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

Resolution ALJ-388
Administrative Law Judge Division
November 5, 2020

# R E S O L U T I O N

RESOLUTION ALJ-388- Resolution Denying the Appeals by Uber Technologies, Inc. and Lyft Inc. of the Consumer Protection and Enforcement Division's Confidentiality Determination In Advice Letters 1, 2, and 3.

---

## SUMMARY

Uber Technologies, Inc. (Uber) and Lyft Inc. (Lyft) each appealed a determination by the Commission's Consumer Protection and Enforcement Division (CPED) denying the confidentiality of certain information in their respective Advice Letters 1, 2, and 3. Pursuant to General Order (GO) 96-B, the appeal was referred to the Administrative Law Judge (ALJ) division. This ALJ Resolution denies both Uber's and Lyft's appeals on all grounds, and directs Uber and Lyft to each serve unredacted versions of their respective Advice Letters 1, 2, and 3 within thirty (30) days from the issuance of this Resolution.

## BACKGROUND

On March 19, 2020, the California Public Utilities Commission (Commission) adopted Decision (D.) 20-03-007, which addressed certain requirements for the Commission's "TNC Access for All" program. The TNC Access for All program was established pursuant to Senate Bill 1376 (Hill, 2018), the TNC Access for All Act. In particular, D.20-03-007 directed that transportation network companies (TNCs) seeking reimbursement of funds expended for their wheelchair accessible vehicles (WAV) programs must submit certain categories of information in an offset application (Offset Request) to the Commission. The decision adopted an Advice Letter process for review of quarterly Offset Requests and applied the General Rules of GO 96-B to the adopted Advice Letter process with some modifications.[1] The decision designated CPED as the

[1] D.20-03-007 at 37-38.

Industry Division responsible for conducting ministerial review and disposition of the Advice Letters.

On April 15, 2020, Lyft and Uber each submitted their respective Advice Letters 1, 2, and 3 requesting retroactive offsets. In each Advice Letter, Lyft and Uber redacted certain information and requested confidential treatment of the redacted information. Per Rule 10.4 of GO 96-B, Advice Letter confidentiality claims may be acted upon by the Commission or Industry Division.

On May 5, 2020, protests to the Advice Letters were filed by the following parties: San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively, San Francisco), and Disability Rights California and Disability Rights Education & Defense Fund (collectively, the Disability Advocates). The protests objected to Uber's and Lyft's requests for confidential treatment, among other objections.

CPED and protesting parties met and conferred with Uber and Lyft in efforts to informally resolve the confidentiality disputes. The meet and confer failed to produce an agreement. On July 14, 2020, in separately issued letters, CPED referred the disputes to the ALJ Division pursuant to GO 96-B, stating in its referral that confidential treatment is not warranted.

On July 17, 2020, the Chief ALJ designated ALJ Debbie Chiv to handle these disputes. On July 24, 2020, Lyft and Uber separately submitted appeals of CPED's determination. On August 10, 2020, comments to Uber's and Lyft's appeals were submitted by the Disability Advocates and San Francisco. On August 9, 2020, Lyft and Uber submitted replies to party comments.

## DISCUSSION

This Resolution addresses whether Uber and Lyft have complied with General Order 96-B, Rule 10, which sets forth specific pleading and substantive requirements concerning requests for confidential treatment of information submitted in Advice Letters. The information Lyft and Uber seek to protect is information required by the Commission in D.20-03-007 for a TNC that wishes to apply for a reimbursement of WAV expenses in an Offset Request. The categories of information that Lyft and Uber seek to withhold from disclosure are listed below.

Lyft objects to disclosure of the following WAV information:

(a) Number of WAVs in operation;
(b) Number of WAV trips completed;

(c) Number of WAV trips not accepted;
(d) Number of WAV trips cancelled due to no show;
(e) Number of WAV trips cancelled by passenger;
(f) Number of WAV trips cancelled by driver;
(g) Completed WAV trip request response times in deciles;
(h) Complaints;
(i) WAV driver programs used and number of WAV drivers that completed training;
(j) Funds Expended; and
(k) Funds Expended Certification.

Uber objects to disclosure of the following WAV information:

(a) Number of WAVs in operation;
(b) Number of WAV trips completed;
(c) Number of WAV trips not accepted;
(d) Number of WAV trips cancelled by passenger;
(e) Number of WAV trips cancelled by driver;
(f) Completed WAV trip request response times in deciles;
(g) Funds Expended;
(h) Funds Expended Certification; and
(i) Payments to third-party WAV partners.

Lyft and Uber each claim that the above WAV information is not subject to disclosure on various grounds. This resolution resolves both appeals by Uber and Lyft. For reasons discussed below, we find no basis for withholding from disclosure any of the WAV information at issue in their respective Advice Letters.

## 1. Applicable Laws, Rules and Decisions Governing Confidential Treatment of Information Submitted to the Commission in Offset Requests

The California Constitution's mandate provides that the public has the right to access most Commission records. Cal. Const. Article I, § 3(b)(1) states:

> The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.[2]

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

The California Public Records Act (CPRA) requires that public agency records be open to public inspection unless they are exempt from disclosure under the provisions of the CPRA.[3] The Legislature has declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[4]

The CPRA requires the Commission to adopt written guidelines for access to agency records, and requires that such regulations and guidelines be consistent with the CPRA and reflect the intention of the Legislature to make agency records accessible to the public.[5] GO 66-D, effective January 1, 2018, constitutes the Commission's current guidelines for access to its records, and reflects the intention to make Commission records more accessible.[6] GO 66-D also sets forth the requirements that a person must comply with in requesting confidential treatment of information submitted to the Commission.

GO 96-B provides further rules concerning disclosure of information obtained through the Advice Letter process, which are consistent with the above constitutional and statutory requirements applicable to disclosure of government records.

Of relevance here, in D.20-03-007, the Commission stated that a parallel decision to be adopted in Rulemaking (R.) 12-12-011 "shall govern confidentiality as it relates to information submitted pursuant to SB 1376."[7] D.20-03-014, the parallel decision, made clear that a person submitting information to the Commission must satisfy the requirements of GO 66-D.[8]

D.20-03-007 also designated that the General Rules of the GO 96-B Advice Letter process, with limited modifications, shall apply to Offset Requests.[9] As such, Rule 10 of GO 96-B governs our analysis here.

Rule 10.1 of GO 96-B states that "[b]ecause matters governed by this General Order are informal, it is rarely appropriate to seek confidential treatment of information submitted in the first instance in the advice letter process."

---

[3] *See Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 370. ("The Public Records Act, section 6250 *et seq*., was enacted in 1968 and provides that "every person has a right to inspect any public record, except as hereafter provided." (§ 6253, subd. (a).)

[4] Gov. Code § 6250.

[5] Gov. Code § 6253.4(b).

[6] *See* D.17-09-023 at 11-12, 14.

[7] D.20-03-007 at 43.

[8] D.20-03-014 at 23.

[9] D.20-03-007 at 37-38.

Rule 10.2 provides that "[a] person requesting confidential treatment under this General Order bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure."

Rule 10.3(d) and (e) require a person seeking confidential treatment to:

> Identify any specific provision of state or federal law, or Commission decision, the person believes prohibits disclosure of the information for which it seeks confidential treatment and explain in detail the applicability of the law or decision to that information.
>
> [and]
>
> Identify any specific privilege, if any, the person believes it holds and may assert to prevent disclosure of information and explain in detail the applicability of that law to the information for which confidential treatment is requested.

Accordingly, Uber and Lyft bear the burden of proving that the information at issue in their Offset Requests satisfy Rule 10's pleading and substantive requirements.

**2. <u>Trade Secret Exemption</u>**

Uber and Lyft each assert that certain information in their Advice Letters is exempt from disclosure under the California Uniform Trade Secret Act (CUTSA), pursuant to California Government (Gov.) Code § 6254(k) and Evidence (Evid.) Code § 1060.[10] Gov. Code § 6254(k) provides an exemption for "[r]ecords, the disclosure of which is exempted or prohibited by federal or state law including, but not limited to, provisions of the Evidence Code relating to privilege." Evid. Code § 1060 provides that the holder of a trade secret has the privilege to refrain from disclosing a trade secret unless doing so would conceal fraud or otherwise work injustice.

