

**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 AND
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY TO NOMAD TRANSIT,
LLC'S MOTION FOR CONFIDENTIAL TREATMENT OF PORTIONS OF ITS 2021
ANNUAL TNC REPORTS**

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Pursuant to Rule 11.4(b) of the Rules of Practice and Procedure of the Public Utilities Commission (“Commission”), the San Francisco Municipal Transportation Agency and the San Francisco County Transportation Authority (together, the “City and County”) submit this joint response (“Response”) to Nomad Transit, LLC’s (“Nomad”) Motion for Confidential Treatment of Portions of Its 2021 Annual TNC Reports (“Nomad Motion”) filed on July 16, 2021. Our Response to the Nomad Motion refers to and incorporates the prior Response of the City and County, and San Francisco City Attorney’s Office to Motions of Uber Technologies, Inc., Lyft, Inc., and HopSkipDrive, Inc. for Leave to File Confidential Information Under Seal filed on July 1, 2021 (“Prior Response”).

INTRODUCTION

Decision 20-03-014 (“D. 20-03-014”) acknowledged that 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 Transportation Network Company (“TNC”) services. The footnote’s blanket effects ran afoul of the California Public Records Act (“CPRA”), and it prevented public entities from carrying out their obligations under federal, state, and local law to evaluate and assess impacts of TNCs, make informed public policy decisions, and enforce state and local laws applicable to TNCs. As of today, notwithstanding the Commission’s elimination of footnote 42 and the detailed subsequent Commission guidance favoring disclosure issued by the Assigned Administrative Law Judge’s 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 (“ALJ Ruling”) and the Commission’s Decision 21-06-023 (“D. 21-06-023”) Modifying Decision 20-03-014 and Denying Rehearing of Decision, as modified on June 4, 2021 (“Order Modifying Decision 20-03-014”), there has been no public reporting of any information contained in TNC annual reports submitted to the Commission. The Nomad Motion largely presents the same arguments the Commission has previously rejected, and Nomad presents no persuasive new evidence to support a different outcome. We urge the Commission to put an end to TNC efforts at delaying and obscuring TNC trip data from public disclosure.

DISCUSSION

Nomad argues that its business model is different than other TNCs because it partners with other entities, such as public agencies, to provide transportation services. We question whether services Nomad provides under contract to public entities are properly characterized as TNC services; however, so long as Nomad does not contest this status, Nomad’s annual report data should be subject to the same disclosure requirements as that of other TNCs. Nomad’s arguments for confidentiality should be afforded no greater weight than those previously raised by Uber, Lyft, and HopSkipDrive. Nomad is required to “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.”¹ Nomad has failed to satisfy its burden of demonstrating that information contained in its Annual Reports for which it requests confidential treatment, identified as Exhibit B in the Nomad Motion, should be protected from public disclosure under one or more exemptions to the CPRA.²

1. Privacy

Nomad raises the same arguments the City and County have previously addressed regarding the alleged privacy rights of passengers and drivers.³ Nomad’s argument directly contradicts the CPRA, which requires that public agency records be open to public inspection unless they are exempt. “Public records” are broadly defined to include all records “concerning the conduct of the people’s business” including the regulation of regulated industries.⁴ Aside from the Golde Declaration, Nomad provides no evidence or case law that spatially aggregated geolocation data falls within the protections

¹ D. 20-03-014, pp. 28-29.

² Nomad Motion, Exhibit B.

³ See Prior Response, pp. 3-4.

⁴ Cal. Gov. Code § 6250; D. 20-03-014, pp.11-12.

of the California Consumer Privacy Act or CPRA.⁵ The declarant, Saar Golde, is an employee of Nomad and cites to no other peer reviewed articles, case law, or other evidence to show a risk of re-identification of individuals from de-identified and aggregated TNC trip data that warrants confidential treatment of such data.⁶

Nomad asserts that quasi-identifiers and census block and tract level data pose a risk for re-identification because, given the limited number of trips Nomad provides, any person who knows the origin and destination of a ride would be able to use Nomad's reporting to identify the exact time a passenger left home, the work location for a passenger could be ascertained, or a driver for which complaints have been filed against.⁷ The ALJ Ruling previously addressed quasi-identifiers, finding that the likelihood that quasi-identifiers could be used to identify a driver or rider is too speculative.⁸ Similar to the ALJ Ruling with respect to Uber and Lyft's arguments, Nomad's argument that the nature of its service results in a greater risk of re-identification through use of this data is also entirely speculative and unpersuasive. Similarly, the City and County and the Commission have previously addressed the argument that census block and tract level data pose a risk for re-identification.⁹ In response to Uber and Lyft's arguments that census block and tract level data posed a risk for re-identification, the Assigned ALJ found that Uber and Lyft "have failed to make the necessary granular showing how this geolocation data, either individually or in combination, could lead to the identification of a particular driver or customer."¹⁰ Nothing in the Nomad Motion suggests their argument has merit.

⁵ ALJ Ruling, pp. 4-8; Nomad Motion, pp. 5-9.

