STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This is the proposed decision of Commissioner Shiroma. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 14, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE
Michelle Cooke
Chief Administrative Law Judge

MLC:jnf
Attachment

Decision **PROPOSED DECISION OF COMMISSIONER SHIROMA**
(Mailed 11/9/23

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.	Rulemaking 12-12-011

DECISION REQUIRING TRANSPORTATION NETWORK COMPANIES TO SUBMIT THEIR ANNUAL REPORTS FOR THE YEARS 2014-2019 TO THE COMMISSION WITH LIMITED REDACTIONS

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DECISION REQUIRING TRANSPORTATION NETWORK COMPANIES TO SUBMIT THEIR ANNUAL REPORTS FOR THE YEARS 2014-2019 TO THE COMMISSION WITH LIMITED REDACTIONS

Summary

This decision finds that the presumption of confidentiality granted by Decision 13-09-045, footnote 42, to the Transportation Network Companies' (TNCs) Annual Reports for the years 2014-2019 should be terminated and that these Annual Reports should be made publicly available. Public disclosure of these Annual Reports is necessary and in the public interest as they will provide the most informative understanding of the nature and scope of this mode of transport and will provide interested government entities, academics, and other third parties with needed insights so they may evaluate and make informed decisions regarding the impact of TNC passenger transportation services on city roads, traffic congestion, public safety, competing transportation options, or other analyses.

This item was previously scheduled for the April 6, 2023 Commission Voting Meeting, but was withdrawn in order to further investigate the possibility of aggregating timestamp data for TNC trips in the public versions of the Annual Reports. After reviewing the additional comments, the TNCs will be permitted to submit their public annual report data with ride timestamps aggregated to the nearest 30-minute interval. Based on our review and analysis of available information provided by the parties and through our own investigation, the Commission concludes that our timestamp aggregation approach strikes the appropriate balance between promoting the public interest and protecting personal privacy.

Thus, with the exception of matters that we have determined should be protected from public discovery on privacy grounds, or should be provided in

aggregated form, TNCs shall submit the balance of their Annual Reports for the years 2014-2019 to the California Public Utilities Commission in accordance with the disclosure and redaction templates attached as Appendices A through U to this decision, following the timetable that we adopt herein.

This proceeding remains open.

1. Background

1.1. The Commission Orders TNCs to Provide Trip Data in Their Annual Reports and Dictates How the Data Must Be Compiled

With the adoption of Decision (D.) 13-09-045, the Commission dictated the contents of the information that Transportation Network Companies' were required to provide in their Annual Reports, as well as the manner in which that information, including trip data, would be reported. D.13-09-045 set forth the various requirements that TNC must comply with, one of which was the obligation to submit verified Annual TNC Reports to the Commission that include trip data about each trip provided by a TNC driver for the 12 months prior to the TNC's Annual Report's due date:

> One year from the effective date of these rules [September 19, 2013] and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the above ride information in electronic Excel or other spreadsheet format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a

> column where the ride ended, the miles travelled, and the amount paid/donated. Also, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers.

Footnote 42 in D.13-09-045 allowed TNCs to submit their Annual Reports to the Commission on a confidential basis but that the Commission reserved the right to later require the Annual Reports to be publicly reported:

> 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.

As the TNC business operations continued to grow, the Commission determined that additional reporting requirements were needed in order to ensure that the TNCs were operating in a safe and nondiscriminatory manner. D.16-04-041 added the following reporting categories for inclusion in the Annual Reports: data on driver suspension, data on traffic incidents and accidents arising from TNC fare splitting services; data on assaults and harassments; data on Off-Platform strip solicitations by drivers; and data on shared/pooled rides.

The Commission also permitted its staff to supplement the trip data requirements in D.13-09-045 and D.16-04-041 in order to gain sufficient information to evaluate TNC operations and to make recommendations for additional reporting category requirements. For example, the Commission's Consumer Protection and Enforcement Division (CPED) has propounded data requests and has supplied the TNCs with additional granular data categories, along with a specimen Annual Report template. For example, in the August 31, 2018 courtesy reminder to all TNCs, CPED states:

> This is a courtesy reminder that, pursuant to Decision (D.) 13-09-045 Ordering Paragraph 1 and D.16-04-041, each

> TNC is required to submit the reports as required in the aforementioned Decisions. Please provide the required data no later than September 19, 2018, as required by law. Please utilize the data templates posted on the Commission website at [link omitted]. All data should be PC compatible. In the bullet points below, Staff seeks to clarify the types of data that are required and requests a few additional pieces of information.

With respect to the trip data required by regulatory requirement j in D.13-09-045, CPED added the following clarifications:

- Staff also directs each TNC to include a column that displays the time that each accepted ride began and a column that displays the time that each accepted ride ended. Note that the time of each request and the time that each request is subsequently accepted or not accepted is included in Regulatory Requirement j.
- Staff also directs each TNC to include a column that displays the name of the driver and a unique identification number representing the driver for each ride that was requested and accepted by TNC drivers and rides that were requested but not accepted by TNC drivers. The unique identification number shall be consistent for each driver and shall be the same unique identification number in all the document reports provided to the Commission under D.13-09-045 and D.16-04-041. For example, if Jane Smith did not accept Ride 1 that was requested on January 1, 2018 at 12:05 a.m. but did accept Ride 2 that was requested on January 2, 2018 at 12:10 a.m., then the unique identification number for Jane Smith will be the same in the data provided in the reports for both instances.

In addition to the templates and guidance, CPED also provided each TNC with a data dictionary with instructions on how the information should be populated in the Commission generated templates. In sum, the Annual Reports do not contain an assemblage of data that is not generally known.

1.2. The Reversal of the Confidentiality Presumption

Decision 20-03-014 reversed the policy the Commission adopted in D.13-09-045, footnote 42, that allowed TNCs to submit their Annual Reports required by the Commission on a confidential basis. We explained that the presumption of confidentiality was adopted at a time when TNCs were a nascent transportation service, so that the implications from requiring public disclosure of the contents of each TNC's Annual Reports could not be fully appreciated at the time D.13-09-045 was issued. Accordingly, for the years 2014-2019, the TNCs have submitted their Annual Reports to Commission staff on a presumed confidential basis.

As set forth in D.20-03-014, the Commission has in the period since the issuance of D.13-09-045, footnote 42,gained a greater understanding of the TNC operations. With this insight we have determined that the confidentiality presumption attendant to the TNC annual reports should be ended.

As a result of these changed factual circumstances, D.20-03-014 concluded that the Commission would no longer permit TNC Annual Reports to be submitted confidentially and deleted footnote 42 from D.13-09-045. Instead, the Commission adopted the protocol, with some modifications, set forth in the Commission's General Order (GO) 66-D, effective January 1, 2018, and placed the burden on each TNC to establish, by way of a noticed motion and supporting declaration, that its Annual Reports should not be made publicly available. D.20-03-014 found that the Commission's newly adopted approach in this proceeding aligned with California's policy that public agencies conduct their business with the utmost transparency, and that absent a compelling reason to

the contrary, information provided by a TNC to the Commission should be available to the public.

Finally, D.20-03-014 noted that while the decision applied on a prospective basis, the Commission was aware that the parties, as well as public and nonprofit entities, have expressed a continuing interest in and need for obtaining unredacted copies of the TNC Annual Reports submitted from 2014-2019. Accordingly, D.20-03-014 deferred to the assigned Commissioner and assigned Administrative Law Judge (ALJ) to determine, by way of an appropriate procedural vehicle, if any or all previously filed TNC Annual Reports for the years 2014-2019 should be made available to the parties on the service list and to the public.[1]

In furtherance of that directive, on December 9, 2021, the assigned Commissioner issued her *Third Amended Phase III.C. Scoping Memo and Ruling* (*Third Amended Scoping Memo*) wherein she asked the parties to answer a series of questions regarding whether all or portions of the Annual Reports for the years 2014-2019 should be made available to the parties and to the public. On February 11, 2022, San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, San Francisco International Airport (San Francisco), Lyft, Inc. (Lyft), Uber Technologies, Inc. (Uber), HopSkipDrive, Inc. (HSD), and San Francisco Taxi Workers Alliance (SFTWA) filed Opening Comments, as well as Reply Comments on February 25, 2022.

[1] D.20-03-014, at 3.

2. Issues Before the Commission

The *Third Amended Scoping Memo's* questions relevant to the Annual Reports for the years 2014-2019 are set forth in the Discussion and Analysis section of this decision.

3. Discussion and Analysis

3.1. Should the Commission Require Each TNC to Publicly Disclose All or Parts of its Annual Reports Submitted for the Years 2014-2019?

3.1.1. Comments

Lyft

Lyft first critiques the *Third Amended Scoping Memo* for not setting forth the Commission's authority for requiring TNCs to publicly disclose their Annual Reports. Lyft presumes that the legal impetus behind this inquiry is the California Public Records Act (CPRA), which considers information submitted to a public agency to be a public record subject to disclosure unless the information falls within any of the recognized exceptions to the CPRA. Assuming that the CPRA provides the Commission with the legal predicate for releasing the 2014-2019 Annual Reports to the public, Lyft argues that before a public agency discloses a public record, it must weigh the interests of those whose data they maintain in assessing the agency's obligations under the CPRA.

After setting forth this preliminary legal precaution, Lyft answers the first question in the negative insofar as it relates to information in the Annual Reports that is protected on either privacy or trade secret grounds.[2] In support of its privacy argument, Lyft argues that although Article I, Section 3 of the California Constitution establishes the right of the people to "information concerning the

[2] Lyft *Comments*, at 3-6.

conduct of the people's business," that same provision also makes clear that "nothing" about the right to transparency in government "supersedes or modifies the right of privacy guaranteed by [that section]."[3]

With respect to its trade secret argument, Lyft asserts that CPRA protects the trade secrets of private companies from forcible disclosure – and consequent destruction – pursuant to Government Code § 6254(k)[4] and Evidence Code § 1060.[5] Lyft then cites to several decisions where the Commission has recognized the trade secret claims of companies subject to the Commission's jurisdiction.[6]

In addition to its privacy and trade secret claims, Lyft also argues that requiring the disclosure of Annual Reports that were once presumptively confidential would result in retroactive agency regulating. Because of the U.S. Constitution's Fourteenth Amendment's Due Process clause which prohibits "any State" from depriving "any person of life, liberty, or property, without due process of law,"[7] the retroactive application of agency regulations is disfavored

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[3] Cal. Const., Art. I, §3(b)(3).

[4] "(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

[5] "[T]he owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice."

[6] Lyft cites Application of Pac. Gas & Elec. Co. (U39e) for Comm'n Approval Under Pub. Utilities Code Section 851 of an Irrevocable License for Use of Util. Support Structures & Equip.; Extenet Sys. (California) LLC. (Oct. 27, 2016) 2016 WL 6649336, at *3. *See also* Order Instituting Rulemaking on Com'n Own Motion into Competition for Local Exch. Serv. (Oct. 22, 1998) 82 CPUC 2d 510, at *36; Order Instituting Rulemaking on Commission's Own Motion into Competition for Local Exch. Serv. (Sept. 2, 1999) 1999 WL 1112286, at *1; In Re S. California Edison Co., No. 04-12-007, 2005 WL 1958415, at *1 (Aug. 9, 2005); and D.20-12-021.

[7] U.S. Const., Art. 14, § 1.

in California.[8] In Lyft's view, "changing the rules only after a regulated entity has relied upon those rules deprives the regulated entity of adequate notice, alters the legal consequences of an action after it has occurred, and *may* subject the entity to an arbitrary deprivation in violation of the Due Process Clause."[9]

A second problem that Lyft claims stems from retroactive regulating is that it may run afoul of the U.S. Constitution's Fifth Amendment's prohibition against regulatory taking without just compensation.[10] Lyft argues that the retroactive disclosure of information previously submitted to a regulatory agency under assurances of confidentiality may constitute an unlawful taking, as the takings clauses of the U.S. and California Constitutions protect not only tangible property, but also intangible trade secret property rights protected by state law.[11] Lyft concludes by claiming that the public disclosure of trade secret data without Lyft's consent would frustrate Lyft's claimed reasonable investment-backed expectation with respect to its control over the use and dissemination of the trip data submitted to the Commission, and would thus

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[8] Lyft cites *Aetna Cas. & Sur. Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 391; *Bowen v. Georgetown University Hosp*. (1988) 488 U.S. 204, 208; D.04-10-040, *Yucaipa Mobilehome Residents' Ass'n, Order Denying Rehearing of D.04-05-056* (Oct. 28, 2004) 2004 WL 2535369, at *3 (Cal. PUC); and *De Niz Robles v. Lynch*, 803 F.3d 1165, 1167 (10th Cir. 2015).

[9] Lyft *Comments*, at 8, italics added.

[10] Cal. Const. Art. I, § 19, of California's Constitution contains a similar regulatory takings prohibition: "(a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation."

[11] Lyft cites *Ruckelshaus v. Monsanto Co*. (1984) 467 U.S. 986, 1003–1004, 104 S.Ct. 2862, 81 L.Ed.2d 815; *City of Oakland v. Oakland Raiders* (1982) 32 Cal.3d 60, 67–68; and *Syngenta Crop Protection, Inc. v. Helliker* (2006) 138 Cal.App.4th 1135, 1167– 1169.

constitute an unlawful taking in violation of the U.S. and California Constitutions.

Uber

Uber argues that in light of the Commission's determination in D.20-03-014, the Commission should require each TNC to publicly disclose its Annual Reports submitted for the years 2014 to 2019 and should allow TNCs to follow the requirements of GO 66-D to request confidential treatment of any portions of those previously filed TNC annual reports.

HSD

HSD requests the Commission not adopt rules with retroactive application as doing so here would be unfair and unreasonable, and importantly, would undermine the regulatory process. HSD asserts that TNCs submitted reports between 2014 and 2019 based on the rule that the Commission expressly adopted and that was in place during that time period. The rule in effect during that period expressly granted confidential treatment of such reports - and TNCs made their submissions based on the rule in effect. TNCs' reliance on that rule was legitimate since the Commission's decision was clear, and no party challenged this particular rule. Had different rules been adopted in 2013, HSD believes that TNCs may have made different decisions at that time.

San Francisco

San Francisco argues that the Commission should require disclosure of all prior year Annual Reports, following the guidance the Commission established in D.20-03-014 and D.21-06-023. As support, San Francisco notes that 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

SFTWA

SFTWA supports disclosure, reasoning that the same questions of law and policy that caused the Commission to reverse course for future data submissions apply equally to past reports. In SFTWA's view, the fact that the information is not current is of no consequence since the law compels disclosure. Furthermore, SFTWA asserts that the lookback is also valuable as a tool for planning purposes, and for lifting the cloak of secrecy that has kept the public largely in the dark about the impacts of TNC operations.

3.1.2. Discussion

3.1.2.1. The History of the Annual Report Requirement and the Presumption of Confidentiality

D.20-03-013 explained that on December 20, 2012, the Commission opened this proceeding in order to adopt rules, regulations, and reporting requirements that would apply to the TNCs that had begun operating in San Francisco and have subsequently expanded their operations throughout California and the rest of the United States. In its first decision (D.13-09-045),[12] the Commission adopted specific safety requirements and regulatory requirements, the latter also requiring each TNC to file annual reports, covering specific reporting categories, with the Commission's Safety Enforcement Division, that covered:

- ***Data on drivers***: (number of drivers that became eligible and completed the TNC's driver training course; average and median number of hours and miles each TNC driver spent driving for the TNC);[13]
- ***Data on traffic incidents and accidents***: (the cause of the incident, the amount paid, if any, for compensation to any

[12] *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*.

[13] D.13-09-045, at 27.

party in each incident; date and time of the incident; amount that was paid by the driver's insurance, the TNC's insurance, or any other source; and the total number of incidents during the year);[14]

- ***Data on zero-tolerance complaints regarding drugs and alcohol***: (number of drivers found to have committed a violation and/or suspended, including a list of zero-tolerance complaints and the outcome of the investigation into those complaints);[15]
- ***Data on TNC trips*** (accepted requests): (the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; the date, time, and zip code of each request; the concomitant date, time, and zip code of each ride that was subsequently accepted; for each ride accepted, the zip codes of where the ride began and ended, the miles traveled, and the amount paid/donated);[16]
- ***Data on TNC trips*** (unaccepted requests): (the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates; concomitant date, time, and zip code of each ride that was not accepted);[17] and
- ***Data on accessibility***: (the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with request for accessible vehicles; description of any instances or complaints of unfair treatment or discrimination of persons with disabilities; and necessary improvements (if any), and additional steps to be taken by the TNC to ensure that

[14] *Id.*, at 32.

[15] *Id.*, at 32.

[16] *Id.*, at 31-32.

[17] *Id.*, at 31-32.

there is no divide between service provided to the able and disabled communities).[18]

3.1.2.2. The Need for Additional Data Sets in the Annual Reports

As the TNC industry continued to grow and modify its business model, the Commission realized that it was necessary for the effective oversight of this industry that additional data reports were necessary. Thus, the Commission adopted D.16-04-041 and required the TNCs to submit additional reporting data on the following subjects:

- ***Data on driver suspensions***: (identification of TNC drivers suspended or deactivated for any reasons relating to safety and/or consumer protection);[19]
- ***Data on traffic incidents and accidents arising from the TNC fare-splitting services such as UberPOOL***: (complaint, incidents, and the cause of each incident; the amount paid, if any, for compensation to any party in each incident; and amounts paid for compensation to any party in each incident if the amount is known by the TNC);[20]
- ***Data on zero-tolerance complaints***: (identification of TNC drivers suspended or deactivated for violation of the zero-tolerance policy); [21]
- ***Data on assaults and harassments***: (identification of TNC drivers suspended or deactivated for assaulting, threatening, or harassing a passenger or any member of the public while providing TNC services);[22]
- ***Data on "Off-Platform" trip solicitations by drivers***: (identification of TNC drivers suspended or deactivated

[18] *Id.*, at 30-31, 33-34, and 54.

[19] D.16-04-041 at 24.

[20] *Id.*, at 49.

[21] *Id.*, at 24.

[22] *Id.*

for soliciting business that is separate from those arranged through the TNC's app);[23] and

- ***Data on shared/pooled rides***: (report on how fare-splitting operation has impacted the environment; report on structure of fares for split fare rides; and data on the number of TNC vehicles that have traveled more than 50,000 miles within a year).[24]

While the Commission permitted the 2014-2019 Annual Reports to be submitted confidentially per footnote 42, there was no intent on the Commission's part to treat the reports required by D.13-09-045 as confidential in perpetuity. In addition to placing the TNCs on notice that the Commission might take another look at whether Annual Reports should be presumed confidential, the Commission has the authority, after giving notice to the parties and giving them an opportunity to be heard, to "rescind, alter, or amend any order or decision made by it."[25] Thus, even without the qualifying language in footnote 42, the Commission has the inherent power to modify an order or decision.[26]

3.1.2.3. Changes in Circumstances and the Heightened Showing Required to Support a Claim of Confidentiality

D.20-03-014 found that since initially permitting TNCs to file their annual reports confidentially, there have been three important developments that have caused this Commission to conduct a fresh consideration of whether any of the information required by the annual reports should be confidential and protected

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[23] *Id*.

[24] *Id*., at 56.

[25] Pub. Util. Code § 1708. *See, also, Bodega Head v. Public Utilities Commission* (1964) 61 Cal.2d 126, 135-136.

[26] Interested persons may also petition the Commission to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code § 1708.5.

from public disclosure: (1) lack of viable competition in the TNC industry; (2) the Commission's adoption of stricter standards for establishing a claim of confidentiality; and (3) the heightened public interest in obtaining unredacted TNC annual reports.[27] We will not repeat those findings and discussion but, instead, incorporate them herein by reference.

In addition to being able to modify its prior orders, the Commission also has the authority and duty to independently evaluate the legal and factual sufficiency of future TNC claims of information confidentiality. In fact, in a subsequent ruling in the instant proceeding, the assigned Commissioner and ALJ rejected a request from Uber to file documents and responses to a ruling under seal, finding that Uber had failed to meet its burden of proving that the subject documents were confidential. (*See Assigned Commissioner's and Administrative Law Judge's Ruling Denying Motion of Uber Technologies, Inc. for Leave to File the Confidential Version of its Response to Assigned Commissioner and Administrative Law Judge's Ruling Under Seal* (September 4, 2015); and D.16-01-014, wherein the Commission rejected Rasier-CA's claims of trade secret protection as to trip data.[28])

In view of the changes D.20-03-014 made for the procedural requirements and the showing a party would have to make to substantiate a claim of confidentiality, the Commissioner issued her *Third Amended Scoping Memo* which identified various confidentiality issues, including whether footnote 42 should be

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[27] D.20-03-014, at 14-28, as modified by Decision 21-06-023 (*Decision Modifying and Denying Rehearing of D.20-03-014*).

[28] *Modified Presiding Officer's Decision Finding Rasier-CA, LLC, in Contempt, in Violation of Rule 1.1 of the Commission's rules of Practice and Procedure, and that Rasier-CA, LLC's License to Operate Should be Suspended for Failure to Comply with Commission Decision 1309-045*, at 104-117, Conclusion of Law Nos. 17 and 18.

eliminated or modified, and if a TNC, instead of automatically submitting its Annual Reports as confidential, must comply with the procedural requirements and factual showing required by GO 66-D. After permitting party comments, the Commission adopted D.20-03-014 which eliminated, prospectively, the presumption of confidentiality for Annual Reports, and left open the question of whether the Annual Reports for the years 2014-2019 should also be publicly disclosed.