"Trade secret" is defined in California Civil (Civ.) Code § 3426.1(d), which falls within the CUTSA, as follows:

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

[10] *See* Declaration of Brett Collins in Support of Request for Confidential Treatment of Documents (Collins Decl.), Lyft Advice Letter WAV-001, Para. 7, 14; Declaration of Shivani Sidhar for Confidentiality Pursuant to General Order Section 96-B, Section 10.3 (Sidhar Decl.), Uber Advice Letter 1, Para. 2(a)(i), 2(b)(i)-(v).

> (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.

As an initial matter, for Uber's Categories (a)-(e) and (i),[11] Uber does not identify a specific law or privilege that would warrant confidential treatment, other than merely citing Gov. Code § 6254(k), which protects "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law…."[12] Uber's declaration, however, includes a catch-all paragraph that Uber seeks to apply to Categories (a)-(h). That paragraph asserts that "[a]dditionally information within the Worksheets named in Section b of the Advice Letter 1 Submission reveals proprietary internal formulas, methods, salaries, techniques, investments, and tools" and that "this information is also protected by Cal. Evid. Code § 1060…."[13]

As applied to Uber's Categories (a)-(e) and (i), Uber fails to satisfy Rule 10.3's threshold pleading requirement to "explain in detail the applicability of the law or decision to that information." Uber's conclusory statement that each of the categories are also protected by Evid. Code § 1060, without any explanation of how this law applies to each category, is inadequate and therefore, fails to satisfy Rule 10.3.

As the Commission stated in D.20-03-014, TNCs are cautioned "against the use of broad-brush-style confidentiality claims" and the Commission "warned that it would view such sweeping claims with suspicion…."[14] Uber uses such broad-brush-style claims to apply to Categories (a)-(e) and (i), and accordingly, we reject Uber's trade secret claims as applied to Categories (a)-(e) and (i).[15]

---

[11] These categories are as follows: (a) Number of WAVs in operation; (b) Number of WAV trips completed; (c) Number of WAV trips not accepted; (d) Number of WAV trips cancelled by passenger; (e) Number of WAV trips cancelled by driver; and (i) Payments to third-party WAV partners.

[12] Sidhar Decl., Uber Advice Letter 1, Para. 2(a)(i), 2(b)(i)-(v). The Declaration of Shivani Sidhar submitted with each of Uber's Advice Letters 1, 2, and 3 appears to be identical in substance; thus, while we cite to Sidhar Decl., Uber Advice Letter 1, we also intend to refer to the declarations submitted with Advice Letters 2 and 3.

[13] *Id.*, Para. 3.

[14] D.20-03-014 at 30.

[15] We note that Uber's claims also fail to satisfy the requirements of § 3.2(b) of GO 66-D, which requires the information submitter to "[s]pecify the basis for the Commission to provide confidential treatment with specific citation to the applicable provision of the CPRA."

For Categories (f)-(h),[16] Uber specifically asserts that these categories are exempt from disclosure under the CUTSA, and we address these categories separately below.[17]

### 2.1. "Compilation" Information

Under Civ. Code § 3426.1(d), trade secret "means information, including a formula, pattern, compilation, program, device, method, technique, or process…." In D.16-01-014, the Commission found that a common thread between these types of information is that "it is something that the party claiming a trade secret has created, on its own, to further its business interest:"[18]

> While it is true that the word 'information' has a broad meaning, trade secrets usually fall within one of the following two broader classifications: first, technical information (such as plans, designs, patterns, processes and formulas, techniques for manufacturing, negative information, and computer software); and second, business information (such as financial information, cost and pricing, manufacturing information, internal market analysis, customer lists, marketing and advertising plans, and personnel information). The common thread going through these varying types of information is that it is something that the party claiming a trade secret has created, on its own, to further its business interests.

Moreover, courts have distinguished between trade secret information versus other secret information:[19]

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

In both Uber's and Lyft's Advice Letter declarations and both of its appeals, neither explain how the WAV information qualifies as such "information, including a formula,

---

[16] These categories are as follows: (f) Completed WAV trip request response times in deciles; (g) Funds Expended; and (h) Funds Expended Certification.

[17] Sidhar Decl., Uber Advice Letter 1, Para. 2(b)(vi)-(viii).

[18] D.16-01-014 at 105.

[19] *See Cal Francisco Investment Corp. v. Vrionis* (1971) 14 Cal.App.3d 318, 322 (citing Restatement, Torts, section 757, comment (b)).

pattern, compilation, program, device, method, technique or process…."[20] In comments to Uber's and Lyft's appeals, San Francisco noted this deficiency, stating that both Uber and Lyft failed to show that any of the WAV data qualifies as "information such as a formula, pattern, compilation, program, device, method, technique, or process."[21]

In response to San Francisco's comments, Lyft stated that "Lyft is perplexed by [San Francisco's] argument as well, as a 'compilation' is a collection of data, and the ALs plainly identify each category of compiled data for which confidentiality is requested."[22] Uber responded that "the nature of the WAV data as a compilation appears so clear as to obviate the need for a specific discussion."[23] We disagree with both statements.

Uber and Lyft have the burden to "explain in detail the applicability" of the CUTSA to the categories of information at issue, as Rule 10.3 requires. The conclusory statements by both Uber and Lyft that the categories of information are naturally all "compilations," without any further explanation, is insufficient to show that the information is a "compilation" trade secret under Civ. Code § 3426.1(d). Therefore, Uber and Lyft fail to satisfy Rule 10's pleading requirements.

We note that Lyft's citation to Merriam-Webster's dictionary to support its claim that "a 'compilation' is a collection of data"[24] is unavailing because that is not what the definition states. The actual definition cited by Lyft defines "compilation" as the "act or process of compiling" or "something compiled."

Courts have generally found a "compilation" to be a trade secret when information is grouped together in a unique, valuable way, even though the discrete elements that make up the compilation would not qualify as a separate trade secret.[25] The mere fact

---

[20] Civ. Code § 3426.1(d).

[21] San Francisco Comments to Lyft's Appeal, at 11; San Francisco Comments to Uber's Appeal, at 11.

[22] Lyft Reply Comments to San Francisco, at 3.

[23] Uber Reply Comments to San Francisco and Disability Advocates, at 5.

[24] Lyft Reply Comments, at 3, citing Merriam-Webster at *https://www.merriam-webster.com/dictionary/compilation*.

[25] *See, e.g., Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1523 (finding that a detailed customer list developed over a period of years had independent economic value and constituted a compilation trade secret); *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 47-48 (finding that the design concept was a protectable trade secret even though parts of the combination were in the public domain). In *Altavion*, the court stated that a trade secret "can include a system where the elements are in the public domain, but there has been accomplished an effective, successful and valuable integration of the public domain elements…." *Id.*

that Lyft and Uber possess a set of information and group that information for the purposes of applying for an Offset Request does not transform that information into a trade secret "compilation."

Indeed, the Commission previously rejected similar claims by Uber's California subsidiary, Rasier-CA, LLC (Uber-CA) in D.16-01-014, where Uber-CA attempted to argue that consumer data reported pursuant to a Commission order was a compilation trade secret. There, the Commission found that Uber-CA's "compilation" of trip data "put together at the behest of the Commission" was not a trade secret:

> First, the type of consumer data compilations that have been accorded trade secret status are ones that contain client names, addresses and phone numbers that have been acquired by lengthy and expensive efforts (*See MAI Sys. Corp. v. Peak Computer, Inc.* (9th Cir. 1993) 991 F.2d 511, 521, *cert. denied*, 510 US 1033l *Courtesy Temp. Serv. v. Camacho* (1990) 222 Cal.App.3d 1278, 1288.)
>
> In other words, the party seeking trade-secret protection has, on its own initiative, developed some product or process for its own private economic benefit. In contrast, it is the Commission that has ordered the TNCs to respond, in template format, with the trip data by zip code. The compilation is being put together at the behest of the Commission, rather than by Raiser-CA for some competitive advantage over its competitors.[26]

Here, the information Lyft and Uber seek to protect is akin to the trip data at issue in D.16-01-014. The categories of information are being put together at the behest of the Commission in D.20-03-007. We find that Uber and Lyft failed to satisfy their respective burdens of demonstrating that a trade secret exemption applies to any of the categories of information.

