

**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, SAN FRANCISCO CITY
ATTORNEY'S OFFICE, AND SAN FRANCISCO INTERNATIONAL AIRPORT TO
MOTIONS OF UBER TECHNOLOGIES, INC. AND LYFT, INC. FOR LEAVE TO FILE
CONFIDENTIAL INFORMATION UNDER SEAL**

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Pursuant to Commission Rule of Practice and Procedure 11.4(b), the San Francisco Municipal Transportation Agency (“SFMTA”), the San Francisco City Attorney’s Office (“CAO”), and the San Francisco International Airport (“Airport” or “SFO”), collectively “the City,” and the San Francisco County Transportation Authority (“TA”) (together, the “City and County”) submit this joint response (“Response”) to (1) the Motion of Lyft, Inc. (“Lyft”) for Confidential Treatment of Certain Information in Its 2020 Annual Report (“Lyft Motion”) and (2) the Motion of Uber Technologies, Inc. (“Uber”) for Leave to File Confidential Information Under Seal (“Uber Motion”) – both filed on June 22, 2020.

INTRODUCTION

As the Commission’s Decision 20-03-014 (“D. 20-30-014”) acknowledges, in the six years since Commission approval of Decision 13-09-045, footnote 42 obscured from the general public and from other public entities essential information about the use, delivery, and impacts of TNC services. We applaud the Commission’s decision to delete footnote 42 and require TNCs to file a motion seeking confidential treatment of Annual Report information. This approach properly places the burden on the TNCs to identify a lawful basis for confidential treatment in light of the general presumption in the California Public Records Act (“CPRA”) that regulatory records are subject to public disclosure and in light of the many ways in which TNC data is essential to effective formation of public policy decisions by many public agencies other than the CPUC that are well established in the record of this proceeding.

The Uber and Lyft Motions address hundreds of fields of data required to be entered in twenty separate templates that, taken together, constitute the required 2019-2020 TNC Annual Reports.¹ The motions filed by Uber and Lyft reflect precisely the kind of broad-brush confidentiality claims the Commission warned against,² and, accordingly, we urge the Commission to reject the large majority of claims for confidential treatment.

¹ See TNC Annual Reports Data Dictionary Reference and TNC Annual Reports Templates accessed here on July 1, 2020: <https://www.cpuc.ca.gov/General.aspx?id=3989>

² D. 20-03-014, pp. 28-29.

Further, given the extremely limited time available for submission of responses to the TNC motions, we urge the Commission to consider the motions in a process that provides an opportunity for additional public input and comment from parties to this proceeding on the Commission's proposed treatment of data in all required fields. As discussed in previous City and County filings, this proposed treatment should lead to routine annual CPUC posting of *Public TNC Annual Reports* that include the majority of data required to be filed. Such postings, like those the Commission makes in connection with the Quarterly Pilot Service Data Reports required to be filed by participants in the CPUC's AV Passenger Service pilot programs, reduce administrative burdens on both the Commission and on parties who are legally entitled to access much of the required data under the California Public Records Act.³

To the extent the Uber and Lyft Motions reflect legitimate reasons well established in law to protect from disclosure some of the hundreds of data fields, public access to a very small number of fields may be appropriately limited. As to other fields, it may be appropriate and consistent with CPRA law to separately consider and limit public access to: (1) circumstances under which a specific public records request is filed and reviewed on its merits under General Order 66-D; and (2) circumstances that may be addressed in future procedures the Commission may develop for providing access to public entities under conditions that may constrain further disclosure by those public entities. The City and County identify in Section II of these comments certain fields – and kinds of information in fields – that can be appropriately excluded from the proposed *Public TNC Annual Reports*. The recommendation that certain fields are appropriate for exclusion from *Public TNC Annual Reports* is not intended to suggest that those same fields may not be appropriate for disclosure, with or without redactions, in either of these additional circumstances.

As discussed further below, we urge the Commission to:

1. Reject the Uber Motion for failure to meet the standards for specificity established in D.

20-03-014;

³ See Quarterly Pilot Service Data Reports accessed here on July 1, 2020: <https://www.cpuc.ca.gov/avcpilotdata/>; see also California Constitution, Article I, § 3(b)(1); Cal. Gov. Code § 6250.

2. Solicit party and public comments on a proposed ruling or decision that addresses:
 - a. which Annual Report data fields are presumptively public and should be made available by all TNCs and posted on the CPUC website without redaction in *TNC Public Annual Reports*;
 - b. which Annual Report data fields are presumptively public and should be made available in *TNC Public Annual Reports* with redactions as may be necessary to appropriately protect information (such as home address or telephone number) clearly protected under a CPRA exemption;
 - c. which Annual Report fields may be excluded from *TNC Public Annual Reports* and subject to disclosure either in response to specific requests under the CPRA or in connection with requests from public agencies under circumstances and on terms to be discussed in a future workshop; and
3. Schedule a workshop to address both the circumstances under which data fields that are not included in *TNC Public Annual Reports* may appropriately be disclosed to state and local public agencies and any terms under which such disclosures beyond the content of the *TNC Public Annual Reports* may be appropriately made.

