Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-4164

Appeal MA19-00853

City of Toronto

February 16, 2022

Summary: The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about a private transportation company. The city initially issued a decision denying access to the responsive information and then revised its decision, granting full access to it. The private transportation company appealed the city's decision, claiming that the mandatory exemption at section 10(1) (third party commercial information) of the Act applies to the information. In this order, the adjudicator finds that section 10(1) does not apply to the information and upholds the city's decision to disclose it to the requester. She dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 10(1).

Orders and Investigation Reports Considered: Orders PO-2200 and PO-2228.

OVERVIEW:

[1] Within the City of Toronto, a number of private transportation companies (PTCs)[1] provide a marketplace to connect riders to available drivers. These PTCs operate pursuant to the requirements of the *Toronto Municipal Code* (*Municipal Code*), Chapter 546, Licensing of Vehicles-for-Hire.[2] Pursuant to this chapter of the *Municipal Code*,

[1] PTCs are often colloquially referred to as rideshare companies.
[2] This information was provided by the PTC in its representations submitted to the Information and Privacy Commissioner/Ontario for the purposes of this appeal.

PTCs are required, as a condition of their licensing, to pay a set fee to the city for each trip.

[2] A requester made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Toronto (the city), for access to information relating to a named PTC operating in the city. The requester specifically sought access to the total number of trips taken and the fees paid by that PTC to the city for those trips pursuant to the requirements of Chapter 546 of the *Municipal Code* in the amount set out in Schedule 12 of Appendix C of Chapter 441 of the *Municipal Code*.[3] The requester asked that the information provided be broken down on a monthly basis for a specified period covering the first 15 months that the PTC operated within the city.

[3] The city created a record that set out, in chart form, the total trips and corresponding trip fees paid to the city for the requested months (the trip data). Under section 21(1)(a) of the *Act*, the city notified the PTC as it might have an interest in the disclosure of the record. After receiving submissions from the PTC, the city issued a decision denying the requester access to the record, in its entirety, citing the mandatory exemption at section 10(1) (third party information) of the *Act*.

[4] The requester appealed the city's decision to the Information and Privacy Commissioner/Ontario (the IPC). A mediator was assigned to attempt to reach a resolution between the parties. Subsequently, the city issued a revised decision, granting full access to the responsive record. The requester's appeal was closed.

[5] The PTC, now the appellant, appealed the city's revised decision to disclose the record to the requester to the IPC, and the appeal relating to this order was opened. Again, a mediator was assigned to attempt to assist the parties in reaching a resolution.

[6] During mediation, the appellant confirmed that it was appealing the city's decision to disclose the record on the basis that it should be withheld pursuant to the mandatory exemption at section 10(1) of the *Act*. The requester confirmed that he continues to pursue access to the record.

[7] As a mediated resolution could not be reached, the file was moved to the adjudication stage of the appeal process. As the adjudicator assigned to the appeal, I decided to conduct an inquiry.

[8] During my inquiry, I sought and received representations from the appellant, the city and the requester. All parties provided representations which were shared in accordance with the IPC's sharing practices set out in the *Code of Procedure and*

[3] Under section 546-115 of Article 10 of Chapter 546 of the *Municipal Code*, for each trip, every PTC must remit, to the city's Municipal Licensing and Standards (ML&S), a "PTC trip fee." The fee itself is charged under the *Municipal Code*, Chapter 441, Fees and Charges, Appendix C, Schedule 12, Municipal Licensing and Standards, Ref no. 442. That per-trip fee is listed at $0.31.

Practice Direction 7.

[9] For the reasons that follow, I find that the trip data is not exempt from disclosure under the mandatory exemption at section 10(1) of the Act. I uphold the city's decision to disclose it to the requester and dismiss the appeal.

RECORD:

[10] The record at issue, a one-page chart created by the city to respond to the request, contains the responsive information: the total monthly trips and the corresponding monthly trip fee amounts paid to the city by the appellant for the months of January 2018 to March 2019. In this order, I will refer to this information as "trip data."

DISCUSSION:

Does the mandatory third party information exemption at section 10(1) apply to the record?

[11] The sole issue to be determined in this appeal is whether the mandatory exemption at section 10(1) applies to the trip data. For the reasons outlined below, I find that the exemption does not apply.

