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No. 94026-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LYFT, INC, and
RASIER, LLC, a Delaware limited liability company,

Respondents,

v.

CITY OF SEATTLE and JEFF KIRK,

Appellants.

OPENING BRIEF OF APPELLANT CITY OF SEATTLE

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I. INTRODUCTION

In this Public Records Act case, Uber and Lyft¹ reported certain data to the City of Seattle for regulatory purposes as a mandatory condition of being licensed to operate in the City. These records contain information required by City Ordinance 124524 to be provided quarterly to the City by TNCs, as well as taxis and other for-hire vehicles, and the data has historically been public. But when a member of the public requested the TNCs' reported data for the express purpose of studying potential discriminatory practices, the trial court enjoined the release of key records to the public, thereby also severely hampering the City's ability to regulate the TNCs.

The trial court erred by improperly applying a common-law injunction standard to restrict disclosure of the records, as opposed to the more rigorous standard contained in the PRA itself. *See* RCW 42.56.540. The injunction prevents the City Council from engaging in needed public analysis and informed law-making on the impact of the burgeoning TNC industry, which adds millions of trips to the City's already crowded rights of way. The injunction further shuts down public scrutiny and debate over whether the TNCs are equitably serving all parts of the City or engaging in

¹ The City refers to Respondent Rasier, Inc., by its parent company's name—Uber. Uber and Lyft are often referred to as "Transportation Network Companies" or "TNCs."

discrimination, a critical purpose of the ordinance requiring the submission of the quarterly reports.

In addition to applying the wrong injunction standard, the trial court erroneously concluded that the quarterly data—which merely reflects the results of the TNCs’ booming business—is exempt from disclosure. Though the quarterly reports contain multiple data sets, most of which are already publicly available, the trial court accepted the TNCs’ assertions that zip codes where TNCs’ travel are their “trade secrets,” and enjoined release of records revealing the zip codes where each company provides (or refuses to provide) service. The data at issue here is the result of the TNCs’ burgeoning operations in the City, which the TNCs agreed to provide for the City’s regulatory purposes. It is not a “trade secret” and is not exempt from public disclosure.

For these reasons, the trial court’s ruling should be reversed.

II. ASSIGNMENTS OF ERROR

The City assigns error to the following findings of fact:²

1. During mediation in June 2014, the TNCs sought confidential treatment of the data at issue, asked for reassurance this data would be confidential, and the City knew this was a key issue. *See* CP 2703.

² The trial court did not number its findings of fact or conclusions of law. As such, the City notes the relevant page numbers where the findings are made within the decision. To assure compliance with RAP 10.3, the City also has separately numbered what appear to be conclusions of law.

2. “[Uber] has entered into agreements to share data with third parties but has always done so only under the terms of a non-disclosure agreement.” CP 2706.
3. Uber and Lyft use the data to “make strategic decisions on pricing, promotions, and marketing campaigns.” CP 2705.
4. The data “has independent economic value from not being generally known to competitors.” CP 2716.
5. “Both Lyft and [Uber] have taken reasonable efforts under the circumstances to maintain the secrecy of their Zip Code Data.” CP 2717.
6. “[D]isclosure of the Zip Code Data will cause actual and substantial injury to Lyft and [Uber] because once the data is disclosed, they will lose the trade secrets they have spent time and money developing, and they will be able to gain an unfair competitive advantage against each other with the disclosure of this data.” CP 2718.
7. “An injunction does not in any way impact SDOT’s or FAS’s ability to analyze the data provided by Lyft or [Uber] and make recommendations to the City Council.” CP 2719.
8. “[T]he City is able to analyze the data to ensure no red-lining is occurring and city witnesses testified at trial that they had no evidence of any such practice occurring at either TNC.” CP 2719.

9. “[H]eat maps can be publicly disclosed without a legend showing the specific number of rides originating and ending in particular zip code areas of the city. Such a map would show the public where TNC service is highest and lowest, from which regulators and researchers can then implement other well-established strategies for evaluating whether red-lining is in fact occurring, such as with testers who request rides into or out of certain underserved areas of the city.” CP 2719-20.

10. “[D]isclosure of Lyft’s trade secret Zip Code Data presents the company with an existential threat.” CP 2720.

11. “Because Uber has such a dominant position in the TNC market, it could use Lyft’s data to squeeze Lyft out of the Seattle market, giving Uber a monopoly in the TNC market. Such an occurrence is not in the public’s interest.” CP 2720.

The City further assigns error to the following:

1. The court erred in ruling that the PRA’s injunction provision—RCW 42.56.540—does not apply in PRA cases where trade secrets are alleged to exist. CP 2716.

2. The court erred in ruling that even if RCW 42.56.540 applies, disclosure of the disputed data would “clearly not be in the public interest” in this case and that disclosure would cause “actual and substantial injury” to Uber and Lyft. CP 2720.

3. The court erred in ruling that disclosure of the data would cause actual and substantial injury to Uber and Lyft. CP 2718, 2772.
4. The court erred in ruling that Uber and Lyft were entitled to either a preliminary or permanent injunction under *CR 65/Tyler Pipe Indus. v. Dep't of Revenue*, 96 Wn.2d 785, 793, 638 P.2d 1213 (1982). CP 2720.
5. In evaluating the public interest, the court erred in refusing to take judicial notice of the National Economic Bureau Report discussing discrimination in the TNC industry in Seattle. CP 2697-98.
6. The court erred in failing to separately analyze each data set at issue and in ruling that the quarterly data provided to the City is a “compilation” under Washington law. CP 2716.
7. The court erred in ruling that the data is exempt from disclosure under the PRA. CP 2718.
8. The court erred in ruling that disclosure of a trade secret, without more, constitutes sufficient injury to support an injunction. CP 2718.
9. The court erred in entering final judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by refusing to apply the PRA’s injunction provision in this PRA case?
2. Did the trial court err by ruling that the disclosure of the records at issue was “clearly not in the public interest?”

3. Did the trial court err by ruling that disclosure of the records at issue would cause actual and substantial injury to Uber and Lyft?

4. Did the trial court err in ruling that the records at issue comprise a trade secret under the Uniform Trade Secrets Act (UTSA), exempt from disclosure under the PRA?

IV. STATEMENT OF THE CASE

A. The Public Records Request and Preliminary Injunction.

In January 2016, Mr. Jeffrey Kirk made a PRA request for five categories of operational data submitted by Uber and Lyft pursuant to Ordinance 124524. Ex. 112. Mr. Kirk stated in his request that he intended to use the data to study possible “redlining” in the TNC industry.³ *Id.* In keeping with its desire to provide the public access to information, the City chose not to claim exemptions, instead providing third-party notice to Uber and Lyft, who then sued the City and Mr. Kirk to enjoin disclosure.

At the preliminary injunction hearing, the court acknowledged the public interest in disclosure of the quarterly data, but nonetheless enjoined release of the pick-up and drop-off zip codes and the percentage or number of rides picked up in each zip code because the court believed the

³ “Redlining” is the refusal equally to serve certain neighborhoods or communities on the basis of race or other discriminatory factors.

information was a “trade secret.”⁴ In so doing, the court refused to apply the PRA’s injunction provision, instead relying on the less stringent standard set forth in *Tyler Pipe*. VRP 3/10/16, 90:8-16. The court then ordered expedited discovery and set a permanent injunction hearing.

B. The Permanent Injunction Hearing.

At the multi-day hearing, City witnesses testified extensively about the history of the TNCs’ operations in Seattle, the governing regulatory scheme, the impacts of the TNC industry on the City and the City’s use of TNC operational data for public purposes. City witnesses further testified that the TNCs’ obstruction of public disclosure and insistence on secrecy were compromising the City’s ability to fulfil its regulatory functions. VRP 10/25/16, 169:2-19. Finally, the City put on uncontroverted evidence of the public’s interest in fighting discrimination and promoting transparency via regulation of the TNC industry. *See, e.g.*, VRP 10/25/16, 135:1-17, 135:20-136:22. By contrast, Uber and Lyft each put on a single witness who testified generally to each company’s operations in the City.

⁴ The trial court also ruled other categories of data were not trade secrets and declined to enjoin their disclosure. Uber and Lyft did not seek review of that ruling, and as a result, the City fulfilled Mr. Kirk’s request for the total number of rides, crime/complaint details and number of requests for accessible vehicles for the last two quarters of 2015. Though neither Uber nor Lyft presented evidence demonstrating the number or percentage by zip code of unfulfilled ride requests are trade secrets—and the City does not concede the trial court’s order covers this category of data—both TNCs have taken the position post-trial that the court’s order on “zip code data” covers this data set, and have objected to later public records requests for this data on that basis. As detailed below, the TNCs’ interpretation is further evidence of the overbreadth of the court’s injunction.

As summarized below, the evidence at trial did not establish the records at issue are a trade secret, or that disclosure should be enjoined.

1. Uber and Lyft are Large Transportation Companies That Cause Significant Impacts on the City's Roads.

Though both Uber and Lyft have attempted throughout this case to cast themselves as “data companies,”⁵ Uber and Lyft are transportation providers of exponentially increasing proportions and voracious consumers of City resources, including public rights of way. As Christina VanValkenburgh, Deputy Director for the Seattle Department of Transportation (SDOT) testified, TNCs take people from Point A to Point B, and in doing so, contribute to congestion, emissions and wear and tear on the City's roads just as taxis and other vehicles do. VRP 10/25/16, 147:15-22. Unlike taxis, however, Uber and Lyft can be hailed only via a smartphone application, meaning that only people with credit cards, smartphones and the ability to read English are able to use them. VRP 10/25/16, 153:8-16. Moreover, while Ordinance 124524 limits the total number of taxicab licenses in effect at any given time to 1,050, there is no cap on the total number of TNC drivers. Exs. 101, 305 at 38; SMC 6.310.500. As Uber's lone witness Brooke Steger testified, at the time of trial, Uber alone had at least 14,000 drivers (and growing) in Seattle, while

⁵ Federal courts have consistently rejected this position. *See O'Connor v. Uber Technologies, Inc.*, 82 F. Supp. 3d 1133, 1141 (N.D. Cal. 2015); *Cotter v. Lyft, Inc.*, 60 F. Supp. 3d 1067, 1078 (N.D. Cal. 2015).