Section I of the City and County's Response outlines the legal arguments supporting this Response. Section II identifies those few fields in *TNC Annual Reports* that we believe may be *appropriately redacted from Public Annual Reports*, notwithstanding the fact that they may also be appropriately subject to disclosure in response to a public records request or in connection with further rules adopted by the Commission to guide disclosure of additional information to public entities with governmental purposes that are best served by such additional disclosures.

I. LEGAL ARGUMENT

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

D. 20-30-014 states that TNC Annual Reports should *not* be presumed to be confidential and requires that TNCs must specify the basis for confidential treatment under an applicable provision of the CPRA.⁴ 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.”⁵ A TNC which cites the public interest balancing test, Government Code section 6255(a), as the basis for withholding a document from public release “must demonstrate with granular specificity on the facts of the particular 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.”⁶

Both Uber and Lyft fail to satisfy their burden of demonstrating that all the information contained in their Annual Reports for which they have requested confidential treatment should be protected from public disclosure under one or more of the exemptions set forth in the CPRA, for the following reasons:

1. Uber improperly cites the CPRA for claims of confidentiality when there is no statutory basis for such a claim.

Uber argues that “Complaint and Accident Information” data is confidential under Government Code section 6254(c) because this data includes “files, the disclosure of which would constitute an unwarranted invasion of personal privacy.”⁷ This argument runs counter to Uber’s comments made on

⁴ D. 20-30-014, p. 37.

⁵ D. 20-03-014, pp. 28-29.

⁶ D. 20-03-014, p. 29.

⁷ Uber Motion, p. 13.

June 26, 2020, in response to the Commission’s Second Amended Phase III.C. Scoping Memo and Ruling Of Assigned Commission (Sexual Assault and Sexual Harassment Questions), which state that “Uber firmly believes that publishing such data [referencing Uber’s 2019 Safety report] will further the development and evolution of best practices to help prevent safety incidents, including sexual assault incidents, from occurring in the first place.”⁸ As discussed in Section II below, certain data fields in the Assaults and Harassments Report Template may indeed implicate individual privacy; however, the assertion that all data called for in the Accidents and Incidents report template and the Assaults and Harassments report template are protected from disclosure is overbroad and nonsensical. There is a strong public interest in analyzing the street safety impacts of the TNC business model, and the location and nature of collisions involving TNC vehicles is a critical element of any such analysis. Similarly, there is a strong public interest in analyzing crime alleged to have occurred in TNC vehicles. Data in most of the data fields in these templates can be released in a manner that protects personal privacy, and the Commission should ensure that public disclosure is the norm while permitting only those redactions necessary and consistent with CPRA.

2. Uber improperly applies the public interest balancing test at the expense of the public interest in disclosure of relevant public safety information.

Uber maintains that the disclosure of complaints and driver discipline records are not in the public interest because it “may prompt TNCs to be less thorough and forthcoming about their complaints and incidents, or to categorize them in ways that create less public concern.”⁹ This argument is disingenuous, at best, and is a veiled threat to the Commission that if the Commission requires disclosure of these public safety records, then Uber will purposefully misconstrue its data or fail to report such incidents. And once again, this runs counter to Uber’s comments made on June 26,

⁸ Opening Comments of Uber Technologies, Inc. (June 26, 2020) (“Uber Comments”), p. 1.

⁹ Uber Motion, p. 27.

2020,¹⁰ and creates a significant public safety concern. Furthermore, Uber falls far short of demonstrating “granular specificity” as to how the public interest should weigh in its favor. The City and County strongly urge the Commission to require reporting of complaints and driver discipline records as a matter of particular public interest that is served by disclosure of these records as discussed in Section II. And we also point out that TNC drivers names are *not* required to be reported to the Commission in either the “Suspended Drivers” template – which only requires a driver ID – or in the “Assault & Harassments” field which also only requires a driver ID, so no personal privacy interests for TNC drivers are implicated.

3. Uber’s reference to Gov. Code Section 6254(k) fails to cite applicable federal or state law as required by D. 20-03-014.

The Commission requires that a TNC cite “the applicable statutory provision and explain why the specific statutory provision applies to the particular information” if the TNC cites California Government Code section 6254(k) as a basis for withholding information.¹¹ Uber argues that “Trip Location” data¹² is protected under Government Code section 6254(k) because Civil Code section 1798.140(o)(1) (the California Consumer Privacy Act) provides that geolocation data is protected personal information “if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household.”¹³ However, trip data required to be disclosed by the CPUC Requests Accepted template includes no identification of any passenger. Furthermore, disclosure of spatially *aggregated* geolocation data is consistent with the statute because California state law only prohibits disclosure of geolocation data

¹⁰ Uber Comments, p. 1.

¹¹ D. 20-30-014, p. 38.

¹² No CPUC Report Template calls for disclosure of anything called “Trip Location” data. Rather, certain reports call for certain specific data fields, including, in some cases, the latitude and longitude associated with certain events. As discussed in Section II, the City and County believe redaction of latitude and longitude data is appropriate for purposes of some CPUC Report Templates from *Public TNC Annual Reports*.

