

**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)

**OPENING COMMENTS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION  
AGENCY, SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, SAN  
FRANCISCO INTERNATIONAL AIRPORT 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**

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Dated: April 21, 2022

Pursuant to California Public Utilities Commission Rule of Practice and Procedure 14.3(a), 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”) submit these joint comments to the Proposed Decision Denying Lyft’s Appeal of the Ruling for Confidential Treatment of Certain Information in Lyft and Uber’s 2020 Annual Reports (the “Proposed Decision”) filed by the California Public Utilities Commission (“Commission” or “CPUC”) on April 1, 2022.

The City and County supports the denial of Lyft’s appeal and reserves the right to respond to the opening comments submitted by other parties in this proceeding. In Decision 20-03-014 (“D.20-03-014”), the Commission provided, with specificity, the procedures that a Transportation Network Company (“TNC”) must follow, and the burden of proof that a TNC must carry, if they wish to claim that certain information contained in their annual reports should be protected from public disclosure.<sup>1</sup> In June 2020, Lyft submitted a motion seeking confidential treatment of a litany of data points required to be submitted in their 2020 Annual Report (“Lyft’s Motion”).<sup>2,3</sup> In December 2020, the Administrative Law Judge (“ALJ”) issued a ruling denying Lyft’s Motion in part as to the balance of geolocation and trip data for which Lyft sought confidential treatment (collectively “Trip Data”).<sup>4</sup> In

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<sup>1</sup> D.20-03-014, Ordering paragraph 2, at 37-38.

<sup>2</sup> Motion of Lyft, Inc. for Confidential Treatment of Certain Information in its 2020 Annual Report, filed on June 22, 2020.

<sup>3</sup> As summarized in Lyft’s appeal, Lyft sought confidential treatment of the following data points:

Unique Driver ID, Vehicle Identification Number, Vehicle Make, Vehicle Mode, Vehicle Year, Latitude of Passenger Drop Off, Longitude of Passenger Drop Off, Zip Code of Passenger Drop Off, Census Block of Passenger Drop Off, Trip Requester Latitude, Trip Requester Longitude, Trip Requester Zip Code, Trip Requester Census Block, Driver Latitude, Driver Longitude, 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 Latitude, Request Accepted Longitude, Request Accepted Zip Code, Request Accepted Census Block, Passenger Pick Date/Time (to the second), Miles Traveled (P2), Passenger Pick Up Latitude, Passenger Pick Up Longitude, Passenger Pick Up Zip Code, Passenger Pick Up Census Block, Passenger Drop Off Date/Time (to the second), Passenger Drop Off Latitude, Passenger Drop Off Longitude, Passenger Drop Off Zip Code, Passenger Drop Off Census Block, Miles Traveled (P3), and Total Amount Paid.

*See* 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 28, 2021.

<sup>4</sup> *See* Ruling on Uber Technologies, Inc.’s and Lyft’s Motion for Confidential Treatment of Certain Information in their 2020 Annual Reports, issued on December 21, 2020 (the “Ruling”). The Ruling granted Lyft’s request for

the Ruling, the ALJ found that Lyft had failed to make the granular showing necessary for protection of the Trip Data on privacy grounds,<sup>5</sup> and that Lyft had failed to establish that the Trip Data was a trade secret.<sup>6</sup>

As expressed in the City and County’s comments filed in response to Lyft’s Motion, we agree that the Trip Data at issue does not qualify for trade secret protection, and moreover, that the privacy concerns raised by Lyft are not sufficiently tangible to overcome the people’s constitutional right to access information concerning the conduct of the people’s business.<sup>7</sup> The California Legislature has declared that the public has a “fundamental and necessary” right to access public records, and the California Public Records Act (“CPRA”) presumes that records are public, unless those records are “exempt from disclosure by express provisions of law.”<sup>8</sup> The CPRA favors disclosure and agencies may not delay or obstruct inspection of public records, and must narrowly construe statutes, rules or other authority if it limits the right of public access.<sup>9</sup> Further, “[t]he 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. Unless a record is subject to a law prohibiting disclosure, CPRA exemptions are permissive, not mandatory; they allow nondisclosure but do not prohibit disclosure.”<sup>10</sup>

The City and County agree with the determination in the Proposed Decision that concealment of Trip Data would amount to an injustice.<sup>11</sup> The strong public interest in disclosure of the Trip Data

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confidential treatment of certain pieces of data, including latitude and longitude of the driver and rider and driver personal information.

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

<sup>6</sup> *Id.* at 17.

<sup>7</sup> See 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, filed on July 2, 2020, at 10-16; Cal. Const. art. I, § 3.

<sup>8</sup> Cal. Gov. Code §§ 6250, 6253(b). Public records are defined as “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” Cal. Gov. Code § 6252(e).

<sup>9</sup> Cal. Const., art. I § 3(b)(2); Cal. Gov. Code § 6253(d).

<sup>10</sup> See CPUC Rulemaking 14-11-001, Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, at 11 (internal citations omitted).

<sup>11</sup> Proposed Decision at 72 (“ . . . concealing Lyft’s alleged trade secret protected trip data would work an injustice as there is a strong public interest in obtaining trip data.”)

cannot be overstated. 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.<sup>12</sup>

It has now been over two years since the ALJ ruled that the Trip Data at issue was subject to disclosure.<sup>13</sup> Lyft has been given ample opportunity to make its case for confidential treatment of the Trip Data and has failed to carry its burden of proving that the Trip Data should be shielded from disclosure.<sup>14</sup> The continued delay in the release of the Trip Data actively thwarts the strong public interests in disclosure identified in the Ruling and the Proposed Decision.<sup>15</sup> We urge the Commission to adopt the Proposed Decision so that the Trip Data can be made available and utilized by the public as soon as possible.

Dated: April 21, 2022

Respectfully submitted,

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On behalf of: THE, SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AUTHORITY, SAN  
FRANCISCO INTERNATIONAL AIRPORT, AND  
SAN FRANCISCO COUNTY TRANSPORTATION  
AUTHORITY

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<sup>12</sup> See Proposed Decision, at 72-74; and the Ruling, at 19-21, 19 n.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 our 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.

<sup>13</sup> Ruling, *supra* note 4.

<sup>14</sup> See Proposed Decision, at 13 citing Evidence Code § 500 (“[e]xcept as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.”)

<sup>15</sup> Ruling and Proposed Decision, *supra* note 12.