Lyft's sole witness Todd Kelsay testified that Lyft's zip code data is generated from "tens of thousands" of cars on the road. VRP 10/10/16 PM, 71:10-72:1; VRP 10/11/16, 85:12-18.

2. Uber and Lyft Create the Requested Records for the City.

Notwithstanding their current concerns, it was the TNCs *themselves* that suggested that they provide the very data at issue in this case to the City. VRP 10/11/16, 186:12-19. And both Ms. Steger and Mr. Kelsay admitted that Uber and Lyft create the data sets at issue specifically to satisfy the City's reporting requirements. VRP 10/10/16 PM, 29:10-14; VRP 10/11/16, 149:18-21. In other words, neither TNC relies exclusively on the data provided to the City for any business decision it makes. VRP 10/10/16 PM, 65:23-25; VRP 10/11/16, 156:22-23. When asked for an example of how she used "zip code data", Ms. Steger described marketing to the Leschi "neighborhood,"⁶ and explained that she would look at ETAs, driver supply, and time of day in conducting her analysis of marketing efforts there. VRP 10/10/16 AM, 107:4-23. The quarterly reports required by the City, however, *do not* require the dates, time of day, ETAs or driver supply information. *See* Exs. 332-340. When pressed, Ms. Steger later confirmed that she uses "every tool that you have

⁶ The Court can take judicial notice of the fact that the Leschi neighborhood is in two different zip codes, 98122 and 98144. Ms. Steger acknowledged as much in her own confusion as to what zip code contains Leschi. VRP 10/10/16 PM, 59:24-60:4.

at hand in order to execute the most effective marketing campaign.” VRP 10/10/16 PM, 65:23-25. Similarly, Mr. Kelsay testified that in making his marketing and product decisions, he uses “everything I can get, including information I’ve heard from drivers.” VRP 10/11/16, 156: 22-23. Neither company introduced evidence demonstrating independent use of the quarterly data sets provided to the City other than to fulfill the City’s regulatory requirements. Finally, Uber introduced *no evidence* regarding any effort or expense in creating its App or data sets, while Mr. Kelsay’s testimony alluded without elaboration to “millions and millions” of dollars. VRP 10/11/16, 80.

3. Despite Release of Similar Data, the TNCs Keep Growing.

Though both TNCs’ alleged “trade secret” data has been released in multiple markets, including Spokane, Portland, Austin, King County and Seattle, neither company introduced evidence of any harm from these releases. To the contrary, both companies have seen continued exponential growth in the number of rides provided. *See* Exs. 307, 310, 390, 333-340, 342-349; VRP 10/11/16, 29:8-13 (Uber’s business in Spokane doubled). Where Uber and Lyft have sued to stop the release of relevant data and lost, neither company has ever appealed (including the order in this case releasing Seattle total ride data in April). And in each of those court cases, Uber and Lyft advanced the same hyperbolic predictions of economic ruin

that they did in the trial court, none of which have proven to be true. VRP 10/11/16, 180:8-181:8; VRP 10/11/16, 27:5-31:20, 32:11-34:14.

To the contrary, the TNCs' growth has been meteoric. The City introduced evidence of sustained quarter over quarter growth in total number of rides provided by both Uber and Lyft. Information taken from Exhibits 333-340, 342-349, 377 and 385 is summarized below:

Year/Quarter	Uber Total Reported Rides	Lyft Total Reported Rides
2014/3rd Quarter	449,847	90,057
2014/4th Quarter	1,014,618	193,358
2015/1st Quarter	1,135,110	241,599
2015/2nd Quarter	1,416,756	261,629
2015/3rd Quarter	1,611,366	311,214
2015/4th Quarter	1,917,623	329,448
2016/1st Quarter	1,958,211	490,594
2016/2nd Quarter	2,205,822	750,001
2016/3rd Quarter	Revenues increasing	Continued upward growth

In response, Uber and Lyft offered only conclusory and generalized lay opinions that each company "thought they'd do better" in Seattle or other markets where data has been released. VRP 10/11/16, 27:1-4, 84:22-85:4. Neither introduced any evidence of these allegedly missed expectations. Nor did Uber or Lyft call any expert or lay witness to testify to their budgets, forecasts, profits, losses or how data releases

allegedly impacted their business in any way.

4. Evidence of the Public Interest in Disclosure.

City witnesses testified about the impacts of the rapidly expanding TNC industry on the City's roads and services and the need for public discourse to determine whether amendments to Ordinance 124524 are necessary to deal with the unprecedented and unexpected growth. VRP 10/25/16, 148:15-150:5, 264:13-265:6, 167:13-168:6. They also testified that the City uses the data for a variety of public purposes including traffic planning, greenhouse gas regulation, consumer protection initiatives and parking and curb space management. VRP 10/25/16, 108:1-16, 11:1-16, 235:6-236:24; Ex. 113. City witnesses further testified that the TNCs' insistence on secrecy of their quarterly data is hindering the City's regulatory functions. To that end, Dr. Main-Hester testified that because of threatened and actual litigation by the TNCs, she has been unable to respond to basic inquiries from City Councilmembers about the level of TNC service in their districts because to do so would require revelation of the data sets at issue. VRP 10/25/16, 248:24-249:11. For these same reasons, though Ordinance 124524 requires provision of an annual report to the City Council summarizing the data, it has *never* been provided.

The City also presented evidence that it collects the data to evaluate transportation equity throughout the City as a component of the

Mayor's Race and Social Justice Initiative. VRP 10/25/16, 135:1-17. Consistent with this public purpose, shortly after the trial, the National Bureau of Economic Research published a paper addressing the question of whether African Americans experience longer wait times for Uber and Lyft service in Seattle and Boston. CP 1937. In its post-trial brief, the City asked the court to take judicial notice of the paper's issuance as evidence of the ongoing public interest in discrimination in the TNC industry. CP 1915. Lyft moved to "strike" reference to the study, which the court granted. CP 2697-98.

C. The Court Permanently Enjoins Disclosure.

The trial court ruled that the TNCs' "zip code data" is a trade secret under the UTSA, permanently enjoining the City from disclosing the data to Mr. Kirk. CP 2720. Without elaboration, the court summarily ruled that the data was a "compilation" with "independent economic value from not being generally known to competitors" and was thus a trade secret. CP 2716-2717. Despite substantial evidence to the contrary, the court further ruled that Uber and Lyft had taken reasonable efforts to maintain the secrecy of their data. *Id.* With respect to the TNCs' requested injunction, the court again ruled the PRA's injunction provision did not apply in this PRA case. As it did at the preliminary injunction stage, the trial court applied the general CR 65/*Tyler Pipe* standard, which gives

lesser weight to the public interest in disclosure and requires a lesser showing of harm. The court then further ruled, without elaboration, that the distinction between the two standards ultimately “does not matter in this case because Lyft and [Uber] have established an entitlement to an injunction under both the UTSA and RCW 42.56.540.” CP 2716.⁷ Given the significant public interests at stake, the City sought direct review.

V. ARGUMENT

The PRA is a “strongly worded mandate for broad disclosure of public records....” *Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 791, 246 P.3d 768 (2011) (citation omitted). “The PRA’s primary purpose is to foster governmental transparency and accountability by making public records available to Washington’s citizens.” *Doe ex rel. Roe v. Washington State Patrol*, 185 Wn.2d 363, 371, 374 P.3d 63 (2016). To that end, the PRA is “liberally construed and its exemptions narrowly construed to ensure that the public’s interest is protected.” *Id.*

When the City receives a public records request, it must produce all responsive records unless an exemption applies. RCW 42.56.070(1). A third-party moving to enjoin the City’s disclosure of public records (as Uber and Lyft did in this case) must establish both a valid statutory exemption from disclosure, and that disclosure would “*clearly not be in*

⁷ The trial court never actually applied RCW 42.56.540 because the “harm” section of its order makes no finding whatsoever as to “irreparable damage.”

the public interest and would substantially and *irreparably damage* any person, or would substantially and irreparably damage vital government functions.” RCW 42.56.540 (emphasis added); *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 744, 958 P.2d 260 (1998). Where another statute conflicts with the disclosure mandate of the PRA, the PRA governs. RCW 42.56.030. This includes cases where, as here, the asserted “conflict” involves the UTSA. *Spokane Research & Def. Fund v. City of Spokane*, 96 Wn. App. 568, 578, 983 P.2d 676 (1999) (noting that “if any conflict exists between the Act and the UTSA” the PRA controls).

A decision granting or denying an injunction under the PRA is reviewed de novo. *Serv. Employees Int’l Union Local 925 v. Freedom Found.*, 197 Wn. App. 203, 212, 389 P.3d 641 (2016) (citing *Robbins Geller Rudman & Dowd LLP v. State*, 179 Wn. App. 711, 719-20, 328 P.3d 905 (2014)); RCW 42.56.550(3). Legal questions also are reviewed de novo, while findings of fact based on the testimonial record are reviewed for substantial evidence. *Zink v. City of Mesa*, 140 Wn. App. 328, 337, 166 P.3d 738 (2007).

Here, the trial court’s order enjoining release of the quarterly data suffers from both legal and factual errors requiring reversal. First, the court applied the wrong injunction standard, ruling that the PRA’s own

injunction provision does not apply in cases involving exemptions arising under the PRA's "other statutes" provision. Second, the court improperly weighed the public interest in this case, and credited Uber and Lyft's conclusory allegations of harm, despite their failure to provide any evidence in support of them. Finally, the court erroneously applied Washington trade secrets law to find that the quarterly data submitted by Uber and Lyft amounts to a protectable "compilation," notwithstanding the lack of evidence on multiple required elements.