[12] The appellant claims that paragraphs (a) and (c) of section 10(1) apply to the trip data. Those sections read:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
> >
> > …
> >
> > (c) result in undue loss or gain to any person, group, committee or financial institution or agency[.]

[13] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[4]

[4] *Boeing Co. v. Ontario* (*Ministry of Economic Development and Trade*), [2005] O.J. No. 2851 (Div. Ct.)], leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[5]

[14] The onus of proof that the exemption at section 10(1) applies rests with the party resisting disclosure on the basis of the exemption. In this case, the appellant must establish that each part of the following three-part test is satisfied:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

Part 1: Type of information

[15] The appellant submits that the responsive information is commercial and financial information. Previous orders have discussed what constitutes commercial and financial information in the context of this exemption as follows:

> ***Commercial information*** is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.[6] The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.[7]
>
> ***Financial information*** refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.[8]

[16] The appellant submits that as the responsive information relates to the number of trips per month as well as the total fees it paid to the city for those trips, the information "clearly constitutes commercial and financial information."

[17] The city does not dispute that the requested record contains financial information, as it sets out the amount of fees paid by the appellant to the city. The city

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[5] Orders PO-1805, PO-2018, PO-2184 and MO-1706.
[6] Order PO-2010.
[7] Order P-1621.
[8] Order PO-2010.

concedes that part 1 of the section 10(1) test has been met.

[18] The requester does not specifically comment on whether the information at issue qualifies as any of the types of information contemplated in part 1 of the section 10(1) test. He submits generally that the question of whether the information qualifies for exemption under section 10(1) of the *Act* is better answered by the parties to which the information relates and the determination of whether the exemption applies is best left to the adjudicator.

[19] Having considered the trip data, I find that it is commercial information as it relates to the buying and selling of transportation services. I also find that the total trip fee amounts are financial information as they relate to money and its use or distribution. I find that part 1 of the section 10(1) test has been established.

Part 2: Supplied in confidence

Supplied

[20] The requirement that the information have been "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.[9]

[21] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.[10]

In confidence

[22] The party arguing against disclosure must show that both the individual supplying the information and the recipient expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an objective basis.[11]

[23] Relevant considerations in deciding whether an expectation of confidentiality is based on reasonable and objective grounds include whether the information:

- was communicated to the institution on the basis that it was confidential and that it was to be kept confidential,
- was treated consistently by the third party in a manner that indicates a concern for confidentiality,

[9] Order MO-1706.
[10] Orders PO-2020 and PO-2043.
[11] Order PO-2020.

- was not otherwise disclosed or available from sources to which the public has access, and
- was prepared for a purpose that would not entail disclosure.[12]

Representations

Appellant's representations

[24] The appellant concedes that the responsive record itself was not supplied to the city. It submits, however, that the information in the responsive record is derived from "trip data" that it directly supplied to the city pursuant to the requirements of Chapter 546 of the *Municipal Code*[13] and, in accordance with the terms set out in the Vehicle-for-Hire Data Sharing Agreement (data sharing agreement) between the parties.[14] The appellant submits that in accordance with these agreements it is required to provide the city with this information.

[25] Addressing the "in confidence" portion of part 2 of the test, the appellant submits that its trip data is "the subject of efforts" to maintain its secrecy and confidentiality and that those efforts are reasonable under the circumstances. It submits that the trip data was "furnished to the city under a claim of confidentiality and transmitted via a secure transmission protocol." The appellant submits that its expectation of confidentiality is further supported by the data sharing agreement between the parties in which Articles 5 and 6 require both parties to "maintain the security and confidentiality of data that is shared pursuant to the agreement." The appellant does acknowledge that Article 2.6 of the data sharing agreement provides that any data shared pursuant to the agreement is subject to the *Act* and that the city will not be found in breach of the agreement if it discloses data in accordance with applicable law, including the *Act*. However, the appellant takes the position that the information should not be disclosed under the *Act* because it fits within the mandatory exemption at section 10(1).

