions by Uber Technologies, Inc. and Lyft Inc. for Confidential Treatment of Certain Information in their 2020 Annual Reports, filed on May 5, 2022 (“Decision Denying Lyft’s Appeal”). In the 2020 and 2021 Rulings, the ALJ granted the TNC’s motions as to a small subset of data which necessitated confidential treatment, but denied the motions as to the balance of geolocation and trip data for which the TNCs sought confidential treatment (collectively “Trip Data”).³ The current TNC motions largely present the same arguments the Commission has previously rejected, and they present no persuasive new evidence to support a different outcome. We urge the Commission to reject the TNC’s motions to the extent the TNC’s are seeking confidential treatment of data submitted to the Commission beyond that which the ALJ approved such treatment for in the 2020 and 2021 Rulings.

I. LEGAL ARGUMENT

A. Only Those Data Categories Granted Confidential Treatment in the 2020 and 2021 Rulings Should Be Protected from Disclosure

In the 2020 and 2021 Rulings, the ALJ granted confidential treatment to a discrete subset of data categories required to be submitted in the TNCs Annual Reports. These data categories include:

- Latitude and longitude information in all data categories.
- Driver information in all data categories: drivers’ names, type of driver identification, license state of issuance, license number, expiration date, description of allegation, definition, type and description of alleged sexual assault or sexual harassment, and vehicle VIN.
- Accidents and incidents: the parties involved in the incident, any party found liable in an arbitration proceeding, information concerning any criminal proceeding if the record has been sealed by the court, amounts paid by the TNC’s insurance, driver’s insurance, or by any other source.⁴

³ See Ruling on Uber and Lyft’s Motions for Confidential Treatment of Certain Information in their 2020 Annual Reports, issued on December 21, 2020 (the “2020 Ruling”); Ruling on Uber, Lyft, HopSkipDrive, and Nomad’s Motions for Confidential Treatment of Portions of their 2021 Annual Reports, issued on November 24, 2021 (the “2021 Ruling”).

⁴ 2021 Ruling at 1-2.

All of the TNCs seek continued confidentiality for these data categories, and the City and County does not contest continued confidentiality for these categories.⁵ However, despite the Commission’s repeated denial of confidential treatment for the remaining Trip Data, only Uber limits themselves to requesting continued confidentiality for the above data categories. In so limiting their motion, Uber makes the following statement:

Uber recognizes the Commission’s shift away from broad designations of confidentiality and toward “California’s policy that public agencies conduct their business with the utmost transparency.” Uber supports the Commission’s interest in this regard and is not attempting to rehash previously decided motions. Rather, Uber brings this motion for the limited purpose of asserting valid claims over a narrow set of data that has previously been ruled confidential by the Commission.⁶

The other TNCs, and in particular Lyft, continue to submit motions which press confidentiality arguments that have been exhaustively considered by the Commission and repeatedly denied.⁷ As stated in our response to Lyft’s Application for Rehearing, the City and County believes that the continued assertion of these arguments is “a prime example of the behavior the Commission cautioned it would view with suspicion when it issued D.20-03-014.”⁸ The City and County urge the other TNCs

⁵ To be clear, the City and County support continued confidentiality for those data categories which the ALJ approved such treatment for in the 2020 and 2021 Rulings, but retain our position that the Commission should make data that’s been deemed confidential available to local entities that agree to treat the disclosed material as confidential under Government Code § 6254.5(e). The City and County reaffirm and incorporate the comments previously filed by the San Francisco City Attorney’s Office (“SF CAO”), the San Francisco International Airport (“SFO”), and the San Francisco Municipal Transportation Agency (“SFMTA”), on July 17, 2017, and July 31, 2017, which describe compliance with the Public Records Act, and the Commission’s ability to share confidential information with local entities pursuant to Government Code § 6254(e). *See* Opening Comments of the SF CAO on Phase III.B Scoping Memo and Ruling of Assigned Commissioner on Track 3 – TNC Data, filed July 17, 2017 at 3-4,6, 9; Reply Comments of SF CAO on Phase III.B Scoping Memo and Ruling, filed July 31, 2017 at 4; Opening Comments of the SFO and SFMTA on the Phase III.B Scoping Memo and Ruling, filed July 17, 2017 at 12, 16; Reply Comments of SFO and SFMTA on the Phase III.B Scoping Memo and Ruling, filed July 31, 2017 at 6.