¹³ Uber Motion, p. 7 n.10, p.10 n.23.

that can reasonably be associated with, or reasonably linked, directly or indirectly with a particular consumer or household. As discussed in Section II below, redaction of latitude and longitude from certain Report Templates and reliance on geolocation data that is spatially aggregated by an area such as census tract or census block allows for analysis which satisfies many public needs while protecting privacy interests. Thus, we have recommended such redactions for purposes of *Public TNC Annual Reports*.

4. Uber fails to meet its burden of demonstrating that information contained in its Annual Reports contains trade secrets.

In order for a TNC to assert that information contained in its Annual Reports, or portions thereof, contain trade secret, “the TNC must establish that the annual report(s) (a) contain information including a formula, pattern, compilation, program, device, method, technique, or process; (b) derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and (c) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.”¹⁴

Uber claims that three categories of information in its Annual Report (product, driver, and trip data) should be protected as trade secret.¹⁵ “Product information” includes the type of service requested (including, for example, whether pooling is requested or received or whether a wheelchair accessible vehicle is requested), amounts paid, and the total volume of service. This data goes to the heart of many public interests at issue when assessing the impacts of TNC service,¹⁶ yet Uber fails to establish why certain elements of its product data should be confidential, opting instead to assert

¹⁴ D. 20-30-014, p. 38.

¹⁵ Uber Motion, p.16.

¹⁶ These interests are extensively documented in the City and County’s previous filings. *See, e.g.,* Reply Comments of City and County to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (Dec. 20, 2020) (“Reply Comments”), pp. 2-6.

blanket protection¹⁷ of this data that is clearly important to the public. With respect to “product data” reported in the CPUC Accessibility Report Templates (both as designated ‘Confidential’ and ‘Public’) the data reported is highly aggregated at the statewide level on no less than a monthly basis. Neither Uber nor Lyft has established how such highly aggregated data fulfills the standard for trade secrets. In regards to driver data, as discussed in Section II below, the City and County agree that driver names and license information can lawfully be withheld from *Public TNC Annual Reports*. However, Uber fails to specifically identify¹⁸ why the release of anonymized TNC driver ID numbers or other anonymized driver data is also a source of “independent economic value” that should be protected as trade secret. Finally, Uber maintains that trip data should be confidential because of the “fierce”¹⁹ competition between Uber and Lyft; however, Uber fails to demonstrate that it derives independent economic value from this data not being generally known to the public or to other persons who can obtain such economic value.²⁰

These three categories of data for which Uber seeks a blanket claim of confidentiality should not be withheld categorically, but rather on a section-by-section basis. The City and County recognizes that there are elements of Uber’s data that should be withheld, but urges the Commission to see through the broad-brush attempt by Uber to assert confidentiality claims and evaluate each element of this data individually.

¹⁷ D. 20-30-014, p. 30 (the Commission has warned TNCs not to issue broad-brush claims of confidentiality).

¹⁸ Uber Motion, p. 23 (“Information about the drivers’ particular habits, such as miles spent on trips referred through the Uber App, could also be used to Uber’s serious detriment.”).

¹⁹ *Id.* at 23.

²⁰ *See* D. 20-30-014, pp. 15-16 (“Uber and Lyft refer to competitors in opaque terms, thus failing to substantiate that their claims of an unfair competitive disadvantage have any factual validity.”), p. 17 (“Nor is the Commission aware of any information to suggest that the public release of the annual reports would create an unfair competitive disadvantage between Uber and Lyft.”), p. 20 (“Can either company honestly state that they will be surprised or learn something new about the other if their annual reports were disclosed publicly? The information known to date suggests otherwise.”).

5. Lyft fails to assert a statutory basis for its claims of confidentiality.

Lyft maintains that driver names, unique TNC driver IDs, and driver license numbers are “confidential” under Government Code section 6254(c) and should be protected from disclosure.²¹ The City and County agrees that driver names can lawfully be withheld from disclosure in *Public TNC Annual Reports*, but, as discussed in Section II below, there are many public purposes served by the ability to analyze certain occurrences by driver. With one exception, CPUC Annual Report Templates already use only the unique anonymized TNC driver IDs. Disclosure of this data to the public without any link or reference to a driver’s name does not impair protected privacy interests and does not constitute “personal information” that warrants confidential treatment.

6. Lyft fails to meet its burden of demonstrating that information in its Annual Reports contains trade secrets.

As stated earlier, for a TNC to claim trade secret, there must be a detailed explanation. Lyft assert that unique driver identifiers are trade secret. Anonymized unique Driver IDs should be disclosed as a method of tracking other publicly available data points in a way that does not implicate personal privacy interests or data from which Lyft derives independent economic value. Lyft also asserts that the required Accessibility Reports are trade secret despite the fact that the Commission has labeled one Accessibility Report “Public” and one “Confidential.”²² The data required for these reports is highly aggregated at the statewide level and on no less than a monthly basis. Both Uber and Lyft have failed to describe with specificity why information at this level of generality is a trade secret.

