

FILED
SUPREME COURT
STATE OF WASHINGTON
10/26/2017 12:35 PM
BY SUSAN L. CARLSON
CLERK

No. 94026-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LYFT, INC., *et al.*,

Respondents,

v.

CITY OF SEATTLE, *et al.*,

Appellants.

**RESPONDENTS RASIER LLC'S ANSWER TO
BRIEF OF AMICUS CURIAE WASHINGTON STATE
ASSOCIATION OF MUNICIPAL ATTORNEYS**

Ryan P. McBride, WSBA # 33280
Heidi B. Bradley, WSBA # 35759
Katie D. Fairchild, WSBA # 47712
Attorneys for Rasier, LLC

LANE POWELL PC
1420 Fifth Avenue, Suite 4200
Seattle, Washington 98101
Telephone: 206.223.7000
Facsimile: 206.223.7107

Respondent Rasier, LLC (Rasier) respectfully submits this Answer to the Brief of Amicus Curiae Washington State Association of Municipal Attorneys (WSAMA). WSAMA argues that the PRA-specific injunction standard set forth in RCW 42.56.540 should always control “regardless of what exemption might apply”—including, presumably, in cases like this one where disclosure is prohibited by the Uniform Trade Secrets Act (UTSA) or “other statute” containing its own non-disclosure provision. *See* RCW 42.56.070(1) (PRA does not apply if an “other statute ... prohibits disclosure of specific information”); RCW 19.108.020(1) (“actual or threatened misappropriation may be enjoined” under UTSA).

WSAMA joins the City’s arguments and, to avoid unnecessary duplication, Rasier likewise incorporates its prior briefing. As both Rasier and Respondent Lyft, Inc. (Lyft) explained, the UTSA is an “other statute” under the PRA and, as such, it is the UTSA standards for injunctive relief that control. *See* Rasier’s Opening Br. at 11-16; Lyft’s Opening Br. at 38-43. In answer to WSAMA’s other arguments, Rasier states as follows:

1. WSAMA argues that RCW 42.56.540 should apply in all PRA cases because different standards create uncertainty and inefficiency as agencies “parse out each specific exemption” to determine if the “other statute” contains its own injunction standard. Not so. Agencies do not apply RCW 42.56.540 or any injunction standard when they decide

whether a record is exempt from disclosure under the PRA or an “other statute”; they simply determine whether an exemption applies. *See* RCW 42.56.070(1) (agencies “shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (8) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or record.”). The injunction standard has no bearing on the agencies’ decision.¹

Thus, regardless of what injunction standard would apply, agencies must always consider “over one hundred ... statutes” to determine whether the record is exempt. Only when the agency determines that no exemption applies, and then only if a party challenges that determination in court, does the question of injunction standard arise—and, even then, it is a question for the court, not the agency. Of course, the vast majority of PRA decisions are never challenged, and so the question of injunction standard never comes up. In short, because agencies must analyze all “other statutes” to determine whether to withhold a record, and they do so without regard to judicial injunction standards, the fact that a court may

¹ Indeed, when an agency refuses to produce a record, it is not required to analyze or explain why disclosure would be enjoined under RCW 42.56.540 or any other injunction standard; rather, it need only “include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.” RCW 42.56.210(3).

apply different injunction standards depending on category of exemption will have no effect whatsoever on agency conduct or efficiency.

2. By the same token, there is no merit to WSAMA’s concern about inconsistent judicial rulings. Even when courts apply the same legal standard, they can reach different results even in seemingly similar cases. And that is true whether courts apply the injunction standards in RCW 42.56.540, CR 65/*Tyler Pipe*, or an “other statute.” Ultimately, what matters for purposes of consistency is that courts apply the same standard when considering the same basis for non-disclosure. This Court should affirm the trial court to ensure that consistent approach. When the PRA supplies the exemption, courts should uniformly apply RCW 42.56.540; when some “other statute” (like the UTSA) supplies the exemption, courts should uniformly apply that statute’s injunction standard.

3. WSAMA’s argument that RCW 42.56.540 better supports the PRA’s goal of transparency ignores the fact that, where an “other statute” provides the exemption, the legislature already “made it explicitly clear that a specific record ... is exempt or otherwise prohibited from production in response to a public records request.” *Doe v. Washington State Patrol*, 185 Wn.2d 363, 373, 374 P.3d 63 (2016). As this Court first recognized in *PAWS*, and recently reaffirmed in *WSP*, the legislature did so unambiguously with respect to trade secrets under the UTSA. *Id.* at

385 n.5; *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn.2d 243, 262, 884 P.2d 592 (1994). There is no need for courts to undertake RCW 42.56.540's analysis when the legislature has spoken.

4. WSAMA's proposed approach not only threatens to frustrate clear legislative intent regarding protection of certain records, it would also create clear conflict between RCW 42.56.540 and "other statutes" (like the UTSA) that contain specific disclosure or injunction standards. *See, e.g.*, RCW 74.34.095(3) (Vulnerable Adults: "A court ... may order disclosure of confidential information only if the court ... determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report"); RCW 26.33.340 (Adoption: "Department, agency, and court files regarding an adoption shall be confidential except that reasonably available nonidentifying information may be disclosed upon the written request for the information from the adoptive parent, the adoptee, or the birth parent.").

