

NO. 94026-6

SUPREME COURT OF THE STATE OF WASHINGTON

LYFT, INC., et al.,

Respondents,

v.

CITY OF SEATTLE, et al.,

Appellants.

LYFT, INC.'S ANSWER TO BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS

Judith A. Endejan, WSBA #11016
GARVEY SCHUBERT BARER
Eighteenth Floor
1191 Second Avenue
Seattle, Washington 98101-2939
jendejan@gsblaw.com
206-816-1351

Danny David*
Aaron Streett*
BAKER BOTTS L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002-4995
danny.david@bakerbotts.com
aaron.streett@bakerbotts.com
713-229-1234

**Admitted Pro Hac Vice*

Respondent Lyft, Inc. respectfully submits this Answer to the Brief of Amicus Curiae Washington State Association of Municipal Attorneys (WSAMA). The Answer of Co-respondent Rasier, LLC explains why WSAMA's claim that the RCW 42.56.540 standard must always apply for third party injunctions involving disclosure of a public record makes no sense.¹ To avoid repetition Lyft joins in Rasier's Answer to WSAMA but wishes to address WSAMA's mistaken claim that applying the standard from CR 65 and *Tyler Pipe Indus. v. Dep't of Revenue*, 96 Wn.2d 785, 793, 638 P.2d 1213 (1982), "would place the desires of the agency/third party over the public's right of oversight of government agencies" (p. 3).

This simplistic assertion ignores the nature of the "other statutes" exemptions referenced in RCW 42.56.070, which were adopted for important public policy reasons, not to elevate a party's "desires." The legislature creates an "other statute" exemption to "protect a particular interest or value." *SEIU 775 v. State Department of Social and Health Services*, 198 Wn. App. 745,756, 396 P. 3d 369 (2017). These sometimes "outweigh the PRA's broad policy in favor of disclosing public records." *Limstrom v. Ladenburg*, 136 Wn. 2d 595, 607, 963 P.2d 869 (1998).

The "other statutes" exemptions operate "to supplement" the PRA; they are neither in conflict with the PRA nor subject to the PRA, as

¹ WSAMA adopted the analysis of the City of Seattle in the City's Opening and Consolidated Reply Brief on the issue of the appropriate injunction standard. Lyft incorporates its response to that analysis from Respondent's Brief (pages 38-43).

WSAMA contends. *Progressive Animal Welfare Soc’y v. University of Washington*, 125 Wn.2d 243, 262, 884 P.2d 592 (1994) (“PAWS”); accord *Planned Parenthood of Great Northwest v. Bloedow*, 187 Wn. App. 606, 619, 350 P.3d 360 (2015). The provision for looking to “other statute[s]” in RCW 42.56.070 reconciles any tension between the treatment of public records in RCW ch. 42.56 and another statute that mandates *non-disclosure* to protect some other important public-policy interest. Thus, *PAWS* squarely held that the Uniform Trade Secret Act (“UTSA”), RCW ch. 19.018, did not conflict with the PRA and that the PRA could not be used to obtain a trade secret. *PAWS* never mentioned RCW 42.56.540’s injunction standard (then RCW 42.17.330) as the means to prevent release of a trade secret; it instead referred to the UTSA to provide such relief.

PAWS and numerous “other statutes” establish that the Washington Legislature places the highest priority on protecting trade secrets, through the UTSA and elsewhere:

- RCW 19.108.020 as interpreted in *PAWS* (“[t]he Public Records Act is simply an improper means to acquire knowledge of a trade secret.” 125 Wn. 2d at 262.)
- RCW 15.85.065(1), 17.24.061(1) (“director shall not make public ... *trade secrets*.” [T]he applicant or registrant may institute an action in the Superior Court of Thurston County for a declaratory judgment as to whether such information is protected...).
- RCW 48.130.070 (“except such information ... involving *trade secrets*”).
- RCW 49.17.200 (“court shall issue such orders as may be appropriate to protect the confidentiality of *trade secrets*”).

- RCW 43.723.310 (“*trade secret* ... shall not be disclosed”).
- RCW 39.10.470 (“*trade secrets* ... shall not be subject to chapter 42.56 RCW”).
- RCW 31.45.030 (“*trade secret* ... is exempt from the public disclosure requirements of chapter 42.56 RCW”).
- RCW 31.45.077 (“*trade secret* ... is exempt from the public disclosure requirements of chapter 42.56”).
- RCW 31.45.090 (“*trade secret* ... is exempt from disclosure under chapter 42.56”).
- RCW 80.04.095 (“*trade secrets* ... shall not be subject to inspection or copying under chapter 42.56 RCW ... if disclosure would result in private loss, including an unfair competitive advantage”).