[26] The appellant further submits that internally, it has consistently treated the responsive information, information relating to the number of trips in a given period and fees paid to the city for those trips, in a confidential manner. The appellant submits that it takes specific measures to protect this "confidential information" from being released to individuals other than those it chooses to provide access to and identifies those measures as follows:

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[12] Orders PO-2043, PO-2371 and PO-2497, upheld in Canadian Medical Protective Association v. Loukidelis, 2008 CanLII 45005 (ON SCDC).
[13] *City of Toronto Municipal Code*, Chapter 546, Licensing of Vehicle-For Hire.
[14] Copies of both Chapter 546 of the *Municipal Code* and the Data Sharing Agreement between the city and the appellant, were enclosed as an appendix to the appellant's representations.

- it stores the information on a private network drive protected by appropriate computer security controls,
- access to the information is limited to a subset of its employees who have been approved and require access to the information in order to fulfill their job responsibilities,
- it requires all new employees to sign a confidentiality agreement which prohibits disclosure of its confidential information to outside parties both during and after employment,
- it requires all employees to sign an employee handbook which describes, in detail, each employee's obligations regarding technology use and security and protection of its confidential and proprietary information, and
- it requires all visitors to its headquarters to read and sign a non-disclosure agreement before proceeding past the reception desk.[15]

[27] The appellant submits that its representations, including the measures it takes to ensure confidentiality of its information that are set out above, demonstrate that the responsive information clearly meets part two of the test as having been supplied to the city in confidence.

City's representations

[28] The city disagrees that the appellant "supplied" the information at issue to the city. The city submits that Chapter 441 of the *Municipal Code*, Appendix C, Schedule 12 ref. no. 442 sets out recovery costs per trip that are to be paid to the city.[16] It submits that these fees apply to all PTC companies operating in Toronto and do not specifically relate to the appellant's operation. Therefore, the city submits that information relating to the amounts paid to the city was not supplied by the appellant and therefore, do not meet the "supplied" component of part 2 of the test.

[29] Addressing the "in confidence" component of part 2 of the test, the city submits that the appellant "could not have operated under the assumption that the trip data was provided to the city in confidence." It explains that, as pointed out by the appellant, Article 2.6 of the data sharing agreement under which the trip data is shared between the parties, the city expressly sets out that the information is subject to the *Act*.

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[15] The appellant confirms the measures that it takes to ensure the confidentiality of its information in an affidavit sworn by one of its Regional Directors. The affidavit was enclosed with its representations.

[16] Under section 546-115 of Article 10 of Chapter 546 of the *Municipal Code*, for each trip, every PTC must remit, to the city's Municipal Licensing and Standards (ML&S), a "PTC trip fee" charged under the *Municipal Code*, Chapter 441, Fees and Charges, Appendix C, Schedule 12, Municipal Licensing and Standards, Ref no. 442. That fee is listed at $0.31 per trip.

[30] The city submits that the trip fees paid are similar to the information contained in a record entitled "Professional Services Statement of Work for Fixed Price Deliverables" which in Order PO-2228, was found by the adjudicator not to have been supplied within the meaning of part 2 of the test. As I explain below, the record in that case was a contract and is distinguishable from the record before me.

[31] The city also notes that in Order PO-2200, the adjudicator ordered that information relating to the basis for calculating leasing costs be disclosed. The city submits that such calculations would be analogous to any calculations done using the number of trips to determine the individual trip fees from the monthly trip fees set out in the record. For reasons I explain below, the information at issue in Order PO-2220 is not analogous to the trip data before me in this appeal.

Requester's representations

[32] The requester does not submit any representations that address whether the information at issue was supplied in confidence by the appellant to the city within the meaning of part 2 of the test for section 10(1) to apply. As indicated above, he submits that question of whether the information qualifies for exemption under section 10(1) of the *Act* is best left to the adjudicator.

Analysis and finding: supplied in confidence

[33] While it is clear, as acknowledged by the appellant in its representations, that the record itself was created by the city and therefore not supplied to it, I accept the appellant's position that the information that it contains, the number of monthly trips and the corresponding monthly trip fees for those trips that the appellant paid to the city, was supplied to the city by the appellant, in confidence, as required by part 2 of the section 10(1) test.