⁶ Uber’s Motion, at 2.

⁷ *See* 2020 Ruling; 2021 Ruling; Decision Denying Lyft’s Appeal.

⁸ Response of the City and County to Lyft’s Application for Rehearing of the Decision Denying Their Appeal, filed May 23, 2022 at 3; *see also* D.20-03-014 at 30.

to move away from the “broad-brush style confidentiality claims” the Commission has warned against and to follow Uber’s example.⁹

Additionally, to lessen the burden on the parties, the City and County encourage the Commission to establish a briefing process for these annual motions for confidential treatment that provides an opportunity for more fulsome consideration and input from the non-TNC parties to this proceeding. Notably, the TNCs have a full year to craft their annual confidentiality motions, but the non-TNC parties to this proceeding have only ten days to consider those motions and develop a response under Rule 11.4(b). Given the public’s strong and recognized interests in accessing the Trip Data, as well as the public’s constitutional right to access information concerning the conduct of the people’s business, the City and County urge the Commission to establish a longer response window.¹⁰

B. The TNCs Have Not Met Their Burden of Demonstrating That Information Contained in Their Annual Reports Should Be Protected from Public Disclosure.

D. 20-03-014 states that TNC Annual Reports should *not* be presumed to be confidential and requires that TNCs specify the basis for confidential treatment under an applicable provision of the CPRA.¹¹ The Commission requires that a TNC “must specify the basis for the Commission to provide confidential treatment with specific citation to an applicable provision of the California Public Records Act. A citation or general marking of confidentiality, such as General Order-66 and/or Pub. Util. Code § 583 without additional justification is insufficient to meet the burden of proof.”¹² A TNC which cites the public interest balancing test, Government Code, § 6255(a), as the basis for withholding a document from public release “must demonstrate with granular specificity on the facts of the particular

⁹ *Id.*

¹⁰ Cal. Const. art. I, § 3; *See, e.g.*, Decision Denying Lyft Appeal, at. 72-74; the 2020 Ruling at 19-21, 19 fn.37, citing comments from the City and County’s Opening Comments on Proposed Decision Re: Data Confidentiality Issues (February 27, 2020) at 3, citing to the City and County’s Opening Comments to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (December 3, 2019) at 8-13; and Reply Comments to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (December 20, 2019) at 2-7.

¹¹ D. 20-03-014 at 2-3, 37.

¹² D. 20-03-014 at 28-29.

information why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. A private economic interest is an inadequate interest to claim in lieu of a public interest.”¹³

The TNCs have failed to satisfy their burden of demonstrating that information contained in their Annual Reports for which they request confidential treatment should be protected from public disclosure under one or more exemptions to the CPRA, and largely regurgitate the same arguments made in their 2020 and 2021 motions which have been addressed by the City and County in its prior responses and by the ALJ in their 2020 and 2021 Rulings.

1. Privacy

a. Disclosure of the Trip Data Does Not Implicate a TNC’s Possessory or Privacy Interests

Lyft again relies on *Patel v. City of Los Angeles* to assert that the TNCs retain both a possessory and ownership interest in their data, and a right of privacy in that data.¹⁴ But Lyft continues to offer no statutory or case law to support that this interest would apply to TNC trip data. Rather, the cases cited by Lyft discuss protections when private or commercially sensitive information are produced on an *individualized* basis. This is an argument that the ALJ already extensively considered in the 2021 Ruling, and Lyft has presented no new reasons why the ALJ’s prior analysis should be altered.¹⁵

b. Disclosure of the Trip Data Does Not Constitute an Unwarranted Invasion of Personal Privacy

The TNCs again argue that Trip Data should be exempt from public disclosure under Government Code, § 6254(c) as an unwarranted invasion of personal privacy.¹⁶ The City and County

¹³ D. 20-03-014 at 29.

¹⁴ Lyft’s Motion at 8-10; *see also Id.* at 41-42.

¹⁵ 2021 Ruling at 8-15.

¹⁶ Lyft’s Motion at 32-41; Nomad’s Motion at 6-8.

have already addressed these arguments in previous responses.¹⁷ As has the Commission.¹⁸ However, elements of the TNC’s privacy arguments are worth addressing.