5. Such conflicts should not be resolved by rote incantation of the PRA's rule of construction. RCW 42.56.030 ("In the event of conflict ... the provisions of this chapter shall govern."). To do so would render these "other statutes" meaningless. Rather, the PRA must be construed to avoid conflict altogether when disclosure is protected by an other statute.

In such cases, the courts should continue to look to that statute as exclusively defining standards for disclosure. See *Wright v. State*, 176 Wn. App. 585, 597, 309 P.3d 662 (2013); *Deer v. Dep't of Soc. & Health Servs.*, 122 Wn. App. 84, 92, 93 P.3d 195 (2004). Indeed, this Court has already done so with respect to the UTSA. *PAWS*, 125 Wn.2d at 262 (“this ‘other statute’ operates as an independent limit on disclosure”). The trial court did the same, and correctly applied the UTSA’s injunction standard to protect the trade secrets at issue in this case.

6. Finally, it is important to note that WSAMA asks the Court to “reverse” the trial court’s conclusion that the UTSA’s traditional injunction standard applies, but it does not argue for reversal of the judgment generally. It can’t. The trial court specifically found that Rasier and Lyft were entitled to a permanent injunction under both the traditional injunction standard (*CR 65/Tyler Pipe*) and RCW 42.56.540, and its findings on each were supported by substantial evidence. Thus, while it may matter to WSAMA which injunction standard might apply in a future court case, it doesn’t matter to the outcome of this appeal.

RESPECTFULLY SUBMITTED this 26th day of October, 2017.

LANE POWELL PC

By *s/Ryan P. McBride* _____

Ryan P. McBride, WSBA No. 33280

Heidi B. Bradley, WSBA # 35759

Katie D. Fairchild, WSBA # 47712

Attorneys for Rasier, LLC

CERTIFICATE OF SERVICE

I, Kathryn Savaria, hereby certify under penalty of perjury of the laws of the State of Washington that on October 26, 2017, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

Sara O'Connor-Kriss
Michael K. Ryan
Seattle City Attorney's Office
Civil Division
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Phone: (206) 386-0075
Fax: (206) 684-8284
sara.oconnor-kriss@seattle.gov
michael.ryan@seattle.gov
Attorneys for City of Seattle

- by **JIS e-filing**
- by **Facsimile**
- by **First Class Mail**
- by **Hand Delivery**
- by **Overnight Delivery**

Matthew J. Segal
Kymberly K. Evanson
Pacifica Law Group LLP
1191 2nd Avenue, Suite 2000
Seattle, WA 98101
Phone: (206) 245-1700
Fax: (206) 245-1750
matthew.segal@pacificalawgroup.com
kymberly.evanson@pacificalawgroup.com
Attorneys for City of Seattle

- by **JIS e-filing**
- by **Facsimile**
- by **First Class Mail**
- by **Hand Delivery**
- by **Overnight Delivery**

Jeff Kirk
E-mail: jeffkirk@gmail.com
Pro se defendant

- by **JIS e-filing**
- by **Facsimile**
- by **First Class Mail**
- by **Hand Delivery**
- by **Overnight Delivery**

s/Kathryn Savaria
Kathryn Savaria

LANE POWELL PC

October 26, 2017 - 12:35 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94026-6
Appellate Court Case Title: Lyft, Inc., et al. v. City of Seattle, et al.
Superior Court Case Number: 16-2-03536-1

The following documents have been uploaded:

- 940266_Briefs_20171026123117SC216188_5175.pdf
This File Contains:
Briefs - Answer to Amicus Curiae
The Original File Name was Answer to Brief of Amicus Curia WSAMA.pdf

A copy of the uploaded files will be sent to:

- FairchildK@lanepowell.com
- aaron.streett@bakerbotts.com
- bradleyh@lanepowell.com
- danny.david@bakerbotts.com
- dawn.taylor@pacificallawgroup.com
- docketing-SEA@lanepowell.com
- jeffkirk@gmail.com
- jendejan@gsblaw.com
- kymberly.evanson@pacificallawgroup.com
- lboston@gsblaw.com
- lise.kim@seattle.gov
- matthew.segal@pacificallawgroup.com
- michael.ryan@seattle.gov
- mkorngold@gsblaw.com
- sara.oconnor-kriss@seattle.gov
- sgross@cityofpt.us
- sydney.henderson@pacificallawgroup.com

Comments:

Sender Name: Kathryn Savaria - Email: savariak@lanepowell.com

Filing on Behalf of: Ryan P McBride - Email: mcbrider@lanepowell.com (Alternate Email:)

Address:
1420 Fifth Avenue
Suite 4200
Seattle, WA, 98101
Phone: (206) 223-7741

Note: The Filing Id is 20171026123117SC216188