A. The PRA's Injunction Provision Applies in All PRA Cases.

This case is a third-party injunction proceeding under the PRA and, therefore, RCW 42.56.540 applies. Under RCW 42.56.540:

If a PRA exemption applies, a court can enjoin the release of a public record *if disclosure would clearly not be in the public interest and would substantially and irreparably damage any person, or ... vital governmental functions.*

Belo Mgmt. Servs., Inc. v. Click! Network, 184 Wn. App. 649, 661, 343 P.3d 370 (2014) (citing *Morgan v. City of Federal Way*, 166 Wn.2d 747, 756-57, 213 P.3d 596 (2009) (quoting RCW 42.56.540)) (quotations omitted) (emphasis added). By its terms, the PRA injunction standard applies to "any" request to examine a public record. RCW 42.56.540; accord *Belenski v. Jefferson County*, 186 Wn.2d 452, 458, 378 P.3d 176 (2016) ("Therefore, we adopt the one year statute of limitations in [the

PRA] for causes of action under the PRA.”). Because nothing in the statutory text creates an exception for “trade secrets” or public records potentially protected under “other statutes,” the PRA’s injunction standard applies in all PRA cases.

Uber and Lyft argued incorrectly below that this Court’s decision in *Progressive Animal Welfare Soc. v. Univ. of Washington (PAWS II)*, 125 Wn.2d 243, 884 P.2d 592 (1994), rendered inapplicable the PRA injunction standard when a trade secret is claimed as an exemption from disclosure. But this Court issued no such decision, since RCW 42.56.540 was not at issue at all in *PAWS II*—there was no third-party intervention and no requested third-party injunction. The sole parties to that case were the agency (the University of Washington, which resisted disclosure) and the requester (PAWS, which sought disclosure). *PAWS II*, 125 Wn.2d at 250. This is in contrast to the present case where both the requester (Mr. Kirk) and the agency (the City) support disclosure, but third parties (the TNCs) seek to stop it. Because there was no injunction request in *PAWS II*, the only mention of the PRA injunction standard in that case pertains to whether it created an independent exemption from disclosure; this Court held it did not. *Id.* at 257-58; *see also DeLong v. Parmelee*, 157 Wn. App. 119, 151, 236 P.3d 936 (2010), *review granted, cause remanded*, 171 Wn.2d 1004, 248 P.3d 1042 (2011). The trial court acknowledged that

PAWS II did not address the PRA injunction standard, but somehow took that to mean that the standard did not apply. *See* CP 2715 (“The Washington Supreme Court did not refer to RCW 42.56.540 in *PAWS II* when it discussed injunctive relief.”). The trial court’s legal conclusion that RCW 42.56.540 did not apply must be reversed.

Other courts considering the applicability of RCW 42.56.540 in the context of an “other statutes” exemption have correctly determined the PRA standard applies. *See, e.g., Belo Mgmt. Servs.*, 184 Wn. App. at 661; *SEIU Healthcare 775NW v. State, Dep’t of Soc. & Health Servs.*, 193 Wn. App. 377, 391, 377 P.3d 214 (2016), *rev. denied sub nom. SEIU Healthcare 775 N.W. v. State of WA DSHS*, 186 Wn.2d 1016, 380 P.3d 502 (2016); *Elster Solutions LLC v. City of Seattle*, No. C16-0771-RSL, Dkt. 35 at 6 (W.D. Wash. Aug. 9, 2016) (copy attached as Appendix A).

Like this case, *Belo* involved a motion by third parties to enjoin the release of public records based on alleged trade secrets. *Belo* rejected protection of the records specifically because the requirements of RCW 42.56.540 were not met, concluding the party seeking to prevent disclosure was not entitled to relief because it could not meet the “clearly not...in the public interest” or the irreparable harm requirements. 184 Wn. App. at 661 (“Even if the broadcasters had proven that RCA prices are trade secrets or that the federal regulations are an ‘other statute,’ the

broadcasters still failed to prove the requirements for an injunction under RCW 42.56.540.”). The trial court was bound to follow this authority.

This Court should take with a grain of salt the TNCs’ assertions that RCW 42.56.540 does not apply when an exemption is claimed based on trade secrets. At the commencement of this case, both parties took the opposite position. Uber’s motion stated: “where a party seeks to protect documents from disclosure under the public-records laws, it must also show ‘that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions.’” CP 95 (quoting RCW 42.56.540). Lyft’s motion stated the same. CP 52.

Other courts also have had no difficulty in applying RCW 42.56.540 to the TNCs’ trade secret claims. In the King County proceedings that gave rise to Mr. Kirk’s request, the superior court declined to enjoin disclosure in part because it was “unlikely that a court would find that release of the information requested here is *not clearly in the public interest.*” CP 171 (emphasis added). The same was true in Spokane. CP 182 (“Under RCW 42.56.540, the person, agency, or representative whom the record pertains must show that disclosure of the specific public record would clearly not be in the public interest....”).

In sum, RCW 42.56.540 sets the legal standard in *all* PRA cases. Indeed, it is illogical to conclude that information potentially exempt from disclosure under “other statutes,” which by their very definition are not exemptions the Legislature purposely placed into the PRA, is subject to a lesser burden. The PRA requires Uber and Lyft to prove that disclosure of the records would “clearly not be in the public interest and would substantially and irreparably damage any person[.]” Uber and Lyft did not meet this standard.

B. Uber and Lyft Failed to Prove Disclosure was Clearly Not in the Public Interest.

Uber and Lyft failed to overcome the presumption that disclosure is in the public interest. At the preliminary injunction hearing, the trial court acknowledged such an interest:

[T]he public has an interest in this data. There’s no question about it. The City has an interest in this data, and I’m sure the City has a public interest in disclosing the data to the public so that they understand how you’re regulating and why you’re regulating in the way that you are. No question.

VRP 3/10/16, 49:14-20. It never explained why it changed its mind.

1. The Public Has an Interest in Analyzing Possible Discrimination in the TNC Industry.

Although not obligated to do so, Mr. Kirk identified a specific public interest that he was pursuing in requesting the records at issue—to study whether the TNCs were engaged in discriminatory practices

(“redlining”). Ex. 112. The public has an undisputed interest in whether private companies are engaged in discriminatory practices. *See* RCW 49.60.010 (discrimination is “a matter of state concern” that “menaces the institutions and foundation of a free democratic state”). Consistent with Washington’s emphasis on ending discrimination and RCW 42.56.540, California has specifically recognized the public’s interest in “illuminating the debate” over potentially discriminatory industry practices justifies the public disclosure of alleged trade secrets. *See State Farm Mut. Auto. Ins. Co. v. Low*, 92 Cal. App. 4th 1169, 112 Cal. Rptr. 2d 574 (2001), *aff’d sub nom. State Farm Mut. Auto. Ins. Co. v. Garamendi*, 32 Cal. 4th 1029, 88 P.3d 71, 12 Cal. Rptr. 3d 343 (2004).

Ms. Steger agreed that “citizens of Seattle have a public interest in knowing whether or not businesses who operate in their city are engaged in discrimination.” VRP 10/10/16 PM, 14:25-15:9. That should have been enough to establish that an injunction was not available under RCW 42.56.540. The trial court attempted to side step this concession by ruling that “the City is able to analyze the data to ensure no redlining is occurring and city witnesses testified at trial that they had no evidence of any such practice occurring at either TNC.” CP 2719. This ruling misses the point, however, as the question is whether the release of data that could prove or

disprove the existence of redlining is in the public interest, not whether the City had already established that redlining was occurring.

Moreover, the trial court's statement that there was no evidence on the subject of redlining is inaccurate, as the City's Christina VanValkenburgh testified that recent mapping "shows that south of I-90 there are very little trips; you know, the number of TNC trips is clearly much lower than it is north of I-90." VRP 10/25/16, 136:17-22; Ex. 393. This, in her view, was a potential indicator of redlining. VRP 10/25/16, 135:25-136:22. The trial court also refused to take judicial notice of the National Economic Bureau Study, issued just days after trial concluded, demonstrating longer wait times in Seattle for African American passengers. CP 1937-85, 2697. The trial court should have taken judicial notice of the study's issuance as further evidence of the public's significant interest in the study of redlining and the release of records that could promote further analysis. *See Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (internal citation omitted) (FRE 201 allows courts to take judicial notice that materials have been published to "indicate what was in the public realm at the time, not whether the contents of those articles were in fact true").

2. The Public Has an Interest in the Impact of the TNCs on the City's Rights of Way.

Aside from the issue of redlining, disclosure of the data is also in the public interest because it provides important information about the TNCs' use of public resources and rights of way. Lyft's Todd Kelsay acknowledged his company's corporate philosophy that "[b]y rebuilding transportation so that you're not owning this thing that sits there all the time, you get to rebuild cities in the process." VRP 10/11/16, 198:16-199:10. He testified further that "[t]ransportation's a massive sector of any economy, so a change to transportation is going to inevitably make changes elsewhere." VRP 10/11/16, 200:4-6. As multiple City witnesses testified, the exponential growth of Uber and Lyft drivers on City streets adds to traffic congestion, increases pollution, and diminishes available curb space. VRP 10/25/16, 265:1-4 ("[W]e thought we would have 1800 drivers, that was one of the first estimates, there are tens of thousands of drivers that we've had to license."). The records at issue in this case are essential to analyze the effectiveness of the City's regulatory scheme with respect to these issues, and to drive subsequent policy decisions. *See, e.g.*, VRP 10/25/16, 108:3-6 ("The Zip Code data from the TNC's [sic] is one element, an important element of the data, given the amount of trips that they're currently, you know, operating in the city of Seattle."), 259:14-18;

Ex. 113. To that end, recognizing both the impact of TNCs on city infrastructure and services and the potential city uses for TNC data, Uber itself holds out the promise of sharing data with various jurisdictions in order to obtain authorization to operate. *See* Ex. 386.