Lyft

First, in the 2021 Ruling, the ALJ rejected Lyft’s privacy arguments, in part, because the privacy harms identified by Lyft were speculative and unsubstantiated.¹⁹ In their 2022 motion, Lyft continues to present speculative privacy concerns which the 2021 Ruling held were inadequate to support a 6254(c) privacy exemption,²⁰ and which the courts consider insufficient to overcome “the public’s ‘fundamental and necessary right’ to be informed concerning the workings of its government.”²¹ For instance, the privacy harms identified in Lyft’s Motion and in the declaration of Alix Rosenthal submitted with Lyft’s Motion, continue to use words such as “potentially,” and “may.”²² The Commission should continue to give no weight to these speculative and hyperbolic arguments.²³

Second, Lyft continues to cite to *Carpenter v. U.S.* (2018) 138 S.Ct. 2206 and *Sander v. Superior Court* (2018) 26 Cal.App. 5th 651 even though the Commission distinguished those cases in their Decision Denying Lyft’s Appeal.²⁴ As the City and County explained in our reply comments to the Proposed Decision Denying Lyft’s Appeal, *Carpenter* involved Government use of a particular identified person’s cell site location data over a four-month period with the specific intent of tracking

¹⁷ See, e.g., the City and County’s 2020 and 2021 Responses.

¹⁸ See the 2020 and 2021 Rulings, and the Decision Denying Lyft’s Appeal.

¹⁹ 2021 Ruling at 63, 81-84.

²⁰ *Id.*

²¹ See *New York Times Co. v. Superior Ct.* (1990) 218 Cal.App. 3d 1579, 1582, 1585-86, citing Government Code § 6250 and *CBS, Inc. v. Block* (1986) 42 Cal.3d 646 (holding that “[a] mere assertion of possible endangerment does not ‘clearly outweigh’ the public interest in access,” to names and addresses of a water district’s customers who exceeded their water allocation).

²² See Lyft’s Motion at 33 (arguing that the release of the contested Trip Data could “*potentially* reveal[] intimate personal details, such as medical visits, political affiliations, personal relationships, sexual orientation, etc.”) (emphasis added); Rosenthal Declaration at ¶ 15 (“public disclosure of the Trip Data *may* allow third parties to identify particular individuals and track their movements, *potentially* exposing them to danger, embarrassment, ridicule, liability, or other negative consequences”) (emphasis added).

²³ See 2021 Ruling at 63, 81-84.

²⁴ Lyft’s Motion at 39-41; Decision Denying Lyft’s Appeal at 115, 120-121.

the individual's location.²⁵ The passenger trip data at issue here is wholly different; it is not linked to any particular person, it does not link one trip with another trip, and it does not document any one person's travel over time. The driver trip data at issue here is also wholly different. It is also not linked to any particular known person as driver names and identifiers are redacted, does not link trips by a driver over time, and the data only documents location when drivers are providing service to the public. Further, as has been firmly established in the record, there is a strong public interest in data related to these movements as they document service delivery and allow municipalities to measure the impact of TNCs.²⁶ Lyft's citation to *Sander v. Superior Court* is also distinguishable. There, Plaintiff's sought disclosure of records from the State Bar on all applicants to the Bar from 1972 to 2008, including applicants' race or ethnicity, law school, transfer status, year of law school graduation, law school, GPA, LSAT, and bar exam scores.²⁷ The anonymous and aggregated Trip Data at issue here is in no way comparable to seeking detailed demographic and scholastic information for a discrete group of individuals.

Third, the TNCs continue to put forth arguments which conflate census blocks with "few individuals" with an increased risk of reidentification. Census blocks that "contain few to no individuals" are census blocks that may have few residents with a home address within the block. They may nonetheless have thousands, tens of thousands or even millions of people taking trips in and out of and around the census block every day depending on the nature of the land uses. It is disingenuous to suggest that risk of reidentification of individuals from trips starting or ending in these census blocks is heightened in such a census block as more often than not, the opposite conclusion is far more likely – that risks of reidentification are much lower. For example, Exhibit C attached to the Rosenthal Declaration purports to show a census block in Placentia, CA with a reported population of 3 residents. Exhibit D shows a census block in Los Angeles, CA with a reported population of 5

²⁵ *Carpenter v. United States* (2018) 138 S.Ct. 2206, 2212; *see also* Reply Comments of the City and County Re: The Proposed Decision Denying Lyft's Appeal, filed April 26, 2022 at 4. It should also be noted that the Court in *Carpenter* expressly provided that their decision was a "narrow one" and that they were not expressing a view on matters not before them. *See Carpenter*, 138 S.Ct. at 2220.