The time has now come for the Commission to answer that question in the affirmative. As we noted above, D.20-03-014 determined that the lack of viable competition in the TNC industry; the heightened public interest in obtaining unredacted TNC Annual Reports; and the Commission's adoption of stricter standards for establishing a claim of confidentiality led the Commission to conclude that the presumption of confidentiality should end, prospectively. Having reviewed that decision, we find that the rationale for ending the presumption of confidentiality should also be applied retroactively to the Annual Reports for the years 2014-2019.

3.1.2.4. The Right to Public Access to Records in the Commission's Possession

D.20-03-014 recognized that the California Constitution, Article I, § 3(b)(1), is clear that the public has a constitutional right to access most government information:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.[29]

[29] *See*, *e.g.*, International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court (2007) 42 Cal.4th 319, 328-329.

The California Constitution also states that statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access.[30] Rules that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.[31]

The California Public Records Act (CPRA) requires that public agency records be open to public inspection unless they are exempt from disclosure under the provisions of the CPRA.[32] "Public records" are broadly defined to include all records "relating to the conduct of the people's business"; only records of a purely personal nature fall outside this definition.[33] Since records received by a state regulatory agency from regulated entities relate to the agency's conduct of the people's regulatory business, the CPRA definition of public records includes records received by, as well as generated by, the agency.[34]

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[30] Cal. Const., Article 1, § 3(b)(2): "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest." (*See, e.g., Sonoma County Employee's Retirement Assn. v. Superior Court (SCERA)* (2011) 198 Cal.App.4th 986, 991-992.)

[31] *Id.*

[32] *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370: "The Public Records Act, section 6250 et seq., was enacted in 1968 and provides that "every person has a right to inspect any public record, except as hereafter provided." (§ 6253, subd. (a).) We have explained that the act was adopted "for the explicit purpose of 'increasing freedom of information' by giving the public 'access to information in possession of public agencies.'" (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651 [citation omitted])."

[33] *See*, *e.g.*, *Cal. State University v. Superior Court* (2001) 90 Cal.App.4th 810, 825.

[34] *See* Cal. Gov't Code §§ 6252(e).

Further, the Legislature has declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[35] An agency must base a decision to withhold a public record in response to a CPRA request upon the specified exemptions listed in the CPRA, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.[36] The CPRA favors disclosure, and CPRA exemptions must be narrowly construed,[37] meaning the 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.[38] The CPRA requires the Commission to adopt written guidelines for access to agency records, and requires that such regulations and guidelines be consistent with the CPRA and

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[35] Cal. Gov't. Code § 6250.

[36] Cal. Gov't. Code § 6255(a): "The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

[37] Cal. Const., Article 1, § 3(b)(2), *supra*. *See, e.g., American Civil Liberties Union of Northern California v. Superior Court* (*ACLU*) (2011) 202 Cal.App.4th 55, 67; and *SCERA*, *supra*, 198 Cal.App.4th at 991-992.

[38] *See*, *e.g.*, *CBS, Inc. v. Block*, *supra*, 42 Cal.3d at 652; *ACLU*, *supra*, 202 Cal. App. 4th at 67-68 fn. 3; Cal. Gov't. Code § 6253(e); *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 905-906; *Black Panthers v. Kehoe* (1974) 42 Cal.App.3d 645, 656; *Re San Diego Gas &* Electric *Company* (*SDG&E*) (1993) 49 Cal.P.U.C.2d 241, 242; and D.05-04-030, at 8.

reflect the intention of the Legislature to make agency records accessible to the public.[39]

In *Re Sierra Pacific Power Company* (1988) 28 CPUC2d 3, the Commission relied on the foregoing policy favoring open access and transparency to its regulatory proceedings to reject a utility's unsubstantiated confidentiality claims:

> The Commission intends to continue the policy of openness as enunciated in the *Pacific Bell* decision and will expect the utility to fully meet its burden of proving that the material is in fact confidential and that the public interest in an open process is outweighed by the need to keep the material confidential. Granting confidentiality to the contract terms requested by Sierra would unduly restrict scrutiny of the reasonableness of fuel costs and operations. We conclude that Sierra has not adequately demonstrated that any harm to it would occur; therefore, we will deny the request for confidentiality in this order. We believe that Sierra's ratepayers are best served and protected by open disclosure of contract terms.[40]

A similar result is dictated by the facts of the instant proceeding, even though we are dealing with a party's duty to comply with annual reporting requirements imposed by the Commission rather than a CPRA request from a third party. The purpose behind the Annual Reports that each permitted TNC was ordered to submit was to give the Commission, and the parties, a better understanding of each TNC's operations. In turn, the information assists the Commission and staff in determining what follow up investigations are needed at the staff level, and

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[39] Cal. Gov't. Code § 6253.4(b): "Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public.…"

[40] 28 CPUC 2d at 11.

whether the Commission should expand the scope of the proceeding to facilitate the issuance of additional decisions regarding TNC functions.

Furthermore, the growth in the information required by the Annual Reports has stimulated the public's interest in and need for access to the data in the Annual Reports to further several public policy objectives. In Decision 21-06-023,[41] we summarized the legitimate public interests that parties proffered for obtaining the data from the Annual Reports:

> Here, the record contains evidence that substantially supports our determination that the local government entities showed a legitimate public interest in obtaining trip-level TNC data. This evidence includes statements from: (1) the Los Angeles Department of Transportation explaining the need for TNC data to adequately address new safety concerns, manage curb space, and handle transit issues associated with the industry;[42] (2) the San Francisco County Transportation Authority explaining that TNC trip-level data will assist it in developing and administering a congestion management program;[43] and (3) the San Francisco City Attorney's Office explaining that trip-level data will allow it to enforce civil and administrative code sections against TNCs.[44]

While we affirmed D.20-03-014's determination that there was public interest in and need for the Annual Reports from 2020 on, that same determination is equally applicable to the Annual Reports for the years 2014-2019. With the growth of the TNC industry following our adoption of

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41 Order Modifying Decision 20-03-014 and Denying Rehearing of Decision, as Modified.

42 *Opening Comments of the LA DOT to Amended Phase III.C Scoping Memo on Data Confidentiality, Collection, and Sharing Issues*, at 1-2 & 6.

43 Opening Comments of the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, San Francisco City Attorney's Office, and San Francisco International Airport to Phase III.C Scoping Memo and Ruling of Assigned Commissioner (Track 3 – TNC Data), at 10 (SFMTA Comments).)

44 SFMTA *Comments*, at 12-13.

D.13-09-045, cities, counties, and municipal transportation have an interest in the historical impact that TNCs services have had on traffic congestion, traffic planning, safety, infrastructure, and air quality, just to name a few examples. The best source of information that would allow interested third parties to conduct such historical investigations would be the data in the 2014-2019 Annual Reports.

3.1.2.5. The Fifth Amendment Regulatory Takings Argument is Legally Flawed

This is not the first time that a TNC has raised the regulatory takings argument in connection with the Annual Reports that each TNC must submit. For example, Lyft previously argued that compliance with the 2021 Annual Report requirements amounted to a regulatory taking in violation of the Fifth Amendment of the U.S. Constitution and Article I, Section 19 of the California Constitution, arguments that the *2021 Confidentiality Ruling* rejected. D.16-01-014 also rejected this argument when Raiser-CA, Uber's wholly owned subsidiary, made a similar assertion after being found in contempt and ordered to pay a penalty.[45] Lyft now raises the Fifth Amendment challenge with respect to its Annual Reports for the years 2014-2019, but in a slightly different context. It claims that the possible release of information that it previously submitted with a promise of confidentiality amounts to a regulatory taking without compensation in violation of the Fifth Amendment.

We, again, reject this regulatory takings challenge as being legally unsound. The Takings Clause, which is deemed applicable to the states *via* the

[45] D.16-01-014, at 125-126.

Fourteenth Amendment,[46] is found in the Fifth Amendment of the U.S. Constitution and provides that "nor shall private property be taken for public use, without just compensation." The purpose behind the clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." (*Armstrong v. United States* (1960) 364 U.S. 40, 49.) While takings law had its genesis in real property disputes, over time the United States Supreme Court expanded the constitutional protection of property beyond the concepts of title and possession and sought to protect the value of investments against governmental use or regulation. (*See Pennsylvania Coal Co. v. Mahon* (1922) 260 U.S. 393, 415 ["while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."])[47] In *Lingle v. Chevron U.S.A., Inc.* (2005) 544 U.S. 528, 538, the United States Supreme Court recognized two categories of regulatory takings for Fifth Amendment purposes: first, where government requires an owner to suffer a permanent physical invasion of the property; and second, where the government regulation completely deprives an owner of all economically beneficial use of the property.[48]

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[46] *Palazzolo v. Rhode Island* (2001) 533 U.S. 606, 617 ("The Takings Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q. R. Co.* v. *Chicago,* 166 U.S. 226, 41 L. Ed. 979, 17 S. Ct. 581 (1897), prohibits the government from taking private property for public use without just compensation.")

[47] California law also has a takings clause. Article I, Section 19 of the California Constitution provides in part: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."

[48] *See also Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 1027-1028, where the Supreme Court recognized that by reason of the State's traditionally high degree of control over commercial dealings, regulations can constitutionally render personal property economically worthless. To be an unconstitutional taking, the property right has to have been "extinguished." (*Ruckelhaus, supra,* 467 U.S. 986, 1002.)

These two categories of regulatory taking must be weighed against the deference that must be accorded to the decisional authority of state regulatory bodies. In *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299, 313-314, the Supreme Court discussed the deference that should be given to both state legislative bodies, as well as state public utilities commissions that are an extension of the legislature:

> It cannot seriously be contended that the Constitution prevents state legislatures from giving specific instructions to their utility commissions. We have never doubted that state legislatures are competent bodies to set utility rates. And the Pennsylvania PUC is essentially an administrative arm of the legislature [citations omitted.] We stated in *Permian Basin* that the commission "must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests."…

As such, other courts have also recognized that "every statute promulgated by the Legislature is fortified with a strong presumption of regularity and constitutionality." (*Keystone Insurance Co. v. Foster*, 732 F. Supp. 36 (E.D. Pa. 1990); *Illinois v. Krull*, (1987) 480 U.S. 340, 351 (["Indeed, by according laws a presumption of constitutional validity, courts presume that legislatures act in a constitutional manner."] (*See e.g., McDonald* v. *Board of Election Comm'rs of Chicago* (1969) 394 U.S. 802, 809 ["Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them."].)

The concern for respecting state legislative action is applicable to the Commission's regulatory activities. The Commission derives some of its powers from Article XII of the California Constitution and by powers granted from the

Legislature. (*People v. Western Air Lines, Inc.*(1954) 42 Cal.2d, 621, 634 ["The Commission is therefore a regulatory body of constitutional origin, deriving certain of its powers by direct grant from the Constitution which created it. (*Pacific Tel. & Tel. Co.* v. *Eshleman* (1913), 166 Cal. 640 [137 P. 1119, Ann.Cas. 1915C 822, 50 L.R.A.N.S. 652]; *Morel* v. *Railroad Com*. (1938), 11 Cal.2d 488 [81 P.2d 144].) The Legislature is given plenary power to confer other powers upon the Commission. Art. XII, §§ 22 and 23.)"].)

In *Penn Central Transportation Co v. New York City* (1978) 438 U.S. 104, 124, the Supreme Court acknowledged that it has been unable to develop any set formula for determining when government action has gone beyond regulation and constitutes a taking. Nevertheless, *Penn Central* set forth several factors that have particular significance:

- The economic impact of the regulation on the claimant;
- The extent to which the regulation has interfered with distinct investment-backed expectations that the integrity of the trade secret will be maintained; and
- The character of the governmental action.

While written in the conjunctive rather than the disjunctive, some decisions suggest that a reviewing court "may dispose of a takings claim on the basis of one or two of these factors." (*Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1277; *Bronco Wine v. Jolly*(2005) 129 Cal. App.4th 988, 1035 ["The court may dispose of a takings claim on the basis of one or two of these factors. (*Maritrans Inc. v. United States* (Fed. Cir. 2003) 342 F.3d 1344, 1359 [where the nature of the governmental action and the economic impact of the regulation did not establish a taking, the court need not consider investment-backed expectations]; *Ruckelshaus v. Monsanto Co., supra*, 467 U.S. 986, 1009] [disposing of takings claim relating to trade secrets on absence of reasonable investment-backed

expectations prior to the effective date of the 1972 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act].) But for completeness's sake, and consistent with how rules are interpreted and applied when clauses are separated by a conjunctive, we will evaluate Lyft's takings argument against all of the criteria set forth, *supra*, in both *Lingle* and in *Penn Central*.

Lyft fails to establish that providing trip data meets either definition of a regulatory taking set forth in *Lingle*. First, there is no permanent physical invasion into Lyft's property. Instead, the trip data is information that the Commission has ordered all TNCs to maintain and report upon in the manner required by D.13-09-045. What is involved is the electronic transfer of information that will be analyzed and evaluated by the Commission as part of its regulatory responsibility over the TNC industry. Second, compliance with Reporting Requirement j does not deprive Lyft of all economically beneficial use of its property. To the contrary, Lyft is free to continue analyzing trip data in order to refine or adjust its transportation business model for the TNC drivers and passengers who subscribe to the Lyft App.

Lyft's regulatory takings argument also fails under the *Penn Central* factors. With respect to the character-of-the-governmental-action prong, a takings claim is less likely to be found "when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." (*Penn Central*, *supra*, 438 U.S. at 124.) Here, the reason for requiring the trip data in the manner prescribed is for the Commission to continue reviewing its regulations over the TNC industry in order to evaluate the impact on the riding public. Determining who is being served, what areas are being served, and the volume can assist the Commission in deciding if this new mode of transportation is being made available to all customers utilizing the

Lyft app for service. Equal 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.

Lyft's argument also fails under the economic-impact prong. Here the inquiry is whether the regulation impairs the value or use of the property according to the owners' general use of their property. (*Phillip Morris v. Reilly* (2002) 312 F.3d 24, 41, citing *Pruneyard Shopping Center v. Robins* (1980) 447 U.S. 74, 83.) In contrast to *Phillip Morris*, where Massachusetts required tobacco companies to submit their lists of all ingredients used in manufacturing tobacco products so that this information could be disclosed to the public, the Commission has not ordered Lyft to submit the algorithms or other criteria utilized to market its service. It is just the resulting trip information that the Commission is requiring the TNCs to make publicly available. In sum, even if Lyft's trip data were a trade secret, neither the value of the property, nor the use to the property, has been impaired or extinguished simply by providing the information to the Commission or if the Commission orders the trip data at issue be publicly disclosed.

Finally, Lyft's argument fails under the investment-backed-privacy-expectation standard. As the Supreme Court explained in *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980) 449 U.S. 155, 161, property interests, and the privacy expectations attendant thereto, "are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Here, there is no California law or controlling federal law holding that the trip data at issue is inherently private or that the creation of same invests it with some sense of privacy. Indeed, Lyft was aware that the Commission ordered all TNCs to

create the Annual Reports so that the Commission could determine how its regulations were working and if any adjustments would be needed. In other words, Lyft's claim of a privacy expectation is subject to the Commission's power to regulate TNCs for the public good. Moreover, even if there was a distinct investment-backed expectation, "a taking through an exercise of the police power occurs only when the regulation 'has nearly the same effect as the complete destruction of [the property] rights' of the owner." (*Pace Resources, Inc. v. Shrewsbury Tp.* (3rd Cir. 1987) 808 F.2d 1023, 1033, quoting *Keystone Bituminous Coal Association v. Duncan* (3d Cir. 1985) 771 F.2d 707, 716, *aff'd* (1987) 480 U.S. 470.) There is no complete destruction of Lyft's property as it can utilize its trip data for whatever legitimate business purposes it deems appropriate.

In sum, Lyft fails to substantiate its unconstitutional regulatory takings argument.

3.1.2.6. Retroactive Ratemaking

We also reject Lyft's claim that applying today's decision to the Annual Reports submitted from 2014-2019 would amount to impermissible retroactive ratemaking. While retroactive ratemaking is disfavored, it is not illegal. In D.04-10-040,[49] we explained that:

> because Commission decisions generally apply on a prospective basis, any contemplated retroactive application of a proposed Commission decision would have been made explicit and would have been the subject of comments and briefing by the parties.

Our position that retroactive ratemaking requires clear intent and notice to the affected parties is consistent with the rules of statutory interpretation that the California Supreme Court has summarized on whether a statute should be given

[49] *Order Denying Rehearing of Decision 04-05-056*, at *6.

retroactive effect: "It is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent."[50]

In reviewing the record, we conclude that the factual predicate for giving retroactive effect to today's decision has been satisfied. First, the TNCs were placed on notice that the Commission was considering reversing its prior practice of permitting Annual Reports to be submitted in confidence. D.20-03-014 did reverse the practice prospectively and advised all parties that the assigned Commissioner would decide whether to require the Annual Reports for the years 2014-2019 to be publicly disclosed.[51] The assigned Commissioner then issued her *Third Amended Scoping Memo* which scoped this issue into this proceeding. Second, the parties were given the opportunity to provide comments. Opening and reply comments were filed on February 12, 2022 and February 28, 2022, respectively. Accordingly, as we placed the TNCs on notice that the Commission was considering requiring the public disclosure of the prior Annual Reports and gave the parties an opportunity to be heard on the issue, the legal requirements for permitting retroactive application of today's decision have been satisfied.

In sum, we conclude that each TNC should be required to publicly disclose their Annual Reports for the years 2014-2019, subject to the exceptions identified herein.

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[50] *Aetna Casualty*, *supra*, 30 Cal.2d, at 391.

[51] D.20-03-014, at 3.

3.2. Should any Portions of the TNC Annual Reports Submitted for the Years 2014-2019 be Redacted on Privacy Grounds?

3.2.1. Comments

Lyft

Lyft claims that Trip Data (*i.e.* information regarding individual trips completed on the Lyft platform that can reveal intimate details of a user's life, even if that information does not itself identify a particular individual) should be protected from disclosure on privacy grounds. Lyft cites to the *2020 Confidentiality Ruling*, which agreed with Lyft that disclosure of some trip data categories in the Annual Report (*e.g.* Driver IDs, vehicle information, latitude and longitude information, and waybill information) would constitute an unwarranted invasion of privacy, finding "[s]upport for the proposition that this information might be engineered to identify the exact starting and ending addresses of a trip, which can then be combined with other information to identify a driver and/or passenger."[52] Lyft then inserts the protected categories that CPED provided in its template for the 2021 Annual Reports and asks that those same categories in the Annual Reports for the years 2014-2019 also be exempt from disclosure.

Lyft also reiterates its argument that geolocation data (*e.g.* date and time, census block and zip code of both the driver and rider; when the rider is picked up and dropped off; when the driver's app is turned on or the last rider dropped off; time a trip request was made; and when the trip request was accepted on the TNC's app) should also be exempted from disclosure on privacy grounds, even

[52] *2020 Confidentiality Ruling*, at 5.

though Lyft acknowledges that the assigned ALJ rejected Lyft's argument in two previous rulings.[53]

Uber

Uber claims that the 2014-2019 Annual Reports contain a large volume of personal information pertaining to both riders and drivers that must be kept confidential on privacy grounds. This includes certain trip location data, driver information, and complaint and accident information which in Uber's view falls within the CPRA's exemptions from disclosure.

Uber argues that the TNC Annual Reports contain extensive amounts of detailed trip data including the date, time, and geolocation information of both the driver and rider, including:

- when the rider is picked up and dropped off;
- when the driver's app is turned on or the last rider dropped off;
- at the time a trip request was made; and
- when the trip request was accepted on the app.

Uber claims that this type of trip location data is exempt from disclosure under both Government Code § 6254(c)'s exemption for "files, the disclosure of which would constitute an unwarranted invasion of personal privacy", and Government Code § 6254(k)'s exemption for "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law."

The TNC Annual Reports also contain extensive amounts of detailed personal information about drivers who use the TNC's app, including:

- Driver Personal Information: Each driver's first and last name, middle initial, type of identification, the driver's

[53] *Id.*, and *2021 Confidentiality Ruling*, at 78-79.

license and state of issuance, number and expiration date, as well as the VIN and license plate of the driver's vehicle.

- Driver Use Information: The days a particular driver has used the TNC app, the day, month and year a driver's hours were reported on trips referred through the TNC app, the number of hours a driver logged onto the app for the day in using the TNC app, mean and median hours and miles a driver logged on trips referred through the TNC app, total hours and miles a driver logged on or drove for the month using the TNC app, and total miles driven on trips referred through the TNC app.

