

**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, AND SAN
FRANCISCO INTERNATIONAL AIRPORT REGARDING RELEASE OF 2014 TO 2019
ANNUAL TNC REPORTS**

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INTRODUCTION

In response to the California Public Utilities Commission’s (the “Commission”) *Third Amended Scoping Memo and Ruling* for Phase III of Rulemaking 12-12-011 issued on December 9, 2021, 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 Opening Comments to assist the Commission in deciding whether all or parts of the Transportation Network Company (“TNC”) Annual Reports submitted from 2014 through 2019 should be publicly disclosed.

DISCUSSION

In these Opening Comments, the City and County responds to the four questions the Commission poses regarding the disclosure of TNC Annual Reports between 2014 and 2019.

I. SHOULD THE COMMISSION REQUIRE EACH TNC TO PUBLICLY DISCLOSE ALL OR PARTS OF ITS ANNUAL REPORTS SUBMITTED FOR THE YEARS 2014 TO 2019?

Yes. The Commission should require disclosure of all prior year Annual Reports, following the guidance the Commission established in Decision 20-03-014, which reversed a policy that the Commission adopted in 2013 that allowed TNCs to submit their required Annual Reports on a confidential basis, and which the Commission confirmed in Decision 21-06-023.¹ Further, the Administrative Law Judge’s Ruling on Uber Technologies, Inc.’s (“Uber”) and Lyft, Inc.’s (“Lyft”) Motion for Confidential Treatment of Certain Information in Their 2020 Annual Reports (“2020 Confidentiality Ruling”) identified a limited subset of information that may be redacted from the public versions of the Annual Reports, and the Administrative Law Judge’s Ruling Granting, in Part, the Motions of Uber, Lyft, Hopskipdrive, Inc., and Nomad Transit, LLC for Confidential Treatment of Portions of Their 2021 Annual Transportation Network Company Reports (“2021 Confidentiality Ruling”) further narrowed the subset of information that may be redacted. These Decisions and the subsequent Administrative Law Judge’s Rulings exhaustively establish the principles requiring

¹ See Order Modifying Decision 20-03-014 and Denying Rehearing of Decision, As Modified (D. 21-06-023).

disclosure, as described below. We request that the Commission’s determinations in the aforementioned Decisions and Rulings also prospectively apply to the public disclosure of future TNC Annual Reports, except with respect to any new data fields required by the Commission to be reported, which would be subject to further Commission determination.

1. California public policy favors disclosure and public access.

The Commission has established that California’s public policy favors the disclosure of information in the government’s possession to promote transparency in the government’s regulatory activities.² The Commission also found that the California Constitution mandates that the public have the right to access most Commission records.³

2. The Commission has never guaranteed confidentiality for TNC Annual Reports.

The Commission has no duty to maintain the alleged secrecy of the trip data or limit its use and points out that the regulated entities fail to identify any guarantee of confidentiality or express promise that trip data would be exempted from public disclosure.⁴ Uber agrees. In a Joint Motion filed on January 3, 2022, Uber requested that the Commission require all TNCs to (1) release public versions of previously filed TNC annual reports that had previously been kept confidential by the Commission pursuant to Decision 13-09-045, footnote 42, and (2) follow the requirements of GO 66-D to keep any portion of those previously filed TNC annual reports confidential.⁵ Finally, Footnote 42, which established the presumption that TNC Annual Reports would be confidential, contemplated that the status of reports as confidential could change through the course of the proceedings.⁶ This is exactly what happened in 2020, when the Commission deleted Footnote 42.⁷

² 2021 Confidentiality Ruling, p. 6.

³ *Id.* at 7.

⁴ *Id.* at 17.

⁵ See Joint Motion of the Consumer Protection and Enforcement Division and Uber Technologies.

⁶ See D.13-09-045, p. 33, footnote 42 (“For the requested reporting requirements, TNCs shall file these reports confidentially unless in Phase II of this decision we require public reporting from TCP companies as well.”).

⁷ See D.20-03-014, p. 2.

3. Trip data is not a trade secret.

Trip data is not a trade secret because the reported trip data fails both parts of the two-part test used by the Commission: it is neither novel or unique, nor does it have independent value because of its secrecy. While the Commission acknowledges that the TNC data reported is indeed a “compilation,” the 2021 Confidentiality Ruling explains that the mere compilation of data to respond to the Commission’s requirements does not result in a trade secret; “[o]therwise, any compilation of information could arguably be considered a trade secret.”⁸ Further, the Commission concludes that the TNCs have “failed to establish that the trip data as a whole, or any subcomponent thereof, is either novel or unique”⁹ and thus also “failed to satisfy the first element of a trade secret claim.”¹⁰

4. Confidential portions of the TNC Annual Reports can be withheld to omit any potentially personally identifiable information.

Pursuant to the 2020 and 2021 Confidentiality Rulings, the public disclosure of the TNC Annual Reports does not include release of any personally identifiable information for either individual customers, such as that names of parties involved in accidents or incidents, or drivers. Driver data may contain personally identifiable information, but California law recognizes that personally identifiable information that is obtained by a government agency like the Commission is generally protected against public disclosure, and “[t]he 2020 Confidentiality Ruling agreed with Uber and Lyft that such personally identifiable information could be redacted from the public version of the TNC Annual Reports. The 2020 Confidentiality Ruling also agreed that latitude and longitude information could also be redacted from the public version of the TNC Annual Reports since this information could be used to deduce an actual starting and ending address for a TNC passenger trip.”¹¹ Similar redactions may be applied to the 2014 to 2019 reports, to ensure that no personally identifiable information is publicly released, where applicable.