²⁶ *See* Opening Comments of the City and County on the Proposed Decision Denying Lyft's Appeal of the 2020 Confidentiality Ruling (April 21, 2022), at 2-3 (citing the necessity of trip data for measuring "the impact of TNC services on the environment, infrastructure, traffic patterns, and the overall quiet enjoyment of [of] cities and counties.")

²⁷ *Sander v. Superior Ct.* (2018) 26 Cal.App. 5th 651, 655.

residents. Exhibit G shows a census block in Alameda, CA with a reported population of 26 residents. But what Lyft neglects to show is that the census block in Exhibit C is a retail and commercial area approximately 20 minutes outside of Disneyland, the census block in Exhibit D is Griffith Park, one of the largest municipal parks in the United States with approximately 10 million visitors annually,²⁸ and the census block in Exhibit G is a retail and industrial area directly west of Jack London Square and the Port of Oakland.²⁹ It takes no stretch of the imagination to conclude that the volume of TNC rides in and out of the identified census blocks is substantial regardless of the number residents with a home address in the block.

Additionally, the map that Lyft cites to is the Census Office of the State of California’s “Hard to Count” map. As the Census Office website Lyft cites to explains:

Many California residents live in areas that, based on demographic, socioeconomic and housing characteristics, may be hard to count in the 2020 Census. The California Census Office has created this interactive map that shows California census tracts and block groups shaded by their California Hard-to-Count Index, a metric that incorporates 14 variables correlated with an area being difficult to enumerate.³⁰

What the Hard to Count Map identifies are census tracts and blocks where, because of a number of different factors, an accurate count of the population is difficult to ascertain. While the Hard to Count Map does show the number of reported residents in a census block, the whole point underlying the Hard to Count Map is to show areas which are potentially being *undercounted* in the Census. The higher the Index score, the more likely the population of a census block is underreported. With the

²⁸ City of Los Angeles, Department of Recreation and Parks, Griffith Park, <<https://www.laparks.org/griffithpark/>> (as of July 1, 2022); James Bartlett, Mary Forgione, *Our Guide to Griffith Park. How to Safely Explore its Wild, Classic and Hidden Gems*, Los Angeles Times (Sept. 4, 2020) <<https://www.latimes.com/lifestyle/story/2020-09-04/beginner-guide-griffith-park>> (as of July 1, 2022).

²⁹ The Rosenthal Declaration also references a census block in San Francisco, CA with a reported population of 32 residents as Exhibit H. This exhibit appears to have not been appended to the Rosenthal Declaration. *See* Rosenthal Declaration ¶ 20. Regardless, the census block identified as Exhibit H is Golden Gate Park, which receives approximately 24 million visitors annually. *See* San Francisco Recreation and Parks, Getting to Golden Gate Park, <<https://sfrecpark.org/1159/Getting-to-Golden-Gate-Park>> (as of July 1, 2022). (“We’re proud to welcome an estimated 24 million visitors each year to Golden Gate Park, one of San Francisco’s greatest treasures.”)

³⁰ CA Census 2020, The California Hard-to-Count Map, CA.gov, <<https://census.ca.gov/HTC-map/>> (as of July 1, 2022).

exclusion of the Griffith Park and Vandenburg Air Force Base census blocks, the remainder of the census blocks cited by Lyft all have Hard to Count Index scores of 34-55, which suggests their population has been undercounted. The City and County believe that this context is necessary for the Commission to accurately consider the information proffered by Lyft.