3. The Public Has an Interest in Regulatory Transparency.

The TNCs' position in this case, and the trial court's ruling adopting that position, substantially prohibit the City from utilizing the data it collects as intended, and prohibits the public from overseeing the City's policymaking. *See* VRP 10/25/16, 264:4-266:1. As noted above, City staff cannot effectively use the data to recommend regulatory goals or changes without disclosing it, and the required report to the City Council has never been submitted to this day, first because of threats of litigation, and now because the trial court's permanent injunction effectively prohibits it. VRP 10/25/16, 264:14-18; Ex. 149. Multiple City Council members have asked for the draft report, but have been unable to review it. VRP 10/25/16, 264:19-266:1.

The TNCs suggested solutions to this issue only further illustrate the problem. Both proposed, and the trial court agreed, that the City could simply report the data to the City Council via "heat maps" without "a legend showing the specific number of rides originating and ending in particular zip code areas of the city." CP 2719. In other words, the trial

court recommended that the City fulfill its reporting duty under Ordinance 124524 by creating a visual representation of the data deliberately excluding any parameters by which the data can be meaningfully analyzed. As Dr. Main-Hester testified, and common sense confirms, a heat map of data is not useful without a key. VRP 10/25/16, 248:2-249:19. Moreover, providing a legend-less heat map does not enable SDOT to answer inquiries from Councilmembers who want to know about the actual level of TNC service in their districts. Finally, as Dr. Main-Hester pointed out, providing a heat map with no key would not necessarily shield the underlying data from disclosure, as heat maps “are only created through that line-by-line data. So you can’t have one without the other[.]” VRP 10/25/16, 270:3-4.

For this same reason, the City could not present the data in a “closed session” (as Uber suggested and as the trial court inquired⁸) or withhold the data if it forms the basis for a report to be acted upon by the City Council. The Open Public Meetings Act (OPMA), ch. 42.30 RCW, requires that City Council “actions be taken openly and that their deliberations be conducted openly.” RCW 42.30.010. There is no exception to the OPMA for discussion of trade secrets, and no authority to hold an “executive session” to evaluate TNC service. The City may

⁸ Ex. 149; VRP 10/25/16, 150:6-8.

convene an executive session on one of the grounds specified under RCW 42.30.110, but “*only the action explicitly specified* by the exception may take place in executive session.” *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1089 (9th Cir. 2003) (emphasis original) (quoting *Miller v. City of Tacoma*, 138 Wn.2d 318, 327, 979 P.2d 429 (1999)); *see also Cathcart v. Andersen*, 85 Wn.2d 102, 107, 530 P.2d 313 (1975) (“We believe that the purpose of the [OPMA] is to allow the public to view the decision-making process at all stages.”).⁹

By demanding the City keep the data it collects for regulatory purposes confidential, the TNCs are in reality evading both effective regulation and public scrutiny of their use of City rights of way. The trial court’s order facilitates this result. More than anything, this case demonstrates the importance of RCW 42.56.540. As Judge Lasnik observed in *Elster Solutions*, when public records are requested and “the agency is willing to produce the records”, “simply showing that the information is ‘financial, commercial, and proprietary’ is insufficient....” No. C16-0771RSL, Dkt. 35 at 6. Beyond a mere balancing of competing interests, the party seeking an injunction must demonstrate disclosure is “clearly” not in the public interest. *Id.* (citing RCW 42.56.540). This

⁹ Dr. Main-Hester testified on this point: “Q: Could you not also share this information with policymakers with the same understanding of confidentiality?
A: I don’t believe we can if what we’re doing is suggesting that they need to change the law. There needs to be a basis for that. We don’t get to go to the public and say, oh, just trust me. That’s not how it works.” VRP 10/25/16, 269:3-10; *see also id.* at 148:23-149:3.

requirement assures private parties cannot dictate the manner in which the government, as a regulator, uses the information it collects from them.¹⁰ It further assures that when the government uses the very records at issue to study and regulate a private party, the public may take part in this process. Such a result lies at the heart of open government in Washington State, and requires reversal of the trial court in this case.

C. Uber and Lyft Failed to Show that Disclosure Would Cause Substantial and Irreparable Damage.

Just as the trial court failed to appropriately evaluate the public interest in disclosure, it also failed to hold the TNCs to their burden of proving sufficient harm to warrant an injunction. Though the court claimed that Uber and Lyft satisfied the heightened harm element of RCW 42.56.540 as well as the lower *Tyler Pipe* standard, the court made no findings that disclosure would cause “substantial and irreparable damage” as required by the PRA, and instead only found “actual and substantial injury.” CP 2718. Specifically, the court ruled that “disclosure of the Zip Code Data will cause actual and substantial injury to Lyft and [Uber] because once the data is disclosed, they will lose the trade secrets they

¹⁰ With respect to Uber and Lyft, this is not an academic question. As the *New York Times* recently observed, by virtue of its business model, “Uber exists in a kind of legal and ethical purgatory....” NOAM SCHEIBER, *How Uber Uses Psychological Tricks to Push Its Drivers’ Buttons* (April 2, 2017). Recent reports demonstrate it has been startlingly effective in evading regulators and suppressing information about its business operations. MIKE ISAAC, *How Uber Deceives the Authorities Worldwide*, N.Y. Times (March 3, 2017), available at <https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html>.

have spent time and money developing, and they will be able to gain an unfair competitive advantage against each other with the disclosure of this data.” CP 2718. This conclusion is wrong both because disclosure of trade secrets is not harm *per se* under the PRA and because the court’s factual findings on harm are not supported by substantial evidence.

1. Disclosure of Trade Secrets is Not Harm *Per Se*.

In permanently enjoining the release of the data at issue, the court in effect ruled that the release of the TNCs’ alleged trade secrets, without more, constitutes sufficient injury to warrant injunctive relief. The court’s cursory “harm *per se*” conclusion relies upon a misapplication of *Versaterm, Inc. v. City of Seattle*, 2016 WL 4793239, at *7 (W.D. Wash. Sep. 9, 2016) (Robart, J.). There, though the court observed that “harm *may occur* where public disclosure is threatened because such disclosures destroy the information’s status as a trade secret,” the court did not rule that threatened disclosure always warrants an injunction. *Id.* (quotation omitted) (emphasis added). Indeed, under federal authority, there is no presumption of harm in trade secret cases. *See, e.g., Pac. Aerospace & Electronics, Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1198 (E.D. Wash. 2003) (“Unlike a copyright infringement plaintiff, however, a trade secrets plaintiff who shows a likely success on the merits of its claims *is not entitled to a presumption* of irreparable harm.”) (emphasis added); *see*

also Ossur Holdings, Inc. v. Bellacure, Inc., 2005 WL 3434440, at *8 (W.D. Wash. Dec. 14, 2005) (Robart, J.).

Moreover, the City is not aware of any Washington case supporting a harm *per se* theory in PRA cases involving trade secrets. Though the trial court cited *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 738 P.2d 665 (1987), in that case, this Court upheld an injunction not because the release of trade secrets was *per se* harmful, but rather because it was “necessary to prevent misappropriation by Sierracin and others[.]” *Id.* at 64. This is critical because the UTSA’s injunction provision, RCW 19.108.020(1), which the trial court here specifically relied upon, provides that a court “may” enjoin “[a]ctual or threatened misappropriation” of a trade secret. *See also* RCW 19.108.020(3) (“In appropriate circumstances, affirmative acts to protect a trade secret *may be* compelled by court order.”) (emphasis added).¹¹ Despite its reliance on .020(1) in issuing this injunction,¹² the trial court never found that releasing the data sets in question would constitute an actual “misappropriation” of the TNCs’ alleged trade secrets. While the UTSA may be an “other statute” for

¹¹ Given subsection (1) specifically references injunctions, subsection (3)’s reference to “affirmative acts” must relate to other forms of relief besides injunctions. *See, e.g., State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586 (2002) (“When the legislature uses different words within the same statute, we recognize that a different meaning is intended.”).

¹² In *PAWS II*, the court relied on subsection (3) of the UTSA, not subsection (1) in its “other statute” analysis. 125 Wn.2d at 262. Thus, it is not altogether certain that *PAWS II* and its holding regarding the UTSA being an “other statute” should be extended to third-party injunction cases such as this. *Cf. Doe ex. rel. Roe*, 185 Wn.2d at 385 n.5 (noting *PAWS II*’s reliance on subsection (3)).

purposes of the PRA, even if one accepts that the PRA's injunction standard does not apply, in order to invoke the UTSA's injunction provision, the trial court was required to find that publicly disclosing the data amounted to a misappropriation of a trade secret. The TNCs never pressed such an argument, and the trial court made no such finding.

If the trial court's reasoning is accepted, and the release of a trade secret is *per se* injurious, then it necessarily follows that once a party establishes a trade secret exists, it can *never be* subject to release under the PRA. If the Legislature intended this result—that certain public records would be categorically exempt from disclosure in every situation—it would have (1) put an express mandatory trade secret exemption in the PRA, and (2) made an injunction mandatory under the UTSA. It did neither. *See* RCW 19.108.020(1) (“Actual or threatened misappropriation *may be enjoined.*”) (emphasis added). As such, this Court also should refuse to adopt such a *per se* rule, which runs counter to the PRA's presumption of disclosure and narrow construction of exemptions.

2. The Trial Court's Factual Findings on Harm are Not Supported by Substantial Evidence.

In addition to misapplying the law, the trial court's cursory “harm” findings are unsupported by substantial evidence. The only injury identified by the trial court is the generic loss of “time and money” spent

developing the data and “unfair” competitive advantage the TNCs could gain against each other via disclosure. CP 2718. As detailed below, Uber introduced no evidence regarding “time and money” spent developing its App, let alone the data at issue. Likewise, Lyft’s testimony on time and expense was conclusory and not specific to the data sets in question.

