

SouthWest Transit
Attachment to Application for Temporary Classification of Government Data

August 17, 2018

Describe Data to be Classified as Not Public:

SouthWest Transit (“SouthWest”) was created in 1986 under a Joint Powers Agreement between the Cities of Chanhassen, Chaska and Eden Prairie to provide the three cities with public transit service. SouthWest is governed by a seven-person commission. Each of the three cities has an appointed member as well as an elected official and the seventh member is a rider representative. SouthWest offers service to and from downtown Minneapolis, the University of Minnesota, Normandale Community College, Best Buy headquarters, and local malls, as well as service between Chanhassen, Chaska and Eden Prairie and surrounding communities. SouthWest currently operates four major park-and-ride lots, including its main hub, SouthWest Station in Eden Prairie, Minnesota.

In 2015, SouthWest began operating SW Prime, which is an on-demand transit service providing curb-to-curb service for the communities of Eden Prairie, Chaska, Chanhassen, Carver, and Victoria. Through SW Prime, riders can request a ride to or from any location within the SW Prime service area by booking through the website (www.SWprime.org), the SouthWest Transit mobile app, or over the phone. SW Prime is not a taxi service, but provides shared rides, which means that other riders may be picked up or dropped off during a ride. SW Prime is available to anyone, and riders must be 13 years or older to ride without an accompanying adult.

To use the SW Prime website or mobile app, a rider must first create an online account. To do so, the rider must enter his or her first and last names, phone number, and email address. To book a ride, the rider must indicate: (1) pick-up address or location; (2) drop-off address or location; (3) how many riders are in the group; and (4) whether the rider will have a mobility device (i.e., wheelchair, walker, scooter, etc.) or a bicycle. The rider then receives a text message or phone call when the driver arrives at the pick-up location.

Riders can pay for a SW Prime ride in several ways, including cash or credit card upon boarding the vehicle, credit card upon booking through a mobile account, GoTo/Upass/Metropass cards, a SW Prime Card (a 10-ride card purchased from a driver or at SouthWest’s customer service desk), or free ride coupons.

SouthWest is requesting a temporary classification for all data obtained when a rider books a ride through SW Prime, which includes the following data:

- (1) Name
- (2) Phone number
- (3) Email address
- (4) Pick-up address or location
- (5) Drop-off address or location
- (6) Time and date of pick-up and drop-off
- (7) Number of riders in the group
- (8) Whether the rider will have a mobility device or bicycle
- (9) Credit card or other payment information

We will refer to this data hereafter as the “SW Prime data.”

There is a compelling need for temporary classification of SW Prime data as private in order to ensure riders’ safety and security. Because SW Prime data are similar to transit-related data collected and maintained by the Metropolitan Council (“Met Council”) that are classified as private or non-public under the Data Practices Act, SW Prime data deserve the same protection under the law.

Data Sharing:

If SouthWest receives a request for SW Prime data during the time of the temporary classification, it will be legally required to share the data. Because SW Prime data are not otherwise classified as private or confidential, the data is public under Minn. Stat. § 13.03, subdivision 1.

Upon such a data request, SouthWest could potentially classify the requested SW Prime data as “security information” that is private pursuant to Minn. Stat. § 13.37. Such a classification, however, would require SouthWest to make a determination that the particular request “substantially jeopardizes the security of information, possessions, individuals or property against theft, tampering, improper use, attempted escape, illegal disclosure, trespass, or physical injury.” Minn. Stat. § 13.37, subd. 1(a). Such a determination would not only be practically difficult if SouthWest does not know the circumstances of the subject of the data, but also administratively burdensome depending on the scope of the data request.

Justification:

There is a compelling need for immediate temporary classification of the SW Prime data as not public, which if not granted could adversely affect the public’s health, safety or welfare, or the data subject’s well-being or reputation. The Commissioner of the Minnesota Department of Administration has not specifically issued advisory opinions related to data similar to that collected as part of the SW Prime program.

If the SW Prime data remain public, any person could learn about riders' movements through SW Prime. For example, a requester could learn where a rider lives or works, when a rider was or was not at home, how long the rider was gone, and where he or she went. This could place at risk victims, or potential victims, of domestic abuse, stalking, or other harassment-related crimes. A perpetrator could request SW Prime data to try to determine where the victim may be living or working or to follow the victim's movements throughout the community. The safety of victims, or those who could potentially be victims, is at risk by the availability of the SW Prime data.