⁶ See Saar Golde Declaration in Support of Nomad Transit LLC's Motion for Confidential Treatment, pp. 1-4.

⁷ See Nomad Motion, pp. 6-19.

⁸ See ALJ Ruling, pp. 7-8.

⁹ See ALJ Ruling, p. 5; Prior Response pp. 6-9.

¹⁰ ALJ Ruling at p. 5

2. Trade Secret

Nomad concurs with Uber, Lyft, and HopSkipDrive’s legal arguments but provides no new evidence or case law to support its position that its TNC data, constitutes a trade secret that warrants confidential treatment.¹¹ Nomad asserts, without any foundation, that disclosure of aggregated and de-identified basic service data will reveal its algorithms and confidential business methods. Nothing in the Declaration of Saar Golde establishes why this would be any more true for Nomad than it is for Lyft, Uber or Hop-Skip-Drive. As the City and County noted in its prior responses, the cases Nomad cites only set forth general standards for what constitutes a “trade secret” and provide no support for its contention that data required to be reported and disclosed by the Commission is protected by the trade secret doctrine.¹² Further, Nomad fails to demonstrate that it derives independent economic value from aggregated, de-identified TNC trip data not being generally known to the public or other persons who can obtain such economic value.¹³

Nomad contends that its algorithms are trade secrets, and the disclosure of data categories “ride requests accepted,” “ride request accepted period,” and “ride request not accepted” would allow competitors to reverse engineer its algorithms.¹⁴ Nomad fails to provide evidence for this, rather it simply asserts that disclosure of the data would allow the “logic” behind its algorithms to be “ascertained.”¹⁵ Nomad explains that when disclosing trip and driver data to third parties, it reports *aggregated* data in an attempt to “limit[] trip-level reporting in a way that seeks to prevent the reverse

¹¹ See Nomad Motion, pp. 9-14.

¹² Prior Response, p.4; 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, dated July 2, 2020 (“2020 Response”), p. 13.

¹³ ALJ Ruling, pp. 17-19; Cal. Evid. Code § 1060.

¹⁴ Nomad Motion, pp. 10-11.

¹⁵ Nomad Motion, p. 11.

engineering of algorithms.”¹⁶ Given that the Commission has, to date, authorized public disclosure of de-identified aggregated trip level data, the Commission’s decisions square with the business practices Nomad describes and call for no unique treatment by the Commission to protect its algorithms. Nomad also claims that its confidential business methods are trade secrets.¹⁷ This argument misses the mark. While Nomad broadly asserts that it derives economic value from being able to offer efficient and affordable services by compiling and evaluating data, it fails to show how the aggregated data required to be reported to the Commission fulfills the standard for trade secrets.¹⁸

3. Public Interest Balancing

Nomad again restates and reiterates the arguments made by Uber, Lyft, and HopSkipDrive regarding the need to withhold passenger complaints, driver discipline information, and certain TNC trip data from public disclosure, on the basis of public interest balancing under the CPRA.¹⁹ As addressed in the Prior Response and in the ALJ Ruling, these arguments are disingenuous at best and have been rejected by the Commission.²⁰ In addition, Nomad completely fails to demonstrate with “granular specificity” how the public interest under this balancing test weighs in its favor.²¹

Nomad claims that on balance, the public interests of privacy and promoting competition outweigh any public interest achieved through disclosure.²² The case Nomad cites for the proposition that public interest favors privacy discusses protections when private or commercially sensitive information is produced on an *individualized basis*.²³ As noted in our Prior Response, this reasoning

¹⁶ Nomad Motion, p. 11.

¹⁷ Nomad Motion, pp. 11-13.

¹⁸ Nomad Motion, pp. 11-13.

¹⁹ See Nomad Motion, pp. 14-15.

²⁰ Prior Response, p. 5; 2020 Response, pp. 5-6; ALJ Ruling, p. 23.

²¹ See Prior Response, p. 5; ALJ Ruling, p. 23.

²² See Nomad Motion, pp. 14-15.

²³ See Nomad Motion, p. 14; Prior Response, p. 3.

does not apply here.²⁴ Rather, Nomad is only required to report aggregated, de-identified data. Additionally, Nomad's argument that promoting competition advances public interest rests on the unsubstantiated claim that disclosure of aggregated, de-identified data would reveal trade secrets.²⁵ Nomad's contention that there are no public interests advanced by disclosing the data fails to recognize the public interests that are benefited by transparency.²⁶ As with all TNCs, regardless of size or business model, the public's interest is advanced through transparency regarding what is occurring on city streets and in TNC vehicles.

CONCLUSION

In conclusion, the City and County believe that the Commission should reject Nomad's claim for confidential treatment of data submitted to the Commission beyond that which the ALJ approved for confidential treatment in December, 2020, because Nomad has not met its burden of demonstrating why such information should be withheld from public disclosure.

Dated: July 26, 2021

Respectfully submitted,

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By: _____ /s/
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On behalf of: THE SAN FRANCISCO MUNICIPAL
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²⁴ See Prior Response, p. 3.

²⁵ See Nomad Motion, p. 15.

²⁶ See Nomad Motion, p. 15.