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

ORDER MODIFYING DECISION 22-05-003 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. INTRODUCTION

Decision (D.) 13-09-045 authorized the operation in California of a new category of transportation charter party carriers called Transportation Network Companies (TNC). As a condition to be permitted to operate, D.13-09-045 set forth various requirements that TNCs must comply with, one of which was the obligation to submit verified Annual Reports to the Commission that include information about each trip provided by a TNC driver for the eleven months prior to the Annual Report's due date. D.13-09-045 permitted the TNCs to submit their Annual Report confidentially to Commission staff. (D.13-09-045 at 33, fn. 42.)

In D.20-03-014, the Commission revisited that earlier confidentiality determination and found that Annual Reports were no longer entitled to a presumption of confidentiality. Instead, D.20-03-014 mandated that any claim for confidential treatment of information required to be included in a TNC's Annual Report must be made by motion and filed 90 days before the deadline for submitting the report to Commission staff. (D.20-03-014 at 37 (Ordering Paragraph (OP) 1 & 2.a).) The motion must justify with particularized references to the type of information sought to be shielded from public disclosure, the law that supports the claim of confidentiality, and a declaration under penalty of perjury that sets forth the factual justification with the requisite

granularity. (D.20-03-014 at 37-38 (OP 2).) Information currently required in the Annual Reports includes, for example, unique driver IDs, vehicle identification numbers, make, model and year of the vehicle, the latitude and longitude of the driver when the app is turned on or off, the latitude and longitude of the requester at the time of the request, picks up, and drop off, the date and time of the request, pick up, and drop off, the number of miles traveled, and the amount paid. (D.22-05-003 or "Decision" at 9.)

In accordance with D.20-03-014, on June 22, 2020, Lyft Inc. (Lyft) and Uber Technologies, Inc. (Uber) filed their respective motions for confidential treatment of certain information in their 2020 Annual Reports. Lyft and Uber identified several categories of information that they claimed were protected from public disclosure on either privacy, trade secret, or other grounds. (See generally *Lyft Motion for Confidential Treatment of Certain Information in its 2020 Annual Report* at 3-10 (Lyft 2020 Motion); *Uber Motion for Leave to File Confidential Information Under Seal* (Uber 2020 Motion).) Lyft's evidence in support of these claims includes the supporting declaration of its former Director of Regulatory Compliance, Brett Collins, several secondary sources related to Lyft's privacy claims, and some comments from the underlying rulemaking. (See generally Lyft 2020 Motion.) Uber's evidence included several supporting declarations and secondary sources, including a study performed by Uber's client, Privacy Analytics, Inc. (PAI Report).

The San Francisco Municipal Transportation Agency (SFMTA), San Francisco County Transportation Authority (SFCTA), San Francisco International Airport (SF Airport), and the San Francisco City Attorney's Office (collectively San Francisco)[1] filed a response to Lyft's 2020 Motion on July 2, 2020. Lyft filed a reply to party responses on July 17, 2020, citing additional secondary sources to support its privacy claims.

[1] Although comments submitted by San Francisco do not always include these four entities, this Order refers to all comments filed by any of these entities as San Francisco.

On December 21, 2020, the assigned Administrative Law Judge (ALJ) issued the *Ruling on Uber Technologies, Inc.'s and Lyft's Motion for Confidential Treatment of Certain Information in Their 2020 Annual Reports* (Ruling). The Ruling denied, in part, Lyft's request to redact certain trip data information. The Ruling approved the redaction of many fields that require submission of personally identifying information and precise geolocational data, including driver names and identifications and latitude and longitude information. (Decision at 6-10, 19-20, 93.)

Lyft appealed the Ruling on May 28, 2021 (Ruling Appeal), challenging the determinations insofar as the Ruling rejected Lyft's contentions that its trip data warranted protection on trade secret and privacy grounds.[2] As support for its Ruling Appeal, Lyft cited to Uber's PAI Report and a host of new secondary sources to support its privacy and trade secret claims. Lyft also cited as support its *Lyft Motion for Confidential Treatment of Certain Data in its 2021 Annual Report* (2021 Motion) and the accompanying supporting declaration of Alix Rosenthal. The Decision denied Lyft's Ruling Appeal and ordered Lyft to comply with the Ruling no later than 30 days after the Decision was issued, which occurred on May 6, 2022. (See Decision at 124 (OP 2).)

On May 6, 2022, Lyft filed an application for rehearing and an accompanying emergency motion for a stay (Emergency Stay Motion) of the Decision alleging that its trip data slated for public release was a trade secret and had privacy implications for Lyft and its users.[3] Lyft argued that the factors for a stay considered by

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[2] The categories of trip data Lyft challenges that are required to be disclosed by the Decision include: Census Block of Passenger Drop Off, Trip Requestor Zip Code, Trip Requestor Census Block, Driver Zip Code, Driver Census Block, Trip Request Date/Time (to the second), Miles Traveled (P1), Request Accepted Date/Time (to the second), Request Accepted Zip Code, Request Accepted Census Block, Passenger Pick Up Date/Time (to the second), Miles Traveled (P2), Passenger Pick Up Zip Code, Passenger Pick Up Census Block, Passenger Drop Off Date/Time (to the second), Passenger Drop Off Zip Code, Passenger Drop Off Census Block, Miles Traveled (P3), and Total Amount Paid. This data is referred to herein as the "Trip Data." (App. Rehg. at 1, fn. 1.)

[3] Lyft also filed a *Petition for Writ of Mandate, Supersedeas, and/or Other Appropriate Relief and Motion for Emergency Stay* with the California Court of Appeal, First District,

(footnote continued on next page)

the Commission weighed in favor of granting a stay, and that the Decision should be stayed at least until the Commission resolves its application for rehearing. On May 23, 2022, San Francisco filed an opposition to Lyft's motion. The Commission granted Lyft's Emergency Stay Motion on June 2, 2022. (D.22-06-023 at 2.)

In its rehearing application, Lyft alleges that the Decision is in error because it: (1) makes conflicting findings about whether the Annual Reports are public records under the California Public Records Act (CPRA); (2) misapplies trade secret law by imposing a "novelty or uniqueness" standard, requiring a greater evidentiary showing than required under law to establish independent economic value, and incorrectly judging Lyft's reasonable efforts to maintain the secrecy of each individual trip instead of the compilation of trip data; (3) misconstrues the requirements of Evidence Code section 1060 to support disclosure of Lyft's trip data; (4) excludes evidence for reasons inconsistent with Commission practice and procedure and the Evidence Code; (5) relies on extra-record evidence to support its conclusions; (6) makes factual findings that the trip data is not a trade secret and does not invade the privacy of Lyft's users that are not based on substantial evidence and are contrary to relevant case law; and (7) violates Lyft's constitutional right to privacy under the Fourth Amendment. Lyft's rehearing application also references its rights under the Takings Clause of the Fifth Amendment without substantiation. In its rehearing application, Lyft relies heavily on the evidence it proffered in its Ruling Appeal and introduces new evidence.

San Francisco filed a response to Lyft's rehearing application on May 23, 2022. The response recommends denial of Lyft's application on the grounds that Lyft is improperly relitigating matters the Commission already considered and rejected.

We have carefully considered all the arguments presented by the rehearing applicant and are of the opinion that certain modifications of the Decision are

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on May 6, 2022. (Case No. A165133.) On May 25, 2022, the Court dismissed Lyft's petition for lack of jurisdiction, admonishing Lyft to first exhaust its administrative remedies before the Commission prior to seeking judicial review.

appropriate, as explained below. After making these modifications of the Decision, rehearing is denied.

II. DISCUSSION

A. Although the Annual Reports are "public records" under the CPRA, the Decision is modified to clarify the definition of "public records."

Lyft argues that the Decision errs because it is premised on conflicting findings about whether the Annual Reports are "public records" as defined in Government Code section 6252(e) [currently 7920.530] for purposes of the CPRA. (App. Rehg. at 6.) The Decision finds that the Annual Reports are public records, even though they are submitted by the TNCs, and also that public records are limited to writings prepared by government employees. (Decision at 15-16, 101-102.) The Decision states that these findings do not conflict because they merely distinguish writings generated by government employees and regulated entities. (*Id.* at 101-102.) The definition of "public records" does not distinguish between a government generated writing and a writing submitted by a regulated entity." (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617, 622 (*City of San Jose*).) Accordingly, the Decision will be modified to remove these statements indicating that public records are limited to those prepared by a government entity.

Lyft also argues that the Annual Reports are not public records because there is no evidence showing how the Commission uses the data or how disclosure would shed light on the Commission's conduct of the public's business. (App. Rehg. at 6, fn. 9.) As support, Lyft cites to *Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 594-600 (*Board of Pilot Commissioners*).

Lyft's argument is meritless. A public record is generally "any 'record ... kept by an officer because it is necessary or convenient to the discharge of his official duty ….' [Citations.]" (C*ity of San Jose*, *supra*, 2 Cal.5th at 618.) The Annual Reports fall squarely within this definition as they are part of the Commission's rules and

regulations related to protecting and enhancing public safety and consumer protection in the TNC industry. (See, e.g., D.20-03-014 at 13-14, 25-28.) Lyft's reliance on *Board of Pilot Commissioners* is also inapposite because in that case there was no evidence that government employees used the documents at issue in the performance of their official duties. (*Board of Pilot Commissioners*, *supra*, 218 Cal.App.4th at 596-97.) In this case, the Commission has used Annual Report data to investigate TNC activities. (See D.18-11-006.) Lyft fails to demonstrate that the Decision's determination that the Annual Reports are public records is in error.