Uber argues that this type of driver information falls within Government Code § 6254(c)'s exemption for "files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

Finally, Uber claims that the TNC Annual Reports contain detailed information submitted by third parties to TNCs regarding alleged sexual and non-sexual assaults, harassments, other complaints, and settlements of those complaints, including:

- Sexual Assaults and Harassment: The date, time, type and description of the alleged sexual assault or harassment, and the geolocation data including latitude, longitude, and census block of the alleged sexual assault or harassment.
- Non-Sexual Assaults and Harassment: The type and description of the alleged non-sexual assault or harassment and the geolocation information including latitude, longitude, and census block of the alleged non-sexual assault or harassment.
- Other Complaints: The associated waybill number of the trip in which there was a zero tolerance incident, the type of incident/accident, and certain specific details regarding the resolution of complaints, including: the amount paid by any party involved in accident, any amount paid by a driver's or the TNC's insurance, claims as to what caused accident, and the date/time of accident.

Uber asserts that this data also falls within Government Code § 6254(c)'s exemption for "files, the disclosure of which would constitute an unwarranted invasion of personal privacy."

San Francisco

San Francisco argues that 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. Nonetheless, San Francisco supports the redaction of personally identifiable information on privacy grounds, as the *2020 Confidentiality Ruling* recognized.

SFTWA

SFTWA agrees that protecting personal privacy is a legitimate concern. Portions of reports that could result in unwanted disclosure of personal identity to the public at large should be redacted. But government entities should have access to the full data under conditions of confidentiality if the data is to be used in furtherance of public purposes. In addition, SFTWA claims that disaggregated data should also be provided on a confidential basis to recognized academic researchers studying these issues.

3.2.2. Discussion

The right to privacy is enshrined in Article I, Section 1, of the California Constitution:

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

That right to privacy, however, is not absolute and must be balanced against the public's right to access government records, a right guaranteed by Article I, Section 3(b)(1) of the California Constitution:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

In attempting to balance the tension between Sections 1 and 3, the California Constitution provides at Article I, Section (b)(3) that "[n]othing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy[.]"

That tension between the right of privacy and the right to government records can be seen in the context of when a person seeks to obtain records pursuant to the California Public Records Act (CPRA).[54] While it is California policy that the government's functions must be as transparent as possible, the CPRA creates an exemption to a CPRA request, found in Government Code § 6254(c), for "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Since the statute does not define "privacy" the California Supreme Court has stepped in and offered the following guidance in *International Federation of Professional and Technical Engineers v. Superior Court* (2007) 42 Cal.4th 319, 330: "A particular class of information is private when well-established social norms recognize the need to maximize individual control over its dissemination and use to prevent unjustified embarrassment or indignity." (*Hill v. National Collegiate Athletic*

[54] Commencing at Government Code § 6250.

Assn. (1994) 7 Cal.4th 1, 35.'" In *Hill*, the California Supreme Court established a three-part test for determining the legitimacy of an invasion of privacy claim: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct that constitutes a serious invasion of privacy.[55]

Before applying the *Hill* test, we must also discuss the burden of proof that a party seeking the confidential treatment of information provided to the Commission must satisfy. The CPRA requires the Commission to adopt written guidelines for access to agency records, and requires that such regulations and guidelines be consistent with the CPRA and reflect the intention of the Legislature to make agency records accessible to the public.[56] GO 66-D, effective January 1, 2018, constitutes the Commission's current guidelines for access to its records, and reflects the intention to make Commission records more accessible.[57] GO 66-D also sets forth the requirements that a person must comply with in requesting confidential treatment of information submitted to the Commission. D.20-03-014 made clear that a TNC submitting information to the Commission must satisfy the requirements of GO 66-D to justify withholding that information from the public on confidentiality grounds.[58]

Applying the *Hill* test, along with the requisite burden of proof, to the categories of data that TNCs wish to redact lead the Commission to concur with the *2020* and *2021 Confidentiality Rulings* that certain trip data information (*e.g.* Driver IDs and vehicle information in all categories, latitude and longitude

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55 7 Cal.4th, 39-40.

56 Government Code § 6253.4(b).

57 *See* D.17-09-023 at 11-12, 14.

58 D.20-03-014 at 23.

information in all categories, certain waybill information, assault and harassment type, definition, and description, and amounts paid to resolve incidents) should be precluded from disclosure on privacy grounds.[59] With respect to latitude and longitude information, we agree with the proposition that this information might be engineered to identify the exact starting and ending addresses of a trip, which can then be combined with other information to identify a driver and/or passenger. While it is also true that the starting or ending point of a trip may not always originate or end at the rider's home (*e.g.* the rider may be starting his/her trip from or heading to a friend's house or a commercial establishment), the fact remains some of these ride requests will originate or end at the rider's home. On balance, then, the latitude and longitude information should be protected from public disclosure.

As the information required by the Annual Reports has evolved over time, we accept and reprint the table provided by San Francisco in its comments as the table properly identifies, by year, the categories of information that TNCs may redact:

Data Type	Data Field	2014	2015	2016	2017	2018	2019
Latitude and longitude information in all data categories		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

[59] 2020 Confidentiality Ruling, at 5, 8, 10, and 11; 2021 Confidentiality Ruling, at 5.

Data Type	Data Field	2014	2015	2016	2017	2018	2019
	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

But as for the balance of the trip data that TNCs wish to withhold from disclosure on privacy grounds (*i.e.* date and time, census block and zip code of both the driver and rider; when the rider is picked up and dropped off; when the driver's app is turned on or the last rider dropped off; time a trip request was made; and when the trip request was accepted on the TNC's app; the days a particular driver has used the App, the day, month and year a driver's hours were reported on trips referred through the App, the number of house a driver logged onto the App for the day in using the App, mean and median hours and miles a driver logged on trips referred through the App, total hours and miles a driver logged on or drove for the month using the App, and total miles driven on

trips referred through the App), we reject that request as TNCs fail to demonstrate that the *Hill* three-part privacy test has been met.

- **Does the Balance of the Trip Data Include a Legally Protected Privacy Interest?**

The first inquiry is whether the TNCs have demonstrated that the balance of the trip data at issue fits within *Hill's* three-part test for privacy, and we answer that question in the negative. The *2020* and *2021 Confidentiality Rulings* determined that the balance of the trip data categories required by the 2020 and 2021 Annual Reports were not privacy protected and TNCs have failed to set forth a credible factual and legal argument that would require a different finding for the Annual Reports for the years 2014-2019. While Courts have deemed home contact information to be private,[60] the balance of the trip data does not ask for contact information. TNCs appear to agree that individual trip data categories do not invade protected privacy and, instead, argue that trip data can be manipulated through a re-identification process that can lead to the revelation of private contact information. By their own argument, TNCs must acknowledge that the balance of the trip data does not reveal information about a rider or driver that would rise to a constitutionally protected privacy right. Nonetheless, Lyft and Uber have raised a number of arguments to support their claims of trip data privacy so we will address them separately.

Lyft

Lyft spends a considerable amount of time on its data re-identification argument, an argument that on closer scrutiny fails to establish that the balance of the trip data can be manipulated to reveal private information. According to Lyft, re-identification is a process where granular trip data can be manipulated to

[60] *Williams v. Superior Court* (2017) 3 Cal.5th 531, 554.

identify specific individuals and track their movements, "potentially revealing intimate personal details, such as medical visits, political affiliations, personal relationships, sexual orientation, etc."[61] To establish this claim of potential trip data manipulation, Lyft first references the United States Census Bureau documents that are attached to its *Comments* as Exhibit A and argues that because some census blocks may include as few as five individuals, and 4,000,000 census blocks in the United States have zero population, there are privacy implications from producing trip data census block information.[62] In Lyft's view, aggregating trip data by census blocks provides no anonymity at all and presents the same privacy concerns as the latitude and longitude data which the *2020* and *2021 Confidentiality Rulings* determined need not be publicly disclosed.

Yet the 4,000,000 figure is meaningless since the Commission must concern itself with California-based TNC activities. Furthermore, Lyft does not claim that any of its TNC drivers travel from or to census blocks with few to no individuals, and that those trips are part of the information provided to the Commission in Lyft's Annual Reports for the years 2014-2019. Instead, Lyft claims that as of 2010, "California had thirty-six zip codes with fewer than one hundred residents and eighty-three zip codes with fewer than two-hundred residents."[63] But by failing to tie any of these zip codes to any rides that Lyft drivers have provided

[61] Lyft *Comments*, at 16.

[62] *Id.*, at 17, footnote 21.

[63] *Id.*, at 20.

for the years 2014 to 2019, the privacy concerns that Lyft has raised are merely conjectural.[64]

We also reject Lyft's attempt to establish its re-identification argument by citing to a series of unsubstantiated studies, articles, and opinions. Lyft first cites to the Director of the Federal Trade Commission's Bureau of Consumer Protection who testified before Congress and claimed that "[g]eolocation information can divulge intimately personal details about an individual."[65] Second, Lyft claims that "[n]umerous academic studies have also shown that similarly granular data can be reverse-engineered to identify individuals and track their movements," and references the inadvertent release of New York City taxi data which allowed researchers to track the movements of individual drivers and passengers.[66] Lyft next refers to studies of GPS mobility data where "95% of individuals can be identified using only four spatio-temporal data points."[67]

Lyft's evidentiary showing is insufficient to establish that the trip data at issue, if publicly released, would invade the privacy of TNC drivers or passengers. Consider first the Director of the Federal Trade Commission's comment that geolocation information could reveal if a person visited an AIDS clinic, place of worship, prospective business customer, or psychiatrist's office. Neither the Director nor Lyft explains how census block and zip code

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[64] For that reason, we need not address Lyft's citation to 45 CCR § 164.514 which requires masking zip code information for zip codes with fewer than 20,000 people. (Lyft *Comments*, at 20, footnote 36.)

[65] Lyft *Comments*, at 18.

[66] *Id*.

[67] *Id*., citing to "Spatio-temporal techniques for user identification by means of GPS mobility data," Luca Rossi, James Walker & Micro Musolesi, EPJ Data Science volume 4, article number: 11 (2015).

information, date and time of the trip, and the number of miles traveled would reveal such granular end point information. If the end point was in a census block and zip code that had a hospital which included an AIDS clinic and a psychiatrist's office, a place of worship, businesses, restaurants, and private residences, Lyft fails to explain how the zip code, either alone or combined with the balance of the trip data at issue, would reveal with precision what location the passenger entered at the end of the trip.

An analysis of one of San Francisco's zip codes undermines Lyft's invasion of privacy argument. Zip code 94114 contains 17, 634 housing units with a land area of 1.43 square miles.[68] The border streets are Duboce Avenue to the North, Dolores Street to the East, 26th Street to the South, and Clarendon Avenue to the West. 94114 includes the Castro, Noe Valley, Duboce Triangle, and upper Market neighborhoods, which taken collectively, are home to many diverse retail establishments.[69] Knowing that a Lyft passenger was dropped off somewhere in the 94114 zip code on a Wednesday afternoon after a ride that lasted two miles would not reveal either where the passenger went after exiting the Lyft driver's vehicle, or the passenger's sexual predisposition or gender identity.

And some end destinations, even if known, are not an indicator of the visit's purpose that would compromise the privacy concerns that Lyft has raised. For example, if somehow it could be determined that a Lyft customer traveled to the CPMC Davies Medical Center at 45 Castro Street, San Francisco, California, the trip data at issue would not reveal if the customer traveled there to be admitted as a patient, to visit a patient, or to visit the Walgreens Express in the

[68] *See* zip code map for 94114.

[69] *See e.g.* The Castro Travel Guide.

lobby of the North Tower Building to pick up medication. If the customer did go Davies for an outpatient visit, there is no way to determine what department the customer visited. On its website, Davies states it offers, *inter alia*, the following treatments and services: Allergy Care, Alzheimer's and Brain Health, Arthritis and Rheumatology, Asthma, Back and Spine, Behavioral Health, Cancer, Dermatology, Diabetes, Endocrinology, LGBTQI+ Care, Kidney Disease and Nephrology.[70] Thus, knowing that a Lyft passenger was dropped off at 45 Castro would not reveal the purpose of the visit or if the customer even entered Davies for a medical consultation or to visit a sick friend.

Lyft fares no better with its reliance on GPS studies. GPS stands for Global Positioning System that tracks a person's movements through their vehicle or mobile telephone. Because a GPS device tracks all movements, it is possible, as Justice Sotomayor opined in her concurring opinion in *United States v. Jones*, that "GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations."[71] But the trip data at issue that is contained in the Annual Reports for the years 2014-2019 do not include the precise comings and goings of a TNC passenger such that a third party might be able to determine a rider's familial, political, professional, religious, and sexual associations. Since the Annual Reports do not include starting and ending addresses, and latitude and longitude information is redacted, Lyft fails to explain how the remaining trip data at issue can be manipulated to achieve such potentially intrusive results that Justice Sotomayor alluded to in *Jones*.

[70] *See* Directory for CPMC-Davies.

[71] *United States v. Jones* (2012) 565 U.S. 400, 415.

Nor has Lyft established through its reliance on judicial precedent that zip code information, without more, constitutes private information that should be exempted from public disclosure. Lyft first cites to *Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524 for the proposition that a consumer's zip code constitutes personally identifiable information, but *Pineda* needs to be placed in its proper context. [72] The California Supreme Court tasked itself with resolving whether a retailer violates the Song-Beverly Credit Card Act of 1971 (Civ. Code, § 1747 *et seq*.), which prohibits retailers from recording a customer's personal identification information when the customer uses a credit card in a transaction, by recording a customer's zip code for the purpose of later using it and the customer's name to obtain the customer's address through a reverse search database. The Court answered the question in the affirmative, noting that the word "concerning" in the Song Beverly Act's definition of personal identification information as "information *concerning* the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number[,]" was broad enough to encompass a cardholder's zip code.[73] Similarly, in Lyft's other authority, *Tyler v. Michaels Stores, Inc.* (2013) 464 Mass. 492, 506, the Court construed Massachusetts' version of the Song Beverly Act, General Law c. 93, § 105 (a), which prohibits anyone

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[72] Lyft *Comments*, at 20, footnote 37.

[73] Yet *Pineda* also noted that zip code information is not always entitled to privacy protection as the Song Beverly Act included a number of exceptions: "Section 1747.08 contains some exceptions, including when a credit card is being used as a deposit or for cash advances, when the entity accepting the card is contractually required to provide the information to complete the transaction or is obligated to record the information under federal law or regulation, or when the information is required for a purpose incidental to but related to the transaction, such as for shipping, delivery, servicing, or installation. (*Id.*, subd. (c).)" (51 Cal.4th, at 530, footnote 6.) Thus, even under the Song Beverly Act, the prohibition against disclosing zip code information is not absolute.

accepting a credit card for a business transaction from writing personal identification information not required by the credit card issuer on the credit card transaction form. The Court concluded, considering the principal purpose of the statute was to guard consumer privacy in credit card transactions and to prevent consumer identity fraud, that a zip code constitutes "personal identification information" for purposes of Massachusetts' consumer credit card protection statute.

Thus, Lyft's cited authorities are factually distinguishable in a material way. In both *Pineda* and *Tyler*, the courts were concerned about requiring the disclosure of a consumer's zip code in the context of a credit card transaction. Neither decision held, as in the case here, that a person's zip code could be exempted from public disclosure under the circumstances contemplated by this Commission. It is that factual distinction that makes Lyft's citation to and quote from *Tyler* so deceptive. Lyft quotes the following language from *Tyler*: "a zip code constitutes personal identification information" but deliberately omits the qualifying text: "for the purposes of G. L. c. 93, § 105 (a)."

We also reject as unfounded Lyft's claim that California courts have made clear that data like the trip data at issue, which does not itself identify specific individuals but is susceptible to re-identification, is nonetheless protected from disclosure under the CPRA.[74] Again, the authorities upon which Lyft relies have materially distinguishable factual underpinnings. In *Sander v. Superior Court* (2018) 26 Cal.App.5th 651 (plaintiff sought to compel what he termed individually unidentifiable records for applicants to the California Bar Examination such as race or ethnicity, law school, undergraduate GPA, LSAT scores, and performance

[74] Lyft *Comments*, at 20.

on the bar examination) and *Carpenter v. U.S.* (2018) 138 S.Ct. 2206, (law enforcement sought Cell Site Location Information (CSLI) maintained by the defendant's mobile carrier), there was evidence that there were enough information points in the records that they could be manipulated to re-identify individuals and, therefore, violate individual privacy rights. In contrast, the Commission has already taken steps to permit the redaction of trip data information likely to infringe on driver and passenger privacy interests, and Lyft has not demonstrated that the balance of the trip data at issue can be subject to the same re-dentification process that concerned the *Sander* and *Carpenter* Courts.

Thus, unlike in the case of CLSI which does have both the cell phone owner's name and number, that information is also not part of the information required by the Annual Reports. Second, requiring the TNCs to release the starting and ending census block and zip code information does not provide the same level of locational monitoring provided by CLSI. The census block trip data at issue does not provide the addresses of private residences, doctor's offices, political headquarters, LGBTQIA[75] establishments, or other potentially revealing locales within a range of 50 meters as in the case of CLSI. Using zip code 94102 as an example, it would be sheer guesswork to calculate if a ride began or ended at the California Public Utilities Commission (505 Van Ness Avenue), City Hall (1 Dr. Carlton B. Goodlett Place), the San Francisco Superior Courthouse (400 McAllister Street), or a private residence at the Opera Plaza (601 Van Ness Avenue), Fulton 555, or the Richardson Apartments

[75] Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, and Asexual. *See* www.merriam-webster.com/dictionary/LGBTQIA

(365 Fulton Street), as all are locations within the 94102 zip code.[76] That is because zip code 94102 is .67 square miles and contains 18,758 housing units[77] plus various governmental properties and retail establishments. Accordingly, the concerns that were at the heart of *Carpenter* are not present here as none of the retrospective data in the Annual Reports for the years 2014-2019 identify a driver, passenger, pick up, drop off address, or up to the moment tracking similar to what can be provided by CLSI, making it impossible, within 50 meters, to know of a Lyft passenger's pick up or drop off location. Thus, Lyft's attempt to draw parallels to the CLSI in *Carpenter* and the census block data at issue is nothing more than a false equivalency.

Still, Lyft argues that all TNCs have a constitutionally protected privacy interest in their trip data. In support, Lyft cites *Patel v. City of Los Angeles* (9th Cir. 2013) 738 F.3d 1058, 1061 and argues that TNCs retain both a possessory and an ownership interest in their books and records and have the right to exclude others from prying into the contents of those records.[78] In making this argument, Lyft is attempting to raise a Fourth Amendment challenge that the Commission does not find applicable because the Amendment's protections against unreasonable searches do not extend to public disclosure of records collected therefrom. (*See* discussion, *infra*, in the Comments section.)

Even if Lyft could establish a privacy interest, that interest is not absolute. In affirming the Ninth Circuit's decision, the Supreme Court stated that for a regulatory agency to invade a claimed privacy interest, the invasion must be

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[76] The Commission takes Official Notice of this information pursuant to Rule 13.10 of the Commission's Rules of Practice and Procedure.

[77] *See* Zip Code Map for 94102.

[78] Lyft *Comments*, at 23-24.

justified by "a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made." (*City of Los Angeles v. Patel* (2015) 576 U.S. 409, 426. Thus, even if one were to assume that TNCs have such a privacy interest to their trip data at issue, the Commission has demonstrated a substantial government interest that would justify the information's disclosure. (*See* discussion, *infra*, at Section 3.4.2.)

Lyft next cites *Airbnb, Inc. v. City of New York* (*Airbnb New York)*[79] and *Airbnb, Inc. v. City of Boston (Airbnb Boston)*[80] as proof that the privacy concerns recognized in *Patel* extend to internet-enabled platforms such as Lyft. But these cases are factually distinguishable in a material way. In *Airbnb New York*, the Court was concerned with protecting commercially sensitive information which it identified as customer lists, customer-specific data, pricing practices, user identities, contact information, and usage patterns.[81] None of this information is contained in the census block data at issue that the TNCs are being required to disclose in the Annual Reports for the years 2014-2019.

Airbnb Boston is similarly distinguishable. As for the requirement to produce usage data for a unit (*i.e.*, the number of nights it was occupied in a given time period), something Airbnb or its hosts generally do not publish, the Court found that "Airbnb has a reasonable expectation of privacy in the nonpublic usage data for its listings—especially when paired with additional information such as the location of the unit—and that the City cannot lawfully require disclosure of that information without the protections guaranteed by the

[79] (S.D.N.Y. 2019 373 F.Supp.3d 467, 484, *appeal withdrawn*, No. 19-288, 2019.

[80] (D. Mass. 2019) 386 F.Supp.3d 113, 125, *appeal dismissed* (1st Cir., Sept. 3, 2019).

[81] 373 F.Supp.3d, at 484.

Fourth Amendment."[82] But nowhere does Lyft establish that the census block data at issue contains such precise locational data that would infringe on a driver's or passenger's privacy rights.

Uber

In support of its claim that the trip data at issue is protected on privacy grounds, Uber relies on the California Consumer Privacy Act (CCPA).[83] According to Uber, the CCPA provides that any data that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer constitutes personal data.[84] Uber further reasons that the very nature of the trip data at issue warrants enhanced protection under the CCPA as personally identifiable information, which Uber equates as personal data.[85]

To understand why the Commission rejects Uber's attempt to rely on the CCPA, it will be necessary to conduct a closer analysis of the statute's scope and purpose. Enacted in 2018 and effective January 1, 2020, the CCPA granted certain rights to California consumers: the right to know what personal information is collected, used, shared or sold; the right to delete personal information held by businesses and a business's service provider; the right to opt out of sale of personal information, and the right to non-discrimination in terms of price or service when a consumer exercises a privacy right under the CCPA. A business is subject to the CCPA if one or more of the following are true: a business has gross annual revenues in excess of $25 million; a business buys, receives, or sells the

[82] 386 F.Supp.3d, at 125.