Moreover, neither TNC demonstrated any competitive disadvantage between each other, beyond conclusory statements that such harm would necessarily occur. Thus, as in *Ossur*, “beyond arguing for a blanket presumption in the context of trade secrets, [the TNCs] provide little evidence in the way of demonstrating irreparable harm.” 2005 WL 3434440, at *8; *see also Markowitz v. Serio*, 11 N.Y.3d 43, 51, 893 N.E. 2d 110 (2008) (“It has not been shown that zip code data, without more, would necessarily put the insurer at a competitive disadvantage.”). Moreover, similar data was released in other markets (Spokane, Portland and King County), and each time, despite similar claims of harm, the businesses of both TNCs increased after the data was released. VRP 10/11/2016, 34:3-14; Exs. 385, 377. Given this unrebutted testimony, any finding that either TNC would gain an “unfair advantage against each other” is unsupported by substantial evidence because the only evidence introduced showed both of the TNCs’ businesses *improved* upon the release of similar trip data in Seattle and other markets. Importantly, the

trial court did not find that release of the data would harm Uber or Lyft with respect to *other* competitors, finding only that disclosure would provide “an unfair competitive advantage *against each other.*” CP 2718 (emphasis added).

Moreover, the *only* evidence introduced by either TNC purporting to show any harm was a two-page document analyzing market position. Ex. 246. The document, which was prepared by Ms. Steger in September 2016, detailed five specific reasons for Uber’s then market position, and *not one* of those reasons was the April release of Uber’s quarterly total ride data. *See id.* As such, not even Uber believes that releasing the quarterly data will impact its market position (let alone cause substantial or irreparable harm). The analysis also undercuts Lyft’s claims, by demonstrating significant gains in Lyft’s total ride numbers post-release of the data as well.¹³

In sum, the fact that neither TNC even attempted to show any actual harm from other releases of similar quarterly data, whether in Seattle or other jurisdictions, underscores that this dispute is far more about resisting all regulation and public scrutiny of their operations in the

¹³ For these same reasons, the trial court’s conclusion that release of Lyft’s data would be an “existential threat” to Lyft is not supported by substantial evidence. *See* CP 2772. Moreover, the fact that the trial court made no similar finding *as to Uber* further highlights a fundamental problem in the trial court’s analysis—just as it lumped multiple data sets into something called “zip code data,” it also engrafted testimony relating to Uber onto Lyft, and vice versa.

City than any actual negative impact from the release of this stale, highly generalized quarterly data. Without evidence that disclosure would cause actual and substantial injury, let alone “irreparable and substantial damage” under the PRA, the trial court should be reversed.

D. The Records at Issue are Not a Trade Secret.

In addition to misapplying the injunction standards, reversal is also warranted because the data at issue is not a trade secret.

To establish a trade secret, both Uber and Lyft were required to prove, with respect to each specific data set, that the information is novel or unique, *Woo v. Fireman’s Fund Ins. Co.*, 137 Wn. App. 480, 488-89, 154 P.3d 236 (2007), that it “derives independent economic value from not being generally known or readily ascertainable to others who can obtain economic value from knowledge of its use and ... that reasonable efforts have been taken to maintain the secrecy of the information,” *Precision Moulding & Frame, Inc. v. Simpson Door Co.*, 77 Wn. App. 20, 25, 888 P.2d 1239 (1995). *See also* RCW 19.108.010(4) (defining trade secret).¹⁴ Conclusory testimony that lacks concrete examples is insufficient to carry this burden. *McCallum v. Allstate Property and Case. Ins. Co.*, 149 Wn. App. 412, 425-26, 204 P.3d 944 (2009).

¹⁴ “A plaintiff must establish both that the information is not readily ascertainable and that it is not generally known[.]” *Precision Moulding*, 77 Wn. App. at 26 n.3.

As a threshold matter, in conducting its trade secret analysis, the court erroneously lumped together the data sets at issue into a generic category of “zip code data.” By failing to analyze each category of data separately, the court failed to construe narrowly the applicable exemption as required by the PRA. *Fisher Broadcasting-Seattle TV LLC v. City of Seattle*, 180 Wn.2d 515, 525, 326 P.3d 688 (2014) (“All exceptions, including ‘other statute’ exceptions, are construed narrowly.”). Moreover, as a result, the court’s injunction is so broad as to be unworkable. Though Mr. Kirk’s request referenced only the pick-up and drop-off zip codes for each ride and the percentage or number of rides by zip code, Uber and Lyft have taken the position post-trial that the injunction also covers the number of unfulfilled rides by zip code, a third data set about which neither party offered any evidence. While the City does not believe this category is subject to the court’s injunction, any argument to the contrary only further compounds the failure of the trial court to rigorously apply the trade secret elements to the specific data sets at issue. The data is not a trade secret, and the court should be reversed on this additional ground.

1. The Records at Issue are Not a Protectable Compilation.

Without analysis, the trial court ruled that the generic “zip code data” was a “compilation of information” for purposes of the UTSA. CP 2716. The definition of “compilation” under the UTSA is a question of

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law and is reviewed de novo. *See, e.g., Nat'l Football Scouting, Inc. v. Rang*, 912 F. Supp. 2d 985, 996 (W.D. Wash. 2012) (“definition of ‘information’ ... is a question of law”); *Ed Nowogroski Ins., Inc. v. Rucker*, 137 Wn.2d 427, 436, 971 P.2d 936 (1999) (“definition of a trade secret is a matter of law”).

Here, the data at issue—i.e., where the rides start and stop—is information in the public domain. The Spokane Superior Court recognized this when it ruled that similar ride data was not a protectable trade secret and should be released under the PRA. Ex. 307 (“The information in the TNC Ride Reports is not unique to the Plaintiffs’ products or services, but rather are the end results of the unique products or services....The trip data...is merely statistical data...”). The trial court here ruled that individual drivers and riders know the zip codes of the rides they take, and it was undisputed that Lyft and Uber’s drivers are often the same people. VRP 10/10/16 PM, 70:7-12, 72:6-73:3; VRP 10/11/16, 86:4-8 (Lyft has “some different drivers” from Uber). Further, Uber and Lyft admittedly do nothing to keep their drivers from (1) driving for both companies at once, and (2) using information learned while driving on one platform in order to find customers while driving on the other platform. *Id.* Uber and Lyft both constantly feed real-time demand information to their drivers, encouraging drivers to go to specific locations and pick up riders. This

information is far more detailed than the quarterly reports, which contain no GPS data. VRP 10/10/16 PM, 70:2-73:3 (Uber sends demand information to drivers and no restriction on using it for Lyft); VRP 10/11/16, 105:22-106:21 (Lyft drivers get heat maps of actual supply and demand). As such, the idea that the zip codes in which each company's rides originate and end is somehow secret and "unique" is a fiction. "[T]his is not a case where material from the public domain has been refashioned or recreated in such a way so as to be an original product, but is rather an instance where the end-product is itself unoriginal." *Buffets, Inc. v. Klinke*, 73 F.3d 965, 968 (9th Cir. 1996) (Washington law).

Accordingly, where, as here, all the information contained in the "compilation" is publicly available and not secret, a compilation can only be a protectable trade secret when the information is *compiled* in a unique or novel way. *See, e.g., OTR Wheel Engineering, Inc. v. West Worldwide Servs., Inc.*, 2015 WL 11117430, at *1 (E.D. Wash. Nov. 30, 2015) (Suko, J.) ("The use of commonly available material in *an innovative way* can qualify as a trade secret [but] [t]o qualify for protection as a trade secret, however, the *combination must still be shown to have novelty and uniqueness.*") (quotations and citations omitted) (emphasis added) (Washington law); *Woo*, 137 Wn. App. at 488-89 ("But to qualify for protection as a trade secret, the combination must still be shown to have

novelty and uniqueness.”); *see also Robbins*, 179 Wn. App. at 722; *Machen, Inc. v. Aircraft Design, Inc.*, 65 Wn. App. 319, 327, 828 P.2d 73 (1992), *overruled on other grounds*, *Waterjet Tech., Inc. v. Flow Int’l Corp.*, 140 Wn.2d 313, 323, 996 P.2d 598 (2000); *cf. Earthbound Corp. v. MiTek USA, Inc.*, 2016 WL 4418013, at *9 (W.D. Wash. Aug. 8, 2016) (Martinez, J.) (“Federal and state courts have found that customer compilations of data, which may come from both public and private sources, constitute trade secrets.”)

In *United States v. Nosal*, 844 F.3d 1024 (9th Cir. 2016), the Ninth Circuit recently analyzed whether a source list containing public and proprietary information could be a trade secret. The court observed that “the nature of the trade secret and its value stemmed from the *unique integration, compilation, and sorting of*,” the information contained in the source lists. *Id.* at 1043. Thus, *Nosal* underscores what Washington law requires: For an information compilation to be a trade secret, the information in the compilation must be compiled in a unique and novel way when the information is otherwise publicly available.

The trial court’s reliance on this Court’s decision in *Boeing, supra*, was misplaced because Boeing sued Sierracin (a manufacturer/supplier) for, among other things, misappropriation of its trade secrets which were contained in certain “design drawings.” Those drawings included “unique,

detailed blueprints containing approximately 500 critical tolerances, dimensions, specifications and material requirements.” 108 Wn.2d at 41. Unlike here, only “*certain information* contained in the drawings could be derived from common tooling” and therefore, it was in that context that this Court noted that a “trade secret plaintiff need not prove that every element of an information compilation is unavailable elsewhere.” *Id.* at 50 (emphasis added). Here, *every element* contained in the alleged information compilation (at least with respect to the pick-up and drop-off locations and unfulfilled rides), is already in the public domain because that information reflects a prior transaction or a refusal to provide a requested ride.

