



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Improve  
Public Access to Public Records Pursuant to the  
California Public Records Act

Rulemaking 14-11-001  
(filed November 6, 2014)

**REPLY COMMENTS OF TNC WORKING GROUP REGARDING PROPOSED  
CONFIDENTIAL MATRICES**

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**January 9, 2018**

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Pursuant to the December 18, 2017 Email Ruling of Administrative Law Judge Lirag granting leave to submit reply comments and the December 21, 2017 Email Ruling extending the deadline to January 9, 2018, the TNC Working Group, composed of Lyft, Inc. (“Lyft”) and Rasier-CA, LLC (“Rasier”), submits the following reply comments.

**A. Open Door Legal’s Objections to Proposed TNC Working Group Matrices Are  
Unclear and, in Any Event, Lack Merit**

The TNC Working Group proposed the adoption of six confidential matrices: (1) Competitively sensitive trade secret data protected under Civil Code §6254(k) and Evid. Code §1060; (2) Competitive information covered by Gov’t Code § 6255(a); (3) Personally identifiable information (“PII”) of regulated entity customers protected by Gov’t Code § 6254(c); (4) Customer/user activity files protected under Gov’t Code §6254(c) and Gov’t Code §6254(k); (5) Customer/user incident files protected under Gov’t Code §6254(c), §6254(f), and Gov’t Code §6255(a); and (6) CPUC annual reports submitted under assurances of confidentiality and related supplemental data requests protected under Gov’t Code §6254(k). Only one party submitted comments in opposition to any of the confidential matrices proposed by the TNC Working Group: Open Door Legal (“Open Door”).

Open Door objects to two of the six TNC Working Group proposals, but in one instance fails to clearly articulate which proposal it objects to or the basis for that objection. Specifically, for its first objection, Open Door contends:

The TNC Working Group has not demonstrated why “a strong public interest exists in encouraging vigorous competition for the benefit of consumers,” or how that public interest is served by withholding information pursuant to the public interest balancing test. It has not demonstrated that its basis for withholding information goes beyond a mere private economic interest, and certainly not that the public interest outweighs this private interest. For this reason and for lack of specificity, all items under the TNC’s matrix III (pages 19-20) should not be included.<sup>1</sup>

Open Door’s argument is perplexing because while it purports to take issue with the TNC Working Group’s matrix set forth in Section III at pages 19-20, the matrix in section III at pages 19-20 does not concern competitive information protected under §6255(a), but rather customer/user incident files protected under Gov’t Code §6254(c), §6254(f), and Gov’t Code §6255(a).<sup>2</sup> It is unclear whether Open Door seeks to challenge the latter or the former. In any event, whichever matrix Open Door intended to oppose, its opposition is unfounded.

As noted, the matrix in Section III at pages 19-20 seeks protection from disclosure for customer/user incident files. As explained in detail in the TNC Working Group’s proposal, TNCs regularly receive, investigate and resolve user incident reports in the course of their operations and much of the information collected is required to be reported to the Commission. These customer incident reports include reports of suspected drug or alcohol use by drivers or passengers (including “zero tolerance” reports required under D.13-09-045), vehicle accident reports, and other kinds of incident reports and customer complaints. These incident reports play an important role in allowing TNCs to monitor and regulate activity on the platform and ensure the safety of their users.

These customer/user incident files often include highly sensitive personal information regarding TNC users, and may include embarrassing or potentially libelous allegations against users -- a significant portion of which prove to be unsubstantiated. The public disclosure of these raw, uncorroborated and potentially libelous allegations would constitute an unwarranted invasion of user privacy and would be contrary to the public interest. *See, e.g., Chronicle Pub. Co. v. Superior Court In and For City and County of San Francisco*, 54 Cal. 2d 548, 569 (1960) (public interest in secrecy of state bar complaints outweighed need for access, noting “[t]he fact that a charge has been made against an attorney, no matter how guiltless the attorney might be, if generally known, would do the attorney irreparable harm even though he be cleared by the State Bar.”); *American Civil Liberties Union*

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<sup>1</sup> Open Door Legal’s Comments on Proposed Confidentiality Matrices (“Open Door Comments”), p. 3.

<sup>2</sup> Proposed Confidential Matrices of the TNC Working Group, pp. 19-20.

*Foundation v. Deukmejian*, 32 Cal. 3d 440, 451 (1982) (raw “intelligence information” regarding suspected organized crime figures not subject to disclosure under PRA).

Public disclosure of such reports could also have a chilling effect on incident reporting, given the sensitive content of the reports and resulting exposure of private details concerning drivers, passengers and/or third parties. This would greatly inhibit the ability of TNCs to take prompt action to ensure the safety of users. *Terzian v. Superior Court*, 10 Cal. App. 3d 286, 295–96 (1970) (“It is also generally recognized that when the public interest in securing information necessitates the free communication of such information on a privileged, confidential basis, disclosure of information so secured is against the public interest.”); *City of San Jose v. Sup. Ct.*, 74 Cal. App. 4th 1008, 1023 (1999) (producing complaints submitted by members of the public may “have a chilling effect on complaints, because the newspaper’s purpose in obtaining their identify is to contact complainants directly”); *Chronicle Pub. Co.*, 54 Cal. 2d at 568 (“If every citizen who knows of the unfitness of an officer or employe (sic), or of facts he thinks require an investigation, believes it his duty to lodge information before the board, he will hesitate a long while before doing so if he knows his complaint is to be made public and become of the public records, so that any one may have access to it and he subjected to action for a possible libel. It is not to be expected, if that is so, that very many will come forward and lodge a complaint.”); *cf Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 658 (1974) (practice of disclosing complaints “serves to discourage complaints because it defeats the provisional assurances of confidentiality which section 6254, subdivision (f), offers to complaining citizens.”).