Supplied

[34] I find that the trip data at issue in this appeal was supplied to the city by the appellant. In my view, the number of trips completed is information that was gathered by the appellant. Although I recognize that the total fees paid by the appellant to the city for those trips is based on the fixed recovery fee to be paid per trip, established and publicly available in Schedule 12 of Appendix C of Chapter 441 of the *Municipal Code*, the total fees for those trips is derived from the trip data collected and maintained by the appellant regarding the number of trips that it provided to customers. To be clear, the monthly trip fees paid to the city are the total number of trips in the given month, multiplied by the publicly available trip fee set out in Chapter 441 of the *Municipal Code* that the appellant is required to pay the city. Therefore, disclosure of the total fees for the appellant's trips would reveal the number of trips completed by the appellant. For these reasons, I find that both the number of monthly trips and the total fees to be paid to the city for those trips are information that was

supplied to the city by the appellant.

[35] I do not agree with the city that the record at issue in this appeal is comparable to the "Professional Services Statement of Work for Fixed Price Deliverables" which was the record at issue in Order PO-2228. Although the trip data was provided by the appellant to the city in accordance with the terms of their data sharing agreement, unlike the information in Order PO-2228, the trip data before me is not a contract between the city and the appellant. It is the product of that data sharing agreement but not one of the terms of the agreement itself.

[36] Additionally, I do not agree that Order PO-2200 provides guidance with respect to my determination of whether the trip data at issue in this appeal qualifies as having been supplied by the appellant to the city. In Order PO-2200, the basis of calculating leasing costs for agreements between the Ontario government and a third party was found not to have been supplied, in confidence, because it had been negotiated between the two parties. In this appeal, the key information at issue – the number of trips that the PTC offered in the relevant months – is clearly not information that it negotiated with the city.

[37] For the above reasons, I find that the appellant "supplied" the information in the record to the city.

In confidence

[38] Although the appellant has provided evidence to demonstrate that within its own organization it treats trip data in a manner that indicates a concern for its confidentiality, in light of the city's representations, it is questionable as to whether the appellant had a reasonable expectation of confidentiality with respect to that information, vis-à-vis the city.

[39] In any event, given my findings below that the harms component of the section 10(1) test has not been established, it is not necessary for me to decide whether the trip data was supplied to the city "in confidence."

Part 3: Harms

[40] Parties resisting disclosure of a record cannot simply assert that the harms under section 10(1) are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 10(1) are self-evident and can be proven simply by repeating the description of harms in the *Act*.[17]

[41] Parties resisting disclosure must show that the risk of harm is real and not just a

[17] Orders MO-2363 and PO-2435.

possibility.[18] However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[19]

Sections 10(1)(a) and (c): prejudice to competitive position or interference with contractual negotiations / undue loss or gain

[42] As noted above, the appellant takes the position that disclosure of the trip data would give rise to the harms under sections 10(1)(a) and (c). Those sections state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, commercial, financial or labour relations information, supplied din confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group or persons, or organization;
>
> …
>
> (b) result in undue loss or gain to any person, group, committee or financial institution or agency[.]

[43] These sections seek to protect information that could be exploited in the marketplace.[20]

Representations

Appellant's representations

[44] The appellant submits that the disclosure of the trip data would significantly prejudice its competitive position and would interfere significantly with its contractual or other negotiations under section 10(1)(a). It also submits that disclosure of the trip data could reasonably be expected to result in its experiencing an undue loss while its competitors would experience a corresponding undue gain (section 10(1)(c)).

[45] The appellant submits that PTCs, such as itself, "are an emerging market" and there is "significant competition among these companies to increase their hold in [that] market." It submits that disclosure of the trip fees and volume could reasonably be

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[18] *Merck Frosst Canada Ltd. v. Canada* (*Health*), [2012] 1 S.C.R. 23.
[19] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario* (*Information and Privacy Commissioner*), 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.
[20] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

expected to significantly prejudice its competitive position because competitors could use the information to approximate its market share and revenues for a particular market, in this case, the City of Toronto. The appellant argues that its competitors (in particular, but not exclusively, its largest competitor), "could and would" cross-reference this market share and revenue data with the appellant's publicly available promotions to effectively "gauge the efficacy of [its] driver incentive and marketing programs and determine the extent to which it should reallocate its own resources." The appellant explains:

> One of the central aims of a PTCs business model is to optimize the balance between demand for rides and supply of vehicles. On the demand side, a PTC can try to stimulate demand from passengers by using competitive pricing and promotions. On the supply side, a PTC can try to improve supply of vehicles to areas with high demand by offering drivers various monetary incentives. The ability to collect and analyze ride data is central to this process of balancing supply and demand. By cross-referencing [the appellant's] volume over a certain period of time against the passenger promotions that were run at that time a competitor could track, assess and understand the efficacy of those promotions without having to make the same investments in research, marketing time and analytics that [the appellant] has made. This would result in significant prejudice to [the appellant's competitive position, undue loss to [the appellant] and undue gain to competitors.