B. The Decision is clarified to identify the scope of the evidentiary record and the admissible evidence within that scope.

1. The proper scope of the evidentiary record includes Lyft's 2020 Motion and supporting Collins declaration, party responses to Lyft's 2020 Motion, and party comments submitted in the underlying rulemaking.

The Decision defines the evidentiary record as the evidence Lyft proffered as part of its 2020 Motion and supporting declaration. (Decision at 96, 98-99.) As support, the Decision distinguishes the evidentiary and administrative records and cites to Evidence Code section 355, which provides: "When evidence is admissible as to one party or for one purpose and is inadmissible as to another party or for another purpose, the court upon request shall restrict the evidence to its proper scope and instruct the jury accordingly." (*Id.* at 97-100, 119-120; Evid. Code, § 355.)

Lyft argues that the Decision's determination is in error for three reasons. First, Lyft argues that the Decision cites no authority for the conclusion that the record includes only evidence submitted by a moving party. (App. Rehg. at 26.) Relatedly, Lyft asserts that the Decision's citation to Evidence Code section 355 "is of dubious relevance." (*Ibid*.) Second, Lyft claims that it is commonly understood that the record of a proceeding, including Commission rulemaking proceedings, includes all evidence submitted or considered in that proceeding. (*Ibid*.) Third, Lyft argues the Decision

unlawfully cites to extra-record evidence based on its own definition of the evidentiary record, including citation to comments filed by SFMTA and Lyft. (*Ibid*.)

In general, the record in Commission quasi-legislative rulemaking proceedings includes all docketed filings, including party comments and staff reports. (See Pub. Util. Code, §§ 1757.1, 1701.4; see, e.g., D.22-05-010 at 13-15.) This general practice is consistent with the common understanding that the scope of the record in an administrative proceeding is the record before the agency at the time of its decision. (See, e.g., *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville* (2007) 157 Cal.App.4th 885, 890, 893-895.)

These general rules must be understood in the context of the specific directives established by the Commission in D.20-03-014. D.20-03-014 adopted the protocol set forth in General Order (GO) 66-D, with some modifications, and places the burden on each TNC to show, by way of a noticed motion and supporting declaration, that its Annual Reports should not be made publicly available. (D.20-03-014 at 2, 37-38 (OP 2).) The required declarations must be executed with personal knowledge and under the penalty of perjury and provide specific factual support for "any statute, rule, order, or decision that the TNC is relying upon to support each claim of confidentiality." (D.20-03-014 at 38 (OP 2.h).) D.20-03-014's requirement that each individual TNC make its own affirmative evidentiary showing is consistent with Commission practice in other proceedings and generally aligns with Evidence Code section 355. (See, e.g., D.20-10-026 at 24, fn. 35 [requiring a "substantial affirmative showing by each utility … in support of all elements of its application"], *Lail v. Lail* (1955) 133 Cal.App.2d 610, 618-619 [on appeal, the reviewing court may not consider evidence for any other purpose than the purpose it was offered and received at the trial court level].)

In addition to the TNCs' affirmative showing, parties may file responses to the TNCs' motions. (Commission Rules of Practice and Procedure, Rule 11.4, subd. (b),

Code of Regs., Tit. 20, § 11.4, subd. (b).)[4] Responsive parties may provide additional evidence to either support the motion or their own proposals. (See, e.g., *Rivelli v. Hemm* (2021) 67 Cal.App.5th 380, 385-386, fn. 1 [facts considered by court regarding motion included declarations supporting and opposing the motion].)

Most of the filings in this rulemaking at the time the Ruling was issued would be properly within the record, consistent with the proceedings' un-appealed status as a quasi-legislative. However, Lyft's attempt to rely on Uber's showing and to introduce new evidence on appeal is improper. Ordering Paragraph (OP) 2 of D.20-03-014 is clear that each TNC must make its own affirmative showing. In turn, the Commission may appropriately limit the TNCs from bolstering their cases in chief with the showings of other parties. (See Evid. Code, § 355; cf. Rules 13.8, subd. (b), 13.11, Code of Regs., Tit. 20, §§ 13.8, subd. (b), 13.11.) It is also well-established that introduction of new evidence on appeal is prohibited. (See, e.g., Pub. Util. Code, §§ 1732, 1757.1, subd. (c), D.19-04-048 at 13.) D.20-03-014's requirement that the TNCs make an affirmative showing in their motions and supporting declarations aligns with this customary rule.

Thus, the proper scope of the evidentiary record here reasonably includes Lyft's 2020 Motion and supporting declaration, responses to Lyft's 2020 Motion, and all docketed filings in the underlying rulemaking relevant to resolution of Lyft's 2020 Motion at the time the Ruling was issued. (See *SFPP, L.P. v. Pub. Utilities Com.* (2013) 217 Cal.App.4th 784, 794 [courts consider all relevant evidence when an administrative agency's evidentiary findings are at issue].) The Decision therefore will be modified to explicitly identify this scope.

Consistent with the above discussion and the Decision's own determinations, we clarify that Uber's evidence is inadmissible evidence regarding the disposition of Lyft's 2020 Motion, including the Decision's reference to that evidence.

[4] Unless otherwise noted, citations to Rules are to the Commission's Rules of Practice and Procedure, available on the Commission's website at: https://www.cpuc.ca.gov/proceedings-and-rulemakings/rules-of-practice-and-procedure.

In any event, Uber's evidence is surplusage which is not necessary to support the Decision's conclusion that Lyft's trade secret claim is undermined because Lyft did not make a showing that its business practices differed from other TNCs. (Decision at 41-42.) We note that the Collins declaration shows that Lyft uses similar strategies and tactics as other TNCs. (See, e.g., Collins decl. at ¶¶ 21, 27, 30.) Thus, we will modify the Decision to replace text referring to Uber's evidence with citation to Lyft's declaration.

2. The Decision is modified to clarify that authentication of secondary sources does not require declarations from the authors of those sources.

The Decision interprets D.20-03-014 as requiring a declaration from authors of secondary sources for authentication, a "higher evidentiary standard" than required by the Evidence Code. (Decision at 65-66, 80, 117-118.) Lyft argues that the Decision's requirement is erroneous because, for example, the Evidence Code provides alternative ways to authenticate written evidence. (App. Rehg. at 14-15, 23.)

D.20-03-014 provides that "[t]he TNC must provide a declaration … in support of the legal authority relied on to support confidentiality claims." (D.20-03-014 at 37-38 (OP 2.h).) This directive in D.20-03-014 does not explicitly require the TNCs to obtain declarations from secondary source authors for the purpose of authentication. Because the language of OP 2.h can reasonably be understood as not establishing this requirement, we shall remove statements requiring declarations from secondary source authors and the related analysis. These modifications do not impact the Decision's overall determination regarding what evidence should be excluded.

3. Lyft's privacy evidence was properly rejected.

Lyft argues that Decision improperly excludes as hearsay all evidence it proffered supporting its privacy invasion claim. (App. Rehg. at 21.) Lyft contends that the Decision contradicts longstanding Commission precedent and the Commission's Rules of Practice and Procedure, which recognize that hearsay evidence is admissible in

Commission proceedings. (*Id.* at 22, 23.) Lyft also argues that the Decision is in error because D.20-03-014 provides no other option than to rely on hearsay evidence. (*Id.* at 25-26.) Lyft also claims that the evidence is either non-hearsay or falls within a hearsay exception. (*Id.* at 21-24.) Lastly, Lyft alleges that the dismissal of its privacy evidence violates its due process rights. (*Id.* at 25.)

Hearsay is defined as "evidence of a statement that was made other than by a witness while testifying at [a] hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200.) The Commission generally allows hearsay evidence "if a responsible person would rely upon it in the conduct of serious affairs." (See, e.g., *The Utility Reform Network v. Pub. Util. Com.* (2014) 223 Cal.App.4th 945, 960 (*TURN*).) Any admitted hearsay evidence is given less weight, and if evidence is objectionable on hearsay grounds, the Commission weighs it accordingly. (*Ibid*.) Courts will not interfere with the Commission's judgement as to the appropriate reduced weight accorded to hearsay evidence. (*Id.* at 963.)

Lyft fails to identify legal error. Initially, declarations in support of or opposition to motions for confidential treatment are not hearsay, even though declarations are typically considered hearsay. (See, e.g., *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1050, *Elkins v. Superior Ct.* (2007) 41 Cal.4th 1337, 1355.) Thus, Lyft is incorrect that D.20-03-014 provides no other option than to rely on hearsay evidence because the TNCs' supporting declarations are not hearsay. Also, most of Lyft's privacy evidence is inadmissible for resolving Lyft's 2020 Motion, including Uber's PAI Report and evidence Lyft presented for the first time in its Ruling Appeal. (See Section II.B.1 above.) Thus, the Decision did not need to evaluate whether this evidence was non-hearsay or fell within a hearsay exception.

Further, the Decision properly excluded Lyft's privacy evidence on other grounds. (See Decision at 82-83, 93-94.) Lyft is not excused from D.20-03-014's explicit mandate that it submit a declaration executed with personal knowledge and under the penalty of perjury to provide the factual support for all its legal claims. (D.20-03-014 at 38 (OP 2.h).) The Collins declaration does not have any factual assertions to support

Lyft's privacy claims at issue, which in and of itself establishes that Lyft failed to provide adequate factual support to meet its burden of proof for these claims. (*Id.* at 37-38 (OP 2).) Thus, the Decision's rejection of Lyft's privacy evidence is legally supported, and the Decision did not need to rely on grounds other than those discussed above. (See Decision at 80-82.) We will modify the Decision accordingly.