[83] Civil Code §§ 1798.100—1798.199.100.

[84] Uber *Comments*, at 3, and footnotes 2 and 3.

[85] *Id.*, at footnote 4.

personal information of 50,000 or more consumers, households, or devices; or a business derives 50% or more of annual revenues from selling consumers' personal information.

Initially, we must address whether under the current circumstances Uber can avail itself of the CCPA. First, it was designed to regulate companies that traffic in the acquisition and sale of consumer personal information. There is nothing in the CCPA to suggest that its scope is broad enough to cover the Commission's regulatory activities which would include requiring TNCs to disclose the trip data at issue to the public. We note that Civil Code § 1798.140(o)(2) exempts information lawfully made available from federal, state, or local government records.[86] Second, the CCPA went into effect in January of 2020, yet the Annual Reports are for the years 2014-2019 so it is questionable whether the CCPA can be applied retroactively to information gathered before the law went into effect. Uber does not claim that the CCPA should be applied retroactively, and Uber does not cite to operative statutes that would suggest the CCPA should be applied prospectively.[87] In fact, one federal court has already

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[86] The text of Civil Code § 1798.140(o)(2) is as follows:

> (2) "Personal information" does not include publicly available information. For these purposes, "publicly available" means information that is lawfully made available from federal, state, or local government records, if any conditions associated with such information. "Publicly available" does not mean biometric information collected by a business about a consumer without the consumer's knowledge. Information is not "publicly available" if that data is used for a purpose that is not compatible with the purpose for which the data is maintained and made available in the government records or for which it is publicly maintained. "Publicly available" does not include consumer information that is deidentified or aggregate consumer information.

[87] *See* Cal. Civ. Code § 1798.198 (providing the CCPA "shall be operative January 1, 2020); *see also* Cal. Civ. Code § 3 ("[n]o part of [this Code] is retroactive, unless expressly so declared.").

determined that the CCPA does not apply retroactively.[88] Based on our preliminary analysis, it does not appear that the CCPA is applicable to the dispute before this Commission.

Assuming the CCPA does apply, as the Commission's decision to order the disclosure of the trip data at issue is occurring after the CCPA became effective, Uber still does not prevail because the trip data at issue does not fit within the CCPA's definition of personal information. Civil Code § 1798.140(o)(1) defines personal information as follows:

> "Personal information" means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular consumer or household.

Since none of the trip data at issue identifies a particular consumer or household, the information from the Annual Reports for the years 2014-2019 that the Commission is ordering disclosed does not fit within the opening definition of personal information.

But the CCPA's definition of personal information goes further and provides a series of examples of protected information, so we must next determine if the trip data at issue fits within one of those examples. Civil Code § 1798.140(o)(1)(G) lists "geolocation data" as an example of personal information, and Uber cites to this example in its Comments, which it claims

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[88] *See Lavorious Gardiner v. Walmart Inc*. (U.S.D.C.: No. Dist. Cal: Case No. 20-cv-04618-JSW), *Order Granting Motion to Dismiss and Deny Motion to Strike Class Allegations,* at 3 ("The CCPA went into effect on January 1, 2020, and it does not contain an express retroactivity provision.")

enjoys privacy protection under both the California Constitution and U.S. Supreme Court precedent.

We examine each of Uber's contentions in order. Although geolocation data is listed as an example of personal information, CCPA does not define geolocation data. We are given some guidance when we examine federal law that has interpreted the warrant requests to track the geolocation of a cell phone of a person suspected of having committed a crime. *In re Smartphone Geolocation Data Application* (2013: E.D.N.Y.) 977 F.Supp.2d 129, the Court explained what geolocation data is in relation to its value: "One important aspect of smartphone technology is the ability of these devices to identify, in real time, their geographic location, which data can be shared with certain programs and providers to enable advanced functions." The Court noted that such precision is possible using cell-site data, GPS, and other Bluetooth type technologies that can track a cell phone. Thus, we understand geolocation data to mean data that can be derived from a cell phone, that is being or has been used, with the use of electronic tracking mechanisms.

With that understanding of the scope of the geolocation definition in mind, we can explain that the precedents that Uber has cited in its *Comments* bear no meaningful relation to the trip data at issue in this proceeding because, due to the fact that data are provided annually, the data do not provide such real time geographic location of a TNC passenger. Uber first cites *Opperman v. Path, Inc.* (N.D.Cal.2016) 205 F.Supp. 3d 1064, in which plaintiffs owned an Apple device that came pre-loaded with a Contacts App that owners may use as an address book to input and store various information about the owners' contacts. Plaintiffs allege that Yelp and other app developers uploaded their e mail address book data without their consent, and are liable under an intrusion on

seclusion cause of action. But the information at issue in *Opperman* identified other persons in an owner's contact information via e mail addresses, information that is not part of the trip data at issue. Thus, we find *Opperman* to be factually distinguishable.

Next, Uber cites *Carpenter v. United States, supra*, and *United States v. Jones, supra*. But as we have noted above, both decisions deal with GPS monitoring which is more precise and pervasive than the trip data at issue since GPS monitoring can provide a time stamp display of a subject's every movement. In contrast, the trip data at issue does not provide the same type of information with such locational specificity.

Uber's final authority is equally distinguishable. In *City of Los Angeles v. Patel, supra*, the Los Angeles Municipal Code required hotel operators to maintain the following records for each guest: the guest's name and address; the number of people in each guest's party; the make, model, and license plate number of any guest's vehicle parked on hotel property; the guest's date and time of arrival and scheduled departure date; the room number assigned to the guest; the rate charged and amount collected for the room; and the method of payment. Yet the trip data at issue from the Annual Reports for the years 2014-2019 do not generally include names and addresses, as well as specific vehicle information.[89]

In sum, we conclude that neither Lyft nor Uber have met their burden of establishing that the trip data at issue includes a legally protected privacy interest.

[89] Exceptions would be where DriverID is included in certain reports (*e.g.* zero tolerance reports, sexual assault and harassment reports, or off-platform solicitation reports).

- Reasonable Expectation of Privacy

Because both Lyft and Uber have failed to establish that trip data should be protected from disclosure on privacy grounds, they cannot meet the reasonable expectation of privacy criterion. Additionally, Lyft and Uber fail to cite any provision in their service agreements that trip data will be treated confidentially, or that passengers are allowing the TNCs to collect the trip data with the understanding that it will be kept private.

- Harm from Serious Invasion of Privacy

Finally, Lyft and Uber fail to establish that the disclosure of the trip data would be a serious invasion of privacy. As noted above, the claims that the trip data can be reidentified to reveal personal information about a rider's politics, religious beliefs, sexual orientation, or medical status are speculative at best.

In sum, we conclude that except for the information identified above in the table, the balance of the trip data in the Annual Reports from 2014-2019 is not protected from disclosure on privacy grounds and shall be made publicly available in accordance with the disclosure protocols adopted by this decision.

3.3. Should any Portions of the TNC Annual Reports Submitted for the Years 2014-2019 be Redacted on Trade Secret Grounds?

3.3.1. Comments

Lyft

Lyft claims its Trip Data is entitled to protection as trade secret information under the CUTSA, as that data has independent economic value and is subject to reasonable efforts to maintain its secrecy, and preservation of this data as confidential would not conceal fraud or work an injustice. According to Lyft, these arguments establish that the Trip Data fits within California's

definition of a trade secret.[90] Lyft then cites a series of authorities for the proposition that courts have held that compilations of information that require significant efforts to create, such as customer lists and consumer-specific data, marketing studies, business strategies, pricing algorithms, and instructional materials, are subject to protection as trade secrets, even though individual components of the compilation may be in the public domain and thus unprotectable.[91]

Uber

Uber argues that the following information is also trade secret information protected from public disclosure by state law, and as such, it must be kept confidential:

- Driver Information: (1) Personal information including each driver's first and last name, middle initial, the driver's

[90] Civ. Code §3426.1(d) states:

Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[91] In its Comments, at 26-27, Lyft cites *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1522; *San Jose Construction, Inc. v. S.B.C.C., Inc.* (2007) 155 Cal.App.4th 1528, 1539–1540; *Religious Technology Center v. Netcom On-Line Communication Services, Inc.* (N.D. Cal. 1995) 923 F.Supp. 1231, 1253; *Airbnb, Inc. v. City of New York* (S.D.N.Y. 2019) 373 F.Supp.3d 467, 484; *Lion Raisins Inc. v. USDA* (9th Cir 2004) 354 F3d 1072, 1080-81; *Mattel, Inc. v. MGA Entertainment, Inc.* (C.D. Cal. 2011) 782 F.Supp.2d 911, 972; *MAI Systems Corp. v. Peak Computer, Inc.* (9th Cir. 1993) 991 F.2d 511, 521; *National Information Center, Inc. v. American Lifestyle*, 227 U.S.P.Q. 460, 1985 WL 4035 (E.D. La. 1985); *Editions Play Bac, S.A. v. Western Pub. Co., Inc.*, 31 U.S.P.Q.2d 1338, 1342 n.3 (S.D. N.Y.1993); *Whyte v. Schlage Lock Co.* (2002) 101 Cal. App. 4th 1443, 1155; *Brunswick Corp. v. Jones* (7th Cir. 1986) 784 F.2d 271, 275; *Black, Sivalls & Bryson, Inc. v. Keystone Steel Fabrication, Inc.* (10th Cir. 1978) 584 F.2d 946, 952; *The Retirement Group v. Galante* (2009) 176 Cal.App.4th 1226, 1238; *and Lyft, Inc., et al., v. City of Seattle* (2018) 190 Wn.2d 769.

license state of issuance, number and expiration date, as well as the VIN number of the driver's vehicle; and (2) the days a particular driver has used the App, the day, month and year a driver's hours were reported using the App, the number of hours a driver was logged on the TNC App on days they used the app, mean and median hours and miles a driver was logged onto the App for the month, total months a driver used the TNC App for referrals, total hours and miles a driver was logged on to the TNC App for the month, and total miles driven on trips referred through the App.

- Trip Data: The date, time, and geolocation data, including latitude, longitude, and census block, of both the driver and rider (1) when the rider is picked up and dropped off; (2) when the driver's app is turned on or the last rider dropped off; (3) at the time a trip request was made; (4) at the time a trip request was accepted or not accepted, at the sole discretion of the driver; and (5) the total accepted trips.

According to Uber, Government Code § 6254.7(d) expressly provides that trade secrets are not public records under the CPRA. Further, Government Code § 6254(k) exempts from public disclosure any records exempted from disclosure by state law, including "provisions of the Evidence Code relating to privilege." Evidence Code § 1060 states "the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." Uber asks that the Commission revisit its previous denials and revise its rulings for information that should be properly afforded protection as a trade secret.

San Francisco

San Francisco argues that 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.

SFTWA

SFTWA states that ALJ Mason has twice rejected TNCs' prior claims for confidentiality of information on trade secret grounds.[92] SFTWA argues that the Commission itself rejected Uber subsidiary Rasier-CA's trade secret claim on the confidentiality of consumer and trip data.[93] In SFTWA's view, it seems unlikely that any TNC claims for confidential treatment of any portion of its Annual Reports on trade secret grounds will pass the Commission's test.

3.3.2. Discussion

SFTWA is correct that TNCs have previously raised the argument that trip data and other information in the Annual Reports is protected from disclosure on trade secret grounds, and in each instance the Commission and the assigned ALJ have rejected the claim as being factually and legally deficient.[94] The TNCs have failed to raise any new arguments that would cause us to give their trade secret claim any more weight, we, again, reject the argument that trip data and other information in the Annual Reports for the years 2014-2019 is trade secret protected.

3.3.2.1. General Concepts of Trade Secrets

In 1984, California adopted, without significant change, the Uniform Trade Secrets ACT (UTSA). (Civil Code §§ 3426 through 3426.11. *DVD Copy Control Assn., Inc. v. Bunner (2003) 31 Cal. 4th 864, 874*; *Cadence Design Systems, Inc. v.*

[92] SFTWA *Comments*, at 4, footnote 11, referencing the *2020* and *2021 Confidentiality Rulings*.

[93] D.16-01-014, at 28-54.

[94] *Id*.

Avant! Corp. (2002) 29 Cal.4th 215, 221.) A trade secret has three basic elements, all of which must be established:

- Information such as a formula, pattern, compilation, program, device, method, technique, or process;
- That derives independent economic value (actual or potential) from not being generally known to the public or to other persons who can obtain economic value; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In *KC Multimedia, Inc. v. Bank of America Technology & Operations, Inc*. (2009) 171 Cal.App.4th 939, 955, the Court explained that the California UTSA (CUTSA) provides the exclusive remedy for a claimant seeking redress for a trade secret violation:

> CUTSA has been characterized as having a "comprehensive structure and breadth . . . ." (*AccuImage Diagnostics Corp. v. Terarecon, Inc.* (N.D.Cal. 2003) 260 F.Supp.2d 941, 953.) Here, the eleven provisions of the UTSA set forth: the definition of `misappropriation' and `trade secret,' injunctive relief for actual or threatened misappropriation, damages, attorney fees, methods for preserving the secrecy of trade secrets, the limitations period, the effect of the title on other statutes or remedies, statutory construction, severability, the application of title to acts occurring prior to the statutory date, and the application of official proceedings privilege to disclosure of trade secret information." (*Ibid.*) That breadth suggests a legislative intent to preempt the common law. (*Ibid.*; *I. E. Associates v. Safeco Title Ins. Co., supra,* 39 Cal.3d at p. 285.) At least as to common law trade secret misappropriation claims, "UTSA occupies the field in California." (*AccuImage Diagnostics Corp. v. Terarecon, Inc.*, at 954.)

Thus, if a claimant fails to establish all three elements of a trade secret claim under the CTUSA, claimants have no other legal avenues for trade secret redress in common law and the trade secret claim will fail.

In creating a trade secret protection, courts have distinguished between trade secret information versus other information connected to a business' operations. In *Cal Francisco Investment Corp. v. Vrionis* (1971) 14 Cal.App.3f 318, 322, the Court explains that distinction:

> It [trade secret] differs from other secret information in a business…in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operation of the business.

This distinction is important since trade secrets are generally the products of the creativity and hard work of the trade secret holder's efforts to further a business or otherwise reap economic rewards. (*Courtesy Temporary Service, Inc. v. Camacho* (1990) 222 Cal.App.3d 1278, 1287; *American Paper & Packaging Products, Inc. v. Kirgan* (1986) 183 Cal.App.3d 1318, 1326.) The idea behind the trade secret privilege is that those who devote time and energy to creating something of value should be protected against the use of such hard won, and economically valuable, information by others who contribute nothing to the creation of the trade secret.[95]

Civil Code § 3426.1(d) refers to information and includes, as examples, formulas, patterns, compilations, programs, devices, methods, techniques, or

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[95] *See e.g., Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (*Altavion*) (2014) 226 Cal.App.4th 26, 42; *DVD Copy Control Assn. v. Brunner*, *supra*, 31 Cal.4th at 880; *San Francisco Arts & Athletics, Inc. v. United States Olympic Com.* (1987) 483 U.S. 522, 536; *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1520.

processes. While it is true that the word "information" has a broad meaning,[96] trade secrets usually fall within one of the following two broader classifications: first, technical information (such as plans, designs, patterns, processes and formulas, techniques for manufacturing, negative information, and computer software); and second, business information (such as financial information, cost and pricing, manufacturing information, internal market analysis, customer lists, marketing and advertising plans, and personnel information).

Furthermore, focusing on the word "compilation" from Civil Code § 3426.1 demonstrates that none of the TNCs can meet their burden of establishing a trade secret claim for the trip data at issue. Every TNC previously filed declarations in this proceeding in support of their Motions for Confidential Treatment of their 2021 Annual Reports, acknowledging that the trip data they claim trade secret protection for is a compilation rather than a unique customer list or other groups of information that California courts have treated as a trade secret. (*See* Declaration of Uttara Sivaram on Behalf of Uber Technologies, Inc. [Sivaram Decl., ¶ 3 [referring to the information required by the Commission as "a large dataset that includes information for every Uber trip in California[.]"]; Rosenthal Decl., ¶ 7 ["The data is continually *collected, compiled* and analyzed[.]"]; and Declaration of Saar Golde in Support of Nomad Transit LLC's Motion for Confidential Treatment [Golde Decl.], ¶ 2 ["I oversee the Data Science team, which is responsible for *collecting and reporting* aggregated and trip-level data to regulators[.]"]) While HopSkipDrive attempts to refer to trip data as "essentially a customer list," we reject that analogy as the Annual Reports do not require the disclosure of a customer list. (*See* Declaration of Trish Donahue on Behalf of

[96] *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc., supra*, 226 Cal.App.4th, at 53.

HopSkipDrive [Donahue Decl.], ¶ 9.) As the Commission has specified data categories regarding TNC passenger trips that must be populated with various details, without question, then, the trip data that TNCs must provide is a compilation.

3.3.2.2. The Trip Data at Issue Must be a Compilation that is Not Generally Known to be Considered Trade Secret

Finding that trip data constitutes a compilation, however, does not end the Commission's inquiry into whether a compilation is entitled to trade secret protection. For a compilation to be a trade secret the information has to be grouped in a valuable way that is not generally known, even though the discrete elements that make up the compilation would not qualify as a separate trade secret. Otherwise, any compilation of information could arguably be considered a trade secret. By way of example, if the compilation is a customer list, the party claiming trade secret protection must demonstrate the information is not generally known, *i.e.*, not "readily ascertainable" through public sources, such as business directories. (*American Paper & Packaging Products, Inc. v. Kirgan* (1986) 183 Cal.App.3d 1318, 1326.) Where a person claiming trade secret protection to a list where the employer has expended time and effort identifying customers with particular needs or characteristics, courts will be more likely to find a trade secret. (*Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1522.) As a general principle, the more difficult information is to obtain, and the more time and resources are expended by an employer in gathering it, the more likely a court will find such information constitutes a trade secret. (*Courtesy Temporary Service, Inc. v. Camacho* (1990) 222 Cal.App.3d 1278, 1287 .) As such, requiring that a party claiming trade secret protection demonstrate that the information is not

readily ascertainable through public channels, and that the compilation is the result of dedicated time and effort to isolate the characteristics of customers that otherwise would be difficult to obtain is but another way of requiring evidence that the compilation is not generally known.

After applying the foregoing standards, we conclude that the TNCs have failed to establish that the trip data as a whole, or any subcomponent thereof, is not generally known. Absent from Lyft's and Uber's *Comments* is any explanation of the secret nature of the disclosure of data that reveals a TNC trip that originates in zip code or census block x and terminates in zip code or census block y on date and time z. They cannot provide such an explanation because zip codes and census blocks are geographic locations created by the Federal Government, rather than the TNCs (*See* Lyft's *Comments*, Exhibit A, which provides excerpts from the United States Census Bureau). As such, populating fields by zip code and/or census block, or by any of the other trip data categories at issue that the Commission has required, does not make the information not generally known.[97]

3.3.2.3. The Overbreadth of the Trade Secret Claim

There is an additional problem that undermines Lyft's and Uber's trade secret argument--it is overbroad. In their 2021 Motions for Confidential Treatment, they speak of proprietary databases, algorithms, and formulas used

[97] The Commission acknowledges that there have been other out of state and federal decisions that have found that some of the trip data categories at issue here are trade secret. (*See Rasier-DC, LLC v. B&L Service, Inc*. 2018 Fla.App. LEXIS 320; 43 Fla. L. Weekly D.145; 2019 WL 354557; *Ehret v. Uber Technologies, Inc*. 2015 U.S. Dist. LEXIS 161896; *Lyft, Inc. v. Pennsylvania Public Utility Commission* (2015) 145 A.3d 1235; 2016 Pa. Commw. LEXIS 374; and *McKnight v. Uber Techs. Inc.* 2017 U.S. Dist. LEXIS 124534 (N.D. Cal. August 7, 2017.) The Commission declines to follow these authorities as their findings are too conclusory.

internally to develop strategies for appealing to customers and drivers, and to compete with other TNCs that will be compromised if trip data were publicly disclosed. (Sipf Decl., ¶ 6 ["pricing algorithms for rides"]; and ¶¶ 8 and 9 [Uber is developing "new products and features"]; Rosenthal Decl., ¶¶ 6 and 7 [trip data stored in "proprietary databases" and compiled for "business analytics purposes"].) But the Commission has not asked any TNC to produce its internal analyses, algorithms, or business strategies for marketing its business. Instead, the Commission has ordered Moving Parties to produce their resulting data.

Courts have recognized the distinction between a secret formula possibly being a trade secret and the resulting data derived from a secret formula. In *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 2016 WL 3654454, at *2, the Court explained that while the uniquely developed formula might be protected, the resulting data is not trade secret protected:

> While the algorithms and proprietary price models that Lyft uses to set its fares and the rate of Prime Time premiums and, in turn, its commissions from those moneys are trade secrets, the bare output of those algorithms and price modes (*i.e.*, the total amount of commissions taken) is not. Though the manner in which Lyft determines its pricing is an important part of its competitive strategy, its revenue is not strategy but rather the result of that strategy.