Lyft also requests official notice of a number of documents.³¹ One such document is the testimony of the Director of the Federal Trade Commission’s Bureau of Consumer Protection, which Lyft proffers for proposition that “Geolocation information can divulge intimately personal details about an individual.”³² But that testimony, by its own words, discussed “why precise location information is sensitive personal information” and did not concern deidentified and spatially aggregate TNC trip data.³³ Lyft also requests judicial notice of a study entitled “Spatio-temporal techniques for user identification by means of GPS mobility data” – but this study utilized latitude and longitude data, data points for which the Commission has already provided confidential treatment.³⁴ In fact none of the documents Lyft cites to are relevant to highly aggregated and anonymous TNC trip data.

Nomad

Nomad also cites to *United States v. Jones* (2012) 565 U.S. 400 to support their argument that further redaction of the Annual Reports is necessary to protect individuals’ privacy interests. Like *Carpenter* and *Sanders*, *Jones* is wholly inapposite as it dealt with the government using GPS to track the vehicle of an individual suspect who had already been identified by the police. Nomad fails to cite to any case law which shows the privacy risks attendant to the public having access to highly anonymized and aggregated Trip Data.

³¹ Lyft’s Motion at 47.

³² Lyft’s Motion at 36-37.

³³ Prepared Statement of the Federal Trade Commission on S. 217 the Location Privacy Protection Act of 2014 before the United States Senate Committee on the Judiciary Subcommittee for Privacy, Technology, and the Law, (June 4, 2014), at 1, <https://www.ftc.gov/system/files/documents/public_statements/313671/140604locationprivacyact.pdf> (as of July 1, 2022).

³⁴ Lyft’s Motion at 37, fn. 99. Lyft also cites to the report *The Tradeoff between the Utility and Risk of Location Data and Implications for Public Good* – this is a non-peer review report which the City and County addressed in their 2021 Response. See the City and County’s 2021 Response at 7. For the reasons set out in that response, the Commission should not give credence to this report.

Further, in the 2021 Ruling, the ALJ found that the concern “over re-identification and loss of privacy” based on Nomad’s small scale of service raised by Nomad’s declarant, Saar Golde, were speculative.³⁵ Nomad continues to emphasize their small scale to assert the type of speculative and broad-brush confidentiality claims the Commission has rejected and warned against.³⁶ In their 2022 motion, Nomad presents no compelling evidence that Trip Data can be used to identify an individual. Instead, they attempt to scare the Commission with statistics like, “between April 1, 2022 and June 1, 2022, 29% of the census blocks appearing in our data had only a single rider who ever took a trip from there.”³⁷ But the fact that only one person took a trip from a census block during a two-month period provides no information about who that person is. Nomad uses these scare tactics to ask the Commission to treat the time portion of datetime fields as confidential, but Nomad doesn’t explain how a pickup time, reported more than a full year after a trip takes place, creates a privacy risk.³⁸ Moreover, date and time data are necessary in measuring the impact of TNC services.³⁹ In sum, Nomad has failed to establish that the trip data at issue implicates any privacy interests, and their arguments should be rejected.

HSD

HopSkipDrive continues to argue that public policy reasons for disclosure of TNC trip data that apply to larger TNCs should not apply to them because of its size and clientele. These arguments were already considered and rejected by the ALJ in the 2021 Ruling.⁴⁰ HSD continues to fail to clearly establish why non-disclosure serves the public interest when the de-identification and spatial aggregation of their passenger trip data is just as effective at protecting user privacy for their clients as it is for the passengers of other TNCs. HSD also continues to advance arguments based on the Family Educational Rights and Privacy Act (“FERPA”), which the 2021 Ruling already rejected.⁴¹

³⁵ 2021 Ruling at 86.

³⁶ Nomad’s Motion at 4, 9; D.20-03-014 at 30.

³⁷ Nomad’s Motion at 10; Golde Declaration ¶ 11.

³⁸ Nomad’s Motion at 12-13.

³⁹ See supra, footnotes 10 and 26.

⁴⁰ 2021 Ruling at 68-69.

⁴¹ 2021 Ruling at 89.