Lastly, Lyft's due process claims are misplaced. Lyft cites D.15-06-037, which states that it is "unlawful for the Commission to entirely exclude evidence on one side touching on an essential matter at issue, as this would amount to a denial of due process of law." (App. Rehg. at 21-22, 25; D.15-06-037 at 17.) The Decision did not exclude Lyft's declaration, the main procedural vehicle to substantiate Lyft's privacy claims. Further, D.20-03-014 provided Lyft with notice that its supporting declaration must provide detailed facts to support each legal claim and an opportunity to be heard upon filing its motion and declaration. (Decision at 95-96.) Lyft's failure to comply with the directives of D.20-03-014 does not amount to a lack of due process, and we are not required to provide Lyft another chance to supplement its evidentiary showing. (See Decision at 93-96; see also *California State University v. Superior Court* (2001) 90 Cal.App.4th 810, 835, *American Civil Liberties Union of N. California v. Superior Ct.* (2011) 202 Cal.App.4th 55, 74 (*ACLU*).) Moreover, even if the Decision had not excluded Lyft's privacy evidence, the Ruling rejected the evidence as unpersuasive due to Lyft's failure to demonstrate that any of the cited research papers or reports used the same geolocational data that it must provide in an unredacted form. (Ruling at 5-6.) The Ruling's findings are supported by a reasonable construction of the evidence. (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 538; see also *Lorimore v. State Personnel Board* (1965) 232 Cal.App.2d 183, 187 [findings based on inferences reasonably drawn from the record constate substantial evidence and it will not be reversed].)

Legal error has not been shown as to the Decision's overall conclusions regarding the exclusion of Lyft's privacy evidence. Nevertheless, we will modify the Decision to incorporate the above analysis.

C. The Decision correctly concludes that Lyft's trip data is not a trade secret.

1. The Decision correctly finds that Lyft failed to demonstrate the secrecy of its trip data, although the Decision should be modified to clarify its application of the legal standard.

The Decision holds that when individual components of a compilation of data do not qualify as trade secrets, case law from California and other jurisdictions supports a "novelty or uniqueness" requirement for the compilation. (Decision at 36-38, 102-107.) Lyft argues that the Decision errs because there is no such requirement in California law. (App. Rehg. at 7-11.) Lyft further argues that cases from other jurisdictions either refer to the well-established "not generally known" requirement for trade secrets or are bad law. (*Id.* at 8.) Lyft also alleges that, even if California law recognized a novel or unique requirement, there is no evidence that any person or entity possesses the "unique compilation of data elements derived from rides completed on Lyft's platform." (*Id.* at 11.)

Civil Code section 3426.1(d) defines trade secret as "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." A trade secret claimant must satisfy all elements and, thus, failure to do so means that no trade secret is established. (See, e.g., *Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 62 (*Altavion*); Decision at 54-56.)

The term "novelty" has a distinct meaning in patent law, and we acknowledge that the novelty required in patent law is not required for a trade secret. (See, e.g., *Kewanee Oil Co. v. Bicron Corp*. (1974) 416 U.S. 470, 476.) Further, in *Yield Dynamics, Inc. v. TEA Systems* (2007) 154 Cal.App.4th 547, 561-565 (*Yield Dynamics*), the court did not adopt a novelty or uniqueness requirement. (See *Yield Dynamics,*

154 Cal.App.4th at 561-565.) Specifically, when confronted with the issue of whether California law required trade secrets to be novel or unique, the court "doubt[ed] that California law imposes any such categorical requirement." (*Id.* at 562.) In doing so, the court cited the Third Restatement of Unfair Competition, which states that "[a]lthough trade secret cases sometimes announce a 'novelty' requirement, the requirement is synonymous with the concepts of secrecy and value as described in this Section and the correlative exclusion of self-evidence variants of the known art." (*Ibid.*, citing Rest.3d, Unfair Competition, § 39, com. f.)

Nevertheless, we were overall correct in our interpretation of the law. The Decision is reasonably read to require only that Lyft's trip data is "not generally known" as stated in Civil Code section 3426.1(d). The Decision's analysis can be understood as holding that trade secret protection does not extend to compilations where the facts indicate that both the individual components are generally known, and the overall compilation is too generic to be considered anything but generally known. (See Decision at 38-42.)

The Decision's conclusion is supported by California law and its application of the record evidence. Case law demonstrates that information is not a trade secret when the underlying methods, formulas, practices, etc. are generally known in the industry. (See *id.* at 40, 41, citing *Woo v. Fireman's Fund Insurance Co.* (2007) 137 Wash.App. 480, 488-489, *American Paper & Packaging Products, Inc. v. Kirgan* (1986) 183 Cal.App.3d 1318, 1326; see also *Aetna Building Maintenance Co. v. West* (1952) 39 Cal.2d 198, 206.) Similarly, California courts are reluctant to find trade secrets when the information is readily ascertainable through public sources. (See, e.g., *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1521 (*Morlife*); see e.g., Decision at 34, 38-39.)

We correctly found that the trip data consists of individual components that are common public knowledge and based on generic business practices within the TNC industry, including: (1) the availability of zip codes and census tracts; (2) popular neighborhoods due to dining and entertainment; and (3) the occurrence of special events. (Decision at 39.) The Decision explains that this generalized locational, driving, and time

information already can be ascertained and that computer models can utilize this information to determine optimal times, dates, and zip code information to direct drivers to the area. (*Ibid*.) The Decision also explains that Lyft's declaration fails to provide concrete examples of how its practices and strategies differ from other TNCs, as required by some courts when competitors engage in the same or similar business practices or processes. (*Id.* at 40-41; see also *Fortna v. Martin* (1958) 158 Cal.App.2d 634, 640 [no trade secret where evidence failed to show that plaintiff devised any improved method for generic business practices].) Not only did Lyft fail to present this kind of evidence, evidence provided in the Collins declaration shows that Lyft's trip data and uses thereof are the product of generally known practices in the TNC industry. (See, e.g., Collins decl. at ¶¶ 21, 27, 30.)

Lyft did not demonstrate legal error on this issue. Consistent with Civil Code section 3426.1(d), we will clarify the Decision by stating that novelty and uniqueness are synonymous with secrecy, replacing references to "novel" or "unique" with "generally known," and deleting associated text.

2. The Decision correctly concludes that Lyft failed to provide sufficient evidence to establish that its trip data has independent economic value.

Lyft alleges that it showed the trip data has value because the Collins' declaration "provided a lengthy and detailed explanation as to how the Trip Data is used by Lyft to more effectively target its marketing and promotional efforts— and thereby avoid spending money on ineffective campaigns— and how a competitor could use the data to similar effect." (App. Rehg. at 12; see also *id.* at 13-14.) Lyft also claims the data's value is demonstrated by evidence that at least one company has inquired about purchasing the data. (*Id.* at 14-15.) The Decision rejects these claims for various reasons. Lyft's challenges to the Decision's conclusion that it failed to establish the independent economic value of the trip data are discussed below.

Independent economic value may be established by direct evidence "relating to the content of the secret and its impact on business operations" or

circumstantial evidence, including "the amount of resources invested by the plaintiff in the production of the information, the precautions taken by the plaintiff to protect the secrecy of the information ..., and the willingness of others to pay for access to the information." (*Altavion*, *supra*, 226 Cal.App.4th at 62, internal quotation and citation omitted.) The information must be "sufficiently valuable" to gain an economic advantage over others and this advantage must be "more than trivial." (*Ibid.*, internal citations and quotations omitted.) The burden is on Lyft to show independent economic value. (*Ibid*.)

a) Lyft identified the content of its alleged trade secret.

Lyft argues that the Decision incorrectly concludes that it did not establish the content of the secret and its impact on Lyft's business operations. (App. Rehg. at 12.) Lyft notes that it identified each data field comprising of the purported trade secret and explained how the data is used for marketing and promotions. (*Ibid*.)

We agree that Lyft did identify the content of its alleged trade secret. However, independent economic value is not established merely with evidence that the alleged trade secret has value to the trade secret proponent. (See, e.g., *Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 19, *Yield Dynamics*, *supra*, 154 Cal.App.4th at 565, 568.) Instead, trade secret information must have value to the proponent and a third-party if the information was known, and that value must be more than trivial. (*Ibid.*) As discussed below, Lyft fails to make such a showing. We will clarify the Decision to reflect that Lyft did identify the content of its trade secret.

b) Lyft's evidence is insufficient to demonstrate the value of its trip data.

Lyft challenges the Decision's finding that the Collins declaration provides inadequate information for the factor related to the amount of resources expended by Lyft in developing the trip data or saved by a competitor that may use the data. (App. Rehg. at 11-12.) Lyft also argues that there is no requirement to quantify the trip data's value,

as stated in the Decision, and that its evidence is legally sufficient to show independent economic value. (*Ibid.*; Decision at 60-61.)

The Decision cites to *Yield Dynamics*, which provides the following guidance as to the specificity required to demonstrate independent economic value: "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 labor it would save, or at least that these savings would be 'more than trivial.'" (*Yield Dynamics*, *supra*, 154 Cal.App.4th at 565, original italics, citing Rest.3d, Unfair Competition, § 39, com. e.) We agree with Lyft that this statement does not require quantification, as evidenced by the court's use of "or" in the list of potential ways to establish a trade secret's value.