(*See, also, Buffets, Inc. v. Klinke* (9th Cir. 1996) (Washington law) 73 F.3d 965, 968 ["This is not a case where material from the public domain has been refashioned or recreated in such a way so as to be an original product but is rather an instance where the end-product is itself unoriginal."].) Accordingly, we reject the overbroad nature of Lyft's and Uber's trade secret assertions as the resulting trip data at issue that is included in the Annual Reports for the years 2014-2019 is not trade secret protected.

3.3.2.4. TNCs Fail to Establish that the Trip Data at Issue Has Independent Economic Value

In determining whether the trip data at issue had actual or potential independent economic value because it was secret, the trier of fact may consider any of the following factors:

(a) The extent to which a TNC obtained or could obtain economic value from the trip data at issue in keeping it secret;

(b) The extent to which others could obtain economic value from the trip data at issue if it were not secret;

(c) The amount of time, money, or labor that a TNC expended in developing the trip data at issue; and

(d) The amount of time, money, or labor that would be saved by a competitor who used the trip data at issue.[98]

While the presence or absence of any one or more of these factors is not necessarily determinative, the trier of fact is entitled to expect evidence from which it can form some solid sense of how useful the information is, *e.g.*, how much time, money, or labor it would save, or at least that these savings would be 'more than trivial.' (Rest.3d., Unfair Competition, § 39, com. e.)"(*Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 564-565.) Furthermore, information that is readily ascertainable by a business competitor derives no independent value from not being generally known. (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 62.) Finally, *Yield Dynamics* requires that the economic value cannot be established in the abstract:

> Moreover, it seems inherent in the requirement of value, as codified, that it is relevant to ask to *whom* the information may be valuable. The statute does not speak of value in the

[98] California Civil Jury Instruction 4412 (Independent Value Explained).

> abstract, but of the value that is "[d]eriv[ed] . . . *from not being generally known to the public or to other persons who can obtain economic value* from its disclosure or use. . . ." (Civ. Code, § 3426.1, subd. (d)(1), italics added.) In other words, the core inquiry is the value to the owner in *keeping the information secret* from persons who could *exploit it to the relative disadvantage of the original owner.*[99]

Lyft and Uber fail to carry their burden of proving that the trip data at issue has independent economic value. Lyft quotes four passages from the Rosenthal Declaration[100] to establish the following contentions: first, the trip data at issue is sensitive and valuable data that is collected and maintained by Lyft using data collection, analysis and reporting processes that Lyft developed over time and at great expense and effort and are stored on Lyft's proprietary databases.[101] Second, the trip data at issue that "conform[s] to CPED data reporting requirements when submitting its Annual reports" has value wholly apart from its value in allowing Lyft to comply with regulatory requirements as it is collected, compiled and analyzed as an integral aspect of Lyft's business operations.[102] Third, if Lyft's competitors, "including Uber, HopSkipDrive, Wingz, Silver Ride, Nomad Transit, and any other company that has obtained or might wish to obtain a TNC permit" were provided access to the trip data at issue they could and would analyze and manipulate the data to gain insights into Lyft's market share, pricing practices, marketing strategies, and "other critical

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[99] 154 Cal.App.4th, at 568.

[100] Filed in support of Lyft's Request For Confidential Treatment of Certain Data In Its 2021 Annual Report.

[101] Rosenthal Decl., ¶6.

[102] *Id.*, ¶7.

aspects of its business that it does not publicly disclose."[103] Fourth, it is Ms. Rosenthal's "understanding and belief" that "mobility data collected from GPS-connected vehicles or mobile devices in vehicles, such as the Census Block Data here, has enormous commercial value for a variety of purposes and organization, not just TNCs."[104]

We reject Ms. Rosenthal's factual allegations as being insufficient to establish that the trip value at issue has independent commercial value. First, and contrary to Ms. Rosenthal's concerns, the Commission has not required any TNC to disclose its data collection, analysis, and reporting processes. Thus, any internal analyses that a TNC has developed for analyzing, collecting, and reporting information need not be disclosed. Instead, the Annual Reports contain the resulting data which is not trade secret protected. Second, Ms. Rosenthal's claim that the trip data at issue was the result of collection, reporting, and reporting processes that were developed "over time and at great effort and expense" is conclusory. In *Yield Dynamics, Inc. v. TEA Systems* (2007) 154 Cal.App.4th 547, 564-565, the Court provided guidance as to the specificity of the showing to demonstrate independent value:

> Merely stating that information was helpful or useful to another person in carrying out a specific activity, or that information of that type may save someone time, does not compel a fact finder to conclude that the particular information at issue was "sufficiently valuable . . . to afford an . . . economic advantage over others." (Rest.3d Unfair Competition, § 39.) The fact finder is entitled to expect evidence from which it can form some solid sense of *how* useful the information is, *e.g.*, *how much* time, money, or

[103] *Id.*, ¶8.

[104] *Id.*, ¶9.

> labor it would save, or at least that these savings would be "more than trivial."

Ms. Rosenthal fails to provide the necessary factual specificity to support her assertions regardless of her claim that another company has expressed an interest in Lyft's trip data.

Furthermore, the Commission has not required any TNC to disclose in its Annual Reports for the years 2014-2019 any insights into the effectiveness of its services, features, marketing, and promotional efforts. All the release of the trip data would show is that a passenger requested a TNC ride from zip code x and that the ride terminated in zip code y on z date and time. That information would not reveal why the passenger requested the trip on that day or why the passenger traveled to the destination zip code y. The trip data in the Annual Report does not have a column indicating whether the passenger took advantage of a passenger promotion a TNC advertised on that day or time, or if the passenger even knew of the passenger promotion. There could be other reasons why the passenger picked that particular trip that have nothing to do with a TNC's passenger promotions. For example, a passenger may decide to take a trip because of a special occasion (*e.g.,* date, engagement with friends, movie night, going to an entertainment venue), or need to take a trip because of employment obligations, and either or both scenarios could be completely unrelated to a TNC's passenger promotions. Thus, the release of the trip data will not provide any insights into a TNC customer's reason for requesting a trip, even if a competitor were to cross reference the TNC's ride numbers against the TNC's passenger promotions run at that time the trip was requested.

Similarly, the release of TNC trip data will not reveal any secrets about TNC drivers or driver incentive programs deployed. As with the passenger trip

data, the Commission has not required any TNC to reveal why a driver decided to log onto a TNC app or why the TNC driver decided to pick up a particular passenger and take that passenger to a particular zip code or census block. As the Commission does not generally require any TNC to provide personally identifiable information about TNC drivers, there would be no way for a competitor to gain any insights about the driving habits, patterns, or TNC-generated driving incentives. As with passengers, there could be other reasons why the TNC driver picked a particular day or time to log onto the TNC app or to select particular zip codes to pick up a TNC passenger that have nothing to do with a TNC's driver incentive program. The TNC driver could be working part time and the period in which the driver logged onto the TNC app may be the only available time in which to do so given the personal or professional constraints in the driver's life. If the trip data were released, there would be no way to know what motivated a TNC driver to log on to the TNC app for any ride or time.

Ms. Rosenthal's assertion that competitors, both real and conjectured, could and would analyze Lyft's trip data to gain competitive insights and advantages is also speculative. She references "Uber, HopSkipDrive, Wingz, Silver Ride, Nomad Transits, and any other company that has obtained or might wish to obtain a TNC permit," yet fails to provide any facts that any of these presumed rivals are trying to gain access, might want access, or would in fact gain insights into Lyft's business strategies.

In fact, a closer analysis of the smaller TNC business models underscores the fallacy behind Ms. Rosenthal's contention. HopSkipDrive primarily

transports minors;[105] Silver Ride specializes in providing rides for senior citizens;[106] Nomad focuses on a small set of riders, with certain services allowing only "select and limited groups of riders in a specific geographic area;"[107] and Wingz began as an airport service but has since branched into providing a niche service to specialty events, doctor's appointments, and other destinations.[108] But the Annual Reports for the years 2014-2019 do not require a TNC to list a passenger's age as part of the trip data template so it is not clear what use HopSkipDrive and Silver Ride would have for another TNC's trip data. It is also not clear how limited operations such as Nomad and Wingz would want Uber and Lyft's trip data which would cover their statewide operations. As for the "any other company that has obtained or might obtain a TNC permit" that the Rosenthal Declaration references,[109] these claims are too ambiguous and speculative to warrant further consideration as they don't satisfy the granularity of information standard that the Commission adopted in D.20-03-014 for establishing confidentiality claims. Finally, as for Uber, Ms. Rosenthal does not provide any information that Uber's and Lyft's business operations are so different, or that they compete in different geographic areas, so that Uber would want access to Lyft's trip data at issue or would gain any benefits. As such, Lyft has failed to explain how any of their competitors would benefit by receiving trip

[105] Donahue Decl., ¶ 2 ("HopSkipDrive is a very small TNC…that focuses on arranging safe rides for kids and other individuals who need a little extra support.")

[106] *Id.*

[107] Golde Decl., ¶ 5.

[108] *See* Wingz website.

[109] Rosenthal Decl., ¶ 3.

data that would be to the detriment to whatever independent economic value the trip data has.

Uber

Uber makes the same independent economic value arguments as Lyft.[110] It claims that its data provides "insights for improving its technology and providing information and incentives to drivers in ways to improve rider and driver experience."[111] Uber further claims that public disclosure of such information "would give Uber's competitors—including Lyft, Wingz, Via,[112] and others—free access to trade secret information that Uber invested in developing and relies on to compete in this online market place."[113] For the reasons set forth above in our discussion of Lyft's arguments, we reject Uber's arguments as speculative and unsubstantiated.

The Commission has seen courts reject similarly generalized assertions as being factually insufficient to support a claim of trade secret. In *Confederated Tribes of Chehalis Reservation v. Johnson* (1998) 135 Wn.2d 734, 749, the Court stated:

> Through general statements in declarations, the Tribes maintain that their competitors would gain an advantage over them if the amount of the two percent community contributions were made public. In the Tribes' view, a potential competitor could use the two percent figure to calculate gross revenue and then could gauge the market and market saturation. Therefore, the Tribes argue, the

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110 *Uber Comments*, at 8.

111 *Id*.

112 Based on the filing and permitting records with the Commission, we see that Via is another name for Nomad.

113 Uber *Comments*, at 8-9.

> information derives economic value from not being generally known.
>
> However, there is no evidence in the record before us that knowledge of a casino's profitability could not be generally ascertained by visiting the casino site, through newspaper articles about the casino, or through employees, tribal members, or local service agencies which are recipients of community contributions. Even if the information were not readily ascertainable, there is no evidence in the record to support the Tribes' contention that the information derives "independent economic value" from not being generally known.

Courts have also refused to recognize prices or fees as having independent economic value when different variables can go into calculating the price or fee. In *Belo Management v. Click!Network* (2014)184 Wn.App. 649, 658, the Court stated:

> Similarly, here, the broadcasters' allegations of harm are too conclusory and speculative. They make the same argument as the firm in Robbins: Release of this information would give competitors an unfair advantage. This reason alone is insufficient to prove that the information is a trade secret. The broadcasters have not proven that their prices have independent economic value to their competitors or other cable systems. As the broadcasters concede, every negotiation is different. Markets and cable systems vary. Prices fluctuate over time. Thus, it does not follow that the other cable systems could viably argue that they are entitled to the same price as a cable system in a different market during a different time period.

Similarly, a price for a trip that is revealed through the release of trip data would not be of any use to another TNC because Annual Reports do not require TNCs to explain how the price of a trip was calculated or if any special promotions were offered. A rival TNC would still have to conduct its own analysis and use whatever algorithms it has developed to best determine what price to charge for

a comparable ride. Accordingly, just as the Court found in *Belo*, the TNCs' claims of economic harm are conclusory and speculative.

Lyft

Finally, we reject Lyft's attempts to rely on secondary sources to establish its claim that the trip data has acquired independent value as these sources do not support Lyft's argument.

Datarade, Streetlight Data, and McKinsey & Co. focus on the useful value of mobility data collected from GPS connected vehicles, and such data, as we explained above, can include a phone owner's name, e mail address, e mail contacts, and real time location information while the phone is on and the GPS tracking mechanism is in use, which can also lead to the exact starting, route, and ending locations. In contrast, the trip data at issue does not contain such information so a competitor would not derive the same independent economic value as they would from mobility data collected from GPS connected vehicles.

According, we find that Uber and Lyft have failed to establish the second criterion of a trade secret claim for their trip data.

3.3.2.5. Since They Fail to Establish the Other Elements of a Trade Secret Claim, the Commission Need not Address Whether Lyft and Uber Made Reasonable Efforts to Maintain Trade Secret Privacy

A person or entity claiming a trade secret must also demonstrate that the claimant made "efforts that are reasonable under the circumstances to maintain its secrecy. (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 304.) The Court went further to explain why the absence to maintain the secrecy of a trade secret dooms a trade secret claim:

> Public disclosure, that is the absence of secrecy, is fatal to the existence of a trade secret. "If an individual discloses his trade

> secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished." (*Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986, 1002; *see* Legis. Com. com., 12A West's Ann. Civ. Code (1997 ed.) foll. § 3426.1, p. 238 ["the trade secret can be destroyed through public knowledge"]; 1 Milgrim on Trade Secrets (2001) § 1.05[1], p. 1-197 ["unprotected disclosure . . . will terminate . . and, at least prospectively, forfeit the trade secret status"].)

As discussed above, all of the elements of a trade secret claim must be established as specified by Civil Code § 3426.1(d). Since Lyft and Uber failed to demonstrate that trip data is secret, the Commission need not address their efforts to maintain the claimed secrecy of its trip data.

3.3.2.6. An Established Trade Secret Claim Does Not Guarantee Nondisclosure

While evidentiary privileges such as the trade secret privilege are incorporated into the CPRA as potential bases for an agency to assert the Gov. Code § 6254(k) exemption, an assertion of the trade secret privilege by an entity that submits information to a governmental agency does not guarantee nondisclosure. A party asserting the trade secret privilege under Evidence Code § 1060 bears the burden of proving all the elements in that Code Section, which states as follows:

> If he or his agent (sic) or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.

Pursuant to this statute, if trade secret proponent establishes the existence of a trade secret, the burden shifts to the party seeking access to the trade secret to show that nondisclosure would work an injustice. (*See, e.g., Bridgestone/Firestone,*

Inc. v. Superior Court (1992) 7 Cal.App.4th 1384, 1393, *Davis v. Leal* (E.D. Cal. 1999) 43 F.Supp.2d 1102, 1110.) If the Commission believes the latter, it is not required to honor the party's Evidence Code § 1060 trade secret privilege claim.[114]

Application of the foregoing test leads the Commission to conclude that concealing Lyft's and Uber's alleged trade secret protected trip data would work an injustice as there is a strong public interest in obtaining trip data. As the *2020 Confidentiality Ruling* found:

> There is a public interest in learning when riders are in operation and when trips are accepted or rejected. Public entities have an interest in knowing how many drivers are in operation on their rides for the planning purposes identified above, and would also want to know the number of times and when rides are accepted or rejected to determine if the TNC ride service is being provided to all neighborhoods in a nondiscriminatory manner. County district attorneys or the state attorney general may want to use this data to bring the necessary enforcement actions in civil court.[115]

The planning purposes that the *2020 Confidentiality Ruling* referenced are those identified in the Comments from the San Francisco Municipal Transit Agency, San Francisco County Transportation Authority, San Francisco City Attorney's Office, and the San Francisco International Airport *Opening Comments on Proposed Decision Re; Data Confidentiality Issues:* trip data information is relevant in determining the impact of TNC services on their infrastructure, environmental impacts, traffic patterns, and the overall quiet enjoyment of their

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[114] *See Uribe v. Howie* (1971) 19 Cal.App.3d 194, 205-207, and 210-211; and *Coalition of University Employees v. The Regents of the University of California* (Super. Ct. Alameda County, 2003, No. RG03-0893002) 2003 WL 22717384. In conducing the balancing test, the courts found that the public interest in disclosure outweighed the claimed need for secrecy.

[115] *2020 Confidentiality Ruling*, at 20-21.

cities and counties.[116] In fact, Lyft put the question of the environmental and infrastructure benefits of TNC rides as the basis for allowing them to operate when Lyft filed its initial *Comments* in this proceeding:

> Giving people viable and convenient alternatives in transportation – as a complement to public transit, taxis, carsharing, carpooling, etc. – is the critical element that makes reduced individual car ownership and use of single occupancy vehicles achievable. For platform-based communities to reach the critical mass tipping point at which they can significantly contribute to reduction of urban congestion, greenhouse gas emissions, and other problems caused by single-occupant driving, such communities must be allowed to develop and flourish without unnecessary or ill-fitting regulatory barriers.[117]

It would not be surprising for local government entities to want access to the trip data to evaluate whether the claimed environmental and infrastructure benefits from allowing TNC vehicles to operate have been realized. The San Francisco Municipal Transportation Agency made such an argument in its *Comments* on Issue Track 3—Trip Data:

> San Francisco's transportation planners need TNC trip data to perform their duties. Under the City's charter, SFMTA has a responsibility to the general public to plan the transportation infrastructure for the future, manage congestion, and manage curb space appropriately. Without TNC data, SFMTA transportation planners must rely instead on anecdotal information to fill the gap, but such information does not present an accurate depiction of conditions on the ground. Creating public policy on factual, real time data, is clearly preferable. Here, the CPUC already requires TNCs to report much of the relevant data. Sound public policy requires the CPUC to make it available to allow local jurisdictions to make

[116] *Id.*, at 19 and footnote 37.

[117] Zimride (now Lyft) *Comments*, filed February 11, 2013.

> intelligent, supported transportation planning decisions for the benefit of all Californians.

Even though the 2020 Confidentiality Ruling addressed the 2020 Annual Reports, its rationale is equally applicable to the Annual Reports for the years 2014-2019. From the comments and filings, we can see an unwavering interest by government entities in TNCs providing transportation services in California from the moment the Commission first asserted jurisdiction over the TNCs.

In a recent California decision, the Court of Appeal recognized a municipality's interest in obtaining a TNC's trip data goes beyond environmental and infrastructure matters. In *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66, 73-74, the Court acknowledged that the San Francisco City Attorney has a broad right to investigate when it suspects an entity operating withing its jurisdiction is violating the law, citing to *California Restaurant Assn. v. Henning* (1985) 173 Cal.App.3d 1069, 1075. The San Francisco City Attorney claims it began its TNC investigation to determine:

- Whether Uber was violating the law in several areas relating to unsafe driving and illegal parking, the congestion and volume of Uber vehicles, inequality of access and treatment of passengers, and the distance driven by Uber drivers prior to commencing a shift, after media reports that Uber incentivizes drivers to drive as much as 200 miles or more before driving for an additional 12 to 16 hours, crowding the City's streets with unfamiliar and fatigued drivers.
- Whether Uber was violating California nuisance law, Civil Code § 3479, since the number of TNC vehicles might obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstruct the free passage or use, in the customary manner, of any public park, square, street, or highway.

- Whether Uber was failing to provide adequate accommodations for disabled riders and, possibly, in violation of the Unruh Civil Rights Acts (Civil Code § 51, subd. (b) and Civil Code § 54) and other state laws protecting individuals with disabilities.
- Whether Uber was underpaying its drivers and thereby violating San Francisco's independent minimum compensation ordinance (S.F. Administrative Code, ch. 12V).[118]

The Court found that the administrative subpoena seeking Uber's Annual Reports submitted to the Commission from 2013 to 2017, as well as the raw data the reports were based, was relevant to the City's investigations into possible violations of the law:

> The CPUC reports requests are reasonably relevant to the City's investigation of possible violation of state and municipal laws by Uber. (Citation omitted.) The CPUC reports contain information and data regarding safety problems with drivers, as well as hours and miles logged by drivers, which are relevant to the City Attorney's investigation of safety hazards, parking violations, and other possible violation of state nuisance law. The accessibility plans and the data on providing accessible vehicles included in the CPUC reports are clearly relevant to the City Attorney's investigation of possible violations of state law protections for individuals with disabilities.

We find that public entities would also be interested in TNC trip data for all the foregoing reasons, and it would result in an injustice to deny the public access to this trip data. Based on the data provided in the Annual Reports, the TNC industry has been a rapidly growing mode of private transportation, accounting for more than millions of rides annually in California, so each TNC's

[118] 36 Cal.App.5th, at 74-75.

reach and impact on municipalities where they conduct business is no doubt pervasive. Several investigations into whether a TNC such as Uber or Lyft is operating in violation of various state and local laws would be stymied if governmental entities could not review the relevant trip data. Accordingly, assuming that the trip data was a trade secret, keeping that trip data private is outweighed by the injustice inflicted on governmental entities who would be denied access to trip data.

3.4. Should any and/or all Portions of the TNC Annual Reports Submitted for the Years 2014-2019 be Redacted on any Other Grounds?

3.4.1. Comments

Lyft

Lyft claims that the Trip Data in the Annual Reports from 2014 – 2019 should also be protected from disclosure pursuant to Government Code § 6255(a), the so-called public interest balancing test exemption.[119] When evaluating a disclosure request under § 6255(a), the determining court must decide whether the public interest served by withholding the records clearly outweighs the public interest served by disclosure. In Lyft's view, the public interest in preserving TNC trade secrets in their Trip Data outweighs any public interest in disclosure.