In short, public accessibility to SW Prime data threatens riders' safety and security.

- 1. Establish that data similar to that which the temporary classification is sought are currently classified as not public. Include the Minnesota statute citation to the similar data's current classification. Discuss similarities in the data, in the functions of the entities which maintain similar data, and in the programs/purposes for which the data are collected and used.**

SW Prime data are similar to several types of data maintained by the Met Council, which are private under the Data Practices Act. SW Prime data deserve the same protection.

Transit Customer Data

Section 13.72 of the Data Practices Act governs "Transportation Department Data." Minn. Stat. § 13.72. Section 13.72, subdivision 19, classifies certain "transit customer data" as private data on individuals:

Subd. 19. Transit customer data. (a) Data on applicants, users, and customers of public transit collected by or through the Metropolitan Council's personalized Web services or the regional fare collection system are private data on individuals. As used in this subdivision, the following terms have the meanings given them:

(1) "regional fare collection system" means the fare collection system created and administered by the council that is used for collecting fares or providing fare cards or passes for transit services which includes:

(i) regular route bus service within the metropolitan area and paratransit service, whether provided by the council or by other providers of regional transit service;

- (ii) light rail transit service within the metropolitan area;
- (iii) rideshare programs administered by the council;
- (iv) special transportation services provided under section 473.386; and
- (v) commuter rail service;

(2) “personalized Web services” means services for which transit service applicants, users, and customers must establish a user account; and

(3) “metropolitan area” means the area defined in section 473.121, subdivision 2.

Minn. Stat. § 13.72, subd. 19(a) (2017).

This subdivision classifies as not public two main categories of data on applicants, users, and customers of public transit: (1) data collected by or through the Met Council’s personalized Web services; and (2) data collected by or through the regional fare collection system. SW Prime data are similar to both of these categories of data. Both of these categories relate mainly to the transit services provided by the Met Council.

1. Personalized Web Services.

First, the data collected by SouthWest by or through the SW Prime website and mobile app (the “SW Prime web services”) are substantively similar to “data collected by or through the Metropolitan Council’s personalized Web services” because they are “services for which transit service applicants, users, and customers must establish a user account.” § 13.72, subd. 19(a)(2). Data collected by both agencies includes, at a minimum, the user’s name and email address. The only difference is that the SW Prime data are being collected by SouthWest, rather than the Met Council. Both entities are public transit providers and provide similar services to transit customers in the metropolitan area. If the Met Council web services data are worthy of protection, so are the SW Prime data collected by SouthWest through its web services.

2. Regional Fare Collection System.

As defined in section 13.72, subdivision 19(a)(1), the regional fare collection system is created and administered by the Met Council and is used for collecting fares or providing fare cards or passes. It is used by both the Met Council’s transit arm, Metro Transit, and by regional transit providers, including SouthWest. As part of the system, SouthWest accepts various Metro

Transit fare cards, including GoTo, Upass, and Metropass cards, on its regular route buses and SW Prime vehicles.

The transit services included in the definition of “regional fare collection system” clearly include only one service provided by SouthWest—regular route bus service. *See* § 13.72, subd. 19(a)(1)(i) (including “regular route bus service within the metropolitan area . . . whether provided by the council *or by other providers of regional transit service*”) (emphasis added); *see also id.*, subd. 19(a)(3) (defining “metropolitan area,” by reference to Minn. Stat. § 473.121, subd. 2, which includes Hennepin and Carver Counties). SW Prime does not fit neatly into any of the other categories listed in subdivision 19(a)(1).

SW Prime is not light rail or commuter rail service, nor is it a rideshare program administered by the Met Council. Subd. 19(a)(1)(ii), (iii), (v). Further, SW Prime is not a “special transportation service” as referred to in subdivision 19(a)(i)(iv). Special transportation service is service designed “exclusively or primarily” to serve elderly or disabled persons who are unable to use regular means of transportation. *See* Minn. Stat. § 473.386 (referencing the definition in Minn. Stat. § 174.29). While SW Prime is certainly available to such persons and operates accessible vehicles, it is not designed “exclusively or primarily” to serve the elderly and disabled.