Even though there is no direct quantification requirement, we correctly found that the attestations in the Collins declaration are insufficient because they are stated in "the most general of terms" and fail to establish a credible rationale why Lyft's trip data would have value to competitors. (Decision at 61, 62-64.) The Decision cites to Lyft's generic claims that it generated the trip data "over time and at great expense" and that competitors would not need to invest the "significant resources" that Lyft invested. (Collins decl. at ¶ 27; Decision at 61.) The Decision also discusses, for example, that given Uber's predominant TNC market share and the fact that Uber has its own data to analyze, Lyft fails to sufficiently explain why Uber would want to analyze Lyft's trip data. (Decision at 63; see also *id.* at 63-64 [explaining why Lyft's argument is even less persuasive when looking at the small TNCs].) Lyft's general claims do not provide sufficient evidence to "form some solid sense" regarding the usefulness of Lyft's trip data or how the trip data provides an advantage that is more than trivial. Indeed, the *Yield Dynamics* court rejected generic claims of independent economic value similar to Lyft's claims. (*Yield Dynamics*, *supra*, 154 Cal.App.4th at 567.) The Decision also is supported by cases where, in comparison to Lyft's vague statements, economic value was established with more concrete evidence. (See, e.g., *Altavion*, *supra*, 226 Cal.App.4th at 64 [8-10 engineers developed the information over 4-5 months, investment of $50,000],

San Jose Construction, Inc. v. S.B.C.C. Inc. (2007) 155 Cal.App.4th 1528, 1538 [process can take 6-12 months or longer and typically costs tens of thousands of dollars].)

While Lyft did not show legal error, we will modify the Decision to clarify that quantification is not required.

c) The Decision's findings that Lyft failed to establish the independent economic value of its alleged trade secret does not misapply trade secret law.

Lyft claims the Decision misapplies trade secret law because there is no requirement that trade secrets have value to a current competitor; rather, value can be actual or potential, and need not be to a competitor but to any third-party. (App. Rehg. at 12, 14; see, e.g., *Altavion*, *supra*, 226 Cal.App.4th at 62.) Lyft also argues that the Decision errs by requiring Lyft to show its trip data was misused to establish the data's value. (*Id.* at 14, citing Decision at 110.)

Lyft fails to identify legal error. Contrary to Lyft's allegation, the Decision addresses both Lyft's actual and potential competitors and concludes that Lyft's evidentiary shortcomings apply to both. (Decision at 62-64.) Moreover, Lyft's declaration provides no facts as to the value of the trip data to non-competitors, focusing on current and potential competitors only. There is no requirement for the Decision to address evidence Lyft fails to present. (See, e.g., *Collin v. Am. Empire Ins. Co.* (1994) 21 Cal.App.4th 787, 808 (*Collin*) [failure of proof falls on the party bearing the evidentiary burden].)

Lyft is also wrong that the Decision requires actual examples of trade secret misuse. The Decision only points out that, unlike Lyft, the plaintiffs in *Religious Technology Center v. Netcom On-Line Communication Services, Inc.* (N.D. Cal. 1995) 923 F.Supp. 1231 (*Religious Technology*) provided such examples, which the court found sufficient to show independent economic value. (Decision at 111; *Religious Technology*, 923 F.Supp. at 1253.) In other words, we merely explained Lyft's evidentiary deficiencies by comparing them to adequate showings. (Decision at 63-64, 107-110.)

d) The Decision correctly excludes Lyft's evidence from its 2021 showing proffered to show that other TNCs or third parties would want access to Lyft's trip data but is modified for clarification.

Lyft argues that the Decision errs in finding no other TNC or third-party would want access to Lyft's trip data by excluding evidence to this effect. (App. Rehg. at 13-14.) Lyft's proffered evidence consists of its 2021 Motion and supporting Rosenthal declaration, and associated secondary sources cited therein. (*Id.* at 13-15; see, e.g., Lyft 2021 Motion, Exh. B at 3, ¶ 9 [Rosenthal decl.].) Lyft requests judicial notice of its 2021 showing because it is docketed in underlying rulemaking. (App. Rehg. at 15, fn. 22, citing Evid. Code § 452(h) and Rule 13.10, Code of Regs., Tit. 20, § 13.10.)

Lyft is incorrect that the Decision erred in rejecting this proffered trade secret evidence. As discussed above, the appropriate scope of the evidentiary record excludes Lyft's 2021 showing.[5]

We also concluded that the Collins declaration was insufficient to authenticate the secondary sources and requiring declarations from the authors of the sources. (Decision at 65-66, 111-112.) The Decision additionally found that Lyft cannot avoid the hearsay problems with the secondary sources by trying to elevate either Ms. Collins or Ms. Rosenthal as expert witnesses who can rely on hearsay evidence to inform their opinions. (*Id.* at 112-113, citing Evid. Code, § 720.) These grounds are unnecessary given that the 2021 showing should be excluded, as discussed above, and the Decision shall be modified to clarify its reliance on that basis.

Moreover, we deny Lyft's motion for official notice of its 2021 Motion and supporting Rosenthal declaration. Lyft's rehearing application states in a footnote: "[a]s the Decision refers to this evidence, Lyft requests official notice of Lyft's 2021 motion

[5] In its application for rehearing, Lyft cites to one of Uber's declarations (Sauerwein), which claims competitors, such as Lyft, would gain an advantage with access to Uber's trip data. (App. Rehg. at 13-14.) Like Lyft's citation to its 2021 Motion and the Rosenthal declaration, Uber's declaration is inadmissible evidence that Lyft cannot leverage to supplement its own evidentiary deficiencies.

for confidential treatment and supporting declaration, which has been lodged in the docket of this rulemaking and is thus a record of a proceeding subject to notice under Evid. Code § 452(h) and Rule of Pract. and Proc. 13.10." (App. Rehg. at 15, fn. 22.) Lyft used parallel language in a footnote in its opening comments on the *Proposed Decision Denying Lyft's Appeal of the Ruling* (Proposed Decision) initiating its request to seek official notice, which was rejected by the Decision. (Lyft Opening Comments on the Proposed Decision (April 21, 2022) at 6, fn. 13; Decision at 112, fn. 145.)

Pursuant to Lyft's cited Evidence Code section, 452(h), a court may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).) Lyft does not explain how the identified documents meet this requirement. Lyft does not even explain which facts and propositions within the documents are not subject to dispute. To the contrary, it is clear that certain factual assertions made in the Rosenthal declaration are subject to dispute and not verifiable by resort to sources of reasonably indisputable accuracy (i.e., whether Lyft's trip data is a trade secret and implicates privacy concerns). (See *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz and McCort* (2001) 91 Cal.App.4th 875, 882 ["Courts may not take judicial notice of allegations in affidavits … [and] declarations … in court records because such matters are reasonably subject to dispute… ."].) Thus, Evidence Code section 452(h) does not provide a basis to take official notice.

Furthermore, official notice is inappropriate because Lyft is seeking to admit evidence presented for the first time on appeal and hearsay evidence for the truth of the matters asserted. (See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063–64, *overruled on other grounds* [requests for judicial notice of government reports inappropriate to the extent plaintiff sought notice of the truth of matters asserted therein, not merely their existence], *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175, 1192 [denying request for judicial notice of report that was not part of administrative record].) We reject Lyft's attempt to circumvent admissibility issues with official notice.

e) Lyft is incorrect that the Decision relies on unwarranted speculation to find that Lyft failed to establish the value of its trip data.

The Decision finds that the Collins declaration fails to establish the trip data's value because there could be other reasons why passengers and drivers use Lyft's services other than publicly available promotions (i.e., the release of Lyft's trip data would not reveal Lyft's marketing strategies). (Decision at 61-62.) Lyft argues the Decision's finding is not supported because it directly contradicts the Collins declaration, lacks evidentiary support, and ignores that it is unnecessary to know the reasons each driver and passenger used Lyft's platform because marketing trends can be revealed with analysis of large sets of data. (App. Rehg. at 13.) Lyft asks the Commission to take official notice of the definition of "data analytics" from Investopedia, defining this term as "techniques [that] can reveal trends and metrics that would otherwise be lost in the mass of information … [, which] can then be used to optimize processes to increase the overall efficiency of a business or system." (*Ibid.*, fn. 20, citing Evid. Code, §§ 452, subd. (g) and 452, subd. (h).) Lyft argues that this definition shows that the Decision's finding is "contrary to common knowledge and experience" and any inference otherwise is unsupported. (*Id.* at 13.)

Lyft's arguments are unpersuasive and taking official notice of the definition of data analytics would not advance Lyft's position. Initially, the burden is on Lyft, not the Commission to establish independent economic value, which Lyft fails to do for the variety of reasons discussed in the Decision and above. (Decision at 58-65.) The Decision does not err by making an inference based on Lyft's vague and generic attestations of value to *further* cast doubt on Lyft's claims. (*Id.* at 61-62, 108-109; see *Collin*, *supra*, 21 Cal.App.4th at 808 [failure of proof falls on the party whom the burden rests], see also *Meyers v. Board of Administration* (2014) 224 Cal.App.4th 250, 256 [under the substantial evidence standard, courts resolve all conflicts and indulge all reasonable inferences in favor of the underlying decision].)

Moreover, the Decision's inference is just one of many that could undermine Lyft's inadequate evidentiary showing. The trip data does not reveal what publicly available driver or passenger promotions were available at the time or whether the driver or passenger used any promotion available at the time. (Decision at 61.) Thus, as Lyft concedes, competitors would have to conduct their own analysis by comparing the trip data to publicly available promotions to glean trends that may indicate whether Lyft's promotions were successful. (See App. Rehg. at 13, Collins decl. at ¶¶ 21, 27.)