Neither TNC presented any evidence regarding the compilation of the data. Unsurprisingly then, the trial court made no findings on how the data was compiled, let alone how it was compiled in a unique or novel way. A simple review of the spreadsheets at issue also demonstrates they are merely massive lists of zip codes apparently arranged in chronological order. Exs. 333, 341. For example, Ms. Steger testified that the spreadsheets provided to the City are created by a “snippet of code” that simply spits the required data out of Uber’s databases for submission to the City. VRP 10/10/16 AM, 96:23-97:8. With respect to uniqueness and novelty, Ms. Steger testified only that the data was unique by virtue of

belonging to Uber, but never testified that Uber compiled the data in a unique or novel way. VRP 10/10/16 AM, 97:11-25. Mr. Kelsay likewise failed to offer any testimony on how Lyft's data is generated or compiled. The test is whether the data at issue was compiled "in an innovative way." *Woo*, 137 Wn. App. at 488. Without any evidence on this point, the trial court erred as a matter of law in concluding that the data at issue was a "compilation" for purposes of the UTSA.

2. The Trial Court Erred in Ruling the Records Have Independent Economic Value.

Even if the court properly ruled that the records at issue were "compilations" under trade secret law, which it did not, the court still erred in ruling the data had "independent economic value." Reversal is warranted for this reason as well.

i. The Court Failed to Apply the Proper Legal Standard to Evaluate Independent Economic Value.

In evaluating the economic value of the quarterly data, the trial court improperly flipped the burden of proof, noting that "[n]one of the City's witnesses nor Kirk are in any position to know what economic value this data has to TNCs or to other businesses seeking to compete with TNCs." CP 2716-17. Simply because Uber and Lyft failed to provide any non-conclusory testimony on this element does not mean that the burden shifts to the City and Mr. Kirk to *disprove* that the data was valuable to

either Uber or Lyft. Rather it is the TNCs' burden to prove the existence of a legally protected trade secret, including that the data is independently economically valuable. *Confederated Tribes*, 135 Wn.2d at 744. The trial court failed to require this showing.

“In determining whether information has ‘independent economic value’ under the Uniform Trade Secrets Act, one of the *key factors* used by the court is the effort and expense that was expended on developing the information.” *Nowogroski*, 137 Wn.2d at 438 (emphasis added). Despite the trial court’s acknowledgement of this requirement, it made no findings regarding the “effort and expense” that either Uber or Lyft undertook in creating the generic “zip code data,” let alone each of the distinct data sets at issue. This lack of findings is again unsurprising, given that both TNCs failed to adduce any evidence on this crucial element. With respect to Uber, Ms. Steger provided no testimony regarding the time, effort and expense that Uber expended in developing the Uber App, much less any testimony related to the information contained in the spreadsheets at issue. Although she testified that generating the data for the City was “not difficult,” she never elaborated on any expenses associated with generating the data for the City. VRP 10/10/16 AM, 97:17. As for Lyft, Mr. Kelsay testified so generally that his testimony equates to the conclusory allegations courts routinely reject in similar cases. *See, e.g.*,

Woo, 137 Wn. App. at 488-89. For example, he testified that Lyft spent “millions and millions” building its App, “millions and millions” maintaining its App, and “millions and millions, untold millions” acquiring drivers and passengers in Seattle. VRP 10/11/16, 80:8-15. Even assuming this testimony is credible and non-conclusory, it is beside the point because it does not speak to the dispositive issue in this case—the time, effort and expense Lyft undertook in creating the specific records at issue in this case.¹⁵

Rather than providing actual evidence of economic value, Uber’s and Lyft’s witnesses both opined generally about the “unfair” competitive advantage release of their data would cause by revealing their relative market share in certain zip codes in Seattle. Setting aside the irony that Mr. Kelsay requested and received the taxi zip code data during the pendency of this case, he complained that releasing Lyft’s data would create an unfair “playing field” and “regulate [Lyft] out of existence”. VRP 10/25/16, 160:12-18; VRP 10/11/16, 126:4-11. This Court has rejected nearly identical claims that market share information possesses

¹⁵ Moreover, it was clear that Mr. Kelsay had no knowledge of how the data was actually created, and what effort and expense might be involved. VRP 10/11/16, 128:10-129:5 (as of July 2016, Mr. Kelsay had never even seen the compilations submitted to the City). While admitting he knew nothing about the data at his deposition in July, Mr. Kelsay opined on direct that creating the data was “tremendously difficult” only to admit on cross examination that generating the quarterly reports involved only running a simple database query. VRP 10/11/16, 183:2-6. When asked how much Lyft would pay for Uber’s “zip code data,” Mr. Kelsay provided no number, testifying only that “[i]t would be worth every penny.” VRP 10/11/16, 97:12-13.

independent economic value as a trade secret. *Confederated Tribes*, 135 Wn.2d at 749; *see also Belo*, 184 Wn. App. at 658; *Robbins*, 179 Wn. App. at 722; *Cotter v. Lyft, Inc.*, 2016 WL 3654454, at *2 (N.D. Cal. June 23, 2016) (Chhabria, J.) (“Though the manner in which Lyft determines its pricing is an important part of its competitive strategy, its revenue is not strategy, but rather the *result* of that strategy.”) (emphasis original).

Moreover, neither TNC attempted to “quantify in any meaningful way the competitive advantage” the other “would enjoy” if the information was released. *Woo*, 137 Wn. App. at 489 (citing *Klinke, supra*). For example, neither TNC provided testimony that similar data releases had helped one TNC while harming the other, or that either TNC was struggling for want of the other’s data. This cuts strongly against any finding that the data at issue derived economic value from being generally unknown. *See, e.g., Klinke*, 73 F.3d at 969 (“[T]here was no demonstrated relationship between the lack of success of OCB’s competitors and the unavailability of the recipes, i.e., OCB failed to provide that it necessarily derived any benefit from the recipes being kept secret.”). Finally, as in *Klinke*, there is no dispute that the data in question had to be simplified to be provided to the City. VRP 10/10/16 PM, 27:11-29:1, 182:20-183:6. This too cuts against a finding of independent economic value. *Klinke*, 73

F.3d at 969. Absent concrete testimony on actual expenditures, the TNCs' generic claims of the "unfairness" of disclosure fail as a matter of law.

ii. The Court's Findings on Economic Value Are Unsupported by Substantial Evidence.

The trial court's legal errors were further compounded by the fact that the evidence at trial did not support the court's few factual findings. While the court credited testimony that each company would "love" to see the other company's data, this conclusory allegation is both contrary to the record, and is not the relevant question to ask. First, neither company has ever requested the other company's data. When asked about this on cross-examination, Ms. Steger candidly admitted that consistency with Uber's own legal theory was more important to it than seeing Lyft's data. VRP 10/11/16, 54:24-55:21. Second, Ms. Steger did not testify that Uber would certainly use Lyft's data; rather, she testified that she may "potentially use it" if it was disclosed. VRP 10/11/16, 55:11-12.

Third, in this case, certain trip data that was alleged to be a trade secret was released to Mr. Kirk in April 2016. Ex. 176. Despite this April release, Uber made no effort to analyze the data until early September. VRP 10/11/16, 45:17-19. As for Lyft, Mr. Kelsay testified that six months after its release, Lyft still had not done anything with the data. VRP 10/11/16, 84:12-13. Any conclusion that the TNCs were chomping at the

bit to get their hands on each other's data is all the more unsupportable when one considers that Lyft has asked for and received similar taxi company data on at least two occasions, yet never requested Uber's.¹⁶ Thus, even if the right question to ask was whether each TNC would "love" to see the other's data, the court's finding is directly contradicted by the evidence developed at trial.

Both Uber and Lyft also share drivers, and place no restrictions on drivers using knowledge of one company's business in service of the other. In proving independent economic value, the TNCs were required to show that the alleged "trade secrets" derive value from generally not being known in the *industry*. See, e.g., *MP Medical, Inc. v Wegman*, 151 Wn. App. 409, 421-22, 213 P.3d 931 (2009) (applying California law); see also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) ("Information that is public knowledge or that is generally known in an industry cannot be a trade secret."). There is no dispute that the entirety of the TNCs' business is done in public view. As this Court held long ago, "[a] thing can hardly be said to be a secret, in the sense that it should be guarded by a court of equity, which is susceptible of discovery by observation of any

¹⁶ It is undisputed that the taxi industry has been supplying similar data to the City for years, never once claiming trade secret protection over the information. VRP 10/25/16, 236:1-237:11. This also cuts against the trial court's conclusion. See, e.g., *Indiana Bell Telephone Co. v. Indiana Utility Regulatory Comm'n*, 810 N.E.2d 1179, 1187 (Ind. Ct. App. 2004) (noting "that such a lack of unanimity or even consensus among the other telephone companies regarding the need for confidential treatment of the survey results is a factor that militates against" a conclusion that something is a trade secret).

who thinks it worthwhile to observe.” *Ice Delivery Co. of Spokane v. Davis*, 137 Wash. 649, 658, 243 P. 842 (1926) (quotation omitted). The approach taken by the California Public Utilities Commission combines these two important principles:

[Uber’s] assertion of a trade secret also stems from the apparent fear that, if the information it provides to the Commission is released to the public, its competitors may obtain some economic value from disclosure. Yet [Uber] fails to make a credible argument as to how its competitors can obtain economic value from the information’s disclosure. All TNC drivers are competing for the same pool of potential passengers. All TNC drivers know where the zip codes and neighborhoods are that have the greater chances of securing rides for the day, so any release of [Uber’s] trip data isn’t going to provide the competition with information that they don’t already possess.

Ex. 388. The same is true here. Uber and Lyft concede they actively provide their real-time demand data to people they know are driving *for their competitor*. VRP 10/10/16 PM, 69:10-71:7. Any claim that this data is unknown in the industry is simply not credible.