### 2.2. Information Not Generally Known to the Public

To be a trade secret, Lyft and Uber must prove that the information is secret. In other words, the information must not be "generally known to the public or to other persons who can obtain economic value from its disclosure or use."[27] A subset of the WAV information at issue here is already public information as part of the annual TNC reports, as required by D.13-09-045. Specifically, D.13-09-045 provides that:

> …[E]ach TNC shall submit to the Safety and Enforcement Division a report detailing the number and percentage of their customers who requested accessible

[26] D.16-01-014 at 47-48.

[27] Civ. Code § 3426.1(d).

> vehicles, and how often the TNC was able to comply with requests for accessible vehicles. Upon receipt this report shall be made public by the Safety and Enforcement Division. This report shall also contain a description of any instances or complaints of unfair treatment or discrimination of persons with disabilities.[28]

As part of their annual TNC reports to the Commission, Lyft and Uber are already required to submit the number and percentage of customers that request accessible vehicles, and how often Lyft and Uber comply with an accessible vehicle request. The information in D.13-09-045 is reported annually and posted on the Commission's website in a quarterly format.[29] For example, under D.13-09-045, Uber is required to annually report if a total of 5 customers requested accessible rides and if Uber complied with those 5 requests. To apply for an Offset Request in a particular county, Uber is required to report the "number of WAV trips completed," "number of WAV trips not accepted," "number of WAV trips cancelled by passenger," etc. by quarter. To continue the example, if Uber reported 2 completed WAV requests in a particular county in a quarter, those 2 completed WAV requests should be part of Uber's annual total number of requested accessible rides and accessible ride requests that Uber complied with.

As such, while TNCs are not required to report this information on a county level basis, at least a subset of the information at issue here is already publicly available and therefore, would not meet the requirement of Civ. Code § 3426.1(d) that the information is "not generally known to the public or to other persons who can obtain economic value from its disclosure or use."

In addition, each TNC already provides a description of "complaints of unfair treatment or discrimination of persons with disabilities," as required by D.13-09-045, and that is also publicly available. Again, while the annual TNC complaint reporting does not require county level disaggregation, the complaints reported as part of the WAV Offset Request program should be a subset of the publicly-available complaints required by D.13-09-045, and therefore, would be information generally known to the public.

Uber and Lyft bear the burden to demonstrate that information they seek to protect as a trade secret is not generally known to the public. Neither Uber nor Lyft even mentioned in their declarations or appeals that the annual accessibility ride request data and complaint data is ordered to be public under D.13-09-045. Based on a plain reading of D.13-09-045 and D.20-03-007, it is clear that there is an overlap between the public accessibility data in D.13-09-045 and the data required in D.20-03-007. Uber and Lyft

---

[28] D.13-09-045 at 54.

[29] TNC Accessibility Plan, Driver Training Program Details and Accessibility Data, available at https://www.cpuc.ca.gov/General.aspx?id=3046.

did not attempt to explain what WAV information is public and what WAV information is not. Thus, Uber and Lyft have failed to meet their respective burdens to demonstrate the applicability of the CUTSA under Rule 10.3.

### 2.3. Boundaries of the Trade Secret

In trade secrets litigation, information asserted to be a trade secret must be identified with reasonable particularity to ascertain at least the boundaries within which the secret lies in order to move forward with a trade secret claim.[30] The trade secret asserter "must do more than just identify a kind of technology and then invite the court to hunt through the details in search of items meeting the statutory definition [of a trade secret]."[31]

For certain categories of information, Uber and Lyft do not identify with reasonable particularity the boundaries within which their purported trade secret lies. With respect to the "funds expended" category and certification, D.20-03-007 requires the costs to be aggregated and grouped into 20 broad categories, such as "transportation service partner fees / incentives / management fees," "marketing costs," or "training costs." Lyft argues that if the funds expended information is disclosed, "competitors could and would cross reference such data to better understand which strategies were effective. … In essence, this would allow a competitor to tailor its operations more effectively and to negotiate more effectively to undercut Lyft's pricing, by taking the data that Lyft has generated through significant expenditures."[32] Uber contends that "[t]hese figures identify the granularity of Uber's expenditure amounts which would allow competitors…to understand Uber's operational capacity and could be used to target business opportunities that negatively impact Uber."[33]

We cannot see how the fund amounts would reveal competitively harmful information, if disclosed. For example, the total amount Lyft or Uber expended on "transportation service partner fees/incentives/management fees" is an aggregated amount, and does not differentiate hourly rates or specific pricing information that could be of use to a competitor. Likewise, we do find that disclosing the total amount expended on, for

---

[30] *See* Civ. Code § 2019.210; *Altavion*, 226 Cal.App.4th at 43; *Diodes, Inc. v. Franz* (1968) 260 Cal.App.2d 244, 253.

[31] *Bunnell v. Motion Picture Ass'n. of America* (2007) 567 F.Supp.2d 1148, 1155.

[32] Collins Decl., Lyft Advice Letter WAV-001, Para. 14. The Declaration of Brett Collins submitted with each of Lyft's Advice Letters WAV-001, WAV-002, and WAV-003 appears to be identical in substance; thus, while we cite to Collins Decl., Lyft Advice Letter WAV-001, we intend to refer to the declarations submitted with Advice Letters WAV-002 and WAV-003.

[33] Sidhar Decl., Uber Advice Letter 1, Para. 2(b)(vii).

example, "marketing costs" reveals any "granularity" that a competitor could plausibly use.

We maintain that the "funds expended" amounts submitted contain an aggregated total of fees spent for that quarter. We clarify, however, that for Column R of Lyft's Funds Expended tab submission ("How Funds were expended"), it is not necessary for Lyft to identify: (a) the name or the number of third-party partners, or (b) the type of rate upon which the fee is based.[34] Lyft may modify Column R of its Funds Expended tab submission to remove this information and supplement its Advice Letter.

Uber also asserts that "[i]f third-party WAV providers had information regarding what their competitors charge other TNCs for WAV services, they could see where their pricing is below that of their competitors and seek to raise their own prices accordingly."[35] It appears that Uber is referring to the figure provided in its Advice Letter cover letter. That figure is an aggregated amount of all payments made to third-party partners for that quarter in all counties, although Uber does not state whether the amount provided is for all offset-eligible counties or all counties in which Uber operates. Regardless, because that figure is an aggregated number, and does not differentiate hourly rate or pricing information, we are not persuaded that third-party WAV providers could extrapolate competitive pricing information.

Lyft's and Uber's conclusory assertions that all of the "funds expended" categories constitute trade secrets fails to satisfy their respective burdens to prove with particular facts that such information meets the definition of a trade secret. Based on the limited explanation provided in their declarations, as well as the lack of facts identifying the boundaries of their trade secret assertions, we find no basis for withholding any of the "funds expended" amounts, pursuant to Civ. Code § 3426.1(d).

### 2.4. Independent Economic Value

Notwithstanding Uber's and Lyft's failure to satisfy their respective burdens of proof as to the preceding elements of Civ. Code § 3426.1(d), we nonetheless consider whether Uber or Lyft has met its burden of proof with respect to § 3426.1(d)(1): that the information "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."

---

[34] CPED Staff published a revised template for Offsets and Exemptions on September 25, 2020 that includes a "Contract Information" tab to comply with Ordering Paragraph 11 of D.20-03-007. The third-party contract information is a separate data submission and as such, that information is not necessary as part of the Funds Expended submission.