Rather than demonstrating independent economic value, Lyft's inadequate showing raises questions. For example, if a promotion that ran for a given number of months was only available for one month during the reporting period for a particular Annual Report, would data from this one month be adequate to infer whether the promotion was successful? Further, if there was inadequate data to glean a useful trend under this scenario, would the value of the data become stale while waiting for the next Annual Report to obtain the complete set of trips ran during the promotional period? (See, e.g., *Zenith Radio Corp.* (E.D. Penn. 1981) 529 F.Supp. 866, 891 [competitive disadvantage claims might be undermined if the information sought to be protected were stale], *Whyte v. Schlage Lock Co.* (2002) 101 Cal.App.4th 1443, 1451-1452 (*Whyte*).) In addition, Lyft does not explain whether it runs only one promotion at a time and whether, if more than one at a time, it would still be possible to extrapolate the individual trends for each promotion.

Lyft also provides no facts to determine whether a competitor would need to invest more time and resources to cross-reference Lyft's millions of rides with public promotions than to just either, for example, (1) develop and test their own promotions or (2) simply run the same or more competitive promotions than the promotions Lyft places in the public domain. Without any concrete details in this regard, there is no objective way to determine whether the value of Lyft's trip data is more than trivial. (See *Yield Dynamics*, *supra*, 154 Cal.App.4th at 567 [information is valuable if its advantages outweigh its disadvantages, and the net advantage is more than trivial]; see also Decision at 63.)

Considering the above, taking official notice of the definition of "data analytics" is unnecessary because it does not cure the lack of detail in Lyft's declaration. Thus, we deny Lyft's official notice request.

3. We will modify the Decision's discussion regarding reasonable efforts.

The Decision finds that Lyft failed to demonstrate reasonable efforts to maintain the secrecy of its trip data. We based this finding on the fact that Lyft drivers and passengers have access to the trip data as it relates to the trips they give or receive, respectively, without any obligation to keep that information secret. (Decision at 67-70.) Lyft argues this finding is in error because although a particular driver or passenger has access to their own data, they do not have access to the compilation of trip data, which Lyft alleges is the trade secret. (App. Rehg. at 16-17.) Lyft cites several cases to support its proposition.

A trade secret claimant must demonstrate that it made reasonable efforts under the circumstances to maintain the secrecy of the trade secret. (Civ. Code, § 3426.1, subd. (d)(2).) "Public disclosure, that is the absence of secrecy, is fatal to the existence of a trade secret," whether "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… ." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 304 (*Providian*).) To evaluate whether reasonable efforts were made, factors repeatedly considered include, but are not limited to: (1) restricting access and physical segregation of the information; (2) confidentiality agreements with employees; (3) marking documents with warnings or reminders of confidentiality; and (4) advising employees of the existences of a trade secret. (*Id.* at 304; *Whyte*, *supra*, 101 Cal.App.4th at 1454; see also Decision at 66-67.) Ultimately "whether a party claiming a trade secret undertook reasonable efforts to maintain secrecy is a question of fact." (*Providian*, *supra*, 96 Cal.App.4th at 306.)

We agree with Lyft that the disclosure of individual trip data to drivers and passengers for their respective rides does not demonstrate that it failed to take reasonable

efforts to maintain the secrecy of the compilation of trip data. (See, e.g., *Religious Technology*, *supra*, 923 F.Supp. at 1253, 1255 [trade secret not necessarily destroyed by disclosing "all or almost all" of the claimed trade secret information on the Internet].) The Decision's discussion on this point shall be modified accordingly and we will add language explaining that evaluating Lyft's efforts to maintain secrecy is unnecessary since Lyft's failed to establish the other requirements for trade secrets. (See Decision at 54-56.)

4. Lyft's trip data does not lose potential trade secret status because it was compiled for a regulatory purpose.

We note that our discussion in the Decision which concludes that data collected and submitted for government compliance purposes could not be trade secrets (Decision at 43-54) is not entirely accurate. The Decision's reasoning shall be modified accordingly as described in the below ordering paragraphs. These modifications, however, do not alter the conclusion that Lyft has failed to establish a trade secret.

5. The Decision correctly finds that the Evidence Code section 1060 balancing test favors disclosure of the trip data.

Evidentiary privileges such as the trade secret privilege are incorporated into the CPRA through Government Code section 7927.705 (formerly 6254(k)), which provides an exemption for "[r]ecords, 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." (Gov. Code, § 7927.705; Evid. Code, §§ 1060-1061.) However, even when a trade secret is established under Civil Code section 3426.1(d), the privilege is not absolute. (See, e.g., *Amgen*, *supra*, 47 Cal.App.5th at 732.) Whether the information may be disclosed is subject to a balancing test pursuant to Evidence Code section 1060, which provides: "If he or his agent 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."

The Decision determines that even if Lyft met its burden to establish that its trip data is a trade secret, which it did not, the Commission could still disclose the data under Evidence Code section 1060's balancing test. Lyft argues that the Decision's analysis is flawed. (App. Rehg. at 17-21.) For the reasons discussed below, Lyft fails to identify legal error.

a) Although the Decision applies the correct burden of proof, we will clarify the burden of proof applied.

Lyft challenges the Decision's conclusion that "the moving party must prove that the allowance of the privilege will not tend to conceal fraud or otherwise work injustice." (App. Rehg. at 17, citing Decision at 72, internal quotations omitted.) Lyft asserts that the Decision gets the burden of proof wrong because under *Bridgestone/Firestone, Inc. v. Superior Court of Alameda County* (1992) 7 Cal.App.4th 1384 (*Bridgestone/Firestone*) "the burden on the proponent seeking release of trade secret information is to show that preservation *would* work an injustice." (App. Rehg. at 18, original italics.)

Lyft fails to identify legal error because the Decision's analysis and findings correctly apply the burden of proof. (Decision at 72-78.) Nevertheless, the Decision shall be clarified to show that it applied the burden correctly.

b) Lyft is incorrect that section 1060 requires application of the *Bridgestone/Firestone* test in Commission proceedings and the CPRA context.

Lyft argues that the Decision errs because it does not apply the *Bridgestone/Firestone* test for determining whether a trade secret can be disclosed under the Evidence Code section 1060. Lyft argues that the Decision departs from the test established in this case in that the Decision neither considered less intrusive means to public disclosure (e.g., protective orders) nor required a showing that disclosure was relevant, necessary, and essential to a fair resolution of the matter. (App. Rehg. at 18;

Bridgestone/Firestone, *supra*, 7 Cal.App.4th at 1393.) Lyft misconstrues *Bridgestone/Firestone's* applicability.

The Commission has already established that the *Bridgestone/Firestone* test does not necessarily apply to its proceedings since that test is relevant to litigants in court actions, which are differently situated than applicants in a regulatory context. (D.06-01-047 at 36, D.20-12-021 at 25-27, fn. 60 at 26.) In addition, in the CPRA context, the *Bridgestone/Firestone* test is not applied. Rather, the relevant inquiry involves a balancing test wherein the Commission and courts weigh the public's interest in disclosure against the public's interests in non-disclosure. (See, e.g., D.20-12-021 at 25-26, *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 210-211 (*Uribe*); see also *Cates v. California Gambling Control Com.* (2007) 154 Cal.App.4th 1302, 1313-1314 [when the documents at issue were not subject to disclosure under the CPRA pursuant to a compact and the Gambling Control Act, plaintiff could seek to discover the documents pursuant to Evidence Code section 1060 under appropriate confidentiality agreements for litigation purposes].) Thus, Lyft is incorrect that the Decision should have applied the *Bridgestone/Firestone* test.

c) The Decision correctly determines that Evidence Code 1060's balancing test supports disclosure.

Lyft argues that the Decision errs in finding that preservation of Lyft's trade secret would work an injustice. (App. Rehg. at 17-21.) It further argues that cases finding an injustice under Evidence Code section 1060 "impose a very high bar" and the Decision falls short of this high bar. (*Id.* at 19-20.) As support, Lyft cites *State Farm Fire & Casualty Co. v. Superior Court* (1997) 54 Cal.App.4th 625, *as modified* (May 1, 1997) (*State Farm Fire*) and *Uribe*. Lyft also argues that the Decision errs in relying on San Francisco's comments to support disclosure. (*Id.* at 18-19; Decision at 74.) For example, Lyft emphasizes that these comments state that the access to the Annual Report data is "clearly preferrable" to the anecdotal information San Francisco rely on to make transportation planning decisions. (App. Rehg. at 19.) Lyft's arguments are meritless.

First, Lyft's reliance on *State Farm Fire* is unavailing. The court's finding that the crime/fraud exemption vitiated the trade secret privilege did not establish that such a high bar would be required in all cases. Indeed, the court emphasized the fact-based nature of its finding and "caution[ed] that … [its] conclusion is limited to the existence of evidence sufficient to support disclosure of the information; nothing more." (*State Farm Fire*, *supra*, 54 Cal.App.4th at 651; see Decision at 115-116.)

Second, Lyft's position that Evidence Code section 1060's balancing test imposes a "high bar" is inconsistent with the mandate that courts must interpret the CPRA's provisions in favor of disclosure, including Evidence Code section 1060 as incorporated by Government Code section 7927.705. The CPRA "embodies a strong policy in favor of disclosing public records. [Citations.]" (*Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1275.) Indeed, the CPRA declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state," a principle that became part of the California Constitution. (Gov. Code, § 7921.000; Cal. Const., art. I, § 3, subd. (b)(1).) Further, the CPRA was enacted "to give the public access to information in possession of public agencies in furtherance of the notion that government should be accountable for its actions and, in order to verify accountability, individuals must have access to government files. [Citation.]" (*Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 610.) To these ends, the CPRA is "broadly construed if it furthers the people's right to access, and narrowly construed if it limits the right of access." (Cal. Const., art. I, § 3, subd. (b)(2).)