Finally, Lyft asserts that “Reports of Problems with Drivers” are also trade secret because disclosure “would reveal Lyft’s method of tracking, investigating, and resolving complaints” for

²¹ Lyft Motion, p. 12.

²² *Id.* at 15-16

which Lyft derives independent economic value.²³ Like Uber, Lyft claims that reports of TNC driver misconduct should be confidential, while in its most recent comments to the Commission, Lyft states its commitment to public disclosure in its Annual Reports.²⁴ While reports related to driver misconduct could conceivably raise privacy interests, the Commission has already protected those interests by requiring TNCs to submit reports using Driver IDs rather than driver names. Lyft fails to meet its burden to show that releasing of anonymized driver identification data constitutes trade secret.

B. Uber has not satisfied the requirement that a TNC identify each page, section, or field, or any portion thereof, that it wishes to be treated as confidential.

The Commission requires that a TNC seeking confidential treatment for information contained in an Annual Report “must identify each page, section, or field, or any portion thereof, that it wishes to be treated as confidential.”²⁵ Uber’s claims of confidentiality are presented in a spreadsheet that does not fully conform to the TNC Annual Report Data Dictionary Reference or to the formats provided in the accompanying Annual Report templates. Uber makes blanket claims of confidentiality with vague reverence to some of the categories laid out in the Data Dictionary, but lacks specific reference to a “page, section, or field,” to designate requests for confidential treatment. It is not possible to determine with specificity which fields they propose to have treated confidentially. As a result, the Uber Motion fails to comply with the requirements of D. 20-03-014 and should be rejected.

C. The Case Law Cited in the Uber Motion and Lyft Motion is Inapplicable.

1. Privacy

Lyft and Uber both argue that trip data broadly implicates passenger privacy rights and thus cannot be disclosed either to other government entities or the public. Rather than offering solutions for ways to mitigate legitimate privacy concerns with disclosing hyper-detailed data, both companies decry an unlikely worst-case scenario. Lyft argues that its reports should be filed under seal because

²³ *Id.* at 21.

²⁴ Opening Comments of Lyft, Inc. in the Second Amended Phase III. C. Scoping Memo and Ruling of Assigned Commissioner (Sexual Assault and Sexual Harassment Questions) (June 26, 2020), p. 10.

²⁵ D. 20-03-014, p. 28.

they contain “highly sensitive data regarding TNC users, including precise geolocation data, unique identifiers, and other personal data the disclosure of which could reveal highly personal details regarding their users’ movements, their personal relationships, their political affiliation, and even their medical history.”²⁶ In support of this position, Lyft glosses over the fact that CPUC Annual Report templates call for no passenger identifying information at all and offers a plodding litany of inapposite cases.²⁷ Uber likewise asserts that disclosing the most detailed versions of its trip, driver, and complaint and accident data would run afoul of privacy protections, without providing any specificity about how data fields that do not identify individuals would do so and without binding legal authority for its claims.²⁸

As discussed in Section II and in previous comments filed in this proceeding, there are simple methods for protecting the privacy interests of TNC drivers with minimal redactions to existing Report Templates.²⁹ For example, the City and County have also proposed that public trip data be reported by census tract, rather than by precise geolocation data, i.e., latitude and longitude.³⁰ As discussed in Section II, the City and County think it is appropriate to redact latitude and longitude data in reports where its use could conceivably impair privacy interests for purposes of *Public TNC Annual Reports*.³¹ For many but not all public purposes, trip data that is spatially aggregated is sufficient, and spatial aggregation prevents identification of individuals. Data that contains no personal identification of customers and is spatially aggregated in this manner does not implicate the same privacy concerns as

²⁶ Lyft Motion, pp. 3-4.

²⁷ See *id.* at 4-6, 8-9, 12, 20, 23-26, 31.

²⁸ See Uber Motion, pp. 5-10; see, e.g., *id.* at 7 n.7 & n.8, citing inapplicable Fourth Amendment cases.

²⁹ See Opening Comments of the City and County to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (Dec. 3, 2019), pp. 18-19.

³⁰ See Reply Comments, pp. 11-13.

³¹ See Lyft Motion, p. 6 (citing *Airbnb, Inc. v. City of Boston*, 386 F.Supp.3d 113, 125 (2019) for proposition that “Airbnb has a reasonable expectation of privacy in the nonpublic usage data for its listings—especially when paired with additional information such as the location of the unit”); Uber Motion at 5-10.

in the context of hotel guest information,³² teacher evaluation scores,³³ or employee records,³⁴ all of which were tied to individuals.

