

Uber-Yellow Cab Dispute Answers Questions About What Can Be Hidden as Trade Secrets

by Samantha Joseph

An interesting litigation question in a case involving rival transportation companies, Yellow Cab Co. and Uber Technologies Inc.: What can a private company shield as a trade secret when dealing with a government?

The answer: very little, if that information links to payments to a public agency, suggests a state appellate court ruling issued Jan. 10.

Florida policy requires all state, county and municipal records to be open for inspection and copying by anyone. That's bad news for Uber, which has fought to exclude its files from public and police view. And now, an appellate court has ruled the company must disclose documents detailing its airport trips and what it paid Broward County for that business.



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The dispute stemmed from Yellow Cab's request for information about Uber's pickups at Fort Lauderdale-Hollywood International Airport.

"We're disappointed by the ruling and we're evaluating our options," Uber spokesman Javier Correoso said Friday. "We still haven't made a decision if we're going to appeal or not."

The issue came before the Fourth District Court of Appeal, pitting Uber subsidiary Raiser-DC LLC against Yellow Cab's B&L Service Inc. in a case over a public records dispute in Broward County. It turned on whether an exemption under

Florida law that excludes trade secrets from public records protected Uber from disclosing to Yellow Cab granular information about trips to a public airport and details of its business relationship with Broward County.

"Business competition and a battle between government transparency and entrepreneurial confidentiality lay the foundation for this appeal," Fourth DCA Judge Melanie May wrote in a unanimous

decision with Judges Carole Taylor and Jeffrey Kuntz.

The county charges transportation companies for operating at its air and seaports, and collects information about their trips using transponders and other systems to generate bills. These reports from Uber are at the center of the dispute launched when Yellow Cab issued a public records request in February 2016.

The request was for “all reports or documents” on Uber’s pickups at Fort Lauderdale-Hollywood International Airport, and how much the company had paid or owed the county since October 2015. Uber argued the information was a trade secret that would give its competitor a significant business advantage, if disclosed. It also argued the information was exempt under the Public Records Act. Under a contract with the county that allowed it to protect trade secrets, it blacked out most of the details of its report before releasing the documents to Yellow Cab.

“Uber basically redacted everything, other than the headings,” Yellow Cab’s B&L Service Inc. counsel, Becker

& Poliakoff shareholder Mark Stempler, said.

The reports should have contained aggregate and granular data. The aggregate information, according to a description in the appellate court ruling, includes the number of pickups and drop-offs at the airport and seaport, “multiplied by the fee in each of those zones.” Uber says it pays Broward County \$3 per airport pickup.

The granular data, meanwhile, show information on every pickup and drop-off, including a time stamp, the longitude and latitude, and the first three characters of the driver’s license plate, which identifies the individual.

“Under Florida Law, the intentions are not material. We can seek public records for no reason at all, just by being a member of the public,” Stempler said. “That’s the purpose of the public records law ... to open the government up. It’s a function of transparency.”

Yellow Cab argued it—and everyone else—was entitled to view the reports.

The appellate court agreed.

“In short, the total number of pickups and the fees paid to Broward County do not meet

the definition of trade secrets,” May wrote.

Then in a footnote: “The dollar figure, along with the number of pickups, does not reveal Uber’s fare pricing or revenue. Payment to the driver, cost to the rider and revenue to the company differ for each of Uber’s services. Without knowing the level of service provided, a competitor would not know the type of riders being serviced. Nor does the monthly fee to the county and the total number of pickups reveal the number of miles traveled or the duration of each pickup.”

Yellow Cab’s attorneys at Becker & Poliakoff applauded the decision.

“You can’t keep secret money that is paid to a governmental agency in the state of Florida,” Becker & Poliakoff shareholder Allen Levine said. “That’s the Government in the Sunshine (policy), which is exactly what the appellate court held.”

Alyssa M. Reiter and Jordan S. Cohen of Wicker Smith O’Hara McCoy & Ford in Fort Lauderdale represented Uber.

Samantha Joseph is an award-winning journalist with Daily Business Review, Law.com +more. Grad School: Newhouse Syracuse. Contact: sjoseph@alm.com. On Twitter: @SjosephWriter