2. Trade Secrets

The City and County agree with the Commission's prior determinations that the anonymized and aggregated Trip Data at issue does not constitute a bona fide trade secret.⁴² The TNC's cite no new persuasive case law, nor do they submit any new compelling evidence, which would require the Commission to revisit their prior trade secret conclusions, and the City and County have addressed many of the trade secret arguments advanced by the TNCs in their current motions in prior briefing.⁴³ Notably, each of the TNCs continues to fail to establish the statutory elements of a trade secret under Civil Code § 3426.1(d): that the Trip Data is information that derives independent economic value from not being generally known and that the Trip Data is subject to reasonable efforts to maintain its secrecy. As to the former, the TNC's continue to rely on the same type of speculation that the ALJ found insufficient in the 2021 Ruling to argue that the Trip Data has independent economic value.⁴⁴ The Commission should continue to properly find that the TNCs have failed to carry their burden of establishing that the Trip Data is a trade secret.

In addition, even if any of the TNCs had established a trade secret interest in the Trip Data at issue, concealment of the Trip Data would amount to an injustice that would overcome that interest. As explained in the 2021 Ruling, "evidentiary privileges such as the trade secret privilege are incorporated into the CPRA as potential bases for an agency to assert the Gov. Code § 6254(k) exemption," but "an assertion of the trade secret privilege by an entity that submits information to a governmental agency does not guarantee nondisclosure."⁴⁵ "A party asserting the trade secret privilege under Evidence Code § 1060 bears the burden of proving that the information it wishes to keep secret meets all elements in the Civ. Code § 3426.1(d) definition of a 'trade secret.'"⁴⁶ Under Evidence Code § 1060, "the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent

⁴² See 2020 Ruling at 17 ("...it does not appear that Moving Parties can satisfy their burden of demonstrating that a trade secret exemption applies to any of the categories of information that they wish to redact."); 2021 Ruling at 54 ("Moving Parties have failed to carry their burden of establishing each of the three elements of a trade secret claim."); Decision Denying Lyft's Appeal at 32-78.

⁴³ See the City and County's 2021 Response at 4-5; the City and County's 2020 Response at 7-8, 13-16; the City and County's 2021 Response to Nomad's Motion at 4.

⁴⁴ 2021 Ruling at 35.

⁴⁵ 2021 Ruling at 54-55.

⁴⁶ Decision Denying Lyft's Appeal at 71-72.

another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.” The ALJ found in the 2021 Ruling “that concealing Moving Parties’ alleged trade secret protected trip data would work an injustice as there is a strong public interest in obtaining trip data.”⁴⁷ The Commission affirmed this finding as to Lyft in their Decision Denying Lyft’s Appeal.⁴⁸

The public interest in disclosure of the Trip Data is well documented in this proceeding.⁴⁹ Access to TNC Trip Data is essential for the effective formation of public policy decisions by public agencies, and allows municipalities to measure the impact of TNC services on the environment, infrastructure, traffic patterns, and the overall quiet enjoyment of their cities and counties.⁵⁰ The TNCs do not challenge the validity of these interests, but each seeks to either argue that they do not amount to an injustice or to undermine the strength of those interests as to their set of data. For the reasons set forth below, these arguments are unpersuasive.

Lyft

Lyft first tries to claim that because the Commission, in the Decision Denying Lyft’s Appeal, cites to comments made by the SFMTA in identifying the public interests which would be served by the disclosure of the Trip Data, no injustice should be found, claiming “whether the SFMTA would benefit from free access to Lyft’s trade secret information is not relevant in determining whether to grant Lyft’s request for confidential treatment of its Trip Data.”⁵¹ This statement inappropriately distorts the Commission’s decision. The Commission did not find that the concealment of the Trip Data would amount to an injustice only for the SFMTA – the Commission found, as they did in the 2021 Ruling, that any benefits of keeping the Trip Data private were outweighed by the injustice to “local government entities” who would be denied access to trip data.⁵² The Commission’s use of the

⁴⁷ 2021 Ruling at 56.

⁴⁸ Decision Denying Lyft’s Appeal at 72.

⁴⁹ See 2021 Ruling at 56.

⁵⁰ See *supra*, footnote 10.

⁵¹ Lyft’s Motion at 29.

⁵² Decision Denying Lyft’s Appeal at 74-76 (“The Commission finds that public entities would also be interested in Lyft’s trip data for all the foregoing reasons, and it would result in an injustice to deny the public access to this trip data. Lyft is one of the largest TNCs operating in California, so its reach and impact on municipalities where it conducts business is no doubt pervasive.”); 2021 Ruling at 57-60.

plural *s* in entities is instructive – nowhere does the Commission limit their finding of an injustice to only the SFMTA.