[35] Uber Reply Comments to San Francisco and Disability Advocates, at 5.

To demonstrate "independent economic value," a claimant must do more than "[m]erely stat[e] that information was helpful or useful to another person in carrying out a specific activity, or that information of that type may save someone time…."[36] These simple assertions are not enough to compel a factfinder to conclude that the information is sufficiently valuable to provide the claimant with an economic advantage over others.[37] Rather, the factfinder "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.'"[38]

In Lyft's declaration, Lyft offers nearly identical statements of the economic value for all eleven categories of WAV data, asserting generally that: (1) the data "derives significant independent economic value from not being generally known," (2) the data is the "product of enormous investment by Lyft," (3) if disclosed, Lyft's competitors "would cross reference such data to better understand what strategies were effective. In essence, this would allow a competitor to tailor its operations more effectively…," and (4) a competitor "could enter the market, or increase its market share, without substantial development, by 'free-riding' on Lyft's data."[39]

Lyft's statements do not explain in detail how Civ. Code § 3426.1(d)(1) applies to each category of information, as required by Rule 10.3 of GO 96-B. Lyft's simple assertions are that Uber - the only named competitor - could use Lyft's data to understand what "strategies were effective," to "tailor its operations more effectively," and to gain "insights" into Lyft's success offering WAV rides. Lyft merely duplicates the same vague statements that all of the WAV categories (in addition to multiple "funds expended" categories) are economically valuable, without providing specific evidence to give a factfinder any sense of how useful or how valuable the information would be (*e.g.*, how much time, money, or labor would be saved). Importantly, as discussed in Section 2.2, Lyft also failed to demonstrate that this WAV information is not generally known to the public or to other persons who can obtain economic value from its disclosure or use, a requirement of § 3426.1(d)(1).

---

[36] *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 564-565.

[37] *Id.*

[38] *Id. See Altavion*, 226 Cal. App. 4th at 62 (Claimant may show independent economic value through 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 if the production of 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.")

[39] *See* Collins Decl., Lyft Advice Letter WAV-001, Para. 7, 8. *See also id.*, Para. 14, 15.

In addition, for the "funds expended" categories, Lyft adds that the data's disclosure would "allow a competitor to tailor its operations more effectively and to undercut Lyft's pricing…."[40] As discussed in Section 2.3, the "funds expended" data contain aggregated totals and do not disclose any hourly rates, specific pricing information, or contracted amounts that could be of use to a competitor. For these reasons, we conclude that Lyft has failed to satisfy its burden under Rule 10.3 to explain in detail how each category of information derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure.[41]

For Uber's WAV Categories (a) – (f), Uber's declaration offers identical descriptions of economic value for these six categories. Uber asserts generally that: (1) disclosure "would reveal valuable information about product demand and operational capacity," (2) the data "contains economically valuable information which is not generally known to the public," (3) disclosure "may inhibit competition," and (4) competitors "may be able to use this data to determine supply, demand, insight into resources, and gain an unfair competitive advantage."[42]

These statements do not explain in detail how Civ. Code § 3426.1(d)(1) applies to each category of information, as required by Rule 10.3. Uber's assertion is that if disclosed, unnamed competitors could use Uber's data to "determine supply, demand, insight into resources, and gain an unfair competitive advantage" and "inhibit competition." Uber duplicates the same vague statements that all six WAV categories are economically valuable, without providing any specific evidence to give a factfinder any sense of how useful the information would be. Additionally, as discussed in Section 2.2, Uber failed to demonstrate that these WAV categories are not generally known to the public or to other persons who can obtain economic value from its disclosure or use, as required under § 3426.1(d)(1).

---

[40] *Id*. at Para. 15.

[41] We note that Lyft's declaration contains assertions that appear to be duplicated from another source, as they are inapplicable to the WAV data at issue here. For example, the declaration asserts that the "same analysis applies to data on trips requested by passengers in access mode…." Collins Decl., Para. 9. Lyft, however, seems to state that "Access Mode" data is not included as part of the WAV program but as part of the Annual Reports. *See* Lyft Comments on Draft Resolution at 15. The declaration also asserts that "[t]rip-level data is central to this process of balancing supply and demand." Collins Decl., Para. 7. As discussed, the submitted WAV information contains aggregated totals for WAV rides, and does not include "trip-level" data, which is instead submitted as part of the TNC Annual Reports.

[42] Sidhar Decl., Uber Advice Letter 1, Para. 2(b)(i)-(vi).

For Uber's "funds expended" Categories (g) and (h), Uber asserts that: (1) the "granularity" of the expense amounts allows "competitors to understand Uber's operational capacity and could be used to target business opportunities that negatively impact Uber," (2) the information is "economically valuable information," and (3) disclosure would give competitors a "'free ride' on investments, resources, expenses, and efforts."[43] For its third-party WAV payment information (Category i), Uber asserts that this data could give competitors an "unfair business advantage" and "pose potential negative impacts and/or harm" on Uber's partners. As discussed in Section 2.3, the funds expended and third-party WAV payment data contain aggregated totals and do not reveal granular information, such as hourly rates or pricing information, that could be of use to a competitor. Further, Uber provides no specific evidence that would give any sense of how useful the information would be. For these reasons, we conclude that Uber has failed to satisfy its burden under Rule 10.3 to explain in detail how each category of WAV information derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure.

In conclusion, Lyft and Uber fail to demonstrate how any of the categories contain "information, including a formula, pattern, compilation, program, device, method, technique, or process," under Civ. Code § 3426.1(d). In addition, at least some categories of WAV information are already publicly available, as required by D.13-09-045, and Uber and Lyft have failed to demonstrate that the information it seeks to protect is not generally known to the public. Lyft and Uber also fail to identify with reasonable particularity the boundaries within which the purported trade secret lies. Lastly, Lyft and Uber fail to demonstrate how any of the categories derive independent economic value from not being generally known to the public or to persons who can obtain economic value from their disclosure or use. Accordingly, we find that Uber and Lyft fail to satisfy Rule 10's pleading requirements and accordingly, Uber and Lyft's respective claims for trade secret exemption are denied.

### 3. Privacy Exemption

Uber argues that certain WAV data should be exempt from disclosure because "[t]his data is also sensitive from a user privacy perspective because due to the low volume this data might be used to identify individual riders and drivers."[44] The categories of information for which Uber seek protection are:

(a) Number of WAV trips completed;
(b) Number of WAV trips not accepted;

---

[43] *Id*. at Para. 2(b)(vii), (viii).
[44] Sidhar Decl., Uber Advice Letter 1, Para. 2(b)(ii).

(c) Number of WAV trips cancelled by passenger; and
(d) Number of WAV trips cancelled by driver.

Uber's declaration, however, fails to identify a specific law, Commission decision, or privilege for which it claims protection, as required by Rule 10.3 of GO 96-B. Aside from noting "a user privacy perspective," Uber presents no facts to demonstrate what that user privacy perspective is and therefore, Uber has not provided a sufficient basis to support its privacy claim. Accordingly, Uber fails to satisfy its burden under Rule 10.

In its appeal, Uber attempts to correct this deficiency by citing to California's Consumer Privacy Act (CCPA) and Gov. Code § 6254(c). As an initial matter, Uber was required to provide this statutory basis when it submitted the information at issue in its Advice Letter. Uber's accompanying declaration, however, did not. Nonetheless, neither the CCPA nor Gov. Code § 6254(c) apply here.

We note that Lyft does not claim a similar user privacy exemption in its Advice Letter declaration, but in its appeal, Lyft cites various privacy case law, which we address below.

Gov. Code § 6254(c) provides an exemption from disclosure for "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." None of the above WAV categories involve personnel, medical, or similar files. Thus, this is not a valid claim.