Uber

Like Lyft, Uber argues that Government Code § 6255(a) provides further support for continuing to withhold certain Annual Report data from public disclosure. Uber claims that the public interest served by not disclosing certain data in the Annual Reports clearly outweighs the public interest served by

[119] Lyft *Comments*, at 37.

disclosure of this information to the public. Uber identifies the following data categories that it claims should be withheld from public disclosure:

- Confidential Complaints: Sensitive information regarding confidential reports of harassment, assault, or other complaints, including the geolocation information and description of the alleged incidents, certain information regarding the manner in which the incident or complaint was resolved, and the Waybill number for trips that were subject to complaints. Disclosure of details about these reports and their disposition not only threatens the privacy of those who have previously submitted complaints, but is also very likely to chill future reports from those who wish to keep their complaints confidential.
- Driver Discipline: a TNC reporting higher driver discipline numbers may well be a TNC that simply takes alleged violations more seriously, and imposes discipline on drivers more readily than a competitor. Yet, the public disclosure of a higher number of drivers disciplinary incidents is likely to leave the public with the mistaken impression that one TNC has drivers who are more likely to commit violations than its competitor whose disciplinary standards are more lax. The risk of public confusion regarding the severity of driver infractions leading to discipline may result in TNCs being less likely to discipline drivers, for fear of public backlash regarding high numbers of events resulting in driver discipline.
- Settlements and Pending Complaints: The Commission has acknowledged that some information related to confidential settlements and associated complaints should remain confidential. Publishing pending complaints before they are resolved will undercut the confidentiality granted to incidents which ultimately result in confidential settlement agreements. As such, pending and unresolved complaints should be treated as confidential, consistent

> with the treatment of any complaint which resulted in a confidential settlement or resolution.[120]

In Uber's view, public disclosure of these categories from the Annual Reports threatens to chill the reporting of incidents by drivers and riders, risks penalizing TNCs for thorough and forthcoming reporting of incidents in their Annual Reports, may deter TNCs from implementing driver discipline, and may undercut the resolution and settlement of pending complaints. Given these potential risks, Uber does not believe it to be in the public interest to publicly disclose granular detail from these categories in the Annual Reports.

San Francisco

San Francisco claims that the public interest served by withholding the records is outweighed by the public interest served by disclosure.

SFTWA

SFTWA is not aware of any other grounds that would warrant withholdings all or parts of the Annual Reports from public disclosure.

3.4.2. Discussion

Government Code § 6255(a) is the catch-all provision which may be used for determining the confidentiality of records not covered by a specific exemption enumerated in the CPRA. This provision allows an agency to balance the public interest that would be served by withholding information with the public interest that would be served by the disclosure of the information. (*Humane Society of the United States v. Superior Court* (2013) 214 Cal.App.4th 1233, 1255.) To withhold information, the agency must find that the public interest served by not disclosing the record clearly outweighs the public interest served by the disclosure of the record. Under this CPRA balancing test, a submitter of

[120] Uber *Comments*, at 9-10.

information requesting confidential treatment under Government Code § 6255(a) "must identify the public interest and not rely solely on private economic injury." (D.17-09-023, at 44.) While the public's right to information in possession of the government must be construed broadly, *Humane Society* cautions that "exemptions are to be construed narrowly."(214 Cal.App.4th, at 1254.) Finally, although Government Code § 6255(a) references the "agency," suggesting that it is incumbent on the government entity holding the information to establish that the catch-all exemption applies, the burden of proof as to the application of an exemption is on the proponent of nondisclosure. (*Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, 1071.) In this case, the burden would be on the TNCs to establish, by the preponderance of the evidence, the applicability of the catch-all exemption.

We must first consider if the public interest in nondisclosure of the trip data clearly outweighs disclosure. As this catch-all exemption comes into play only if the confidentiality of records is not covered by a specific exemption enumerated in the CPRA, TNCs cannot assert that the trip data is protected by the trade secret privilege. Instead, the question we must address is what proof the TNCs offered, beyond their claims of trade secret protection, to avail themselves of the catch-all exemption to prevent the disclosure of trip data. To do so, we must consider each of Lyft's and Uber's arguments.

Lyft

Lyft attempts to justify its reliance on the balancing test by invoking the trade secret claim. But as the balancing test only comes into play if no other enumerated exception is applicable, Lyft cannot assert the trade secret privilege.

As its next justification, Lyft points to "all of the reasons set forth above" to fall within the balancing test. But the only other rationale that Lyft advanced was

its privacy argument, and we have already demonstrated herein that Lyft has failed to carry its burden of establishing that the trip data at issue satisfy the three-part privacy test that the California Supreme Court articulate in *Hill*.

Other decisions have also rejected catch-all exemption claims based on speculative assertions of privacy invasions. For example, in *CBS v. Block* (1986) 42 Cal.3d 646, 652, Defendants contend that they met the burden of proving that the records of applications and licenses for concealed weapons fall within the catch-all exception by arguing that releasing this information will allow would-be attackers to plan their crime more carefully against licensees and will deter those who need a license from making an application. In rejecting Defendants' argument, the Court cautioned against the reliance on speculative assertions:

> Defendants' concern that the release of the information to the press would increase the vulnerability of licensees is conjectural at best. The prospect that somehow this information in the hands of the press will increase the danger to some licensees cannot alone support a finding in favor of non-disclosure as to all. A mere assertion of possible endangerment does not "clearly outweigh" the public interest in access to these records."

(*See*, *also*, *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579, 1581, 1586

The Commission considers the foregoing authorities instructive. The "likely" claim that *California State University* rejected as legally insufficient is synonymous to Lyft's claims of privacy invasion that are couched around the word "might" in support of its privacy arguments.[121] In both *California State*

[121] *See* Lyft *Comments*, at 18 ("Put simply, it is impossible to anticipate—and confidently dismiss—the virtually endless nefarious purposes that *might* result from such a massive,

Footnote continued on next page.

University and here, the claims are speculative and supported only by evidence whose admissibility is questionable. Similarly, *CBS'* and *New York Times'* rejection of the applicability of the catch-all exception based on the claim of "possible endangerment" and "could expose," respectively, is the equivalent of Lyft's use of the phrase "potentially revealing intimate personal details[.]"[122] In sum, based on the review of the evidentiary record, we conclude that Lyft has failed to carry its burden of proving that the public interest from nondisclosure of the trip data greatly outweighs the public interest from disclosure of the trip data.

Uber

We next consider Uber's *Comments.* Uber identifies the following categories of information where it claims the public interest served by not disclosing them clearly outweighs the public interest served by disclosure: (1) confidential complaints, which Uber defines as sensitive information regarding confidential reports of harassment, assault, or other complaints; (2) driver discipline; and (3) settlements and pending complaints.[123]

As for what Uber terms confidential complaints, this issue is moot. We have already made a determination that information regarding sexual assaults and sexual harassment complaints, including latitude and longitude, and settlement information, may be redacted from the public version of a TNC's Annual Report.[124] As for "other complaints," that category is too vague for the

detailed, and content-rich database.") and 23 ("No one—the Commission included—can predict how such data *might* be used, and once released, there is no clawing it back.") (Emphasis added.)

122 Lyft *Comments,* at 16.

123 Uber *Comments*, at 10.

124 2021 Confidentiality Ruling, at 5; and 2020 Confidentiality Ruling, at 9-10.

Commission to determine if Uber has carried its burden of proof. Thus, we will not invoke Government Code § 6255(a) any more than the Commission already has.

As for driver discipline information, Uber claims that the disclosure of this number "is likely to leave the public with the mistaken impression that one TNC has drivers who are more likely to commit violations than its competitor whose disciplinary standards are more lax."[125] We reject Uber's concern because it is vague and unsubstantiated.

Finally, as for settlements and pending complaints, we reject Uber's request as being too broadly based. Uber claims that publishing pending complaints before they are resolved will undercut the confidentiality granted to incidents which ultimately result in confidential settlement agreements. But when a complaint is filed, there is no confidentiality attached to it. If a settlement is later reached, the Court can determine if anything beyond the terms of the settlement should be made confidential as one of the terms of the settlement agreement.

On the whole, Lyft and Uber have failed to carry their burden of proof under Government Code § 6255(a)'s balancing test.

But having found that Lyft and Uber have failed to demonstrate that the public interest in nondisclosure is greater than the public interest in disclosure does not end our inquiry. We must also consider whether the public's interest in disclosure of TNC trip data greatly outweighs nondisclosure. In *International Federation of Professional Technical Engineers v. Superior Court* (2007) 42 Cal.4th 319,

[125] Uber *Comments,* at 10.

328-329, the California Supreme Court spoke to the essential value of an open government, which includes access to government records:

> Openness in government is essential to the functioning of a democracy. "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process….
>
> As the result of an initiative adopted by the voters in 2004, this principle is now enshrined in the state Constitution: "The people have the right of access to information concerning the conduct of the people's business, and therefore, . . . the writings of public officials and agencies shall be open to public scrutiny."

In the case of the Commission, regulatory transparency is essential to the public's understanding of how the Commission performs its responsibility of regulating entities under its jurisdiction. Additionally, transparency instills confidence in the public that the Commission is ensuring that entities under the Commission's control are providing services to Californians in a safe, reliable, and nondiscriminatory manner.

When faced with a claim that the catch-all exemption prevents the disclosure of documents in the government's possession, *Humane Society* teaches us on how to balance the two conflicting interests:

> If the records sought pertain to the conduct of the people's business there *is* a public interest in disclosure. The *weight* of that interest is proportionate to the gravity of the governmental tasks sought to be illuminated and the directness with which the disclosure will serve to illuminate.' (*Citizens for a Better Environment v. Department of Food & Agriculture* (1985) 171 Cal.App.3d 704, 715 , italics added.) The existence and weight of this public interest are

> conclusions derived from the nature of the information." (*Connell v. Superior Court* (1997) 56 Cal App.4th 601, 616 [65 Cal.Rptr.2d 738] (*Connell*); accord, *County of Santa Clara, supra,* 170 Cal.App.4th at p. 1324.)
>
> As the court put it in *County of Santa Clara* and *City of San Jose,* "the issue is `whether disclosure would contribute significantly to public understanding of government activities.'"

Thus, in assigning *weight* to the general public's interest in disclosure, courts should look to the "nature of the information" and how disclosure of that information contributes to the public's understanding of how the government functions, and if that functioning is in the best interests of Californians.

- The nature of the information and how it is used

The trip data that the Commission has ordered each TNC to submit in its Annual Report provides the Commission, the agency tasked with regulatory oversight over TNC, with the most comprehensive account of each TNC's transportation for the past 12 months. With the trip data, the Commission can learn the number of rides each TNC provides, learn about driving patterns by examining the areas where rides commence and end, learn about the times of the day and days of the week where TNC passenger requests are highest, learn about TNC requests accepted by geographic locations, and total amounts paid for the rides completed.

- The benefits of the public's understanding of how the government functions

The Commission's analysis and understanding of TNC trip data will enable the Commission to achieve several important objectives that are in the public interest. First, the trip data will enable the Commission to determine the

safety of TNC operations and if any adjustments in the Commission's regulations should be implemented. As the Commission found in D.13-09-045:

> The Commission opened this proceeding to protect public safety and secondarily encourage innovators to use technology to improve the lives of Californians. The Commission has a responsibility for determining whether and how public safety might be affected by these TNCs. In opening this Rulemaking, the Commission wanted to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of TNCs.

With trip data as a guide, the Commission can investigate if there are any safety issues concerning the providing of TNC transportation, and if those safety issues are located in particular areas or times of day in which the service is being provided. Unquestionably, the public has an interest in seeing that the Commission satisfies its obligation to ensure that TNC drivers are operating safely.

Second, the trip data can shed light on whether TNCs are offering their service in a nondiscriminatory manner. Transportation is more than a public convenience. As the Comments from the Center for Accessible Technology point out, transportation, and the equal access to same, has become a civil rights priority:

> Transportation equity is a civil and human rights priority. Access to affordable and reliable transportation widens opportunity and is essential to addressing poverty, unemployment, and other equal opportunity goals such as access to good schools and health care services. However, current transportation spending programs do not equally benefit all communities and populations. And the negative effects of some transportation decisions—such as the disruption of low-income neighborhoods—are broadly felt and have long-lasting effects. Providing equal access to

> transportation means providing all individuals living in the United States with an equal opportunity to succeed.[126]

The Legislature enacted Civil Code § 51(b) to protects all California residents against discrimination:

> (b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

The Commission can use the trip data to ensure that all geographic locations, regardless of their economic or racial makeup, are provided with equal access to TNC services. If trip patterns reveal that some geographic locations receive greater access than others, the Commission can use the trip data to investigate those disparities and take the appropriate corrective or enforcement measures, thus assuring the public that the Commission is ensuring that TNCs do not discriminate against any class of persons.

The public interest in ensuring the release of information to validate that industry services regulated by the state are being provided in a nondiscriminatory manner is so strong that it can overcome claims that the information is protected by trade secrets. The California Supreme Court recognized this interest in the context of insurance rates in *State Farm Mutual Automobile Insurance Company v. Garamendi* (2004) 32 Cal.4th 1029, 1047:

> Finally, the fact that insurers may invoke the trade secret privilege in the public hearing process established by

[126] Center For Accessible Technology's *Opening Comments on OIR*, at 3-4, quoting from Leadership Conference on Civil and Human Rights website.

> Proposition 103, pursuant to Insurance Code Section 1861.08 , does not dictate a different result. There is nothing anomalous about precluding insurers from invoking the trade secret privilege after they have already submitted trade secret information to the Commissioner pursuant to a regulation validly enacted under article 10 (*see ante*, at 1045), while permitting them to invoke the privilege in response to a request for information in a public rate hearing. Insurance Code Section 1861.07 merely requires public disclosure of "information provided to the commissioner pursuant to" article 10. By definition, this information is relevant to the Commissioner's mandate under article 10 to "`ensure that insurance is fair, available, and affordable for all Californians.'" (Historical and Statutory Notes, 42A West's Ann. Ins. Code, *supra*, foll. at 649.) Given that article 10 seeks to encourage public participation in the rate-setting process (*see ante*, at 1045), precluding insurers from withholding trade secret information already provided to the Commissioner because of its relevance under article 10 (*see ante*, at 1040-1042) is certainly reasonable.

As the public's interest in TNC rides being offered in a nondiscriminatory manner is undoubtably as strong as the public's interest in ensuring that insurance is fair, available, and affordable, making trip data public serves a public interest that should be given great weight in the Commission's calculus.

Third, akin to the public interest in ensuring TNC rides are provided in a nondiscriminatory manner is the public interest that persons with disabilities have equal access to TNC rides. Civil Code § 54.1 specifically prohibits discrimination against persons with disabilities in the provision of services, including transportation services:

> (a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and

> privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Similarly, on the federal level, Title II of the Americans with Disabilities Act prohibits disability-based discrimination in providing public and private services.[127] Public and or private entities that provide transportation services to the public are required by law to be accessible to individuals with disabilities. Under the Americans with Disabilities Act (ADA), TNCs are considered private entities primarily engaged in transportation and are required to be accessible to individuals with disabilities.[128]

California recognized the importance of providing TNC service access to persons with disabilities when it amended Pub. Util. Code §5440 as follows:

> (f) There exists a lack of wheelchair accessible vehicles (WAVs) available via TNC online-enabled applications or

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[127] 28 CFR 35.130 General prohibitions against discrimination

a. No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

[128] Private entities that are primarily engaged in the business of transporting people and whose operations affect commerce shall not discriminate against any individual on the basis of disability in the full and equal enjoyment of specified transportation services. This obligation includes, with respect to the provision of transportation services, compliance with the requirements of the rules of the Department of Justice concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers (28 CFR 36.301-36.306).

> platforms throughout California. In comparison to standard vehicles available via TNC technology applications, WAVs have higher purchase prices, higher operating and maintenance costs higher fuel costs, and higher liability insurance, and require additional time to serve rider who use nonfolding motorized wheelchairs.
>
> (g) It is the intent of the Legislature that California be a national leader in the deployment and adoption of on-demand transportation options for persons with disabilities.

Trip data can provide the initial understanding into whether persons with disabilities are given fair and equal access to TNC rides. In addition to the applicability of ADA protections to TNCs, in September 2018, the Governor signed into state law Senate Bill 1376. Pursuant to SB 1376, the Commission must establish a program relating to accessibility for persons with disabilities as part of its regulation of TNCs. While implementation of SB 1376 is occurring in Rulemaking 19-02-012, the trip data developed and submitted in this proceeding can assist the Commission develop regulations specific to persons in wheelchairs to help these persons have access to TNC rides.

Fourth, the trip data can help the public understand the impact of TNC vehicles on traffic congestion, infrastructure, airborne pollutants, and other matters in the public interest. With Government Code § 65088, the Legislature made the following findings regarding the need to alleviate traffic congestion and air pollution:

> a. Although California's economy is critically dependent upon transportation, its current transportation system relies primarily upon a street and highway system designed to accommodate far fewer vehicles than are currently using the system.

b. California's transportation system is characterized by fragmented planning, both among jurisdictions involved and among the means of available transport.

c. The lack of an integrated system and the increase in the number of vehicles are causing traffic congestion that each day results in 400,000 hours lost in traffic, 200 tons of pollutants released into the air we breathe, and three million one hundred thousand dollars ($3,100,000) added costs to the motoring public.

d. To keep California moving, all methods and means of transport between major destinations must be coordinated to connect our vital economic and population centers.

e. In order to develop the California economy to its full potential, it is intended that federal, state, and local agencies join with transit districts, business, private and environmental interests to develop and implement comprehensive strategies needed to develop appropriate responses to transportation needs.

The public has an interest in the Commission sharing trip data with government entities responsible for addressing transportation issues such as congestion, air pollution, and impact on infrastructure. The trip data can show the number of TNC vehicles in service on a given date and time, where the vehicles are concentrated, the overall impact on traffic congestion, impact on road usage, and the impact TNC vehicles have on other service vehicles (*e.g.*, public buses, private shuttles, taxis, and vans) that share the same roads.

Thus, when the Commission applies the balancing test to determine the applicability, if any, of the catch-all exemption to the TNC trip data at issue, we conclude that the public interest in disclosing TNC trip data in the Annual Reports for the years 2014-2019 far outweighs the benefits from not disclosing TNC trip data.

4. Disclosure Guidelines and Timetables

Lyft argues that to the extent the Commission determines it has authority to retroactively repeal footnote 42 from D.13-09-045 and apply a new rule to TNCs' Annual Reports for the years 2014-2019, the Commission should set forth clear guidance on the process and forum for providing such disclosure and must permit TNCs to seek confidential treatment for those portions that implicate personal privacy or constitute trade secrets. Additionally, Lyft suggests that any decision to submit public versions of the Annual Reports for the years 2014 – 2019 must recognize that substantial time and effort will be required to produce redacted versions. Lyft claims that its Annual Reports contain massive files with millions of cells covering a period of six years, which will require significant time and resources to redact. Lyft asks that the Commission take this into consideration and be willing to work with the TNCs in establishing a reasonable production schedule once the form of production has been established. We address each of these positions.

First, with this decision and the templates attached hereto, we provide all TNCs with the guidance as to what information may be redacted from their Annual Reports for the years 2014-2019 and what information must be disclosed.

Second, there is no need for the Commission to set forth a process to permit TNCs to seek confidential treatment of any part of the Annual Reports for the years 2014-2019 as all TNCs were already given the opportunity to make their arguments as to why all or parts of these Annual Reports should be redacted. The opportunity was provided by the *Third Amended Scoping Memo* which set forth deadlines for party opening and reply comments. Lyft understood it had this opportunity and submitted a lengthy set of opening comments setting forth its positions, as did Uber and HSD. Having already

provided TNCs with an opportunity to make their case, there is no reason to permit an additional round of motion filings.

Third, considering the amount of work that may be involved in preparing six years of Annual Reports, with the permitted redactions for submittal to the Commission, we establish the following timetable for TNCs that currently have a TNC license with the Commission to submit their Annual Reports in CSV format in a template provided by CPED Staff:

Document	**Year**	**Due Date for Submission to the Commission**
TNC Annual Report	2019	60 days after issuance of this decision
TNC Annual Report	2018	15 days after submittal of the 2019 Annual Reports
TNC Annual Report	2017	15 days after submittal of the 2018 Annual Reports
TNC Annual Report	2016	15 days after submittal of the 2017 Annual Reports
TNC Annual Report	2015	15 days after submittal of the 2016 Annual Reports
TNC Annual Report	2014	15 days after submittal of the 2015 Annual Reports

Data that is being redacted should maintain the same columns and column headers with the redacted data being replaced with the text string "Redacted" for each value of redacted data.

Because some TNCs may experience more difficulty than others in complying with this decision as a result of staffing or technological considerations, we give the assigned Commissioner and assigned ALJ the

discretion to adjust the schedule for submitting the Annual Reports to the Commission upon a TNC's noticed motion and showing of good cause.