Lyft discusses *Patel v. City of Los Angeles* at length.³⁵ But *Patel* considered whether an ordinance authorizing police officers to conduct non-consensual inspections of hotel guest records and subjected hotel operators to criminal penalties violated the Fourth Amendment.³⁶ This is not a Fourth Amendment matter with criminal implications. Here the TNCs are providing information in order to facilitate permitting by the Commission. Whether or not the TNCs are in a “pervasively regulated” industry is irrelevant,³⁷ as the data the Commission is requesting is sufficiently limited in scope and relevant to the Commission’s enforcement authority.³⁸

Lyft asserts that the TNCs “retain both a possessory and ownership interest in their data, and a right of privacy in that data.”³⁹ But Lyft has offered no statutory or case law to support that this interest would apply to aggregated and anonymized TNC trip data. Rather, the cases cited by Lyft discuss protections when private or commercially sensitive information are produced on an *individualized* basis. While Lyft ultimately concedes that the Commission can require the submission of data for its own regulatory purposes, it objects that the Commission cannot “publicly expose that data.”⁴⁰ Nonsense. The CPRA *requires* that public agency records be open to public inspection unless they are exempt, and “public records” are broadly defined to include all records “concerning the

³² See *id.* at 4-6 (citing *City of Los Angeles, Cal. v. Patel*, 135 S.Ct. 2443 (2015), *Patel v. City of Los Angeles*, 738 F.3d 1058 (9th Cir. 2013)).

³³ See, e.g., *id.* at 8 n.23 (citing *Los Angeles Unified Sch. Dist. v. Superior Court*, 228 Cal.App.4th 222 (2014))

³⁴ See *id.* at 5 n.11 (citing *McLaughlin v. Kings Island, Div. of Taft Broad. Co.*, 849 F.2d 990 (6th Cir. 1988)).

³⁵ See *id.* at 4-6 (citing 738 F.3d 1058).

³⁶ 738 F.3d at 1061.

³⁷ See Lyft Motion at 5 (citing 135 S.Ct. at 2456).

³⁸ See Reply Comments, pp. 2-6 (citing Public Utilities Code §§ 5440.5, 5450); see also *Lyft v. City of Seattle*, 190 Wash.2d 769, 793 (2018) (“The City collects zip code data from taxi companies, and it uses the data from those companies and the TNCs to evaluate traffic and infrastructure concerns, determine future needs, and assess claims of discriminatory redlining.”).

³⁹ Lyft Motion, p. 6.

⁴⁰ *Id.*

conduct of the people’s business.”⁴¹ The people have a constitutional right to understand how the Commission regulates TNCs.⁴² With exceptions discussed in Section II below, the data required by Annual Report Templates are aggregated and anonymized and therefore no basis exists for broad withholding of trip, driver, complaint, and collision information from the public on privacy grounds.

2. Investigatory Files.

The TNCs also object to the production of complaint or investigatory files, which they argue are protected from disclosure by Government Code section 6254(f).⁴³ As discussed in Sections I.A.1, A.2, and A.6, the reports tied to complaints do not identify drivers or complainants by name and should therefore not implicate any complaint “chilling effects” or privacy concerns. The TNCs cite no persuasive case law to support that the data required to be reported by CPUC Annual Report Templates constitute investigatory report data of the kind that should be withheld under Section 6254(f).⁴⁴

3. Trade Secrets.

Finally, the TNCs argue that a majority of the data requested by the Commission is trade secret and should therefore not be disclosed to the public. Lyft again grasps at a belabored list of cases to support its position.⁴⁵ Uber simply asserts it.⁴⁶ But none of these cases or assertions support the notion that anonymized and aggregated data constitute bona fide trade secrets.

State law defines “trade secret” as information, including a formula, pattern, compilation, program, device method, technique, or process that: (1) derives independent economic value, actual or

⁴¹ Cal. Gov. Code § 6250.

⁴² See California Constitution, Article I, § 3(b)(1) (“The people have the right of access to information concerning the conduct of the people’s business . . .”).

⁴³ See Lyft Motion, pp. 8-10, 19-20, 23, 30-31.

⁴⁴ See, e.g., *id.* at 9, 19, and 23, and cases cited: *Haynie v. Superior Court*, 26 Cal.4th 1061 (2001) involved a Sheriff’s records concerning and individual stopped and detained; *Terzian v. Superior Court*, 10 Cal.App.3d 286 (1970) was a child custody case; and *Michael P. v. Superior Court*, 92 Cal.App.4th 1036 (2001) involved murder investigation files in a juvenile dependency proceeding.

⁴⁵ See *id.* at 6, 11-13, 15-16, 25-26, 30.

⁴⁶ See Uber Motion at 16 n.34 & n.35, citing cases that set forth only general standards for what constitutes a “trade secret,” and providing no support for Uber’s contention that “product information,” “driver information,” or “trip data” are trade secrets; see also *id.* at 17-18.

potential, from not being generally known to the public or other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁴⁷ Even if the information is a trade secret, the Evidence Code provides that the privilege may be asserted only “if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.”⁴⁸

Although the burden falls on them, Lyft and Uber offer no support for the proposition that TNCs derive economic value from aggregated anonymized trip data not being known to public agencies, researchers, or the general public and can point to no persuasive case law to support that aggregated trip data, including the fare paid,⁴⁹ is a trade secret. Most of all, this is because Uber and Lyft derive economic value from selling rides to customers, and have not shown how they derive additional and independent economic value from keeping information about trips, drivers, and customers a secret. Moreover, most of the cases Lyft cites are of no relevance to the aggregated data requested by the Commission.⁵⁰ Lyft also misquotes two cases, creating a stronger appearance of trade secret protection than is actually stated in the cases.⁵¹ There is a notable lack of support for Uber’s and Lyft’s claims that the data requested by the Commission are trade secrets.

