



**ROD UNDERHILL**, District Attorney for Multnomah County

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September 23, 2016

Elliot Njus  
The Oregonian  
1500 S.W. First Avenue, Suite 400  
Portland, Oregon 97201

Ken McGair  
Sr. Deputy City Attorney  
City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petition of Elliot Njus, for The Oregonian, requesting data regarding transportation network and taxi companies in the City of Portland.

Dear Mr. Njus and Mr. McGair:

In his public records petition, dated September 14, 2016, petitioner Elliot Njus, on behalf of The Oregonian, requests this office to order the Portland Bureau of Transportation (PBOT) to disclose copies of the following records:

- 1. The number of currently permitted Transportation Network Company (TNC) vehicles, by company and in aggregate.**
- 2. The number of rides provided by TNCs since May 1, 2015, by company and in aggregate.**
- 3. The number of rides provided by taxis since May 1, 2015, by company.**
- 4. Records of taxi and TNC wheelchair-accessible vehicle service provided, including number of rides provided, canceled and completed by month, and average monthly WAV wait times.**

Transportation Network Companies, or "TNCs," are companies such as Uber and Lyft that connect drivers in their private vehicles with customers seeking transportation. After an initial unsanctioned launch in Portland, in April of 2015 city council enacted an ordinance, by a 3-2 vote, to legitimize and regulate the TNC business model in the Portland. These actions were strongly opposed by the existing taxi industry. See, e.g., *Portland makes Uber and Lyft legal -- for now*, THE OREGONIAN, Apr. 21, 2015, [http://www.oregonlive.com/commuting/index.ssf/2015/04/portland\\_makes\\_uber\\_and\\_lyft\\_1.html](http://www.oregonlive.com/commuting/index.ssf/2015/04/portland_makes_uber_and_lyft_1.html).

In its initial response, PBOT asserted the trade secret exemption under ORS 192.501(2) and then, after consultation with the affected transportation companies, additionally asserted a claim of exemption under ORS 192.501(5). PBOT has signed non-disclosure agreements with each TNC that submits data and has provided those agreements for our review. Without discussing the agreements in detail it suffices to say that they generally provide that PBOT will

not disclose the data without the company's written consent unless it is compelled to do so by order of a court or similar body.

There is some dispute between the parties as to whether or not there was actually a denial of the request as to item four above, the wheelchair-accessible vehicle data, or just a failure to pay fees. Because item four presents the same public interest concerns as the other three, we will address it in this order.

In addition to the arguments submitted by PBOT, three of the affected companies have provided information to this office as to why each considers the data at issue a trade secret. Having considered all the arguments, as discussed further below, we conclude that the public interest requires disclosure in this instance.

## DISCUSSION

### A. Business Records Required to be Submitted – ORS 192.501(5)

ORS 192.501(5) conditionally exempts from disclosure,

Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form that would permit identification of the individual concern or enterprise. [...]

The data sought by petitioner are covered by this exemption. They unquestionably constitute records "similar" to sale or production records. The Portland City Code requires these companies to submit the data at issue. See, PCC 16.40.240(J) (TNCs); PCC 16.40.140(J) (taxis). And, because petitioner is seeking data broken down by company, the data would permit identification of individual businesses. However, all conditional exemptions apply only "unless the public interest requires disclosure in the particular instance." ORS 192.501. The question then is, notwithstanding the facial applicability of ORS 192.501(5), whether the public interest nonetheless requires disclosure. We conclude that it does.

We accept the general premise that making available the sales and market penetration figures of a business to a rival is against its interests. Although, it does not seem that a disclosure here would put any one firm at a competitive disadvantage since petitioner is seeking data about all local participants in the industry. Nonetheless, we will assume that it is against each firm's business interest to have these data publicized.

Neither PBOT, nor indeed the individual companies, have identified why a disclosure that is against their individual business interests is also against the public interest. Petitioner, on the other hand, has pointed to the significant public interest in this industry given the recent and contentious entry of TNCs into the local market.

Against that backdrop, disclosure of these particular data as to this particular industry to this particular requestor is required in the public interest. This is not to say that the public interest will compel regular disclosure of these data. Rather we find that a snapshot of the development of a disruptive new industry and, more importantly, insight into the practical effects of controversial political decisions are of significant interest to the local community.

B. Trade Secret – ORS 192.501(2)

ORS 192.501(2) conditionally exempts from disclosure,

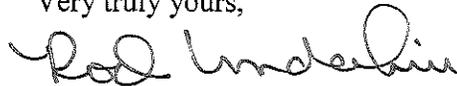
Trade secrets. “Trade secrets,” as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

Our analysis begins and ends with the public interest. We need not decide whether these data are trade secrets within the meaning of ORS 192.501(2) because, as discussed in the previous section, the public interest requires disclosure in this instance.<sup>1</sup>

**ORDER**

The petition is granted. The Portland Bureau of Transportation is ordered to promptly disclose all records responsive to this request. This disclosure is subject to payment of fees to the city, if any, not exceeding the actual cost in making the information available.

Very truly yours,



ROD UNDERHILL

District Attorney

Multnomah County, Oregon

**Notice to Public Agency**

Pursuant to ORS 192.450(2), 192.460, and 192.490(3) your agency may become liable to pay petitioner’s attorney’s fees in any court action arising from this public records petition (regardless whether petitioner prevails on the merits of disclosure in court) if you do not comply with this order and also fail to issue within seven days formal notice of your intent to initiate court action to contest this order, or fail to file such court action within seven additional days thereafter.

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<sup>1</sup> Broadway Cab presents a more forceful argument as to the trade secret status of the data that it submits to the city. Much of the data about which the company is concerned are beyond what petitioner seeks in this case. We do not have before us the question of whether or not that extra data should be released, and our decision today does not require that it be released.