5. Conclusion

Based on the record that we have developed, the party comments, and our evaluation of the applicable precedents, we conclude that the Annual Reports that TNCs submitted for the years 2014-2019 shall no longer enjoy the presumption of confidentiality previously granted by footnote 42 in D.13-09-045. We further conclude that, with limited exceptions noted herein, the TNCs have failed to carry their burden of proving that that the trip data at issue is protected from public disclosure on either privacy, trade secret, or other grounds.

6. Comments on the Prior Proposed Decision

The prior proposed decision of Commissioner Genevieve Shiroma in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

On October 20, 2022, the following parties filed opening comments: Uber, Lyft, and the SF City and County (the collective designation for San Francisco Municipal Transportation Agency, San Francisco International Airport, and the San Francisco County Transportation Authority).

On October 25, the following parties filed reply comments: Lyft and SF City and County.

6.1. Party Comments

Uber

Uber supports the Commission's transparency interests that are behind this decision. Yet it asks that the Commission not allow the disclosures contemplated by this decision to become so overbroad that they undermine user

privacy. As such, Uber reserves the right to appeal the confidentiality designations in the decision.

In addition, Uber asks that the Commission make certain adjustments to the templates provided in Appendix B to ensure consistent application of the policy determinations articulated in the decision. Uber suggests that "Allegation" and "Amounts Paid by TNC's Insurance" information for the 2014 Annual Report be designated as confidential rather than public.

Lyft

Lyft raises nine objections to the decision: (1) Lyft claims that the decision improperly relies upon findings concerning a lack of competition from D.20-03-014 that were subsequently withdrawn in D.21-06-023. Thus, references in the decision to a claimed lack of competition amongst TNC operations should be removed from the decision. (2) Lyft claims that the decision dismisses the argument that many zip codes include a small number of residents that can be manipulated to disclose the identity of an individual passenger. Lyft asks that the decision should find that zip code level location data presents privacy concerns. (3) Lyft claims that the decision dismisses Lyft's evidence showing that census block and zip code data can be manipulated to disclose the identity of an individual passenger. (4) Lyft claims that the decision overlooks Lyft's argument that even in densely populated areas, multiple data points can be combined with publicly available information to review intimate details of specific individuals. (5) Lyft disagrees with the decision's characterization of the *Sander*, *U.S. Patel*, and *Airbnb* decisions as not being controlling and dispositive of Lyft's argument that trip data is a constitutionally protected interest. (6) Lyft disagrees with the decision's conclusion that that interests of local regulatory agency in gaining access to trip data constitutes the public interest. (7) Lyft claims that the decision

fails to recognize that public disclosure of a trade secret destroys Lyft's constitutionally protected property interest in the trade secret. (8) Lyft criticizes the decision for creating what Lyft terms a non-statutory "novel or uniqueness" requirement for denying its trade secret claim. (9) Lyft claims that the decision ignores undisputed evidence that vehicle-based location information has independent economic value.

SF City and County

SF City and County support the decision but ask that it be amended to reverse the order in which the 2014-2019 Annual Reports are submitted. They argue that the more recent reports are of greater public interest and policy relevance as they can be used to evaluate the most recent transportation trends.

SF City and County also ask that the decision should clarify that the public versions of the TNC Annual Reports can be made directly available on the Commission website. They reason this approach will be more efficient than requiring the public to submit public records requests.

6.2. Discussion

We agree with Uber's clarification requests and modify the decision as follows: "Allegation" information from the 2014 TNC Annual Report may be designated as confidential if the allegation information relates to a sexual assault or sexual harassment complaint, as those terms have been defined in our Decision 22-06-029. We also agree that "Amount Paid by TNC's insurance" may be treated as confidential.

We agree with SF City and County's request to reverse the order of submittal of the Annual Reports for 2014-2019. With respect to their second request, as part of its regulatory duties, Commission staff will evaluate

the feasibility of making the 2014-2019 Annual Reports available on the Commission's website.

We reject Lyft's attempts to reargue positions that this Commission, the Assigned Commissioner, and the assigned Administrative Law Judge have already considered and rejected in prior decisions and rulings. (*See, e.g.*, Decision 23-02-041 [Order Modifying Decision 22-05-003 and Denying Rehearing of the Decision, as Modified]; D.22-05-003 [Decision Denying Appeal of Lyft]; D.20-03-014 [Decision on Data Confidentiality]; D.21-06-023 [Order Modifying Decision D.20-03-014]; December 21, 2020 Confidentiality Ruling; and November 24, 2021 Confidentiality Ruling.)

We also address Lyft's argument that our decision improperly relies upon findings in D.20-03-014 regarding a lack of competition that were subsequently withdrawn in D.21-06-023. When we withdrew those findings, we did so because they were "simply not necessary to uphold [the] determinations in the Decision and that the Commission had "ample authority" to remove the confidential presumption without discussing the lack of competition or market concentration. (D.21-06-023, at 20 and 23.) But to be consistent with our prior decision, we will remove this discussion from the decision. Yet in doing so, we stress that there were also other factors to support our decision to conclude that the presumption of confidentiality should end—the heightened public interest in obtaining unredacted TNC Annual Report data, and the Commission's adoption of stricter standards for establishing a claim of confidentiality.

Next, we reject Lyft's attempts to extend Fourth Amendment protections to trip data because the Amendment's protections against unreasonable searches do not extend to public disclosure of records collected therefrom. (*See*, e.g., *Airbnb, Inc. v. City of New York* (S.D.N.Y 2019) 373 F.Supp.3d 467, 499-500 (*Airbnb*

New York) [discussing and analyzing separately plaintiff's claims of Fourth Amendment violations and the risk of public dissemination of the information collected by the City]); *see also Patel v. City of Los Angeles* (9th Cir. 2013) 738 F.3d 1058 (*Patel*) [addressing whether the company had a reasonable expectation of privacy in the records and whether the government's warrantless search of those record was reasonable], *Airbnb, Inc. v. City of Boston* (D. Mass. 2019) 386 F.Supp.3d 113 (*Airbnb Boston*) [same].) Indeed, other laws, not the Fourth Amendment, govern whether the public release a regulated entity's records submitted to an agency is lawful. (*See*, e.g., Gov. Code, §§ 6255, subd. (a), 6254, subd. (k), Evid. Code, § 1060.)

Finally, in light of the recently adopted D.23-02-041, we make adjustments to the trade secret discussion herein so that our legal rationales are consistent.

7. Reopening the Record and Comments on the Instant Proposed Decision

This Commission's proposed *Decision Requiring Transportation Network Companies to Submit Their Annual Reports for the Years 2014-2019 to the Commission with Limited Redactions* was scheduled for a vote at the April 6, 2023 Commission Voting Meeting. Due to concerns about the possibility of aggregating timestamp data and the impact of such an approach on passenger privacy and public access, the Commission withdrew the proposed decision to conduct further review.

On May 9, 2023, Commissioner Shiroma issued her *Assigned Commissioner's Ruling Reopening the Record for Further Comments Regarding the Disclosure of TNC Annual Reports From 2014-2019 on Whether the Timestamp Data for Each TNC Trip Should Be Aggregated*. The *Ruling* asked the parties to address the following questions:

> (1) What are the benefits and/or drawbacks of aggregating timestamp data for each TNC trip in blocks of 15-minute,

30-minute, or 1-hour intervals?

a. Is there an optimal level of aggregation of the timestamp data for each TNC trip that would strike the appropriate balance between providing public access to the timestamp data while safeguarding against potential privacy risks?

(2) Would aggregating timestamp data for each TNC trip hinder the ability of the public to use the data to address safety and environmental concerns, manage curb space, and/or administer transportation planning policies?

a. Would aggregating timestamp data for each TNC trip create any other hinderances to data utility?

(3) Are there any published academic or governmental studies regarding the benefits, or lack thereof, of aggregating timestamp data for TNC trips? If so, please provide a link to each academic and governmental study or attach a hard copy of each academic and governmental study to your comment.

(4) Have any TNCs provided aggregated timestamp data for each TNC trip to another regulatory entity? If so, identify the regulatory entity and the number of years in which the TNC has provided the timestamp data for each TNC trip aggregated by time.

(5) What was the publicly stated rationale of the TNC and/or regulatory entity in providing and/or requesting aggregated timestamp data for each TNC trip in this format?

On June 15, 2023, the following parties filed Opening Comments: San Francisco Municipal Transportation Authority & San Francisco County Transportation Authority (jointly referred to as "San Francisco"), Uber Technologies, Inc. ("Uber"), Lyft Inc. ("Lyft"), and the University of California at Davis – Institute of Transportation Studies ("UC Davis").

On June 29, 2023, San Francisco and Lyft filed Reply Comments.

7.1. Opening Comments

7.1.1. San Francisco

San Francisco proposes the Commission utilizes the existing standards outlined in the TNC 2020 and 2021 Annual Reports for the 2014-2019 reports, on the basis that the Commission has previously rejected arguments that timestamp data create a potential privacy risk. In addition, San Francisco claims that there are benefits to requiring TNCs to disclose the precise timestamp for each TNC trip. According to San Francisco, transportation planners use time data at varying levels of precision for many applications, including: (1) travel demand modeling simulates trips with departure times at 1-minute precision; (2) curb passenger loading capacity planning uses peak 1-minute demand within a 15-minute period to identify needs; (3) traffic assignment models may simulate trips in 30-minute, 1-hour, or multi-hour periods; and (4) active curb management requires precise data. Per San Francisco, SF Park adjusted meter rates based on data with 1-second precision. San Francisco asserts that producing data at lower precision will prevent some of the identified uses.

Because of these claimed societal benefits, San Francisco prefers a one-second precision of timestamp data or a maximum of one-minute aggregation. San Francisco cites New York City's Taxi and Limousine Commission (NYC TLC) as an example of another TNC regulator that publishes precise timestamp data. This data is published monthly with a three-month lag between reporting updates, and "[n]either Uber nor Lyft have cited any issues arising from NYC's requirement in this rulemaking, despite collectively reporting 780 million trips there."[129]

[129] San Francisco Comments at 6.

7.1.2. UC Davis

UC Davis proposes four alternative methods to enhance public utilization of TNC data beyond timestamp aggregation while maintaining privacy interests:

1) *Requiring or calculating trip period measurements*. Instead of publishing timestamp data, staff could calculate the time measured between trip periods to help the public understand trip performance. To help ensure public learning of temporal shifts in TNC travel behavior, staff could denote trip origin times by "morning," "afternoon," *etc.* UC Davis suggests that to preserve data privacy, the time blocks should only be associated with the time of day of trip acceptance.[130]

2) *Data masking*: *Applying Randomized Scalers*. According to UC Davis, random scalers is a data masking tool that could scramble the timestamp data, which would be designed to remain constant within each trip, but random over a predefined time range across trips. As an example, a trip that starts at 8:30 A.M. and ends at 9:30 A.M. would be adjusted by a set factor (e.g., +30 minutes), which will make the new trip start time 9:00 A.M. and the end time 10:00 A.M. All trips will have their start and end times adjusted by the set factor. The potential benefits include accurately calculating trip duration, while scrambling precise pickup/drop off times. In practice, UC Davis sees this method as a type of timestamp aggregation, while keeping the trip duration intact.[131]

3) *Develop or Employ an Existing Data Repository*. UC Davis states that a secured, disaggregated data portal can be set up with restricted access levels based upon agreements among participants. As an example, UC Davis points to the U.S. Department of Transportation's Secure Data Commons where

[130] UC Davis Comments at 5-6.

[131] *Id.*, at 6-7.

institutions can use the Commons for a fee, allowing for different user access levels based on the agreements among participants. Another example UC Davis points to is the Transportation Secure Data Commons which is maintained by the National Renewable Energy Laboratory though a partnership between the Department of Transportation and the U.S. department of energy. The Transportation Secure Data Commons aggregates data from travel surveys and studies—including household ravel surveys and data collected from GPS—into a single, publicly available repository. The National Renewable Energy Laboratory converts the data into an anonymized and consistent format prior to publication.[132]

4) *Publish analyses*. UC Davis suggests that the Commission publish a detailed analysis of the unredacted and precise timestamp data. It claims that there are many capable institutions that could assist with this effort and identifies UC Institute of Transportation Studies (ITS) as researchers with the credibility to provide external validation of such an analysis. UC Davis believes these alternative methods can improve transparency and accountability, while informing future public policy.[133]

7.1.3. Uber

Uber's comments appear to suggest that aggregating timestamp data at one-hour intervals will strike the appropriate consumer-centric balance between supporting public transparency and protecting user privacy.[134] Uber claims that aggregated timestamp data will protect consumer and driver privacy and cites the following legal precedents which it claims requires driver privacy—

[132] *Id.*, at 8.

[133] *Id.*, at 9.

[134] Uber Comments at 3-4.

Government Code Sections 7927.700, 7927.705, California's Consumer Privacy Act, and the Drivers Privacy Protection Act. Uber also points out that in Decision 20-11-046,[135] the Commission has previously authorized aggregated metrics of the total charging sessions associated with a charging facility to understand the patterns and impact around electric vehicle charging.

7.1.4. Lyft

Lyft maintains that aggregation of timestamp data does little to prevent the disclosure of personal privacy. According to Lyft, academic research confirms that anonymized human mobility data—even when the direct identifiers have been removed or obscured—can be readily de-anonymized to identify individuals and track their movements. As proof, Lyft attached the Declarations of Drs. Jan Whittington and Reiyang Sun who were given Lyft's 2014-2022 TNC Annual Report datasets pursuant to a non-disclosure agreement. The declarants concluded that human mobility traces are more unique than fingerprints and that the computer skills necessary to re-identify persons from such datasets are rudimentary and poses little obstacle to re-identification. Lyft relies primarily on a study by de Montjoye, *et al.*, entitled *Unique in the Crowd: The Privacy bounds of human mobility,* in which the authors conclude that four spatio-temporal points (i.e., data that combines the location of an individual at a point in time) are enough to uniquely identify 95% of the individuals in a subject study.[136] Lyft also cites to several additional studies— (1) *Mobility Data Sharing Assessment: Operator's Manual* produced by the Mobility Data Collective (a multi-sector collaboration between the SAE Industry Technologies consortia, a

[135] *Decision Authorizing Deployment of Drivered and Driverless Autonomous Vehicle Passenger Service*.

[136] Lyft Comments at 3-4.

nonprofit affiliate of SAE International, and the Future of Privacy Forum); (2) *Trajectory Recovery From Ash: User Privacy Is NOT Preserved in Aggregated Mobility data;* (3) *Anonymization of Location Data Does Not Work: A Large-Scale measurement Study;* and (4) *On the anonymizability of mobile traffic datasets*, which purportedly show that the disclosure of temporal elements with location data can invade a person's privacy by revealing the precise movements of an individual person.[137]

Rather than adopting a timestamp aggregation approach, Lyft proposes two alternatives:

K-anonymity. Lyft describes K-anonymity as having *k* rows with a non-unique identifier, where *k* is equivalent to the total number of unique individual trips. K-anonymity attempts to preserve privacy by ensuring that there are *k* number of records in the dataset that are non-unique, making it more difficult to identify the movements of unique individuals and re-identify the data (*i.e.*, associate the data with a specific individual). K-anonymity in a dataset of Trip Data with *x* number of data elements (*i.e.*, columns) associated with each unique individual trip (i.e., rows) would require that there be at least *k* rows with a non-unique value for each of the *x* number of data elements.[138]

Differentially Private Synthetic Data. Lyft describes this approach as one in which a model is created and applied to the dataset to generate new, synthetic data, which includes none of the original data, but exhibits the same properties of the original data set, thus preserving the utility of the data while protecting the privacy of the individual data subjects. Lyft claims that Differentially Private

[137] *Id.*, at 4-5.

[138] *Id.*, at 7-8.

Synthetic Data has advantages over k-anonymization but is more complex and must be tailored to the use case.[139]

7.2. Reply Comments

7.2.1. Lyft

Lyft's Reply to San Francisco: Lyft believes San Francisco's request for data to be reported at one-second time intervals and at the Census Block level is contrary to long-standing transportation planning practice, and that San Francisco offers no evidence or explanation as to why this highly granular data is required other than what was referenced on pages 3-4 of San Francisco's Opening Comments.

Lyft's Reply to UC Davis: Lyft agrees with UC Davis's acknowledgement that temporal aggregation is insufficient to protect privacy but believes that the suggested alternative methods require additional deliberation:

- Calculating trip intervals between Periods 1, 2, and 3, instead of providing timestamp data, does little to address the sensitivity of where trips are occurring and only masks when they occurred.[140]
- Applying randomized scalars is a well-established methodology, but Lyft believes the UC Davis's suggestion of increasing the randomization at +/- 30-minute intervals would be the equivalent of aggregating timestamp data at a 60-minute interval. According to research by Whittington and Sun, which was sponsored and cited by Lyft, nearly 95% of rides can be uniquely identified at the census block level and nearly half at the zip code level when timestamps are aggregated at 1-hour intervals.[141]
- A data repository may be a good long-term solution, but Lyft is weary of the technical and legal infrastructure of said repository to ensure the secrecy of the data.[142]

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[139] *Id.*, at 8.

[140] Lyft Reply Comments at 2-3.

[141] *Id.*, at 3-4.

[142] *Id.*, at 4.

- Lyft tentatively supports the proposal of the Commission publishing analysis, subject to agreement on appropriate non-disclosure agreements and consensus on which metrics can be appropriately used to avoid disclosure of Lyft's trade secrets.[143]

7.2.2. San Francisco

San Francisco's Reply to Uber: San Francisco claims that Uber's assertion that "publicly disclosing disaggregated timestamp data endangers the safety and privacy of passengers" is not compelling because the study Uber references used exact latitude and longitude coordinates, which has been deemed confidential by the 2014-2019 Annual Report Data proposed decision.[144]

San Francisco's Reply to Lyft: San Francisco believes that the parties thoroughly addressed these issues during the Third Amended Phase III. C. Scoping Memo and Ruling in February 2022 and when the proposed decision was released. San Francisco argues that both Lyft and Uber did not present any new and compelling arguments that should warrant the Commission to release the 2014-2019 TNC Annual Reports in a manner that differs from the 2020 and 2021 Annual Reports.

San Francisco rebukes Lyft's studies by noting "uniqueness does not imply identifiability, since the sole knowledge of a unique subscriber trajectory cannot disclose the subscriber's identity. Building that correspondence requires instead sensible side information and cross-data base analyses similar to those carried out on medical or Netflix records. To date, there has been no actual

[143] *Id*.

[144] San Francisco Reply Comments at 2-3.

demonstration of subscriber re-identification from mobile traffic datasets using such techniques – and our study does not change that situation."[145]

San Francisco states that TNC data does not link any two records together with a rider ID, so even if Lyft's studies did demonstrate a risk to privacy, the findings simply would not apply.[146]

7.3. Discussion

As the foregoing comment summary demonstrates, there is a lack of consensus among the responding parties regarding the appropriate means to aggregate data to maximize public utility of the information and reduce privacy risks when releasing the trip data to the public, with aggregation proposals ranging from one second to one hour. Additionally, some party comments avoid directly responding to the questions and, instead, offer alternative approaches to data aggregating to increase the public's use of trip data while protecting privacy interests. Despite these differences in opinion, we have gathered enough information from the responses, as well as from our own investigation, to arrive at a conclusion how to best aggregate trip data in the public version of each TNC's Annual Report in a manner that best serves the public's use of trip data while protecting privacy interests. After explaining our approach, we will address the individual party comments.

The Commission adopts a data aggregation approach in which the time stamp for the start and end of each TNC trip reported in the public version of a TNC's Annual Report for 2014-2019 will be aggregated to the nearest 30-minute interval. We are persuaded in reaching this compromise interval by our

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145 *Id.*, at 3.

146 *Id.*

independent review of how the City of Chicago has been aggregating the time stamp for TNC trips (there, TNCs are called Transportation Network Providers or TNPs) and taxi trips.[147] Since 2016, the City of Chicago has required that TNP and taxi trips be aggregated by time, with all trips rounded to the nearest 15-minutes interval, and we are not aware of, and no party has made us aware of, any complaints from Chicago officials tasked with transportation oversight that the aggregated timestamp data is insufficient for their regulatory purposes. In fact, we note that in Uber's Comments, it asserts that "other entities have successfully utilized aggregated timestamp trip data to understand and monitor traffic patterns and improve transportation management."[148]

There are significant parallels to the Commission's and City of Chicago's approaches to data redaction and time stamp aggregation. As with the Commission's reporting requirements, the census tract in which each trip starts and ends is provided, whereas latitude and longitude points for the start and the end of a trip are not provided.[149] It is noteworthy that both Lyft and Uber provide TNC services in the Chicago market and yet, in the last seven years since Chicago adopted its timestamp aggregation approach, neither of them have

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[147] The Commission intends to take official notice of the City of Chicago's Transportation Network Provider reporting regulations (*See* Chicago Municipal Code Chapter 9-115, the rules posted at www.Chicago.Gov/BACP and at http://digital.cityofchicago.org) pursuant to Rule 13.10 of the Commission's Rules of Practice and Procedure, and Evidence Code §§ 452 (a), (b), (c), and 455. Parties may comment on the Commission's intent pursuant to Evidence Code § 455 (a).