Third, Lyft incorrectly alleges that *Uribe* does not support the Decision. Lyft characterizes the court's holding as limited to where "the data was necessary to preserve human health." (App. Rehg. at 19.) This is not the court's holding. The court found that disclosure was in the public interest because information in the reports was "*important* to the study of the effect of pesticides on man" and "would be *useful* to study the long range effects of pesticides on humans …." (*Uribe*, *supra*, 19 Cal.App.3d at 210, italics added.) In addition, the court found that "the information in the reports would be *most helpful* to entomologists attempting to devise even more effective pesticide

programs." (*Ibid.*, italics added.) Moreover, the court noted the report "would be a *valuable* source of data for members of the public who wish to comment on the [new] regulations" and "could be a *significant aid* to self-enforcement by farm workers of the waiting time regulation." (*Id.*, italics added.) The court's use of the terms "important," "useful," "helpful," etc. directly undermine Lyft's argument that the court found the information "necessary" to preserve human life.

Relatedly, there is no merit to Lyft's argument that the Decision errs in relying on San Francisco's comments, which assert that access to the trip data is "preferrable" to anecdotal information. (Decision at 74, citing San Francisco Opening Comments on Phase III.B Scoping Memo and Ruling (July 17, 2017) at 4.) Lyft selectively quotes to these comments, which state more fully that access to the trip data is preferrable because the anecdotal information "does not present an accurate depiction of conditions on the ground" whereas the trip data allows for "public policy on factual, real time data… ." (San Francisco Opening Comments on Phase III.B Scoping Memo and Ruling (July 17, 2017) at 4.) Moreover, other comments submitted by San Francisco state that the results of the *TNCs and Congestion* report "are likely already out of date because this data collection in 2016 was 'one time only' due to restrictions imposed by TNC companies." (San Francisco Opening Comments on Phase III.C Scoping Memo and Ruling (Dec. 3, 2019) at 10.) These comments further state that the Annual Reports are "essential to fulfilling" SFCTA's statutorily required planning and investment responsibilities and that access to the Annual Reports "would support all of these [SFCTA] duties, as well as improve the analysis and the efficiency of SFCTA research enormously." (*Id*. at 10-11.) The needs asserted by San Francisco fall squarely within the *Uribe* court's findings supporting disclosure of a trade secret.

In addition, as the Decision explains, the court in *Uribe* ordered disclosure of the reports at issue due to the public interests in, *inter alia*, protecting public safety, reasons the court in *City and County of San Francisco v. Uber Technologies, Inc.* (2019) 36 Cal.App.5th 66 (*Uber Technologies*) found compelling. (Decision at 74-75, 116-117;

Uber Technologies, *supra*, 36 Cal.App.5th at 74-75.) Thus, there is no merit Lyft's claim that *Uribe* does not support the Decision.

Lyft argues that the Decision's citation to *Uber Technologies* illustrates the Decision's "dangerous implications" because the court in that case "did not find that Uber's Annual Reports should be publicly disclosed;" instead, the court "acknowledged Uber's confidentiality interests and held that those interests could be preserved by a stipulated protective order which *expressly required* the city to withhold the Annual Reports under the CPRA." (App. Rehg. at 20, original italics.) Lyft's description of the court's holdings is incorrect. In *Uber Technologies*, the confidentiality interests acknowledged by the court were limited to Uber's interests under the protective order—the court did not reach the issue of whether Uber's assertions of trade secret privilege were valid. (*Uber Technologies*, *supra*, 36 Cal.App.5th at fn. 8, 83.) In other words, the court's opinion had no bearing on whether a CPRA requester could successfully challenge the City's confidential designation of the information as a trade secret under the protective order in court. (See *id.* at 83 [City was required to withhold the information subject to the protective order upon a CPRA request and inform Uber of the request so that Uber may take or respond to legal action].) Indeed, only a valid trade secret claim could shield Uber's data from public release pursuant to a CPRA request, not an agreement amongst the parties to treat the data as confidential. While the protective order in *Uber Technologies* required such a determination to be made by a court instead of the City, the Commission is under no such obligation. Thus, the Decision's adherence to the CPRA, which includes Evidence Code section 1060's balancing test, does not have "dangerous implications" under the court's inapposite holdings in *Uber Technologies*.

For the reasons explained, Lyft fails to identify any legal error in the Decision's Evidence Code section 1060 analysis or conclusions.

D. The Decision correctly determines that Lyft failed to show that the balance of the trip data would lead to an invasion of privacy.

Lyft argues that the Decision erred because the evidence it proffered and case law demonstrate that an invasion of privacy can occur even when an individual's identify must be inferred from the data, including course data at the census tract level. (App. Rehg. at 27-28, 29-30; see Gov. Code, §§ 7927.700, 7922.000.) Lyft claims that the trip data can be used to re-identify individuals and track their movements, potentially revealing intimate personal details including, for example, political affiliations, personal relationships, and sexual orientation. (App. Rehg. at 27-28, 29, fn. 43.) Lyft references the studies it cites to in its various pleadings and also *Carpenter v. U.S.* (2018) 138 S.Ct. 2206 (*Carpenter*) and *Sander v. Superior Court* (2018) 26 Cal.App.5th 651 (*Sander*) as support. (*Id.* at 26-27.)

Lyft's arguments fail for two reasons. First, as already discussed above, Lyft's proffered privacy evidence is insufficient to meet its burden of demonstrating that the trip data presents a protected privacy interest.

Second, Lyft's attempt to frame release of the trip data as a privacy violation as a matter of law under *Carpenter* and *Sander* is unpersuasive because the facts and holdings in these cases are distinguishable. In *Carpenter*, a Fourth Amendment search case, the cell-site location information (CLSI) was directly linked to an individual cell phone owner's name and number. In addition, the court's holding relied on the fact that individuals "compulsively carry cell phones with them all the time …[,] faithfully follow[ing] its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales." (*Carpenter*, *supra*, 138 S.Ct. at 2218.) Although Carpenter's CLSI data placed him in a "wedge-shaped sector ranging from one-eighth to four square miles," the court permissibly inferred a reasonable expectation of privacy and the evidence showed that "the Government could, in combination with other information, deduce a detailed log of Carpenter's movements, including when he was at the site of the robberies." (*Ibid*.)

Moreover, the court noted that its ruling must take into account advances in the CLSI technology, which had become accurate enough to allow "wireless carriers already have the capability to pinpoint a phone's location within 50 meters." (*Id.* at 2218-2219.)

Unlike in *Carpenter*, the trip data does not include individuals' names and Lyft failed to show that the trip data subject to disclosure could be used to deduce an individual's movements with precision within a census tract. Relatedly, the burden of proof is on Lyft, and the Commission is not required to infer an invasion of privacy where Lyft has not demonstrated beyond mere conjecture that one exists, and where the Decision permits redaction of information likely to infringe on driver and passenger privacy interests. (See Decision at 121.) Further, census tract data does not provide the precise locational information noted in *Carpenter*, where CLSI could pinpoint a phone's location within 50 meters.

In *Sander*, petitioners sought individually unidentifiable records for all applicants to the California Bar Examination from 1972 to 2008 in the following categories: race or ethnicity, law school, transfer status, year of law school graduation, law school and undergraduate GPA, LSAT scores, and performance on the bar examination. (*Sander*, *supra*, 26 Cal.App.5th at 655.) In other words, the data at issue included: (1) personally identifying information (race or ethnicity); and (2) an identifiable pool of potential individuals (e.g., law school graduates and licensed California attorneys), some of this information which is publicly accessible on the California State Bar's website. In contrast, the unredacted trip data at issue here does not include immutable characteristics, the pool of individuals could include anyone who use Lyft's services in California, and we are unaware of any publicly available website where a search by name reveals whether an individual is a Lyft passenger or driver and includes additional personal information. And, unlike in *Sander* where evidence supported a finding that disclosure of the records could violate individual privacy, Lyft made no such showing, and the Decision permits redaction of information likely to infringe on driver and passenger privacy interests. (Decision at 121.) Lyft has failed to show legal error on this issue.

E. The Decision's determination that redacting latitude and longitude addresses privacy concerns is supported by record evidence.

The Decision concludes that Lyft failed to demonstrate that the trip data, which redacts latitude and longitude data among other data fields, supports non-disclosure on privacy grounds. (See, e.g., Decision at 9-10, 19-20, 93, 121, Ruling at 5.) Lyft argues that the Decision's conclusion is not based on record evidence. (App. Rehg. at 28-30.) Specifically, Lyft argues that there is no evidence to support a distinction between latitude and longitude data and the census block and zip code level data slated for disclosure. (*Id.* at 28-29.) Lyft alleges this data implicates serious privacy concerns because it can be combined with other information to identify a driver and/or passenger. (*Ibid.*) Lyft is incorrect.

The Decision's determination to redact latitude and longitude and not census tract level data finds support in comments submitted by San Francisco and its response to Lyft's 2020 Motion, which are part of the record as discussed above in Section II.B.1. In these filings, San Francisco asserts that privacy rights can be protected by using spatially aggregated data at the census tract level and redacting precise geolocations data (i.e., latitude and longitude) and personally identifying information (e.g., driver names). (See, e.g., San Francisco Response to Lyft's 2020 Motion (July 2, 2020) at 11-12, 17-20, San Francisco Opening Comments on the Phase III.C Scoping Memo and Ruling (Dec. 3, 2019) at 18-19, San Francisco Reply Comments on the Phase III.C Scoping Memo and Ruling (Dec. 20, 2019) at 11-13.) Lyft's disagreement with the Decision's conclusion based on this record evidence does not demonstrate legal error and the Commission does not reweigh the evidence at the review stage. (See, e.g., D.14-10-027 at 2, *Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 649.)