Finally, the trial court acknowledged that the quarterly data is created and produced for the City’s regulatory purposes, a factor that further cuts against a finding of independent economic value. In *Spokane Research*, 96 Wn. App. 568, the court rejected claims that certain studies were trade secrets of developers who created them for the purpose of giving them to the City of Spokane. It held, “[i]t is illogical for the

Developers to claim the studies were at the outset trade secrets in this context because the studies were produced for the City, not the Developers.” *Id.* at 578. Here, the data is a highly generalized backward looking subset of the infinitely more detailed GPS trip data, is generated solely for use by the City, and is therefore not a trade secret.

In an effort to sidestep this conclusion, Ms. Steger and Mr. Kelsay offered general testimony about how they “could” or “would” use their own or their rival’s data. But “use” of the data sets provided to the City by Uber and Lyft does not change the fact that the quarterly reports are created in the first instance to satisfy City law. Moreover, as the U.S. Supreme Court observed, the fact that data retains usefulness for marketing or product decisions is “irrelevant” to whether it remains a trade secret after it has been voluntarily produced for regulatory purposes. *Ruckelshaus*, 467 U.S. at 1011. Even if “use” of the data could establish independent economic value, which it cannot, Uber and Lyft testified neither company exclusively uses the reports of zip codes generated for the City; they use the far more detailed GPS-based trip data collected on every ride. *See, e.g.*, VRP 10/10/16 PM, 63:9-65:11. On this record, the finding that Uber and Lyft “use this data to make strategic decisions on pricing, promotions, and marketing campaigns” is unsupported by

substantial evidence. CP 2705. The quarterly data provided to the City lacks independent economic value and is not a trade secret of either TNC.

3. Uber and Lyft Failed to Prove Reasonable Efforts to Maintain Secrecy.

Finally, though the trial court concluded that Uber and Lyft had taken reasonable measures to protect their data, these findings are unsupported. First, as noted, the TNCs share drivers and place no restrictions on how those drivers use information provided to them by either company or learned while driving on a competitor App. VRP 10/10/16 PM, 69:18-73:2. If the so-called “zip code data” was so critical to their business,¹⁷ neither company would allow their drivers to drive for both companies. And even if they did, they would not allow those drivers to use information learned while on the Uber App when that driver is using the Lyft App. But because there are no restrictions, Uber and Lyft allow their drivers to undercut their respective businesses in real-time. In trade secret parlance, they are providing purported trade secrets to individuals “who are under no obligation to protect the confidentiality of the information[.]” *Ruckelshaus*, 467 U.S. at 1002. Thus, while it may be

¹⁷ While the TNCs made it clear that the secrecy of their data was important during the mediation leading up to the Ordinance’s passage, neither company expressed any concern with respect to the *specific* data at issue here. Thus, the trial court’s generic finding that the City “knew throughout the mediation that data confidentiality was a key issue for the TNCs [and] repeatedly asked for reassurance that their data would be kept confidential” is beside the point. CP 2703. The *only* testimony came from a City official who unequivocally confirmed the TNCs’ concerns were focused on “driver information” and not any data relating to zip codes. VRP 10/25/16, 172:1-4, 179:9-14, 184:16-185:5.

true that Uber and Lyft exercise internal controls over other employees' ability to view the "zip code data" in its compiled form, such general measures are not enough because "they are not designed to protect the disclosure of information." *Klinke*, 73 F.3d at 969 (quotation omitted).

Second, it is undisputed that Uber and Lyft failed repeatedly to mark their quarterly submissions as confidential, despite the requirement in Ordinance 124524 that they do so in order to trigger third-party notice. VRP 10/11/16, 39-42, 144-147. Third, it is equally undisputed that Uber and Lyft have a practice of failing to appeal adverse rulings allowing disclosure of similar data in other cases or jurisdictions. *See* VRP 10/11/16, 11, 32-33.

Finally, though it is undisputed that neither company negotiated a non-disclosure agreement with the City, both companies claimed that the City owed them an affirmative obligation to protect their purported trade secrets. While the record does not support this, even if such an obligation could be inferred, it is well-established that an "agency's promise of confidentiality ... is not adequate to establish the nondisclosability of information; promises cannot override the requirements of the disclosure laws." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 137, 580 P.2d 246 (1978); *see also* Public Records Act Deskbook: Washington's Public Disclosure and Open Meetings Law, § 13.5(1), p. 13-17 (J. Endejan); *cf. Ruckelshaus*,

467 U.S. at 1006-07 (party can “hardly argue that its reasonable investment-backed expectations are disturbed” when it knowingly provides trade secrets to EPA with knowledge of “data-disclosure provisions”).

The TNCs’ reliance on the uncodified mediation is unreasonable, particularly since, like the Ordinance, those terms only require the provision of notice under RCW 42.56.540.¹⁸ Uber’s reliance on the Confidentiality Agreement is likewise misplaced because that agreement notes that while Uber believes its data is a trade secret, the agreement makes clear that the information could be disclosed via a PRA request and that it must be marked as “confidential” to trigger notice. Both Uber and Lyft were “on notice” that the City “was authorized to use and disclose any data turned over to it” if a PRA request was made. *Ruckelshaus*, 467 U.S. at 1006; *see also Jensen v. Redevelopment Agency of Sandy City*, 998 F.2d 1550, 1557 (10th Cir. 1993).

¹⁸ Uber and Lyft argued a set of mediation terms developed *before* the Ordinance somehow protected the records in this case from disclosure. This is wrong for several reasons. *First*, the Ordinance itself superseded the mediation terms. *Second*, the language Lyft relied upon—that the City would “work to achieve the highest level of confidentiality for information provided within the confines of state law” cannot trump the PRA. The City is *not required* to provide third-party notice to Lyft or Uber, RCW 42.56.540, but the Ordinance codifies such a requirement. The City, thus, worked within the “confines of state law” to provide Lyft and Uber with “the highest level of confidentiality.” *Third*, the TNCs cannot complain of any perceived “bait and switch,” (VRP 10/26/16, 442:12-13). The TNCs knew what the PRA required, and the discussion regarding the mediation terms involved the TNCs’ experienced counsel. VRP 10/25/16, 188:5-189-6; Ex. 303. *Fourth*, the TNCs know how to enter strong non-disclosure agreements, and did so elsewhere (but not in Seattle). *See* Exs. 172 (Lyft/Portland), 264 (Uber/Boston), 400 (Uber/Portland).

As the Supreme Court explained in a related context, “as long as Monsanto is aware of the conditions under which the data are submitted, and the conditions are rationally related to a legitimate Government interest, a voluntary submission of data by an applicant in exchange for the economic advantages of a registration can hardly be called a taking.” *Ruckelshaus*, 467 U.S. at 1007. Thus, any claim that the City owed an affirmative obligation to either Uber or Lyft to protect their purported trade secrets from disclosure is simply wrong as a matter of law, and does not evidence a reasonable measure to ensure confidentiality.

The trial court should separately be reversed because the TNCs failed to establish the records at issue were exempt trade secrets.

VI. CONCLUSION

For the foregoing reasons, the trial court’s injunction should be dissolved and the records released to Mr. Kirk.

RESPECTFULLY SUBMITTED this 17th day of April, 2017.

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APPENDIX A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELSTER SOLUTIONS, LLC, a Delaware
Limited Liability Company,

Plaintiff,

v.

THE CITY OF SEATTLE, a municipal
corporation, *et al.*,

Defendants.

NO. C16-0771RSL

ORDER

On April 12, 2016, defendant Phil Mocek submitted a Public Records Act request to Seattle City Light seeking:

Plans for, schedules of, policies dictating the performance of, requests for proposals to, contracts for, discussion of, and results of all security audits performed of “smart meter” devices (remotely-addressable electrical meters sometimes referred to as “advance metering infrastructure”) along with metadata.

Decl. of Stacy Irwin (Dkt. # 19) at ¶ 3.¹ The utility’s public disclosure officer determined that a proposal plaintiff submitted in response to a request for proposal, SLC-RFP-3404, was responsive and notified plaintiff that the documents would be disclosed unless plaintiff timely obtained a temporary restraining order preventing the release of confidential commercial information. Plaintiff filed this action, arguing that its proposal contains trade secrets and other

¹ The request was “[f]iled via MuckRock.com.” *Id.* at ¶ 4.

1 highly confidential and proprietary information that should not be disclosed to defendants.
2 Plaintiff also produced a redacted version of its proposal which has since been made public. The
3 Court issued a restraining order on May 26, 2016, and, following a hearing, ordered plaintiff to
4 produce for *in camera* review the documents submitted in connection with “SCL-RFP3404,
5 Advanced Metering Infrastructure,” in their original form along with copies of the redacted
6 pages.

7 Washington’s Public Records Act (“PRA”) is a “strongly worded mandate for broad
8 disclosure of public records.” Hearst Corp. v. Hoppe, 90 Wn.2d 123, 127 (1978). The PRA was
9 intended “to ensure the sovereignty of the people and the accountability of the governmental
10 agencies that serve them.” Limstrom v. Ladenburg, 136 Wn.2d 595, 607 (1998). See also RCW
11 42.56.030 (“The people of this state do not yield their sovereignty to the agencies that serve
12 them. The people, in delegating authority, do not give their public servants the right to decide
13 what is good for the people to know and what is not good for them to know. The people insist on
14 remaining informed so that they may maintain control over the instruments they have created.”).
15 Under the statute, all public records must be made “available for public inspection and copying”
16 unless they fall within a specific exemption set forth in the PRA or in an “other statute which
17 exempts or prohibits disclosure” RCW 42.56.070(1). The exemptions are generally
18 designed to prevent disclosures which would cause “substantial damage to the privacy rights of
19 citizens or damage to vital functions of government.” Limstrom, 136 Wn.2d at 607. “All
20 exemptions, including ‘other statute’ exceptions, are construed narrowly” in order to ensure that
21 the public’s interest in accountability is fully protected. Fisher Broadcasting-Seattle TV, LLC v.
22 City of Seattle, 180 Wn.2d 515, 525 (2014).