[148] Uber Comments at 4, footnote 10, citing to Virginia Sisiopiku *et al*., *Final Report: Project 12: Mitigating Network Congestion by Integrating Transportation Network Companies & Uban Transit* (Nov. 2022); and Hanig *et al*., *What Stay-At-Home Orders Reveal About Dependence on Transportation Network Companies* (January 2023).

[149] HOW CHICAGO PROTECTS PRIVACY IN TNP AND TAXI OPEN DATA. Chicago Open Data Portal Team (April 12, 2019). (cityofchicago.org.)

reported in their comments to the Commission any breaches of personal passenger privacy. And the fact the Commission has decided to double the timestamp aggregation from 15 to 30-minute intervals convinces us that the TNC passengers will receive, at a minimum, the same level of privacy protection in California that the TNP passengers in Chicago enjoy. Given our decision and the rationale behind it, the Commission need not determine whether or not the alternative data aggregation proposals from UC Davis and Lyft will lead to a demonstratively greater level of data privacy.

Our conclusion is bolstered by the scholarly literature that has found that mobility data can be successfully aggregated without sacrificing individual privacy rights. In *Big Data and Innovation, Setting the Record Straight: De-identification Does Work*, authors Ann Cavoukian and Daniel Castro from The Information Technology & Innovation Foundation and the Office of the Information and Privacy Commissioner of Ontario[150] analyzed several of the studies that Lyft has cited to in its Comments and conclude as follows:

> [C]ommentators have misconstrued their findings to suggest that de-identification is ineffective. Contrary to what misleading headlines and pronouncements in the media almost regularly suggest, datasets containing personal information may be de-identified in a manner that

[150] The Information Technology and Innovation Foundation is a 501 (c) 3 non-profit, non-partisan think tank dedicated to designing strategies and technology policies by documenting the beneficial role technology plays in everyday lives. The Office of the Information and Privacy Commissioner of Ontario acts independently from the government to uphold and promote open government and the protection of personal privacy.

minimizes the risk of re-identification, often while maintaining a high level of data quality.[151]

Castro and Cavoukian attribute the tendency to claim that aggregated datasets can be re-identified is based on commentators overstating their findings. Instead, Castro and Cavoukian argue that there are additional techniques, "such as obfuscation," and spatial and temporal aggregation of data, "that can significantly help to preserve the anonymity of location data."[152] The authors further argue that data anonymization can be successful if it addresses three privacy risks. First, data aggregating must protect an individual's records from being uniquely identified in the dataset. Second, data aggregation must prevent an individual's records from being linked to other datasets. Third, data aggregation must make it difficult to infer sensitive information about an individual.

The approach the Commission adopts today meets the three privacy risks that Castro and Cavoukian have identified. First, the public versions of Annual Reports do not contain any unique identifiers for each passenger. Neither names nor code names are used for a passenger's trips. Thus, someone reviewing the dataset would not be able to tell all the times that an individual passenger made use of the TNC passenger service. Second, no information is provided about an individual passenger trip that would allow that information to be linked to other datasets. The Annual Reports do not contain gender information, dates of birth, or other data that would permit such linkages. Third, nothing is required in the

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[151] *Big Data and Innovation, Setting the Record Straight: De-identification Does Work* at 1. This study was cited in *No silver bullet: De-identification still doesn't work,* and Lyft cited *No silver bullet* in its Comments at 6, footnote 22.

[152] *Id*., at 3.

public version of the Annual Reports that would allow a third party to determine sensitive information about an individual. The usual examples that parties' offer in support of their objection to the public disclosure of trip data is that it can be manipulated to determine a passenger's sexual predisposition or political party affiliation, determine if a passenger is going to an abortion clinic, or if a passenger is going to conduct an illicit assignation. But as the Annual Reports do not contain latitude and longitude, one cannot tell by a zip code if a passenger is going to or coming from such a sensitive location.[153]

Thus, when we combine the timestamp aggregation approach adopted today with the other privacy measures previously adopted (*i.e.*, redacting driver information, redacting waybills and vehicle information, and redacting latitude and longitude information for the start and end of each passenger trip), the Commission concludes that it has struck the appropriate balance in protecting passenger and driver privacy, while providing the public and interested third parties with sufficient trip data information to perform their analysis of the impact of TNC operations in California.

Our conclusion is not altered by the contrary findings that have been reached in the studies that Lyft has cited in its Comments. As we will demonstrate, Lyft's argument that its studies represent an apples-to-apples comparison to the type of information that the TNC will have to make public in their Annual Reports is factually flawed. Lyft has tried to anticipate this criticism and argues in its Comments that "mobility data of various types and granularities may be collected in different ways, but any kind of spatio-temporal data that identifies locations over time can allow re-identification and tracing of

[153] And while there are unique identifiers for drivers, that information is not released as part of the public version of an Annual Report.

individual movements."[154] In Lyft's view, the spatio-temporal data captures the location of an individual at points in time and allows for "inferences" to be drawn about that individual—where they live, where they work, where the worship, where they seek healthcare—based on the trajectory "implied" by the data.[155]

Before analyzing the individual studies Lyft has cited, we would be wise to remember the caution from Cavoukian and Castro to engage in a critical analysis of the applicable literature before reaching a conclusion:

> In some circles, it is treated as a given that de-identified data can always be re-identified. What is most disturbing about this assertion and its attempt to grab headlines with sensationalist assumptions is that policy makers who require accurate information to determine appropriate rules and regulations may be unduly swayed. While it is not possible to guarantee that de-identification will work 100 per cent of the time, it remains an essential tool that will drastically reduce the risk of personal information being used or disclosed for unauthorized or malicious purposes.[156]

In fact, a closer analysis of Lyft's studies refutes Lyft's position that the studies have any applicability to the Commission's decision to release trip data with certain redactions and data aggregation, and Lyft offers no dispositive

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154 Lyft Comments at 6.

155 *Id*.

156 Castro and Cavoukian at 12. Of course, this study has its detractors. (*See No silver bullet: De-identification still doesn't work*" by Arvind Narayanan and Edward W. Felten (July 9, 2014). But, again, the fact that neither Lyft nor Uber have raised any problem in their Comments with the City of Chicago's aggregation of passenger timestamp data suggests that de-identification measures can succeed.

evidence that the mere "inference" or "implication" drawn from public spatio-temporal data can violate a passenger's or driver's privacy.

Lyft previously cited to the de Montjoye, *et al*., study and our reasons for rejecting it are equally applicable here. The authors' analysis focused on mobility data derived from mobile phone and telecommunications carriers' antennas. But the Commission does not require a TNC to report on the movements of a particular TNC ride in such detail. Instead, the TNCs are required to provide in the public versions of their Annual Reports starting and ending time of the trip, along with the starting and ending zip code and census block information, but without any personally identifiable or masked information about a particular passenger. In reviewing de Montjoye, we fail to see how the set of data required by our decision can pinpoint a passenger's attendance at a particular church, motel or an abortion clinic. At best, and in de Montjoye's own words, the authors' conclusions "could be inferred" about an individual. As such, these less than certain conclusions cause us to reject Lyft's ominous warning that "aggregating in 15 minute or even hourly increments will do little to reduce the grave implications of producing such a massive and data-rich set of human mobility data."[157] If that were true, one would think that Lyft would have told the Commission that it is challenging the trip data reporting that the City of Chicago has required Lyft and Uber to report aggregated to the nearest 15-minute interval.

Contrary to Lyft's further argument, the research subsequent to de Montjoye does not cause us to alter our conclusion that TNCs must provide timestamped TNC trip data aggregated at the neared 30 minute-interval in the

[157] Lyft Comments at 4.

public version of their Annual Reports. Lyft first quotes from *Mobility Data Sharing Assessment*, in which the authors claim that the combination of time with location data can create a greater privacy risk than either time or location data alone. But as proof, the authors refer to the de Montjoye study which we have already dismissed. The second cited authority in *Mobility Data Sharing Assessment* is *The Tradeoff Between the Utility and Risk of Location Data and Implications for Public Good* by Dan Calacci, *et al*. (December 11, 2019). That study is also ineffectual as the authors focus of data collected from smartphones, and they claim that historical call detail records contain location and communication data about their customers, and metadata from mobile phone use, including which antenna a mobile phone communicated with and when. As cell phone call records and metadata are not the type of data that the Commission is requiring TNCs to provide in their public Annual Reports, we find that the conclusions reached by Dan Calacci, *et al*., have no relevancy.

For the same reason, we also dismiss Lyft's reliance on *Trajectory Recovery From Ash: User Privacy is NOT Preserved in Aggregated Mobility Data* by Fengli Xu, *et al*., in which the authors studied human mobility data collected through cellular networks and mobile applications. Even though each user's trajectory records were not provided but, instead, aggregated mobility data such as the number of users covered by a cellular tower at a specific timestamp was provided, the authors claimed to be able to identify a single cell phone user's mobility pattern as it is "coherent and regular, which makes their trajectories highly predictable." Yet there is nothing in the public Annual Report trip data that would allow identification of single passenger. At best, an interested party will know the date of the trip, the 30-minute time interval of the trip, the zip code, and the census tract, but no specific identifier for each passenger. We do

not see, and Lyft fails to establish, how the information required by the public Annual Reports compares to information gathered from cellular networks and mobile applications.

The last two studies that Lyft relies on are equally unpersuasive because their starting sample study is materially distinguishable from the type of information required by the public version of TNCs' Annual Reports. In *Anonymization of Location Data Does Not Work: A Large-Scale Measurement Study*, authors Jean Bolot and Hui Zang studied a data set of 30 billion Call Data Records from a nationwide cellular service provider in the United States which contains location information about 25 million mobile phone users collected over a three-month period. The Call Data Records include the time and location of the call, and the identities of both parties (which for study purposes were masked with random identifiers). Call Data Records also include cell level (the equivalent to the distance between cell towers) and sector levels (there are roughly two or three sectors in a cell so that a sector covers a 120-degree sector in a cell). The authors assert that releasing anonymized location data in its original format at the sector level or cell level poses serious privacy threats as a significant fraction of users can be re-identified from the anonymized data. But TNCs are not required to submit information that is the equivalent of information derived from Call Data Records such as cell and sector levels. Nor are TNC passengers given random identifiers. As such, the level of information provided to and analyzed by Bolot and Zang is too dissimilar to the information included in a TNC's public Annual Report so that the conclusions reached by Bolot and Zang are of no analytical use to the Commission.

Similarly, in *On the anonymizability of mobile traffic datasets*, authors Marco Fiore and Marco Grameglia also examined mobile traffic datasets collected by

cellular operators to determine the feasibility of effective anonymization. In doing so, they noted that mobile traffic datasets that included different locations of the cellular network infrastructure, concerning the movements and traffic generated by thousands to millions of subscribers, typically for long timespans in the order of weeks or months. Fiore and Gramaglia also observed that mobile subscribers have distinctive patterns that often make them unique even within a large population. Yet even with this uniqueness, the authors acknowledged that feature is not the equivalent of identifiability:

> Uniqueness does not [imply] identifiability, since the sole knowledge of a unique subscriber trajectory cannot disclose the subscriber's identity. Building that correspondence requires instead sensible side information and cross-database analyses similar to those carried out on medical or Netflix records. To date, there has been no actual demonstration of subscriber re-identification from mobile traffic datasets using such techniques—and our study does not change that situation. Still, uniqueness may be a first step towards re-identification, and whether this represents a threat to user privacy is an open topic for discussion.[158]

Thus, contrary to what Lyft might want this Commission to believe, even when one is granted access to more mobile traffic information than is included in the Annual Reports, that is no guarantee of individual TNC passenger re-identification.

Finally, we must address the Declarations of Drs. Jan Whittington and Feiyang Sun that Lyft attached to its Comments. The Declarants assert that they were given confidential access to Lyft's Annual Report data for 2014-2022 to

[158] *On the anonymizability of mobile traffic datasets* at 1.

determine if it were possible to re-identify individual passenger trips. In their analysis of Lyft's annual Report from 09/01/2015 to 09/01/2016, the authors claim that at the 15-minute interval, 64.19% of trips have a unique combination of pickup ZIP code, drop off ZIP code, and timestamp. In other words, the authors conclude that "64.19% of trips and therefor travelers are re-identifiable from (September 2015 to end of August 2016) trip data aggregated to a 15-minute time interval and the spatial area of the ZIP code."[159]

We reject the Declarants' conclusion. First, as we noted above, uniqueness is not the equivalent of re-identification. Additional analysis must be done with a unique passenger trip to lead to the re-identification of the passenger, and Declarants fail to identify those additional steps in arriving at their conclusion that 64.19% of trips are re-identifiable. Second, we also question the accuracy of Declarants' results because if they are correct, then why hasn't Lyft told the Commission in its Comments that it has challenged the City of Chicago's timestamp aggregation which uses the 15-minute interval for passenger trips?

We also reject Declarants' contention that the re-identification process is relatively easy. They assert that the "coding skills necessary to be able to re-identify persons from datasets, even when no common [personally identifiable information] is provided in the data, is taught in freshman-level computing courses on database management and thus a widely available skill."[160] But at least one decision has rejected the claim that re-identification is easy. In *Southern Illinoisan v. Department of Public Health*, (June 9, 2004) 349 Ill. App.3d 431, the defendant appealed an order directing it to release certain Illinois Cancer

[159] Declarations at 15, ¶ 26.

[160] *Id.*, at 7, ¶ 9.

Registry information to the plaintiff, a daily newspaper, pursuant to a freedom of information act. The expert witness, who holds a doctorate degree in computer science from Massachusetts Institute of Technology and is the director of the Laboratory for International data privacy at Carnegie Mellon University, testified that she was able to correctly identify the correct name for 18 of the 20 sets of data the defendants gave her, but the exact methodology had been sealed by the circuit court.

Despite this showing, the appellate court ruled that the data itself did not reasonably tend to lead to the identity of specific persons since there was no showing that others who might access the information have the same academic credentials, experience, and creative methodology to discern individual names:

> But the fact that one expert in data anonymity can manipulate data to determine identity does not necessarily mean, without more, that a threat exists that other individuals will be able to do so as well, nor does it in any way define the magnitude of such a threat or whether that threat, if it in fact even exists, renders the release of the data an act that reasonably tends to lead to the identity of specific persons.[161]

Thus, the fact that the necessary computer coding skills are taught in freshmen-level computing course does not lead to the conclusion that every student taking such a class will be able to re-identify individual TNC passengers from the public versions of the TNC Annual Reports for 2014-2019.

8. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Robert M. Mason III and Debbie Chiv are the assigned Administrative Law Judges in this proceeding.

[161] 436.

Findings of Fact

1. In D.13-09-045, the Commission required all TNCs to submit Annual Reports that include trip data.

2. Commission staff has supplemented the trip data requirements in D.13-09-045 and D.16-041 with data requests and reminder letters that advised the TNCs as to the additional data fields that needed to be completed for the Annual Reports.

3. Commission staff has provided TNCs with a template and data dictionary for use in completing their Annual Reports.

4. For the years 2014-2019, the TNCs have submitted their Annual Reports to Commission staff on a presumed confidential basis because of footnote 42 in D.13-09-045.

5. Decision 20-03-014 reversed the policy the Commission adopted in D.13-09-045, footnote 42, that allowed TNCs to submit their Annual Reports required by the Commission on a confidential basis.

6. In order to maintain the confidentiality of the Annual Reports for the years 2014-2019, each TNC was required to satisfy the burden of proof to substantiate each confidentiality claim.

7. This Commission's proposed *Decision Requiring Transportation Network Companies to Submit Their Annual Reports for the Years 2014-2019 to the Commission with Limited Redactions* was scheduled for a vote at the April 6, 2023 Commission Voting Meeting.

8. Due to concerns about the possibility of aggregating timestamp data and the impact of such an approach on passenger privacy and public access, the Commission withdrew the proposed decision to conduct further investigation.

9. On May 9, 2023, Commissioner Shiroma issued her *Assigned Commissioner's Ruling Reopening the Record for Further Comments Regarding the Disclosure of TNC Annual Reports From 2014-2019 on Whether the Timestamp Data for Each TNC Trip Should Be Aggregated.*

10. On June 15, 2023, the following parties filed Opening Comments: San Francisco, Uber, Lyft, and the University of California at Davis – Institute of Transportation Studies.

11. On June 29, 2023, San Francisco and Lyft filed Reply Comments.

Conclusions of Law

1. It is reasonable to conclude that, with limited exceptions identified in this decision, the Annual Reports for the years 2014-2019 should no longer be afforded the presumption of confidentiality provided footnote 42 in D.13-09-045.

2. It is reasonable to conclude that the TNCs have failed to carry their burden of proving that the trip data at issue in the Annual Reports for the years 2014-2019 is exempt from public disclosure by the trade secret protection.

3. It is reasonable to conclude that, with limited exceptions identified in this decision, the TNCs have failed to carry their burden of proving that the trip data at issue in the Annual Reports for the years 2014-2019 is exempt from public disclosure by California's privacy laws set forth in Article I, Section 1, of the California Constitution.

4. It is reasonable to conclude that the trip data at issue does not meet the definition of a trade secret provided by Civil Code §§ 3426 through 3426.11.

5. It is reasonable to conclude that the trip data at issue does not fit within any of the protected categories in California's privacy law provided by Government Code § 6254(c).

6. It is reasonable to conclude that disclosing the trip data at issue will allow the public to see if the TNCs are operating safely.

7. It is reasonable to conclude that disclosing the trip data at issue will allow the public to see if the TNCs are operating in a nondiscriminatory manner.

8. It is reasonable to conclude that disclosing the trip data at issue will allow the public to see if persons with disabilities have equal access to TNC services.

9. It is reasonable to conclude that disclosing the trip data at issue will allow the public to see the impact of TNC vehicles on traffic congestion, infrastructure, and airborne pollutants.

10. It is reasonable to conclude that considering the evidentiary record, there is substantial evidence that the trip data at issue is not protected from public disclosure on privacy grounds.

11. It is reasonable to conclude that considering the evidentiary record, there is substantial evidence that the trip data at issue is not protected from public disclosure on trade secret grounds.

12. It is reasonable to conclude that requiring TNCs to disclose the trip data at issue does not amount to an unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution.

13. It is reasonable to conclude that requiring TNCs to disclose the trip data at issue does not amount to a regulatory taking under the Fifth Amendment to the U.S. Constitution.

14. It is reasonable to conclude that the public interest in not disclosing the trip data at issue does not clearly outweigh the public interest in disclosing the trip data at issue.

15. It is reasonable to conclude that the public interest in disclosing the trip data at issue clearly outweighs the public interest in not disclosing the trip data at issue.

16. It is reasonable to conclude that the Commission should require each TNC to submit its public Annual Report data with all timestamps aggregated to the nearest 30-minute interval in order to strike a balance between promoting public use of trip data while protecting personal privacy.

O R D E R

IT IS ORDERED that:

1. All Transportation Network Companies (TNC) permitted to provide passenger transport services shall submit public versions of their Annual Report for the years 2014-2019 to the Commission in CSV format, using the same format as the originally submitted Annual Report. For example, for the Annual Report data submitted on September 19, 2017, TNCS shall use the same data template that was used for the Annual Report data submitted on September 19, 2017. Data that is being redacted shall maintain the same columns and column headers with the redacted data being replaced with the text string "Redacted" for each value of redacted data. The timing of the Annual Report submittals shall be as follows:

Document	Reporting Year	Due Date for Submission to the Commission
TNC Annual Report	2019	60 days after issuance of this decision
TNC Annual Report	2018	15 days after submittal of the 2019 Annual Reports
TNC Annual Report	2017	15 days after submittal of the 2018 Annual Reports

Document	Reporting Year	Due Date for Submission to the Commission
TNC Annual Report	2016	15 days after submittal of the 2017 Annual Reports
TNC Annual Report	2015	15 days after submittal of the 2016 Annual Reports
TNC Annual Report	2014	15 days after submittal of the 2015 Annual Reports

2. Because some Transportation Network Companies (TNC) may experience more difficulty than others in complying with this decision, the Commission gives the assigned Commissioner and assigned Administrative Law Judge the discretion to adjust the schedule for submitting the Annual Reports to the Commission. Any TNC seeking additional time to submit any of its Annual Reports must file a motion setting forth good cause for the relief requested.

3. The following categories of trip data shall be disclosed, for each ride provided, as part of each Transportation Network Company's public version of its Annual Reports for the years 2014-2019. All other data fields may be marked "Redacted" per Ordering Paragraph 1:

- Trip Requester Zip Code;
- Driver Zip Code;
- Trip Request Date/Time (aggregated to the nearest 30-minute interval);
- Miles Traveled (Period 1);
- Request Accepted Date/Time (aggregated to the nearest 30-minute interval);
- Request Accepted Zip Code;
- Passenger Pick Date/Time (aggregated to the nearest 30-minute interval);

- Miles Traveled (Period 2);
- Passenger Pick Up Zip Code;
- Passenger Drop Off Date/Time (aggregated to the nearest 30-minute interval);
- Passenger Drop Off Zip Code;
- Miles Traveled (Period 3); and
- Total Amount Paid.

4. The templates attached to this decision as Appendices A-U identify the categories of information that may be redacted from, as well as the categories of information that must be provided in, the Transportation Network Company Annual Reports for the years 2014-2019. Each Transportation Network Company shall comply with its respective template requirements.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDICES A-G

APPENDICES H-N

APPENDICES O-U