Under the CCPA, California consumers have the right to request and delete certain "personal information" collected by certain businesses. "Personal information" is defined as information that "identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household."[45] Uber asserts that even though "no personal identifier is included, trip data can be combined with publicly available data to re identify an individual who took the trip."[46] Uber claims that "the low volume of trips and high uniqueness of these trips in many parts of California put these riders at a particularly high risk of re-identification."[47] Uber cites the example that "data from a county with a low volume of WAV trips may show that a single WAV trip is taken every weekday during the 7:00 hour, making it very simple for an observer to conclude that these trips (though reported as part of 'aggregated' data) were taken by the same individual."[48] This argument lacks merit.

---

[45] Cal. Civ. Code § 1798.140.
[46] Uber's Appeal of CPED's Determination, at 10.
[47] *Id*. at 9.
[48] *Id*.

First, the WAV information is submitted in an anonymized form, which means that no personally-identifying consumer information is provided. Second, the categories of information are all subject to several layers of aggregation. For example, for the data on number of WAV trips, a TNC submits the number of trips by hour of day and day of the week (*e.g.*, Mondays at 12:00), aggregated for the quarter (*e.g.*, Q1 2020) and at the county level (*e.g.*, all of San Francisco County). This results in a single number of WAV rides for that hour of the day and day of the week (*e.g.*, 5 WAV trips "not accepted" on Mondays at 12:00 in Q1 2020 in San Francisco County). Therefore, it is not reasonable that this aggregated information could simply be reverse engineered to identify a particular customer or household, as Uber asserts.

Even in situations where a particular county may have a "low volume of trips," we are not persuaded that this information could be reverse engineered to identify a particular individual. For example, we reviewed data from counties in which Uber reported less than 3 WAV rides for a given day of the week and hour of the day, which included Glenn County (est. pop. 28,000), Siskiyou County (est. pop. 43,000), and Calaveras County (est. pop. 46,000).[49] Even in counties where Uber reported 3 or fewer WAV rides for a given day of the week and hour of the day, the county populations amount to nearly 30,000 people. We strain to see the simplicity in identifying a single individual with the WAV information at issue. Nor has Uber explained this "very simple" process of reidentification, or explained what "publicly available data" could be combined to assist in this identification. Thus, we reject Uber's argument that disclosure of the WAV information could reveal personal CCPA-protected information.

Lastly, in both Uber's and Lyft's appeals, the TNCs cite *City of Los Angeles v. Patel,* 135 S.Ct. 2443 (2015), to support a claim that there is a strong privacy interest in locational records. *Patel* is distinguishable on the facts. *Patel* involved a local ordinance that required hotel operators to keep hotel guest records, make those records available to law enforcement, and subject hotel operators to criminal penalties for refusal to comply. The guest records included detailed personal information about the guest, including guest name, vehicle, room number, and date and time of arrival and departure.[50] Here, as discussed, the offset eligibility requirements do not require Uber and Lyft to submit any individualized, personally identifying information or locational information about consumers, but only requires submission of anonymized, aggregated information. *Patel* also involved a regulatory ordinance that subjected hotel operators to criminal penalties for failing to comply, whereas the anonymized, aggregated WAV information is

[49] *See* Population Estimates, July 1, 2019, https://www.census.gov/quickfacts/CA.
[50] *City of Los Angeles v. Patel,* 135 S.Ct. 2443 (2015).

submitted by TNCs voluntarily seeking a reimbursement of WAV expenses sourced from public funds.[51]

For these reasons, Uber has failed to satisfy its burden to demonstrate that the WAV information is exempt from disclosure based on a privacy claim.

**4. Investigatory Files Exemption**

Lyft asserts that the WAV complaint data is exempt from disclosure under Gov. Code § 6254(f) because it constitutes "investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes." Lyft argues that "[o]n information and belief, the CPUC compiles the information contained in Exhibit A.3 for the purposes of evaluating Lyft's compliance with TNC regulations."[52] This claim is without merit.

A TNC applying for an Offset Request is required to submit the number of complaints related to WAV drivers or WAV services – by quarter and geographic area – categorized as follows: securement issue, driving training, vehicle safety and comfort, service animal issues, stranded passenger, and other.[53]

The WAV complaint data does not contain the type of investigatory or security files that fall under Gov. Code § 6254(f). Lyft submits the aggregated number of WAV complaints for a county and quarter in which it seeks a reimbursement of WAV expenses. The Commission requires the number of complaints solely for the purpose of determining whether a TNC may be eligible for an Offset Request, per D.20-03-007. The WAV complaint data is not submitted as an "investigatory or security file" compiled by the Commission for "correctional, law enforcement, or licensing purposes." Accordingly, we reject Lyft's claim that Gov. Code § 6254(f) exempts disclosure of the WAV complaint data.

---

[51] Lyft also cites *Airbnb, Inc. v. City of New York*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019), which we find distinguishable for the same reasons as *Patel*. *Airbnb* involved a local ordinance that required short-term rental businesses to provide a report to the city that included individualized user information, including host name, physical address, number of days rented, etc. *Id*.

[52] Collins Decl., Lyft Advice Letter WAV-001, Para. 12.

[53] D.20-03-007 at 28.

### 5. California Public Records Act Exemption

Lyft asserts that its Categories (a)-(k)[54] are protected from disclosure under Gov. Code § 6255(a), the "public interest balancing test."

Gov. Code § 6255(a) is a "catch-all" provision that may be used for determining confidentiality of records not covered by a specific exemption, commonly known as the "public interest balancing test." The public interest balancing test allows state agencies to withhold records if an agency determines that, on the facts of the particular case, "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."[55]

Lyft contends that Categories (a)-(k) are all protected because "disclosure of this competitively sensitive information would harm competition in the TNC marketplace."[56] Lyft states that the Commission "has access to the data required to carry out its regulatory functions. There is no reason why members of the public also require access of the data. Therefore, the public interest in non-disclosure clearly outweighs any public interest in disclosure."[57]

#### 5.1. Applicability to Public Agency Records

Lyft is incorrect to state that because the Commission already possesses the Offset Request information that Lyft submits, there is "no reason why members of the public also require access of the data."

As explained above, the California Constitution and the CPRA, as implemented in GO 66-D and GO 96-B, require most governmental records to be open to public inspection. The CPRA does not require a government agency to provide a rationale as to why the public should have access to government records. Rather, the CPRA requires that public agency records be open to public inspection unless they are exempt from disclosure under the provisions of the CPRA.[58] "Public records" are broadly defined to include "any writing containing information relating to the conduct of the people's

---

[54] These categories are as follows: (a) Number of WAVs in operation; (b) Number of WAV trips completed; (c) Number of WAV trips not accepted; (d) Number of WAV trips cancelled due to no show; (e) Number of WAV trips cancelled by passenger; (f) Number of WAV trips cancelled by driver; (g) Completed WAV trip request response times in deciles; (h) Complaints; (i) WAV driver programs used and number of WAV drivers that completed training; (j) Funds Expended; and (k) Fund Expended Certification.

[55] Gov. Code § 6255(a).

[56] Collins Decl, Lyft Advice Letter WAV-001, Para. 11.

[57] *Id.*, Para. 17.

[58] *Roberts,* 5 Cal.4th at 370.

business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics," with only records expressly excluded from the definition by statute, or of a purely personal nature, fall outside this definition.[59] Since records received by a state regulatory agency from regulated entities relate to the agency's conduct of the people's regulatory business, the CPRA definition of public records includes records received by, as well as generated by, the Commission.[60] As discussed above, the Legislature has declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[61]

Here, the fact that the Commission received the WAV information from a regulated entity is not a basis for withholding the information from the public. Rather, the Commission's possession of the information from a regulated entity brings the record within the ambit of a "public record" under the CPRA. Under Section 3 of GO 66-D, the information submitter "bears the burden of proving the reasons why the Commission should withhold any information…from the public."