For all of these reasons, user incident files are protected from disclosure pursuant to 6254(c) (“[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy”), the exemption for investigatory files under §6254(f), and the public interest balancing test of §6255(a). Thus, to the extent Open Door sought to oppose protection of such reports, its objection is not well taken.

If, on the other hand, Open Door actually intended to oppose the TNC Working Group’s proposals to include certain categories of reports in the Assigned Commissioner’s proposed matrix for competitive information covered by Gov’t Code § 6255(a), its objection is equally without merit. The TNC Working Group proposes to include in the matrix reports that disclose nonpublic information regarding market share (e.g., quarterly PUCTRA reports), nonpublic service provider and partnership agreements, and proprietary training materials. With this information, a TNC could replicate another

TNC's core business plan. Disclosure would tend to undermine vigorous competition between TNCs and discourage innovation and investments by allowing competitors to free-ride on efforts of competitors. As the Assigned Commissioner recognized in proposing this matrix, the preservation of vigorous competition serves the public interest by encouraging innovation and investments for the benefit of consumers. *See Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1520 (1997) ("Yet also fundamental to the preservation of our free market economic system is the concomitant right to have the ingenuity and industry one invests in the success of the business or occupation protected from the gratuitous use of that "sweat-of-the-brow" by others."); *United States v. Tribune Publishing Company* (C.D. Cal., Mar. 18, 2016), 2016 WL 2989488, at \*5 ("[T]he preservation of competition is always in the public interest."); *United States v. Columbia Pictures Indus., Inc.*, 507 F. Supp. 412, 434 (S.D.N.Y. 1980) ("Far more important than the interests of either the defendants or the existing industry... is the public's interest ... in the preservation of competition."). Thus, whichever matrix Open Door intended to challenge, its challenge is without merit.

#### **B. Open Door's Objection to Protection of Private Personal Data of TNC Drivers Similarly Lacks Merit**

Open Door additionally takes issue with the TNC Working Group's proposed matrix for customer/user activity files protected under Gov't Code §6254(c) and Gov't Code §6254(k) to the extent the TNC Working Group includes personal data concerning TNC drivers. Open Door objects to classifying drivers as "customers" and claims that as a result, driver data -- including "driver trip history, passenger communication, driver communication, and driver payments, incentives, and adverse actions"<sup>3</sup> -- should not be protected under §6254(c). This argument is unavailing for several reasons.

First, although drivers provide a service to passengers, drivers are also customers/users of the TNC, which provides an electronic platform for drivers to use in providing transportation services to passengers. Individuals may use the TNC platform as either a driver or a passenger. Individuals wishing to activate driver mode must additionally complete an onboarding process involving background and driving record checks and the submission of certain additional information, such as insurance information. However, the fact that a driver utilizes the TNC platform to provide rides to passengers does not mean that drivers are not also users of the TNC service. Many sole proprietors procure goods or services from other businesses in order to provide service to their customers. TNC drivers are no different.

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<sup>3</sup> Open Door Comments, pp. 3-4.

Second, but more substantively, whether a driver is considered a “customer” is not in any way determinative of whether his or her personal data should be protected under §6254(c). Section 6254(c) protects from disclosure “[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” The kinds of data collected from or concerning TNC drivers, including precise geolocation information, information regarding driver payments or incentives, adverse actions such as suspensions from the platform, and driver communications, including incident reports or driver-initiated complaints, are akin to the kinds of data maintained in personnel and “similar files” and are therefore appropriately protected under §6254(c). Disclosure of these materials would result in precisely the “unwarranted invasion of personal privacy” prohibited by §6154(c). For these reasons, Open Door’s argument that TNC drivers are not customers and therefore have no right to confidentiality in their private information should be rejected.

Finally, drivers have a reasonable expectation of privacy in their trip history, communications, income, and other activity on the platform pursuant to Gov’t Code §§ 6254(c), 6254(k) and the Constitutional right of privacy. Release of this driver activity would reveal intimate details of drivers’ comings and goings, income, and daily life. Indeed, both Lyft and Uber have privacy policies which contractually obligate them to protect user information from disclosure, and drivers who sign up to drive with TNCs do so with the understanding that their information will be protected. As a result, drivers have a reasonable expectation of privacy in their personal information generated on the platform. Just because drivers provide a service to other members of the public does not mean they sign away their right to personal privacy.

### **C. Conclusion**

The only party to lodge any objection to the proposed matrices of the TNC Working Group was Open Door and, as explained above, its objections are not well founded. In the view of the lack of opposition, and in consideration of the legal and factual arguments set forth in the TNC Working Group’s proposal, the TNC Working Group urges the Commission to adopt its proposed confidential matrices.

Dated: January 9, 2018

**BRYAN CAVE LLP**

By:                                 /S/                                

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