⁸ 2021 Confidentiality Ruling, p. 27.

⁹ *Id.* at 28.

¹⁰ *Id.* at 34.

¹¹ 2021 Confidentiality Ruling, p. 12.

5. Regulated Entities have a “diminished expectations of privacy.”

Where a government entity is vested with broad authority to promulgate and implement a regulatory program for the regulated transportation industry, those participating “have a diminished expectation of privacy, particularly in information related to the goals of the industry regulation.”¹² “TNCs in California also have a diminished expectation of privacy with respect to providing trip data in their Annual Reports in light of the Commission’s extensive jurisdiction over TNCs. As provided in Article XII of the California Constitution and the Charter-party Carriers’ Act (Pub. Util. Code section 5351 *et seq.*), the Commission has for decades been vested with a broad grant of authority to regulate TCPs.”¹³ Thus, the determinations regarding data disclosure that the Commission established in Decision 20-03-014 and elaborated in the 2020 and 2021 Confidentiality Rulings are equally applicable to prior year TNC Annual Reports.

6. Access to Annual Report trip data is necessary for the Commission and other public agencies to ensure equal access to transportation services

The Commission understands that “[e]qual access to a regulated transportation service is the common good that is one of the prime goals of the Commission’s regulatory authority over the transportation industry,”¹⁴ and that the information included in the Annual Reports is essential to assess the availability of TNC services.

II. SHOULD ANY PORTIONS OF THE TNC ANNUAL REPORTS SUBMITTED FOR THE YEARS 2014 TO 2019 BE REDACTED ON PRIVACY GROUNDS?

Yes. The table below identifies the portions of each Annual Report that may be redacted on privacy grounds based on the Commission’s 2020 and 2021 Confidentiality Rulings:

¹² *Id.* at 13 (citing *Buliga V. New York City Taxi Limousine Comm’n* (2007) WL 4547738 *2, *aff’d sub nom. Buliga v. New York City Taxi & Limousine Comm’n* 324 Fed. Appx 82 (2nd Cir. 2009); and *Statharos v. New York City Taxi & Limousine Comm’n*, 198 F.3d 317, 325 (2nd Cir. 1999)).

¹³ *Id.* at 14.

¹⁴ *Id.* at 23.

Table X. Proposed 2014-2019 TNC Annual Report Data Redactions

Data Type	Data Field	2014	2015	2016	2017	2018	2019
Latitude and longitude information in all data categories ¹⁵		N/A	N/A	N/A	N/A	N/A	Redact
Driver information in all data categories:	Drivers' names	Redact	Redact	Redact	Redact	Redact	Redact
	type of driver identification	N/A	N/A	N/A	N/A	N/A	Redact
	license state of issuance	N/A	N/A	N/A	N/A	N/A	Redact
	license number	N/A	N/A	N/A	N/A	N/A	Redact
	expiration date	N/A	N/A	N/A	N/A	N/A	Redact
	description of allegation,	Redact	Redact	Redact	Redact	Redact	Redact
	Definition, type and description of alleged sexual assault or sexual harassment	Redact	Redact	Redact	Redact	Redact	Redact
	vehicle VIN	Redact	Redact	Redact	Redact	Redact	Redact
Accidents and incidents	the parties involved in the incident	Redact	Redact	Redact	Redact	Redact	Redact
	any party found liable in an arbitration proceeding	Redact	Redact	Redact	Redact	Redact	Redact
	information concerning any criminal proceeding if the record has been sealed by the court	Redact	Redact	Redact	Redact	Redact	Redact
	amounts paid by the TNC's insurance, driver's insurance, or by any other source.	Redact	Redact	Redact	Redact	Redact	Redact

¹⁵ The Commission ordered redaction of latitude and longitude information in order to protect privacy of drivers and users while authorizing public release of geospatial information at the census block level. The City and County agree with the Commission's method here, in light of the fact that Commission reports require submission of geospatial information in multiple forms (latitude/longitude; census block, zip code) that have not been redacted and the public thus retains access to data that supports many of the critical public purposes served by geospatial analysis.

III. SHOULD ANY PORTIONS OF THE TNC ANNUAL REPORTS SUBMITTED FOR THE YEARS 2014 TO 2019 BE REDACTED ON TRADE SECRET GROUNDS?

No. The Commission has already extensively demonstrated in the 2020 and 2021 Confidentiality Rulings that the data contained in the TNC Annual Reports is not a trade secret because the reported trip data fails both parts of the two-part test used by the Commission: it is neither novel or unique, nor does it have independent value because of its secrecy.¹⁶

IV. SHOULD ANY AND/OR ALL PORTIONS OF THE TNC ANNUAL REPORTS SUBMITTED FOR THE YEARS 2014 TO 2019 BE REDACTED ON ANY OTHER GROUNDS?

No.

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

¹⁶ 2020 Confidentiality Ruling, pp. 13-22; 2021 Confidentiality Ruling, pp. 26-34.