SW Prime could potentially qualify as “paratransit service” under subdivision 19(a)(1)(i). Neither section 13.72, however, nor any other provision of the Data Practices Act, defines “paratransit service.” Other transit-related provisions of state and federal law related contain conflicting definitions of “paratransit” *Compare* Minn. Stat. § 174.22, subd. 6 (Minnesota Department of Transportation definition of paratransit), *with* 49 C.F.R. § 37.3 (Americans with Disabilities Act definition of paratransit). For the purposes of this application, however, the correct definition of “paratransit” does not matter. Even if SW Prime is considered to be part of the regional fare collection system as “paratransit service,” the SW Prime data are inherently different than data collected by the regional fare collection system and deserve additional protection under the law.

The statute broadly classifies as private data collected “by or through” the regional fare collection system” which relates specifically to “collecting fares or providing fare cards or passes for transit service.” Minn. Stat. § 13.72, subd. 19(a)(1). Although this data is not further described, subdivision 19(b) provides an illustration of the type of data collected through the system. These data include: “(1) the date a fare card was used; (2) the time a fare card was used; (3) the mode of travel; (4) the type of fare product used; and (5) information about the date, time, and type of fare product purchased.” Minn. Stat. § 13.72, subd. 19(b) (permitting the Met Council to share such data with certain entities).

SW Prime data may include such similar data for those riders who pay using a fare card. SW Prime data, however, are far more comprehensive, because SouthWest collects a larger

category of data for every rider, regardless of the method of payment. For example, unlike the anonymous regular-route bus rider, a SW Prime rider has to tell SouthWest who she is, her phone number, the location where she wants to be picked up, and where she wants to go, regardless of how she wants to pay for her ride. Thus, while SouthWest may collect some SW Prime data as part of the regional fare collection system, the bulk of the data are collected regardless of payment method and are not covered by section 13.72, subdivision 19.

Rideshare Data

Sections 13.72 and 13.201 of the Data Practices Act classifies certain “rideshare” data as private data on individuals:

The following data on participants, collected by the Minnesota Department of Transportation and the Metropolitan Council to administer rideshare programs, are classified as private under section 13.02, subdivision 12: residential address and telephone number; beginning and ending work hours; current mode of commuting to and from work; and type of rideshare service information requested.

Minn. Stat. §§ 13.72, subd. 9, 13.201. SW Prime data are similar to this rideshare data, as SW Prime data include transit participants’ addresses and phone numbers. Further, SW Prime may indirectly collect data on when a rider is away from home—similar to rideshare participants’ “beginning and ending work hours.” If rideshare data are worthy of protection, so are SW Prime data.

Transportation Service Data

Section 13.72, subdivision 10 classifies as private “[p]ersonal, medical, financial, or locational information data pertaining to applicants for or users of services providing transportation for the disabled or elderly.” This data is similar to SW Prime data, as it presumably includes a user’s name, address, phone number, and use of the transportation service. If SW Prime were a service providing transportation solely for the disabled or elderly, the SW Prime data collected would be private under section 13.72, subdivision 10. But, as discussed above, SW Prime is available to all riders, including the elderly and disabled. The main difference is that SW Prime does not impose eligibility requirements, which are typical for services restricted to the disabled and elderly. By requesting SW Prime data, one could obtain data that would be private if the rider were using a service reserved for the disabled and elderly. If transportation service data are worthy of protection, so are SW Prime data.

Safe at Home Data

Under Section 13.045, participants in the Safe at Home Program established under Minnesota Statutes Chapter 5B may notify a government entity that they are enrolled in the program. Subd. 2. Upon receiving such notice, the government entity must classify identity and location data on the participant as private data on individuals. Subd. 3. This data includes data similar to SW Prime data, such as the participants' name, phone number, e-mail address, and, potentially, their home, work, and school addresses. *See* Minn. Stat. § 13.045, subd. 1(2), (3). SW Prime data could further reveal the participants' movements in the community.

If an ex-abuser or potential harasser could obtain this data about a Safe at Home program participant through a request for SW Prime data, it would jeopardize the safety of a participant who fails to send the required notice to SouthWest.

- 2. Establish that making the data available to the public would render unworkable a program authorized by law. Describe the program and cite the statute that authorizes it. If relevant, include past instances where release of the data rendered a program unworkable.**

(None).