Lyft also 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 there is no injustice in concealing the Trip Data.⁵³ The City and County have addressed this argument multiple times and it continues to ring hollow. 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. 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.⁵⁴

Nomad

Nomad argues that their “unique model . . . significantly alters the evaluation of the public interest that may exist with respect to the transparency of this data.”⁵⁵ This is because, as Nomad argues, the company “already shares metrics and regular updates about its services in California with its partners,” some of whom are public entities.⁵⁶ This argument completely misses the mark for two reasons. First, Nomad does not assert, nor can it, that their only clients are public entities and that they only operate within the geographic jurisdiction of the public entities that they have contracts with, and with whom they reportedly share data. In fact, the declaration submitted with Nomad’s Motion from

⁵³ Lyft’s Motion at 30.

⁵⁴ See Lyft’s Motion at 30 (“...local governmental agencies have access to alternative data but would prefer to have the Commission seize Lyft’s Trip Data and turn it over to them at no cost.”); 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).

⁵⁵ Nomad’s Motion at 20.

⁵⁶ *Id.*; Golde Declaration ¶ 22.

Saar Golde explicitly states that Nomad has both public and private partners.⁵⁷ The Golde Declaration also states that Nomad provides rides to “employees...to and from office locations,” and those employees are “likely to live in dispersed areas.”⁵⁸ Nowhere does Mr. Golde state that these rides only take place within the geographic jurisdiction of a public entity they’ve partnered with – in fact, the statement implies just the opposite. Second, that Nomad shares metrics with their public and private partners has absolutely no bearing on the very real and important interests that municipalities throughout the state may have in evaluating the impact of Nomad’s services within *their boundaries*. These are fatal flaws in Nomad’s argument, and they should continue to be subject to the same injustice and public interest balancing test findings applied to the other TNCs.

HSD

HSD argues that their size and limited and targeted customer base make disclosure of their Trip Data “*de minimis*” and not “meaningful to fulfilling the stated public interest reasons” identified by the Commission.⁵⁹ The City and County disagree. The 2021 Ruling provided excellent reasoning for why the size of HopSkipDrive (and any other smaller TNC) has no bearing on local entity’s strong public interest in accessing that TNC’s trip data:

While its operation may be small compared to Uber and Lyft, the fact remains that HopSkipDrive is putting vehicles on the road to further its customer’s transportation interests. HopSkipDrive’s trip data, even though it may be small [sic] than Uber and Lyft’s trip data, nonetheless provides interested government entities with the best overall illustration of the number of TNC passenger rides are being provided by the TNC industry as a whole.⁶⁰

The Commission should reject HSD’s current argument for this same reason.

⁵⁷ Golde Declaration ¶ 22.

⁵⁸ Golde Declaration ¶ 9.

⁵⁹ HSD’s Motion at 12-13.

⁶⁰ 2021 Ruling at 69.

C. Vehicle Make, Vehicle Model, and Vehicle Year Should Not Be Redacted from the Assault and Harassment Report.

Lyft claims, on pure speculation and without any evidence, that vehicle make, model, and year can uniquely identify a person and reveal their identity.⁶¹ They also claim that there is no substantial public interest in disclosing this information.⁶² These assertions are false. Lyft has not shown that this information contains any risk of identifying individuals. Moreover, disclosure of vehicle make, model, and year information is in the public interest, as this information could be used to assess public safety risks. The Commission should reject Lyft's request for confidential treatment of vehicle make, model, and year.

CONCLUSION

In conclusion, the City and County urge the Commission to reject the TNC claims for confidential treatment of data submitted to the Commission beyond that which the ALJ approved such treatment for in the 2020 and 2021 Rulings because neither Lyft, Nomad, nor HopSkipDrive have met their burden of demonstrating why such information should be withheld from public disclosure.

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Respectfully submitted,

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By: _____ /s/
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On behalf of: THE, SAN FRANCISCO MUNICIPAL
TRANSPORTATION AUTHORITY, SAN
FRANCISCO COUNTY TRANSPORTATION
AUTHORITY, AND SAN FRANCISCO
INTERNATIONAL AIRPORT

⁶¹ Lyft's Motion at 42; Rosenthal Declaration ¶ 24.

⁶² Lyft's Motion at 42.