⁴⁷ Cal. Civ. Code § 3426.1.

⁴⁸ Cal. Evid. Code § 1060.

⁴⁹ With regard to fare data, it should be noted that both companies provide fare calculators on their websites, which anyone can use (including those without Uber or Lyft accounts) to obtain pricing information for any possible hypothetical trip. Moreover, after any completed trip, Uber and Lyft provide riders with receipts that show their fare and trip details. To the knowledge of the City and County, riders are not prohibited from sharing that receipt publicly. Uber and Lyft do not undertake any efforts to maintain the secrecy of their fare data.

⁵⁰ See, e.g., Lyft Motion, p. 15 n.73 and cases cited: *National Information Center, Inc. v. American Lifestyle*, 227 U.S.P.Q. 460 (E.D. La. 1985) involved a former employee allegedly misappropriating the business model for selling books containing lists of home business opportunities; *Lion Raisins Inc. v. USDA*, 354 F.3d 1072 (9th Cir. 2004) involved the disclosure of data regarding the sale of raisins; and *Whyte v. Schlage Lock Co.*, 101 Cal.App.4th 1443 (2002) involved a former employee allegedly misappropriating trade secrets in the lock manufacturing industry.

⁵¹ See *id.* at 15 n.73, 25 n.133 (misquoting *Editions Play Bac, S.A. v. Western Pub. Co., Inc.*, 31 U.S.P.Q.2d 1338, 1342 n.3 (S.D.N.Y. 1993); Lyft Motion at 15 n.73 (misquoting *Mattel, Inc. v. MGA Entm’t, Inc.*, 782 F.Supp.2d 911, 972 (C.D. Cal. 2011)).

Lyft cites several cases to claim that customer lists qualify as a trade secret.⁵² No TNC Annual Report Template calls for customer lists. As discussed in Section II, the City and County believe it is appropriate to omit driver name from *Public TNC Annual Reports*. With this simple approach, the Commission can avoid making any determination as to whether driver lists constitute a trade secret.

Lyft protests that providing data regarding Wheelchair Accessible Vehicles is a trade secret that should be protected from public disclosure.⁵³ With respect to data reported in the CPUC Accessibility Report Templates (both as designated ‘Confidential’ and ‘Public’) the data reported is highly aggregated at the statewide level on no less than a monthly basis. Neither Uber nor Lyft has established how such highly aggregated data fulfills the standard for trade secrets.

Lyft further argues that reporting on driver training, miles, and hours driven would “disclose the total number of drivers on the Lyft platform, as well as the total miles driven by those drivers, providing highly detailed information regarding Lyft’s market share and revenues to its competitors, including Uber.”⁵⁴ Uber likewise asserts, without support, that information about drivers’ schedules and mileage, and even information about the total number of Uber drivers, is a protected trade secret.⁵⁵ But to the extent that Lyft and Uber can disaggregate the data to identify the other’s data, the Commission has already found that Lyft and Uber have largely similar operations and should not “be surprised or learn something new about the other” from the annual reports.⁵⁶ It also simply strains credulity for Uber and Lyft to attempt to maintain that their drivers are independent contractors and simultaneously to claim that any information about them – including even how many of them exist – is proprietary.

Lyft argues that, “although the Commission may be entitled to demand access to TNC usage data, it can only do so to the extent necessary to aid in the Commission’s own regulation of TNCs and

⁵² See, e.g., *id.* at 12 n.47 (citing *Morlife, Inc. v. Perry*, 56 Cal.App.4th 1514 (1997), *The Retirement Group v. Galante*, 176 Cal.App.4th 1226 (2009), *Airbnb, Inc. v. City of New York*, 373 F.Supp.3d 467 (S.D.N.Y. 2019).

⁵³ See *id.* at 14-16.

⁵⁴ *Id.* at 23-25.

⁵⁵ See Uber Motion, pp. 17-18.

⁵⁶ Commission Decision 20-03-014, pp. 17-20.

may not disclose that information to serve other, non-regulatory interests.”⁵⁷ But this directly conflicts with the California Constitution and CPRA command that the people are entitled to information concerning the “conduct of the people’s business.”⁵⁸

Finally, to support its argument that broad swathes of data should be protected as “trade secret,” Lyft cites two antitrust cases for the proposition that “the preservation of competition is always in the public interest.”⁵⁹ The City and County agree. Lyft and Uber – a duopoly with greater than 99.9% of the TNC market share in California – have sufficient competitive advantage and should not suffer from being required to produce data necessary for their regulation that can be aggregated before public release.⁶⁰ Aggregated and anonymized trip and driver data is not a trade secret; it is important information for the Commission and other public bodies to regulate the TNCs and understand their impact in our communities.