The foregoing reflects the Legislature’s view that protecting trade secrets against disclosure can outweigh “the public’s right of oversight of government agencies” (p. 3). Because the Court must follow the language in each trade secret or “other statute,” it cannot read RCW 42.56.540’s pro-disclosure standard into them. Doing so respects the PRA’s command that “other statutes” may provide express legislative directives that determine how disclosure is allowed or when nondisclosure is mandated.²

In sum, superimposing a pro-disclosure RCW 42.56.540 standard onto statutes outside of the PRA that contain different, explicit prohibitions on disclosure does violence to the Legislature’s intent. The language contained in “other statutes” must be given full effect, and the

² See, e.g., *Wright v. State*, 176 Wn. App. 585, 309 P.3d 662 (2013) (public records could be obtained only through the procedure in RCW 13.50); *Anderson v. Dep’t of Social and Health Services*, 196 Wn. App. 674, 384 P.3d 651 (2016) (RCW 26.23.120(1) must be followed rather than the PRA).

clear legislative policy directives that these statutes embody must be followed.

A “one size fits all” standard is impractical and unworkable when the Legislature has mandated many unique, different statutory “sizes” that are tailored to achieving specific policy objectives.

RESPECTFULLY SUBMITTED this 26th day of October, 2017.

GARVEY SCHUBERT BARER

By: s/Judith A. Endejan
Judith A. Endejan, WSBA #11016
1191 Second Avenue, Suite 1800
Seattle, WA 98101
206-816-1351
jendejan@gsblaw.com

BAKER BOTTS LLP
Danny David, *Pro Hac Vice*
Aaron Streett, *Pro Hac Vice*
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002-4995
713-229-1234
danny.david@bakerbotts.com
aaron.streett@bakerbotts.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on this date I had served Lyft's Answer to Brief of Amicus Curiae Washington Association of Municipal Attorneys on the following counsel of record, via email and regular U.S. mail:

Matthew J. Segal
Kymberly K. Evanson
Pacifica Law Group LLP
1191 2nd Avenue, Suite 200
Seattle, WA 98101
matthew.segal@pacificallawgroup.com
kymberly.evanson@pacificallawgroup.com
Attorneys for City of Seattle

Sara O'Connor-Kriss
Michael K. Ryan
Seattle City Attorney's Office
Civil Division
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
sara.oconnor-kriss@seattle.gov
michael.ryan@seattle.gov
Attorneys for City of Seattle

Via Email only
Jeff Kirk
Jeffkirk@gmail.com
Pro Se

Steven L. Gross
Port Townsend City Attorney
250 Madison St. Ste. 2
Port Townsend, WA 98368
sgross@cityofpt.us
Attorney for WSAMA

Ryan P. McBride
Heidi B. Bradley
Katie D. Fairchild
LANE POWELL PC
1420 Fifth Avenue, Suite 4200
Seattle, Washington 98101
mcbrider@lanepowell.com
bradleyh@lanepowell.com
fairchildk@lanepowell.com
Attorneys for Rasier, LLC

Dated October 26, 2017, at Seattle, Washington.

s/Leslie Boston
Leslie Boston

GSB:9015848.2

GARVEY SCHUBERT BARER

October 26, 2017 - 3:03 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_20171026150028SC298066_1510.pdf
This File Contains:
Briefs - Answer to Amicus Curiae
The Original File Name was Lyft Answer to WSAMA Amicus Brief.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
- kymberly.evanson@pacificallawgroup.com
- lise.kim@seattle.gov
- matthew.segal@pacificallawgroup.com
- mcbrider@lanepowell.com
- michael.ryan@seattle.gov
- mkorngold@gsblaw.com
- sara.oconnor-kriss@seattle.gov
- sgross@cityofpt.us
- sydney.henderson@pacificallawgroup.com

Comments:

Sender Name: Judith Endejan - Email: jendejan@gsblaw.com
Address:
1191 2ND AVE STE 1800
SEATTLE, WA, 98101-2939
Phone: 206-464-3939

Note: The Filing Id is 20171026150028SC298066