23 The Uniform Trade Secrets Act (“UTSA”), RCW Ch. 19.108, qualifies as an “other
24 statute” for purposes of RCW 42.56.070(1). Progressive Animal Welfare Soc’y v. Univ. of
25 Wash., 125 Wn.2d 243, 262 (1994). Trade secrets are defined as “information, including a
26 formula, pattern, compilation, program, device, method, technique, or process that:

- 27 (a) Derives independent economic value, actual or potential, from not being generally

1 known to, and not being readily ascertainable by proper means by, other persons who can
2 obtain economic value from its disclosure or use; and

3 (b) Is the subject of efforts that are reasonable under the circumstances to maintain its
4 secrecy.”

5 RCW 19.108.010(4). Information has “independent economic value” under the statute when
6 effort and expense were incurred in developing the information (McCallum v. Allstate Prop. &
7 Cas. Ins. Co., 149 Wn. App. 412, 424 (2009)), it is not “readily ascertainable from another
8 source” (Spokane Research & Def. Fund v. City of Spokane, 96 Wn. App. 568, 578 (1999)), and
9 disclosure would create economic value for others. The party seeking to avoid disclosure under
10 the UTSA must provide concrete examples illustrating economic value and novelty, as well as
11 showing that it has taken steps to maintain confidentiality. Robbins, Geller, Rudman & Dowd,
12 LLP v. State, 179 Wn. App. 711, 722 (2014).

13 This case is somewhat atypical in that the agency, the City of Seattle, has no objection to
14 releasing the documents requested by defendants. It has therefore made no attempt to identify
15 applicable exemptions or justify any withholdings. See Resident Action Council v. Seattle
16 Housing Auth., 177 Wn.2d 417, 431 (2013) (“An agency must explain and justify any
17 withholding, in whole or in part, of any requested public records.”). Plaintiff, however, has
18 identified approximately 100 pages of its submission that contain sensitive information and
19 contends that all or portions of those pages are exempt from production under the UTSA and/or
20 the PRA. When an agency is willing to produce records to a requester, as is the case here, “a
21 person who is named in the record or to whom the record specifically pertains” may obtain an
22 injunction if disclosure “would clearly not be in the public interest and would substantially and
23 irreparably damage any person, or would substantially and irreparably damage vital government
24 functions.” RCW 42.56.540. The party seeking to prevent disclosure bears the burden of
25 establishing that a statutory exemption applies. Dragonslayer, Inc. v. Wash. State Gambling
26 Comm’n, 139 Wn. App. 433, 441 (2007). The Court, having reviewed the Declaration of Robert
27 Henes (Dkt. # 4) and the redacted and unredacted pages submitted *in camera*, finds as follows:

1 (1) Plaintiff's evidence is too conclusory to prove that any particular portion of the
2 proposal constitutes a trade secret under the UTSA. Mr. Henes lists the types of information
3 contained in the proposal (Dkt. # 4 at ¶ 8), declares that "Elster spent countless hours and
4 resources developing . . . the proprietary technologies, methodologies, systems, metrics, data,
5 analysis and pricing set forth in its Proposal" (Dkt. # 4 at ¶ 7), and asserts that the information
6 "is not generally available to the public, and relates to proprietary technologies and
7 methodologies that were developed, at great expense, by Elster" (Dkt. # 4 at ¶ 9). While these
8 statements of expense and novelty may, indeed, apply to certain statements and information
9 contained in the proposal, they are not properly linked to any particular redaction.

10 Exhibit A to the Henes Declaration is supposed to supply the necessary link. The exhibit
11 identifies each section of redacted text and provides a list of "Category Codes" and "Justification
12 Codes" that are said to apply to each redaction. Taking the very first redaction as an example
13 (Sec. 5(a) of "Minimum Qualifications"), the "Category Code" assigned ("3. Personally
14 identifiable information") is not a category of information protected by the UTSA. The three
15 justifications listed (A, B, and D) identify the nature of the information and the harm that would
16 arise if it were disclosed. Only two of the justifications, A and D, touch on considerations that
17 are relevant to the UTSA analysis, but they are so general as to be uninformative.² There are no
18 details regarding the effort and expense that was incurred in developing the information, its
19 novelty, the steps taken to maintain its confidentiality, or how the disclosure would create
20 economic value for competitors. The courts of this state have been unwilling to accept
21 conclusory statements regarding costs and novelty or to credit bald claims of hypothetical
22 competitive advantage. See Robbins, Geller, Rudman & Dowd, LLP, 179 Wn. App. at 723-26;
23 McCallum, 149 Wn. App. at 426-27; Woo v. Fireman's Fund Ins. Co., 137 Wn. App. 480, 488-

24
25 ² Justification A reads "Propagation study. Would compromise our ability to compete in the
26 marketplace." Justification D relates to "System security. Would compromise our ability to compete in
27 the marketplace. Competitors could use the information against Elster or as a means to get a head start
28 on developing similar products."

1 92 (2007). More importantly with regards to this particular redaction, there is no reason to
2 presume that the identification of plaintiff's product or plaintiff's claims regarding the product's
3 success in the marketplace could reasonably be considered trade secrets or of "independent
4 economic value." Much, if not all, of the information redacted in Sec. 5(a) was included in
5 plaintiff's cover letter (Sec. 1) and has already been disclosed to the public. Plaintiff has not
6 shown that the redaction in Sec. 5(a) is justified under the UTSA.

7 (2) To the extent plaintiff claims that the redaction in Sec. 5(a) is justified because
8 disclosure could compromise system security (Justification B), it is not clear what statutory
9 exemption applies. Nor is there any indication that the disclosure of the information contained in
10 Sec. 5(a) has even the remotest potential of causing a security breach. Plaintiff has not shown
11 that this redaction is justified under the PRA.

12 (3) Even if one considers information that has a reasonable chance of being a trade secret
13 under the UTSA or "financial, commercial, and proprietary information" under the PRA,
14 plaintiff's submission is inadequate to overcome the mandate for broad disclosure. Plaintiff has
15 redacted virtually every entry in Sec. 14 "Pricing Response," for example. The information is
16 categorized as "pricing details for hardware, software and services," and the redactions are
17 justified by the assertion that disclosure "[w]ould compromise our ability to compete in the
18 marketplace." Under Washington law, there is no presumption that price lists constitute trade
19 secrets. See Belo Mgmt. Servs., Inc. v. ClickA Network, 184 Wn. App. 649, 656 (2014);
20 Robbins, Geller, Rudman & Dowd, LLP, 179 Wn. App. at 723-24. Plaintiff has not presented
21 any evidence regarding the process through which its price list was developed, shown that its
22 prices differ significantly from its competitors, or established the steps it has taken to maintain
23 the confidentiality of its list. As was the case in Belo Mgmt. and Robbins, Geller, Rudman &
24 Dowd, LLP, a bare assertion that release of the information would give competitors an unfair
25 advantage is insufficient to prove that the information is a trade secret. If the price list is static
26 and comparable to that used by other industry participants, any value to competitors would be
27 minimal. If, on the other hand, every proposal and negotiation is different and the market is

1 evolving, knowing what Elster proposed in January 2015 for the City of Seattle would not be
2 particularly helpful to competitors at this point in time and in different locales with different
3 needs.

4 With regards to the PRA, simply showing that the information is “financial, commercial,
5 and proprietary” is insufficient. RCW 42.56.270. The information must fall within one of the
6 categories specified in the statute, and, because the agency is willing to produce the records,
7 plaintiff must show that disclosure “would clearly not be in the public interest and would
8 substantially and irreparably damage any person, or would substantially and irreparably damage
9 vital government functions.” RCW 42.56.540. Plaintiff has not attempted to do so.

10 (4) The Court declines to address each of plaintiff’s redactions. The justifications
11 provided, even when read with Mr. Henes’ declaration, are simply too conclusory to establish
12 that the information is a trade secret under the UTSA or that one of the narrow exceptions set
13 forth in the PRA applies. Plaintiff shall have thirty days from the date of this order to supplement
14 its *in camera* submission. Claims of exemption must be both specific (identifying the statutory
15 provision that applies and the language that was redacted pursuant to that authority) and
16 adequately supported. Failure to establish that information is exempt from disclosure will result
17 in its release.

18
19 The Clerk of Court is directed to note this “*In Camera* Review” on the Court’s calendar
20 for September 9, 2016.

21
22 Dated this 9th day of August, 2016.

23 
24 _____
25 Robert S. Lasnik
26 United States District Judge
27

SUPREME COURT
THE STATE OF WASHINGTON

LYFT, INC, and RASIER, LLC, a
Delaware limited liability company,

No. 94026-6

Respondents,

v.

CITY OF SEATTLE and JEFF
KIRK,

PROOF OF SERVICE

Appellants.

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years and not a party to this action. On the 17th day of April, 2017, I caused to be served, via email, per agreement of the parties, a true copy of Opening Brief of Appellant City of Seattle and Proof of Service upon the parties listed below:

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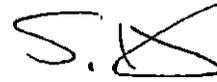
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of April, 2017.

A handwritten signature in black ink, appearing to read 'S. Henderson', written over a horizontal line.

Sydney Henderson

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Subject: Lyft, Inc. et al. v. City of Seattle, et al.-No. 94026-6 / Opening Brief of Appellant City of Seattle

Clerk of the Court:

Attached for filing please find Appellant City of Seattle's Opening Brief and Proof of Service.

Case Name: Lyft, Inc. and Rasier, LLC v. City of Seattle and Jeff Kirk

Case No. 94026-6

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