### 5.2. Burden to Demonstrate with Granular Specificity

Lyft's efforts to explain why Gov. Code § 6255(a) applies to the eleven WAV categories involve a single paragraph, which states generally that disclosure of the competitively sensitive information would harm competition in the TNC marketplace, that strong public policy favors protecting trade secrets and sensitive business information, and that the public interest in public disclosure is minimal.[62]

These conclusory statements that § 6255(a) applies to eleven categories of information entirely disregards Rule 10.3's requirement to "explain in detail the applicability of the law or decision to that information." Lyft also disregards GO 66-D's requirement that if the information submitter cites Gov. Code § 6255(a) as legal authority for withholding a document:

> …the information submitter must demonstrate with granular specificity on the facts of the particular information why the *public* interest served by not disclosing the record clearly outweighs the *public* interest served by

[59] Gov. Code § 6252(e). *See, e.g., Cal. State University v. Superior Court* (2001) 90 Cal.App.4th 810, 825.

[60] *See* Gov. Code § 6252(e).

[61] Gov. Code § 6250.

[62] Collins Decl., Lyft Advice Letter WAV-001, Para. 11, 17.

> disclosure of the record. A *private* economic interest is an inadequate interest to claim in lieu of a *public* interest.[63]

Lyft failed to provide any specificity "on the facts of the particular information why the public interest served by not disclosing the particular record outweighs the public interest served by disclosure" of the particular record. Rather, by using a conclusory paragraph to apply to all eleven categories of information, Lyft employs the "broad-brush-style confidentiality claims" the Commission cautioned against in D.20-03-014. Therefore, we find that Lyft has failed to meet its burden under Rule 10 of GO 96-B, as well as Section 3.2 of GO 66-D.

### 5.3. Private Economic Interest Insufficient

Notwithstanding the above discussion, we evaluate the remainder of Lyft's claim under § 6255(a). The CPRA does not include a specific exemption for records, which if disclosed, could place a regulated entity at an unfair business disadvantage. If competitively sensitive information is subject to a trade secret privilege, an agency may withhold the information pursuant to Gov. Code § 6254(k). However, under Evid. Code § 1060, trade secret privilege is a conditional privilege that can only be asserted where allowance of the privilege would not tend to conceal fraud or otherwise work injustice.[64]

But if an agency does not agree that information is a protectible trade secret, as we have in this Resolution, the submitter's competitive disadvantage arguments may be addressed under Gov. Code § 6255(a).

Due to the aggregated, anonymized nature of the submitted WAV information, we are not persuaded that disclosure reveals competitively sensitive information, nor do we see how revealing the data would harm competition in the TNC marketplace. As discussed in Section 2.3, for the "funds expended" categories, we are not persuaded that disclosure of the aggregated amount expended on broad categories (*e.g.*, partner / management fees, marketing costs) would allow a competitor to "to negotiate more effectively to undercut Lyft's pricing,"[65] and Lyft has failed to explain how a competitor would be able to do so.

The other categories of information Lyft seeks to protect are the number of WAV trips (completed, not accepted, cancelled, etc.), the number of WAV drivers who completed training, and the number of WAV complaints. Lyft states that revealing this

---

[63] Appendix A, GO 66-D, Section 3.2.

[64] *See, e.g., Uribe v. Howie*, (1971) 19 Cal.App.3d 194, 205-207, 210-211.

[65] Collins Decl., Lyft Advice Letter WAV-001, Para. 14.

information "would cause competitive harm to Lyft because it would give competitors insights into Lyft's actual success in offering rides to passengers who request accessible vehicles."[66]

We find that Lyft's assertions are based principally on a fear of increased competition from its competitors, and a potentially negative impact on Lyft's corporate well-being, rather than on any argument that the public itself would be better off not seeing the information at issue. Again, GO 66-D requires the information submitter to show "with granular specificity" why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. Lyft's sole reliance on a private economic interest is inadequate.

In addition to the public interest in information concerning the conduct of the people's business, we find that the direction and goals of the TNC Access for All Act and the Commission's TNC Access for All program evince a strong interest in public dialogue and transparency related to the WAV program. In the TNC Access for All Act, the Legislature noted several public policy goals in implementing the Commission's TNC Access for All program, including:

- "It is the policy of the state to encourage collaboration among stakeholders and to promote partnerships to harness the expertise and strengths of all to serve the public interest."[67]

- "The Legislature finds that adoption of services in communities that were previously underserved may take time, and requires robust dialogue, educational outreach, and partnerships to build trust in new services."[68]

We believe that public disclosure of the requested WAV information, as part of the Offset Request process, will greatly assist the Commission, parties to this proceeding, and the public in understanding the effectiveness of WAV programs in the State, as well as to assist in addressing challenges and ways to improve WAV availability and access.

Further, the TNC Access for All Act requires the Commission to submit a report to the Legislature "on compliance with the section and on the effectiveness of the on-demand transportation programs or partnerships funded pursuant to this section."[69] That report is expected to include a study on the demand for WAVs, as well as "an analysis of current program capabilities and deficiencies, and recommendations to overcome any

---

[66] *Id.*, Para. 7.
[67] Gov. Code § 5440(h).
[68] Gov. Code § 5440(i).
[69] Gov. Code § 5440.1(a)(2)(A).

identified deficiencies."[70] This underscores the Legislature's public interest intent in understanding the effectiveness of the TNC WAV programs, as well as the capabilities and the challenges of providing on-demand WAV access.

Accordingly, we reject Lyft's § 6255(a) claim that the public interest served by keeping the WAV information confidential clearly outweighs the public interest that would be served by disclosure.

### 6. Decision 20-03-007 did not Modify GO 96-B, Rule 10's Confidentiality Requirements

Uber and Lyft argue that disclosure of the WAV data at issue would contradict D.20-03-007. Lyft argues that because D.20-03-007 modified Rule 7.4.1 of GO 96-B to limit protests and responses to an Advice Letter to parties in this proceeding or any successor proceeding, the Commission "expressly rejected the notion advanced by objectors and CPED here that the public generally has a right to receive access to WAV offset requests…."[71] No language in D.20-03-007 supports this argument.

D.20-03-007 did not modify any of GO 96-B's requirements concerning the confidentiality of Advice Letter filings or the public's right to access information submitted in an Advice Letter, as set forth in Rule 10. Rather, the decision's modification to Rule 7.4.1 was narrow in scope to limit protests and responses to an Advice Letter to parties to the proceeding due to "SB 1376's specificity in creating an offset process and the need for expeditious approval of offsets of Access Fund disbursements…."[72] Accordingly, nothing in the modifications adopted in D.20-03-007 has any effect on Rule 10.

---

[70] *Id*.

[71] Lyft's Appeal of CPED's Determination, at 15.

[72] D.20-03-007 at 37.

## CONCLUSION

After reviewing Uber and Lyft's claims for exemption from disclosure of certain WAV information provided in its respective Advice Letters, we find no compelling legal authority or factual basis to withhold any categories of WAV information. Accordingly, Uber's and Lyft's respective appeals of CPED's determination are denied on all grounds. Uber and Lyft are directed to serve an unredacted version of their respective Advice Letters 1, 2, and 3 within thirty (30) days from the issuance of this Resolution, with the exception that Lyft may modify Column R of its Funds Expended tab submission as discussed herein. The unredacted versions of the Advice Letters shall be served to the service list in R.19-02-012, as directed in Ordering Paragraph 20 of D.20-03-007.

## COMMENTS ON DRAFT RESOLUTION

The Draft Resolution was mailed to the service list in Rulemaking 19-02-012 on October 1, 2020 in accordance with Public Utilities Code § 311(g). Comments to the Draft Resolution were received on October 20, 2020 from: Disability Advocates, Lyft, San Francisco, and Uber.

All comments have been considered. Significant aspects of the draft resolution that have been revised in light of comments are mentioned in this section. However, additional changes have been made to the draft resolution in response to comments that may not be discussed here. We do not summarize every comment but focus on major arguments made in which the Commission did or did not make revisions.