F. The Decision does not violate Lyft's Fourth Amendment rights.

1. Lyft does not have a Fourth Amendment privacy interest in the public disclosure of the trip data.

Lyft argues that public release of the trip data would violate its privacy interests in the data, which Lyft claims is protected by the Fourth Amendment of the United States Constitution. (App. Rehg. at 30-31.) Lyft further argues that the Decision misunderstands Lyft's Fourth Amendment claim. Specifically, Lyft asserts that the Decision conflates Lyft's own privacy interest with the interests of Lyft's customers and confuses the Commission's authority to collect the trip data with the authority to publicly release the data. (*Id.* at 31.) Lyft further asserts that the Decision's failure to recognize Lyft's privacy interests under the Fourth Amendment in the public release of the trip data ignores the need for Government Code section 7927.700 (formerly 6254(c)) and this provision's balancing test required by *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319 (*International Federation*). (*Ibid.*)

As an initial matter, Lyft appears to misunderstand the CPRA exemption established in Government Code section 7927.700, which exempts: "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." The balancing test for this provision requires "balance[ing] two competing interests, both of which the Act seeks to protect —the public's interest in disclosure and the individual's interest in personal privacy." (*International Federation*, *supra*, 42 Cal.4th at 229-330.) This exemption and associated balancing test apply only to individuals, not corporations. (See, e.g., *ACLU*, *supra*, 202 Cal.App.4th at 74, fn. 8.) Thus, the Decision was not obligated to analyze whether the public's interest in disclosing the trip data outweighed Lyft's privacy interests in the data under this CPRA exemption.

Lyft also is incorrect that public disclosure of the trip data would violate its Fourth Amendment rights. 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, as the Decision recognizes, other laws, not the Fourth Amendment, govern whether the public release a regulated entity's records submitted to an agency is lawful. (Decision at 19, 22; see, e.g., Gov. Code, §§ 7922.000, 7927.705, Evid. Code, § 1060).

For the reasons discussed above, Lyft's Fourth Amendment claims fail because the Fourth Amendment is not applicable to public disclosure of the trip data lawfully obtained by the Commission. However, the Decision's analysis of Lyft's Fourth Amendment claims shall be modified to clarify the appropriate scope of the Fourth Amendment in this context.

2. The Decision's reasoning for disclosing Lyft's trip data under the Evidence Code section 1060 balancing test is not inconsistent with the Fourth Amendment.

Lyft argues the Decision violates the Fourth Amendment because it offers the following support for disclosing the trip data pursuant to Evidence Code section 1060: "Several investigations into whether a TNC such as Lyft is operating in violation of various state and local laws would be stymied if governmental entities could not review the relevant trip data." (App. Rehg. at 20, citing Decision at 76.) Specifically, Lyft argues that the Decision's reasoning circumvents due process requirements imposed on administrative subpoenas and the potential for protective orders to guard trade secrets. (App. Rehg. at 20, 21.)

Lyft's attack on the Decision's justification for disclosing the trip data under section 1060's balancing test does not show legal error. While Lyft is correct that administrative searches are subject to Fourth Amendment protections, Lyft overlooks that

the Decision does not rely solely on the public's interest in the trip data for investigatory purposes. (See, e.g., *Patel v. City of Los Angeles* (9th Cir. 2013) 738 F.3d 1058, 1064 [reasonableness tests for warrantless administrative searches].) The Decision explains that the public's interest in the data includes environmental and infrastructure benefits, public safety, and investigation purposes. (Decision at 72-76, 116-117.) In fact, several of the reasons stated in *Uber Technologies* to support San Francisco's investigation touch upon public interests that are relevant to the matter at hand beyond violations of the law (e.g., driver fatigue, obstructing access to public parks and streets, and equal access to TNC services). (*Uber Technologies*, *supra*, 36 Cal.App.5th at 74-75.) Lyft fails to cite authority for the proposition that there is a Fourth Amendment concern simply because one public interest in the trip data among many may be for investigatory purposes.

G. Lyft has failed to make a colorable Fifth Amendment regulatory Takings claim.

In its rehearing application, Lyft includes a single sentence which asserts that because the Commission has set a "low bar" for trade secrets, Lyft's property rights would be "eviscerated … in violation of the Takings Clause of the Fifth Amendment of the Constitution." (App. Rehg. at 21.) The footnote citation to that sentence broadly states that "[t]he U.S. Supreme Court has recognized a property interest in trade secrets, even when the trade secrets are required to be submitted to a regulatory agency[,]" with a citation to *Ruckelshaus v. Monsanto Co.* (1984) 467 U.S. 986 (*Ruckelshaus*). (*Ibid.* at fn. 33.)

Lyft fails to articulate legal error as required by Public Utilities Code section 1732, which states that: "[t]he application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application." (Pub. Util Code, § 1732; see *Postal Telegraph-Cable Co. v. Railroad Commission of California* (1925) 197 Cal. 426, 433-434.) In any event, the Decision aptly disposes of the Takings claim. (Decision at 22-28.) Thus, we reject Lyft's claim.

H. The procedure for document disclosure should be clarified.

Lyft states in its rehearing application that the Decision "became effective upon issuance" and that "[u]nless stayed … will require [public] disclosure" of allegedly confidential trip data. (App. Rehg. at 1.) Lyft's motion for a stay similarly asserts that "the Decision creates a substantial risk that the data … will be publicly disclosed[.]" (Lyft Emergency Stay Motion at 1.) This language demonstrates that Lyft believed, or at least was uncertain, as to whether the Commission staff would generate the public version of Lyft's 2020 Report or otherwise disclose the trip data. In order to prevent confusion regarding the procedure for disclosure, we order Lyft to produce the public version of its 2020 Annual Report and submit it to the Commission 30 days after the issuance of this Order. The Commission staff may publicly disclose that data after that compliance date.

The Ordering Paragraphs shall be modified accordingly.

III. CONCLUSION

For the reasons discussed above, D.22-05-003 is modified as specified below, and rehearing of the Decision, as modified, is denied.

THEREFORE, IT IS ORDERED that:

1. The text starting at the first full paragraph on page 15 and ending page 16 in Section 2 of the Decision is deleted.

2. Replace the text in Section 2.1 of the Decision starting at the first full paragraph on page 17 and ending on page 22 with the following text:

> Lyft's argument that having to publicly disclose trip data implicates Fourth Amendment considerations is incorrect 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).

California law recognized that personally identifiable information that is obtained by a government agency like the Commission is generally protected against public disclosure.[33] The *Ruling* agreed with Uber and Lyft that such personally identifiable information could be redacted from the public version of the TNC Annual Reports.[34] The Ruling also agreed that latitude and longitude information could also be redacted from the public version of the TNC Annual Reports since this information could be used to deduce an actual starting and ending address for a TNC passenger trip. What *Patel* did not address, and what the Commission is addressing in this decision, is whether a party has met its burden of proving that certain information that must be submitted as part of the Annual Report is exempt from public disclosure. As such, the facts and issue before the Commission are distinguishable from *Patel*, *Airbnb New York*, and *Airbnb Boston*. Unlike the positions New York and Boston advocated in those two decisions, the Commission is not stating that Lyft or any other TNC lacks the right to assert an expectation of privacy regarding TNC data collected and reported at the Commission's behest. Instead, what the Commission held since it ended the presumption of confidentiality for TNC Annual Reports is that the TNC asserting a claim of confidentiality or other privilege must establish that claim with the requisite granularity.

3. Replace the Decision's text starting at the second full paragraph on page 37 and ending on page 38 with the following text:

The *Ruling's* requirement that Lyft must demonstrate that the compilation of trip data is novel or unique can be understood as synonymous with the concepts of secrecy and value, which are standard elements for trade secret as defined in Civil Code section 3426.1(d). (See, e.g., *Yield Dynamics, Inc. v. TEA Systems* (2007) 154 Cal.App.4th 547, 562, citing Rest.3d, Unfair Competition, § 39, com. f.)

The Commission finds that the Collins Declaration does not establish that trip data as a whole, or any subcomponent thereof, is either not generally known to the public or in the TNC industry—

> a.k.a. novel or unique. Absent from the Collins Declaration is any explanation of the uniqueness 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. Zip codes were created on July 1, 1963, by the United States Postal Service.[55] The U.S. Census Bureau created census blocks, which are statistical areas bounded by visible features such as roads, streams, railroad tracks, and other nonvisible property boundaries that are delineated by the U.S. Census Bureau every ten years.[56]

4. Replace the last full paragraph beginning on page 41 and ending on page 42 of the Decision with the following text:

> While the internal data analytic process may vary at each TNC company, the Collins declaration shows that TNCs may engage in similar processes of utilizing trip data to improve customer service and maintain or improve their competitive advantage over the same pool of potential TNC passengers and drivers. (See, e.g., Collins decl. at ¶¶ 21, 26, 27, 30.)

5. Delete Section 4.1.2 on pages 43-48.

6. Remove the Section 4.1.3 header and delete the section's text starting at page 48 to the end of the first full paragraph on page 54, and make the remaining unstricken text of Section 4.1.3, starting at the second full paragraph on page 54 and ending at page 57, the last part of Section 4.1.1.