[46] The appellant further submits that its competitors could also use the information to interfere with its contractual or other negotiations with third parties and businesses that it partners with to facilitate rides for employees, customers and others. It submits that "[i]n Toronto, there are two main competitors with material market share." It submits that it has marketing and partnership contracts with various entities in Toronto and will pursue additional contracts of this nature in the future. It submits that disclosure of its monthly trip counts would permit its competitors to "glean the market share" which could then be used to attempt to lure partners away from the appellant and seek exclusive deals with other PTCs based on comparative market share.

[47] Finally, the appellant submits that the specific information at issue covers a "significant period of time and is broken down into regular monthly intervals." It submits that, as a result, competitors can use the data to evaluate trends over time. It submits that the specific date range of the requested information at issue is relevant, as it represents when the appellant entered the market and is therefore useful to both existing competitors for evaluating the appellant's market share and performance, and to prospective competitors contemplating entry into the market. It submits that the granular and historical nature of the data, in particular, unpublished trip information, strengthens the analysis a competitor could and would conduct and enables them to evaluate and compare historical trends associated with trip data. For prospective PTCs, the appellant submits that disclosure of its historical market share would provide

valuable information to help inform a decision whether to expand into the market without having to make an investment in research or data that would ordinarily be required and which the appellant incurred before entering the market.

City's representations

[48] The city disagrees with the appellant's submission that disclosure of trip data could reasonably be expected to be used by a competitor to significantly prejudice the appellant's competitive position. The city submits that if the "information were considered to be of such competitive value as envisioned by [the appellant]," the appellant's major competitor with the city, whose information was the subject of the same access to information request, would have also appealed the city's decision to disclose the trip data concerning their own company.

[49] The city further submits that "as a publicly traded company, [the appellant] is required to disclose detailed financial information about its performance, revenue, expenses… etc." It submits that the appellant is subject to published trip fee information within many of the various jurisdictions in which it operates throughout North America and, as a result, the city does not believe that the disclosure of trip data, including the trip fees paid to the city for a discrete period of time, meets the threshold for undue harm.

[50] The city states that it does not support the appellant's claim that the disclosure of the requested information could reasonably be expected to result in any of the harms set out in section 10(1) of the *Act* and therefore, does not agree that part 3 of the test has been established.

Requester's representations

[51] As with part 1 and part 2 of the test, the requester did not submit any representations that specifically address whether part 3 of the test for section 10(1) applies. He does, however, share references to two websites which, he submits, demonstrate how Toronto's politicians took what was one of the best and most affordable taxi industries in North America and turned it into one of the worst and most expensive taxi industries in the world. He submits that these articles demonstrate how a taxi industry should work and recommend an alternative to PTCs.

[52] While both articles referenced by the requester provide background information on the taxi industry in Toronto and the introduction of PTCs into the market, neither of these articles specifically address whether a PTC could reasonably be expected to experience any of the harms listed in section 10(1) were information such as the information at issue in this appeal disclosed.

Findings on harms

[53] For the reasons that follow, I find that the appellant has not established that the

harms contemplated in sections 10(1)(a) and (c) could reasonably be expected to result from the disclosure of the trip data.

[54] To establish that section 10(1)(a) applies, the appellant had to show that disclosure could reasonably be expected to prejudice significantly its competitive position or interfere significantly with its contractual or other negotiations. To establish that section 10(1)(c) applies, it had to show that disclosure could reasonably be expected to result in undue loss to it, or undue gain to its competitors.

[55] The appellant argues that disclosure of the trip data would permit a competitor to approximate its market share. It submits that a competitor could use this approximation of market share to assess the effectiveness of the appellant's marketing strategies, estimate its revenue, interfere with its negotiations with existing partners, and inform prospective competitors in making a decision as to whether to expand into the market. It submits that these results could reasonably be expected to result in significant prejudice to its competitive position, significant interference with its contractual negotiations, and undue loss, while providing its competitors with a correlative undue gain.

[56] I accept the evidence of the appellant that the PTC business is a competitive one, with the existing companies vying to maintain and increase their market share. I also accept that due to the limited number of companies currently in the market, the appellant's main competitor may be able to use the trip data to gain some information about the appellant's comparative market share. Based on the evidence before me, however, I am not persuaded that disclosing the trip data would provide a competitor with material information about the appellant's business. The appellant has not established how disclosure of the trip data itself could reasonably be expected to result in significant prejudice to its competitive position, significant interference with its contractual negotiations or undue loss or gain.

[57] In its representations, the appellant refers to the trip data as granular information. I disagree. In my view, the trip data is high level information that would be of little competitive value to the appellant's competitors. Although the trip data reveals the number of rides provided over a 15-month time period, broken down by month, it does not reveal any other information about those rides. For example, it does not reveal the locations where those rides began and ended, their duration, the distance travelled, the time of day that they occurred, the pricing, or the number of drivers on the road.

[58] The trip data is also historical in nature. It reveals the number of rides over a discrete period in the past. I do not accept that this historical data, particularly where it lacks the type of detail I describe above, would be of material use to a competitor in evaluating the current market or making projections about the future market.

[59] Given the nature of the trip data which, as previously stated, reveals only the number of rides provided during set periods of time, I am not persuaded that its

disclosure could be used by a competitor to accurately gauge the effectiveness of the appellant's promotions and enhance their own marketing strategies. Although the appellant argues that the trip data could be used to competitors' advantage, it has not demonstrated through its evidence or argument that this is the case. I find that the trip data lacks sufficient specificity to be used by competitors for this purpose.

[60] For the same reasons, I am not satisfied that disclosure of the trip data alone, without more detailed information about the rides, as described above, could reasonably be expected to permit a competitor to accurately estimate the appellant's revenue. Even if such an estimation were possible, I do not accept that this information, without any of the specificity I describe above, could be used in such a manner to significantly prejudice the appellant's competitive position or result in undue loss to it.

[61] I also find that the appellant has not provided sufficient evidence of how disclosure of the trip data could reasonably be expected to be used by a competitor to significantly interfere with the appellant's existing contracts or to lure partners away from the appellant based on comparative market share. As previously stated, with only two major players in the market, I acknowledge that disclosure of the trip data might provide a competitor some information about the appellant's market share. However, in my view, the appellant has not demonstrated how this information could reasonably be expected to lead to either of those stated results.

[62] Finally, I do not accept that the appellant has established that the trip data could reasonably be expected to be used by a prospective competitor contemplating entry into the market in a manner that could reasonably be expected to give rise to any of the harms in section 10(1). In its representations, the appellant submits that the trip data would reveal its "historical market share" which would be of use to a prospective competitor. I find that the appellant has not provided sufficient evidence to demonstrate how disclosure of its "historical market share," even if that could be deduced from the trip data, could reasonably be expected to assist a prospective competitor in making projections about entering the current or future market.

[63] For the reasons set out above, I find that the appellant has not established that the disclosure of the trip data could reasonably be expected to significantly prejudice its competitive position, significantly interfere with its contractual negotiations (section 10(1)(a)) or result in the appellant experiencing an undue loss while providing its competitors with a correlative, undue gain (section 10(1)(c)). Accordingly, I find that the third part of the test for section 10(1) to apply has not been met.

Conclusion

[64] All three parts of the test must be met in order for section 10(1) to apply. As I have found that part three of the test has not been established, I find that section 10(1) does not apply to exempt the trip data from disclosure.

ORDER:

1. I find that section 10(1) does not apply to the trip data. I uphold the city's decision to disclose it to the requester.

2. The city is to disclose the trip data to the requester by **March 23, 2022** but not before **March 18, 2022**.

3. I dismiss the appeal.

Original Signed by: February 16, 2022

Catherine Corban
Adjudicator