As a preliminary matter, both Uber and Lyft attempt to relitigate arguments made in their respective declarations and appeals, as well as introduce new arguments that were not previously raised. Rule 10 of GO 96-B is clear that a person requesting confidential treatment of an Advice Letter bears the burden of proving why the information should be withheld alongside the Advice Letter submission. Uber and Lyft have had multiple opportunities to set forth their case for confidentiality protection, including: (1) the declaration accompanying the Advice Letters, (2) the meet and confer process with CPED Staff and protesting parties, (3) the appeal of CPED's confidentiality determination, and (4) a further reply to parties' comments on Uber's and Lyft's appeals. Allowing Uber and Lyft to continue to raise new arguments in comments to the draft resolution not only undermines the GO 96-B and GO 66-D requirements set forth by the Commission, but raises due process concerns for protesting parties that are not afforded an opportunity to respond to these new arguments.

In addition, in Uber's and Lyft's comments, both parties decry the resolution's denial of confidential treatment of their WAV information as an afront to trade secret protection,

privacy protection, WAV service expansion, etc.[73] To be abundantly clear, the crux of the resolution's denial of confidential treatment is the result of Uber's and Lyft's own failures to satisfy the pleading requirements of Rule 10 of GO 96-B. Uber and Lyft are sophisticated parties that participate in multiple Commission proceedings, and the pleading requirements are unambiguous. The Commission expects that in future Advice Letter submissions, Uber and Lyft will closely review the Commission's rules and requirements.

We first address Uber's and Lyft's comments that the data at issue are not "compilations." Uber agrees with the resolution's summary of compilation case law but asserts that Uber's "WAV data fits this definition exactly – while no individual WAV trip would qualify as a trade secret…, the *combination* of WAV data submitted in the Offset Requests is unique and competitively valuable."[74] As discussed in the resolution, Uber failed to demonstrate that any of its WAV data qualifies as a compilation, offering only one conclusory statement that "the nature of the WAV data as a compilation appears so clear as to obviate the need for a specific discussion."[75] Uber's belated attempt to revise its assertion is rejected.

In response to the resolution's discussion of D.16-01-014, Uber comments that "it cannot be that data submitted on a form or in a format directed by a regulator loses its character as a trade secret."[76] We agree that D.16-01-014 does not state that data submitted to the Commission can *never* meet the definition of a trade secret but the submitting party must meet its burden to prove that the information qualifies as a trade secret. Again, Uber failed to meet this burden.

Lyft, on the other hand, argues that Civ. Code § 3426.1(d) contains no definition of a compilation and no requirement that the information be a compilation.[77] We agree that § 3426.1(d) does not require that the information be a compilation. The Commission expounded on whether Lyft's WAV information qualified as a compilation because Lyft itself asserted that "a 'compilation' is a collection of data, and the ALs plainly identify each category of compiled data for which confidentiality is requested."[78] Despite Lyft's claim in its appeal, Lyft now wishes to retract this assertion. Lyft now seems to argue that because "'[i]nformation' has a broad meaning under the [UTSA]," any piece of information should qualify as a trade secret so long as it meets the other elements of the

[73] *See e.g.*, Uber Comments on Draft Resolution at 2, Lyft Comments on Draft Resolution at 1, 13.
[74] Uber Comments on Draft Resolution at 5.
[75] Uber Reply Comments to San Francisco and Disability Advocates at 5.
[76] Uber Comments on Draft Resolution at 6.
[77] Lyft Comments on Draft Resolution at 4.
[78] Lyft Reply Comments to San Francisco at 3.

CUTSA.[79] Even if Lyft had raised this argument in its declaration or appeal, which it did not, this argument is without merit.

The Commission recognizes that "information" has broad meaning under the CUTSA, but that does not mean that anything may qualify as trade secret information. In D.16-01-004, the Commission stated that:

> While it is true that the word 'information' has a broad meaning, trade secrets usually fall within one of the following two broader classifications: first, technical information (such as plans, designs, patterns, processes and formulas, techniques for manufacturing, negative information, and computer software); and second, business information (such as financial information, cost and pricing, manufacturing information, internal market analysis, customer lists, marketing and advertising plans, and personnel information). The common thread going through these varying types of information is that it is something that the party claiming a trade secret has created, on its own, to further its business interests.[80]

Courts have also distinguished between trade secret information and other secret information.[81] Thus, we reject Lyft's new argument. The resolution has been modified to clarify the distinction between trade secret information and other information. We do agree that § 3426.1(d) does not contain a "definition" of compilation and we have also modified the resolution to clarify this.

Next, Uber and Lyft both comment that the "funds expended" data is much more granular than stated in the draft resolution. Uber states that CPED Staff "revised the data template to require the submission of much more granular cost data (such as in the 'Funds Expended' tab of the data template, the disclosure of which poses a serious threat of competitive harm."[82] Lyft comments that "[t]he ALJ appears not to be aware of the fact that TNCs were directed by CPED staff to submit data in accordance with CPED-developed templates, which requires TNCs to break down each of the foregoing categories into 5-6 highly granular elements and to report the exact amount for each."[83]

---

[79] Lyft Comments on Draft Resolution at 5.

[80] D.16-01-014 at 105.

[81] *See Cal Francisco Investment Corp.*,14 Cal.App.3d at 322:

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

[82] Uber Comments on Draft Resolution at 8.

[83] Lyft Comments on Draft Resolution at 6.

Lyft adds that the funds expended data is not aggregated and "reveals specific contract amounts negotiated by Lyft with partners and vendors, it specifies the hourly rates paid to drivers, managers, and others directly involved in providing WAV service."[84]

The Commission is aware that CPED Staff published a template for the Offset Request requirements that includes exemplary descriptions under the "how funds were expended" columns. We reviewed Uber's and Lyft's unredacted "funds expended" data submission and we disagree with their comments. Uber does not provide any expense data in the exemplary "granular" format (*e.g.*, number of staff members, number of hours spent), but submitted only aggregated figures for each quarter. Thus, Uber's comments as to the "submission of much more granular cost data" is rejected.

Lyft provided some descriptions of "how funds were expended" based on the sample format. For example, under the "wages, salaries, and benefits" expense, Lyft provides the number of employees and hours spent "working on WAV" during a quarter in a given county. But Lyft still provides an aggregated total for wages, salaries, and benefits that does not reveal any hourly rates or salary information. For the expense of "transportation service partner fees / incentives and/or management fees," Lyft explains that the amount expended was based on an agreed upon rate with third-party partners. Yet Lyft still submits an aggregated total amount for the fees spent that quarter, which does not reveal hourly rates or a specific contract amount, as Lyft claims. We therefore disagree with Lyft's comments and maintain our position that the submitted funds expended amounts are aggregated figures.

We note, however, that it is not necessary for Lyft to identify in Column R of its Funds Expended tab submission: (a) the name or the number of third-party partners, and (b) the type of rate upon which the fee is based.[85] Thus, for Column R of the Funds Expended tab submission, CPED's sample can be modified to read: "Paid an agreed upon fee with partnership(s) to gain preferred access of utilizing their vehicles." Lyft may modify Column R of its Funds Expended tab submission to remove the additional information and submit a supplemental Advice Letter. The resolution has been modified to reflect this.

---

[84] *Id.*

[85] The Commission is aware that CPED Staff published a revised template for Offsets and Exemptions on September 25, 2020 that includes a "Contract Information" tab to comply with Ordering Paragraph 11 of D.20-03-007. However, the contract information is a separate data submission and that information is not necessary as part of the Funds Expended submission.

Further, Lyft's cited case law is not applicable to the facts here. Lyft cites to case law regarding Pacific Gas and Electric's submission of a master use agreement as confidential,[86] yet Lyft did not submit any contracts or contractual provisions. Citations to cases involving the terms of energy procurement bids and bid prices in a competitive solicitation process are also inapplicable,[87] as Lyft submitted only aggregated expenses that do not reveal pricing, hourly rates, or contracted amounts. Lyft also cites to a string of cases involving federal Freedom of Information Act (FOIA) claims, which do not have the same standard as the CPRA, and cases involving disputes among private parties[88] – these are not applicable cases to the facts here.