7. Replace the first full paragraph on page 57 of the Decision with the following:

> Nevertheless, the Commission will explain why Lyft has also failed to carry its burden to establish that trip data has independent value from not being known by those who might make use of it. This will provide a more complete record of the Commission's reasoning.

8. Replace the last sentence preceding the first full paragraph on page 61 with:

> Ms. Collins' assertions lack any quantification or other adequate details regarding the independent value claim and, therefore, falls short of the evidentiary showing required by the *Yield Dynamics* decision.

9. Replace the Decision's text on page 65 starting at the first full paragraph after the block quote to page 66 ending before Section 4.3 with the following:

> The Commission is similarly unpersuaded by Lyft's attempts to rely on secondary sources from its 2021 showing to establish its claim that the trip data has acquired independent value. In its *Appeal*, Lyft cites to articles and reports that allegedly analyze the monetary value of mobility data.[92] The problem with Lyft's position is that it has cited extra-record evidence not offered as part of its 2020 showing. Thus, these articles and reports will not be considered by the Commission as they are not admissible.

10. Modify Section 4.3 to change the heading to "Since Lyft Fails to Establish the Other Elements of a Trade Secret, the Commission Need Not Determine Whether Lyft Took Reasonable Efforts to Maintain the Secrecy of its Trip Data" and replace the text starting at the first full paragraph on page 67 and ending on page 70 with the following:

> As discussed above, all elements of a trade secret must be established as specified in Civil Code section 3426.1(d). Since Lyft did not meet all trade secret elements, the Commission declines to address the reasonable efforts element.

11. Replace the third full sentence on page 72 of the Decision with the following sentence:

> 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.)

12. Replace the text in Section 4.4.2.1. of the Decision starting at the first full paragraph on page 80 and ending with the first sentence on page 83 with the following:

> The Commission rejects Lyft's argument for three reasons. First, much of Lyft's privacy evidence is inadmissible for resolving Lyft's 2020 Motion because it was not part of Lyft's affirmative showing and was presented in Lyft's *Appeal*. Second, the argument lacks support from a declaration under penalty of perjury with the necessary granularity required by D.20-03-014, OP 2.h. The Collins declaration makes no attestations regarding the risks to privacy that Lyft claims are posed by the trip data. As Lyft is offering these studies for the truth of the matter asserted (i.e., that trip data can be manipulated to reveal private information about a TNC passenger)

and the Collins declaration provides no factual support for these claims, the studies are properly excluded because Lyft fails to meet the requirements of D.20-03-014 OP 2.h.

This outcome is the same, notwithstanding the fact that the Commission utilizes a more relaxed evidentiary admissibility standard. While hearsay may be admissible in an administrative hearing if it is relevant and "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (*Gregory v. State Board of Control* (1999) 73 Cal.App.4th 584, 597), citing to *Funke v. Department of Motor Vehicles* (1969) 1 Cal.App.3d 449, 456), Lyft's evidentiary requirements are established in D.20-03-014, which Lyft failed to meet for its privacy claims.

Lyft is asking the Commission to accept the opinions of authors who are supposedly experts in the field of data manipulation and extrapolation, even though it failed to provide evidence in the form of its supporting declaration as required by D.20-03-014 OP 2.h. Thus, the Commission rejects Lyft's request to admit and consider these unsworn reports as they are not the type of evidence the Commission is accustomed to relying upon to resolve a disputed issue of material fact in light of the specific requirements of D.20-03-014.

Third, even if the unsworn hearsay reports were admitted as hearsay, the Commission would not give the reports any weight because they fail to adequately substantiate Lyft's assertions. As the Commission explained, *supra*, the flaws in the Collins Declaration are fatal to Lyft's assertion that trip data is trade secret protected. Further, Lyft's citations to its 2021 Motion and supporting Rosenthal declaration to support its trade secret claim are inadmissible because this evidence was presented for the first time on appeal. In addition, as for the US Census Bureau information that Lyft attached as Exhibit A to its *Appeal*, which was also presented for the first time on appeal, Lyft does not document that its passengers have or might have requested Lyft rides to or from the census blocks that Lyft argues contain small numbers of households that would make it easy to identify a passenger's identity. Moreover, while the Commission takes official notice of the existence of census blocks, it does not take official notice of the Disclosure Avoidance Modernization project that Lyft cites to in its *Appeal* as it is both extra-record evidence and hearsay.

> In addition to the admissibility problems attendant to the studies that Lyft proffered, Lyft has not carried its burden of proof because the arguments regarding harm to Lyft's passengers if trip data were released are speculative at best.

13. Replace the last sentence in the first full paragraph on page 96 of the Decision with the following:

> Instead, once Lyft filed its *Motion*, and including party responses to its *Motion* and the underlying docketed filings prior to Lyft filing its *Motion*, that was the extent of the evidentiary record upon which the ALJ was entitled to rely on and render his ruling unless the ALJ determined more evidence was needed.

14. Replace the first full paragraph on page 97 of the Decision with the following paragraph:

> Lyft next refers to a series of opinions to support its claim that disclosed trip data can lead to an invasion of rider privacy. Lyft first cites a comment from the Director of the Federal Trade Commission's Bureau of Consumer Protection who testified before Congress that any geolocational information can divulge intimately personal details.[122] Then Lyft cites to a paper entitled *The Tradeoff between the Utility and Risk of Location Data and Implications for Public Good* that allegedly found that geolocation data aggregated to the census block level presents "a series risk of de-identification." Finally, Lyft cites to Health Insurance portability and Accountability Act rules that data linked to zip codes with fewer than 20,000 residents, medical data can be re-identified.[123] The Commission declines to consider the testimony, paper, and rules in that they are all inadmissible extra-record evidence and uncorroborated hearsay. Lyft does not explain why it did not submit the evidence cited in its *Appeal* with its *Motion* or follow the procedure of submitting a declaration under oath with personal knowledge as part of its *Motion* to support its privacy claims and substantiate its hearsay privacy evidence.[124]

15. Replace the third and last full sentences on page 98 of the Decision with the following sentences:

> The evidentiary record consists of all evidence in the administrative record relevant to the Commission's factual findings, which is contextualized by D.20-03-014's requirement that the moving party proffers its evidence by way of motion and supporting declaration for the assigned ALJ to rule on the moving party's request. … ¶

> … As only Lyft has filed an *Appeal*, the Commission must limit its review to the relevant documents in the administrative record that comprise of Lyft's evidentiary record.

16. Delete the "Annual Reports as Public Records" section at 101-102.

17. Delete the "Trade Secrets as Novel or Unique" section at pages 102-107.

18. Replace the last sentence in the first full paragraph on page 108 of the Decision with the following sentence:

> Thus, even if we were to agree with Lyft that the failure to quantify the economic value of the Annual Report data was not fatal to the trade secrecy claim (and we will modify Section 4.2 to reflect that acknowledgement), we have also found that Lyft failed to adequately establish the impact on Lyft's business operations, as well as the value the information would have to others who did not possess it.

19. Replace the Decision's text starting at the last full paragraph on page 111 and ending at the top of page 113 before the "Efforts to Ensure Secrecy of Trip Data" section:

> Lyft also challenges our decision not to consider certain secondary evidence on the grounds that the studies that Lyft has relied upon are unauthenticated hearsay. Lyft attempts to correct the record by stating it was not the Collins Declaration but the Alix Rosenthal Declaration (which was submitted with Lyft's 2021 Motion), that allegedly attested to the emergence of an active marketplace for the licensing of vehicle-related mobility data. Nevertheless, the assertion was made as part of Lyft's *Appeal* from the 2020 Confidentiality Ruling,[144] and Lyft had only supplied the Collins Declaration in support of Lyft's Motion. Thus, it was appropriate to limit our review of Lyft's evidence to the Collins Declaration and its (2020) *Motion*.[145]

20. Delete "Efforts to Ensure Secrecy of Trip Data" section at pages 113-114.

21. Delete "Reliance on Hearsay Evidence" section at pages 117-119.

22. Finding of Fact 2 is deleted.

23. Finding of Fact 3 is deleted.

24. Finding of Fact 5 is deleted and replaced with:

> Brett Collins is not the author of the various studies, articles, and reports that Lyft referenced in its Motion and in its Appeal nor did

she provide attestations to support Lyft's privacy claims or corroborate Lyft's privacy evidence.

25. Delete Finding of Fact 6.

26. Delete Finding of Fact 7.

27. Renumber Findings of Fact 4 and 5 as Findings of Fact 2 and 3.

28. Add new Finding of Fact 4: Much of Lyft's evidence to support its Motion was proffered in its Appeal.

29. Conclusion of Law 5 is deleted and replace with:

It is reasonable to conclude that the assigned ALJ acted within his discretion when, after finding that Lyft did not meet its burden of proving that the trip data at issue did not satisfy the secrecy standard, it was not necessary for him to consider the other elements of a trade secret claim because the elements are written in the conjunctive rather than the disjunctive.

30. Delete Conclusion of Law 8.

31. Delete Conclusion of Law 9.

32. Renumber Conclusions of Law 10-21 to reflect deleted Conclusions of Law 8 and 9.

33. Modify Ordering Paragraph 2 to read:

The Administrative Law Judge's *Ruling on Uber Technologies, Inc.'s and Lyft's Motion for Confidential Treatment of Certain Information in Their 2020 Annual Reports* is affirmed. Lyft shall submit a public version of its 2020 Annual Report no later than 30 days after this decision is issued. The Commission staff could publicly disclose that data after that compliance date.

34. Rehearing of D.22-05-003 is denied

35. This proceeding, Rulemaking 12-12-011, remains open.

This order is effective today.

Dated February 23, 2023, at San Francisco, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners