

**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 CITY ATTORNEY'S OFFICE, SAN FRANCISCO
INTERNATIONAL AIRPORT, AND SAN FRANCISCO COUNTY TRANSPORTATION
AUTHORITY ON THE PROPOSED DECISION RE: DATA CONFIDENTIALITY ISSUES**

TRACK 3 – TNC DATA

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In response to the February 7, 2020 Proposed Decision of Commissioner Shiroma on Data Confidentiality, the San Francisco Municipal Transportation Agency, the San Francisco City Attorney's Office, 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.

By deleting footnote 42 of Decision 13-09-045, the Proposed Decision would bring the data reporting requirements for TNCs in compliance with both the California Public Records Act ("CPRA") and the Commission's own General Order 66-D, which implements the CPRA. The Proposed Decision would also clarify that the TNCs bear the burden to establish, through a clearly defined public process, that any TNC data falls within a recognized exception to the CPRA.¹

The City and County supports this result, and reserves the right to respond to the opening comments submitted by other parties in this proceeding. Under the California Constitution, the public has a "fundamental and necessary" right to access public records, and the CPRA presumes that records are public, unless those records are "exempt from disclosure by express provisions of law."² 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."³ The CPRA favors disclosure and agencies may not delay or obstruct inspection of public records, and where an agency chooses to withhold a document, that agency bears the burden of proving that an exemption applies and must narrowly construe statutes, rules or other authority if it limits the right of public access.⁴ 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."⁵

¹ Proposed Decision, at pp. 27-29.

² Cal. Const. Art. I, § 3; Cal. Gov. Code §§ 6250 and 6253(b).

³ Cal. Gov. Code § 6252(e).

⁴ Cal. Const. Art. I § 3(b)(2); Cal. Gov. Code §§ 6253(d), and 6255.

⁵ Rulemaking 14-11-001, Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, at p. 11 (internal citations omitted).

Moreover, as articulated in the City and County’s comments,⁶ there is a strong public purpose served by the disclosure of this information. State agencies, public transit providers and local governments have myriad transportation related duties that are affected by TNC service. The blanket withholding of public data pursuant to footnote 42 has deprived interested public agencies of information from which to make informed public policy choices, and frustrated important policy goals related to transit, congestion and the reduction of greenhouse gas emissions.

The Proposed Decision should be clarified, however, to specify which issues remain open. While the Proposed Decision states that the Commission defers to the assigned Commissioner and Administrative Law Judge to determine how the “previously filed TNC annual reports should be made available to the parties on the service list and to the public”, the Proposed Decision should also state that the other tracks of the Assigned Commissioner’s October 25, 2019 Amended Scoping Memo and Ruling remain open, specifically Track 2.2.2 (Granularity and Disaggregation of Trip Data Collected), and Track 2.2.3 (Sharing Exempted Data with Interested Government Entities).

Dated: February 27, 2020

Respectfully submitted,

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By: _____ /s/
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On behalf of:
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FRANCISCO CITY ATTORNEY’S OFFICE, SAN
FRANCISCO INTERNATIONAL AIRPORT, AND
SAN FRANCISCO COUNTY TRANSPORTATION
AUTHORITY

⁶ See Opening Comments filed on December 3, 2019 and Reply Comments filed on December 20, 2019.

Appendix

Proposed amendments to Ordering Paragraph 3:

3. Rulemaking 12-12-011 remains open, including Track 2.2.2 (Granularity and Disaggregation of Trip Data Collected), and Track 2.2.3 (Sharing Exempted Data with Interested Government Entities).