In the City and County’ Opening Comments to Phase III.C Scoping Memo and Rules of Assigned Commissioner Track 3 – TNC Data (“Opening Comments”), we called for public reporting of all required data and offered a comprehensive proposal for revised TNC data reporting obligations. We now revisit our suggested approach for handling TNC data reporting in light of the Commission’s current Annual Report Templates and the few arguments for confidential treatment advanced by Uber and Lyft that appear to have some merit.

II. WHILE MOST ANNUAL REPORT DATA FIELDS SHOULD BE PRESUMPTIVELY PUBLIC AND INCLUDED IN PUBLIC TNC ANNUAL REPORTS, SOME DATA FIELDS MAY BE APPROPRIATELY EXCLUDED.

As outlined in the introduction, based on the limited review we have been able to accomplish in the brief time available for comment on the Uber and Lyft Motions, we have identified a small

⁵⁷ Lyft Motion at 26.

⁵⁸ See California Constitution, Article I, § 3(b)(1); Cal. Gov. Code § 6250.

⁵⁹ See Lyft Motion at 23 n.119, 30 n.174 (citing *United States v. Tribune Publishing Company*, 2016 WL 2989488, at *5 (C.D. Cal., Mar. 18, 2016); *United States v. Columbia Pictures Indus., Inc.*, 507 F. Supp. 412, 434 (S.D.N.Y. 1980)).

⁶⁰ Commission Decision 20-03-014, p. 15.

handful of data fields that we believe can appropriately and lawfully be excluded from *Public TNC Annual Reports*. We discuss here those data fields that could be excluded in their entirety and those data fields in which it seems reasonably likely that information included in narrative data fields may require redaction to protect individual privacy rights or a public interest in non-disclosure that outweighs the public interest in disclosure under the CPRA balancing test.

A. A small number of data fields may be appropriately excluded from Public TNC Annual Reports and made available to requesters only after consideration under General Order 66-D or to public agencies under procedures and on terms to be developed in the future.

Multiple TNC Annual Report Templates include data that reflects individual requests for service and/or trips completed. Data that identifies the precise latitude and longitude at which a pick up may be requested or the location where a passenger may be dropped off, could implicate personal privacy rights when combined with data that might be acquired from other sources. However, individual personal privacy rights can be protected by permitting redaction of the specific latitude and longitude from *Public TNC Annual Reports* and retaining data that provides the corresponding aggregate spatial units, such as census block or census tract. This method is commonly used by transportation, social science and other researchers, as well as public entities, to protect the privacy rights of individuals where geographic information is essential to effective analysis. Most CPUC Annual Report Templates that call for submission of latitude and longitude already include fields for also reporting the corresponding aggregate spatial unit.⁶¹ For purposes of posting *Public TNC Annual Reports* on the CPUC website, we recommend that specific latitude and longitude information be

⁶¹ We note that some Annual Report Templates call for latitude and longitude data but do not include a field for reporting the corresponding aggregate spatial unit. We urge Commission staff to review all Annual Report Templates to add an aggregate spatial unit where latitude and longitude are currently required. As discussed in the prior City and County Comments, in a dense urban city, zipcode units are rarely sufficient to meet the needs of transportation analysis. Further, use of spatial units created by the U.S. Census Bureau enables analysts to use Census Bureau tools to trace changes that sometimes occur in such units over time in response to shifting population. *See* Opening and Reply Comments of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, San Francisco City Attorney's Office, and San Francisco International Airport to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (Track 3- TNC Data).

redacted. These redactions would enable the Commission, other public agencies, and other members of the public to research and understand relevant impacts of TNC service while showing due regard for the personal privacy of individuals. We thus identify the following CPUC Annual Report Templates and Fields that would be appropriate for redaction from *Public TNC Annual Reports*.

Table 1: Data Appropriate for Exclusion from Public TNC Annual Reports

CPUC Annual Report Template	Field Name	Template Column
Off-platform Solicitation	OffPlatformSolicitationLat	K
Off-platform Solicitation	OffPlatformSolicitationLong	L
Requests accepted	AppOnOrPassengerDroppedOffLat	J
Requests accepted	AppOnOrPassengerDroppedOffLong	K
Requests accepted	PassengerDropoffLat	AJ
Requests accepted	PassengerDropoffLong	AK
Requests accepted	PassengerPickupLat	AE
Requests accepted	PassengerPickupLong	AF
Requests accepted	ReqAcceptedLat	Y
Requests accepted	ReqAcceptedLong	Z
Requests accepted	TripReqDriverLat	R
Requests accepted	TripReqDriverLong	S
Requests accepted	TripReqRequesterLat	N
Requests accepted	TripReqRequesterLong	O
Requested not accepted	TripReqRequesterLat	I
Requested not accepted	TripReqRequesterLong	J
Requested not accepted	NotAcceptedDriverLat	N
Requested not accepted	NotAcceptedDriverLong	O
Zero tolerance	ZeroToleranceLat	K
Zero tolerance	ZeroToleranceLong	L

In addition, there are many circumstances in which it may not be possible to serve an important purpose without having access to an individual driver’s name. The California Constitution protects individuals from unwarranted invasion of their privacy.⁶² However, case law holds that disclosure of TNC drivers’ names, by itself, does not constitute private information under California law because

⁶² Cal. Constitution, Art. 1, §1; *Am. Acad. of Pediatrics v. Lungren*, 16 Cal.4th 307, 327 (1997).

there is no reasonable expectation of privacy under the circumstances.⁶³ Indeed, we note that TNC apps generally provide a driver's name to a passenger in order to help a passenger ensure they get into the requested vehicle. There is a strong public interest in identifying whether particular drivers are associated with particular activities. For example, California law limits the number of hours that a driver may operate a motor vehicle in passenger service for compensation.⁶⁴ Knowing the identity of a particular driver is essential to enforcement of these limitations, and is essential to public oversight of Commission enforcement of these limitations. As an additional example, individual drivers may respond to requests for service in a manner that shows evidence of unlawful discrimination against certain passengers. There is a strong public interest in access to information that may reflect discriminatory service delivery on the part of a company or particular drivers and ensuring appropriate response to any such evidence. Finally, there is a public interest in ensuring that TNCs take appropriate – and not excessive responses – in response to collisions and/or allegations of driver misconduct.

Nonetheless, in most cases, these interests can be served in *Public TNC Annual Reports* with reduced risk of affecting individual privacy rights if the reports retain the unique Driver ID field that the Commission requires TNCs to report but permit redaction of driver names. Thus, we recommend including the DriverID in all report templates in which the field appears, but think it would be appropriate to authorize confidential treatment/redaction of driver name and driver's license number from *Public TNC Annual Reports*.

⁶³ *Gonzales v. Uber Technologies, Inc.*, 305 F.Supp.3d 1078 (2018).

⁶⁴ Cal. Vehicle Code § 21702.

Table 2: Additional Data Appropriate for Exclusion from Public TNC Annual Reports

CPUC Annual Report Template	Field Name	Template Column
Driver names and ID	DriverFirstName	D
Driver names and ID	DriverLastName	F
Driver names and ID	DriverLicNum	G
Driver names and ID	DriverMI	E

B. A small number of data fields may be appropriate for inclusion in Public TNC Annual Reports but may contain information that should nonetheless be redacted in order to protect individual privacy or other *public* interests in non-disclosure that outweigh the public interest in disclosure under CPRA.

Some fields in some CPUC Annual Report Templates include opportunities for narrative information that could include both information appropriate and important for public disclosure as well as information, such as an individual’s name, home address, or telephone number that may be protected from disclosure by California Constitutional or statutory protections of individual privacy. We recommend that TNCs be given an opportunity to redact such information from *Public TNC Annual Reports* made available on the CPUC website. In addition, there is a strong public interest in the ability to analyze the locations of crimes that are committed in TNCs; however, there are certain limited circumstances, such as crimes that occur at and could potentially reveal a rider’s home address where it would be appropriate to permit redaction of the incident location. As discussed above, in such cases, access to information about the aggregate spatial unit will likely be sufficient to serve the public interest for purposes of *Public TNC Annual Reports*. We thus identify the following fields as fields in which redactions may be appropriate.

Table 3: Data Fields That May Be Appropriate for Selective Redaction in Public TNC Annual Reports

CPUC Annual Report Template	Field Name	Template Column
Accessibility Complaints (Confidential)	Comments	G
Accessibility Complaints (Confidential)	Resolutions	F
Accessibility Complaints (Public)	Comments	E
Accidents & Incidents	CollisionDescr	T
Assaults & Harassments	AssaultHarassDescr	U
Assaults & Harassments	AssaultHarassLat	K
Assaults & Harassments	AssaultHarassLong	L
Off Platform Solicitation	OffPlatformSolicitationDescr	O
Off Platform Solicitation	Complaint Resolved Descr	R
Requests Not Accepted	NotAcceptedDriverReason	R
Suspended Drivers	SuspensionReason	F
Zero Tolerance	ZeroToleranceDescr	Q
Zero Tolerance	ComplaintResolveDescr	U

III. CONCLUSION.

In conclusion, the City and County believe that the Commission should reject the large majority of TNC claims for confidential treatment of data submitted to the Commission because neither Uber nor Lyft has met their burden to demonstrate that redactions are supported by and allowable under California law. As discussed above, the Uber Motion does not comply with the terms of D. 20-03-014 and should be rejected. Furthermore, we urge the Commission to seek comments on a proposed ruling or decision that identifies the disclosure/nondisclosure status of data on a prospective basis for all TNCs. A data field by data field review was clearly contemplated in D. 20-03-014. Such a ruling or decision should establish those fields that should be submitted to the Commission as *Public TNC Annual Reports*. Finally, we urge the Commission to consider *Public TNC Annual Reports* as a minimum standard for disclosure and to convene a workshop to address additional disclosures to public agencies that allow them to use TNC data for important public policy decisions – perhaps on terms that prevent further disclosure to the public.

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Respectfully submitted,

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