In addition, Lyft and Uber each comment that the accessibility information required to be public under D.13-09-045 is distinct from the WAV information required by D.20-03-007. Lyft argues that the data required by D.13-09-045 is the total number of accessible vehicle requests received, which includes geographic areas where Lyft does not have a WAV program, and that the majority of rides disclosed in the Annual Reports are fulfilled by providers other than Lyft.[89] Uber asserts that the WAV data is reported on a quarterly, county basis and broken down by hour of the day and day of the week, while the Annual Report data is not broken down by county.[90] Uber's and Lyft's comments thus acknowledge what was concluded in the resolution: while TNCs are not required to report the accessibility information required by D.13-09-045 on a county level basis, at least a subset of the WAV information should overlap with the information required by D.13-09-045.

To draw this out more explicitly, under D.13-09-045, Uber is required to annually report if a total of, for example, 5 customers requested accessible rides and if Uber complied with the 5 requests. To apply for an Offset Request in a particular county, Uber is required to report the "number of WAV trips completed," "number of WAV trips not accepted," "number of WAV trips cancelled by passenger," etc. by quarter. As such, if Uber reports 2 completed WAV ride requests in a particular county, those 2 completed WAV requests should be part of Uber's annual total number of requested accessible rides and accessible ride requests that Uber complied with. We modify the resolution to include this example for clarification.

Lyft contends that "even if a subset of the WAV data was publicly available, that would not preclude trade secret status where the specific combination of WAV data Lyft seeks

---

[86] Lyft Comments on Draft Resolution at 8 (citing *Application of Pac. Gas & Elec. Co. (U 39 e) for Comm'n Approval Under Pub. Utilities Code Section 851 of an Irrevocable License*, 2016 WL 6649336 (Oct. 27, 2016)).

[87] *Id*. at 8-9.

[88] *Id*. at 7, Footnote 15.

[89] *Id*. at 14.

[90] Uber Comments on Draft Resolution at 7.

to protect has value from now being known."[91] Uber argues that the Commission has not cited case law to support the proposition that disclosure of more general data destroys trade secrecy of more detailed data.[92] The Commission does not bear the burden of demonstrating whether the information Uber and Lyft seek to protect is or is not generally known to the public. Uber and Lyft must make this showing. But neither Uber nor Lyft even mentioned that their annual accessibility ride request data and complaint data is ordered to be public under D.13-09-045. The Commission had to point out that, based on the plain reading of these two decisions, it is clear that there is an overlap between the public accessibility data in D.13-09-045 and the data required in D.20-03-007. Uber and Lyft did not even attempt to explain what WAV information is public and what WAV information is not. The resolution has been modified to reflect this discussion.

Next, Lyft and Uber comment that the resolution does not analyze whether their respective WAV information met § 3426.1(d)(1)'s requirement that it "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."[93] The Commission did not separately address this element in the draft resolution because we determined that Uber and Lyft failed to satisfy Rule 10's pleading requirements as to the other elements of § 3426.1(d), including failing to show that the WAV categories are not generally known to the public. However, in response to comments, we find it reasonable to nonetheless analyze whether Uber or Lyft satisfied the § 3426.1(d)(1) requirement. We conclude that Uber and Lyft did not satisfy their respective burdens as to this element and the resolution has been modified to add an analysis of § 3426.1(d)(1).

Regarding Section 2.3's discussion that the trade secret asserter must identify with "reasonable particularity" the boundaries within which the secret lies, Lyft argues that this is "a procedural hurdle imposed by Code of Civil Procedure § 2019.210…" that a litigant asserting misappropriation must satisfy before engaging in discovery, and is thus inapplicable.[94] The Commission cited the case law in the resolution to demonstrate that even in trade secrets litigation, the trade secret asserter must identify "at least the boundaries within which the secret lies" to move forward with a viable trade secret claim. The Commission's point is that Uber and Lyft cannot make a conclusory claim that, for example, all of the funds expended data is protected (which consists of 20 types of eligible WAV expenses) and expect the Commission "to hunt through the details in

[91] Lyft Comments on Draft Resolution at 14.
[92] Uber Comments on Draft Resolution at 7.
[93] Uber Comments on Draft Resolution at 9, Lyft Comments on Draft Resolution at 5, 10.
[94] Lyft Comments on Draft Resolution at 5.

search of items meeting the statutory definition [of a trade secret]."[95] Uber and Lyft bear the burden to make this demonstration and failed to do so.

Lyft disputes the resolution's discussion of the CPRA, arguing that "[o]*nly* records that shed light on the public agency's performance of its regulatory duties are deemed 'public records' under the law."[96] It appears that Lyft does not believe the WAV information is a record that would shed light on an agency's performance of its duties. We disagree. The WAV information is submitted by Lyft, a regulated entity, to the Commission as directed in a Commission decision. The Commission requires this information to determine whether a TNC may be reimbursed for WAV-related expenses out of funds that have been pooled into California's TNC Access For All Fund. The TNC Access for All Program was established by Senate Bill 1376, which mandated that the Commission oversee and set forth requirements for the program, including the offset eligibility requirements, and Commission employees ensure implementation of and compliance with the adopted requirements. The Commission finds that the WAV information submitted for offset eligibility is precisely the type of records that "shed light on the public agency's performance of its regulatory duties."

## FINDINGS OF FACT

1. CPED determined that information in Uber's Advice Letters 1, 2 and 3 did not warrant confidential treatment. Uber appealed CPED's determination.

2. CPED determined that information in Lyft's Advice Letters 1, 2 and 3 did not warrant confidential treatment. Lyft appealed CPED's determination.

3. Uber asserts various claims for withholding categories of information, including exemptions based on trade secret privilege and user privacy privilege.

4. Lyft asserts various claims for withholding categories of information, including exemptions based on trade secret privilege, investigatory files, and Gov. Code § 6255(a) (the public interest balancing test).

## CONCLUSIONS OF LAW

1. Rule 10.3 of GO 96-B requires that a person requesting seeking confidential treatment of an Advice Letter identify a specific provision of law, Commission decision, or privilege, and explain in detail why such provision applies to the information.

---

[95] *Bunnell,* 567 F.Supp.2d at 1155.

[96] Lyft Comments on Draft Resolution at 13.

2. Section 3.2 of GO 66-D requires that an information submitter must demonstrate with granular specificity why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

3. Uber failed to satisfy its burden to demonstrate that any category of information in its Advice Letters is a trade secret exempt from disclosure.

4. Lyft failed to satisfy its burden to demonstrate that any category of information in its Advice Letters is a trade secret exempt from disclosure.

5. Uber failed to satisfy its burden to demonstrate that any category of information in its Advice Letters is exempt from disclosure under a user privacy privilege.

6. Lyft failed to satisfy its burden to demonstrate that any category of information in its Advice Letters is an investigatory or security file exempt from disclosure pursuant to Gov. Code § 6254(f).

7. Lyft failed to satisfy its burden to demonstrate with granular specificity why the public interest served by not disclosing any category of information clearly outweighs the public interest served by disclosure of the record.

**THEREFORE, IT IS ORDERED** that:

1. Uber Technologies, Inc.'s appeal of the Consumer Protection and Enforcement Division's determination of confidentiality is denied on all grounds.

2. Lyft Inc.'s appeal of the Consumer Protection and Enforcement Division's determination of confidentiality is denied on all grounds.

3. Uber Technologies, Inc. is directed to serve an unredacted version of its Advice Letters 1, 2, and 3 within thirty (30) days from the issuance of this Resolution to the service list in Rulemaking 19-02-012.

4. Lyft Inc. is directed to serve an unredacted version of its Advice Letters 1, 2, and 3 within thirty (30) days from the issuance of this Resolution to the service list in Rulemaking 19-02-012.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 5, 2020, the following Commissioners voting favorably thereon:

/s/ RACHEL PETERSON
Rachel Peterson
Acting Executive Director

MARYBEL BATJER
President
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners