

Date: June 28, 2023

To: Commissioner of Administration
c/o Data Practices Office
200 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

From: Minnesota Department of Labor and Industry
Commissioner Nicole Blissenbach
443 Lafayette Road N.
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RE: Memorandum in Support of Application for Temporary Classification of Government Data

This application for temporary classification of government data is submitted in furtherance of Executive Order 23-07,¹ issued by Governor Walz on May 25, 2023. The Executive Order:

1. Directs the Department of Labor and Industry (“Department”) to commission a study to obtain and analyze data regarding the working conditions of transportation network company (“TNC”) drivers in Minnesota and how potential legislative changes could impact access and cost for riders; and
2. Establishes the Governor’s Committee on the Compensation, Wellbeing and Fair Treatment of Transportation Network Company Drivers (“Committee”).

Pursuant to the Executive Order, the Committee will review the results of the Department’s study and by January 1, 2024, submit a report to the Governor with proposals for state policy and legislative changes related to the compensation and fair treatment of TNC drivers. The study will analyze Minnesota-specific data to ensure that the impacts on riders, drivers, and rideshare companies resulting from any legislative changes are fully understood before such changes are codified in Minnesota law.² The following sections explain the Department’s reasons for requesting temporary classification of the data collected for this study.

I. DESCRIPTION OF DATA TO BE CLASSIFIED AS NOT PUBLIC

The Department seeks to obtain comprehensive rideshare data to complete a study that achieves the purposes of the Executive Order. The rideshare data are anticipated to include geolocational data,³ transit services

¹ Available at https://mn.gov/governor/assets/EO%2023-07%20TNC_tcm1055-579270.pdf (last visited June 28, 2023).

² See H.F. 2369, 2023 Leg., 93rd Sess. (vetoed), available at <https://wdoc.house.leg.state.mn.us/leg/LS93/HF2369.3.pdf> (last visited June 28, 2023); see also Letter from Governor Tim Walz to Speaker Melissa Hortman (May 25, 2023) at 1, https://www.leg.mn.gov/archive/vetoes/2023veto_ch65.pdf (last visited June 28, 2023).

³ E.g., passenger pick-up/drop-off locations, date, and time.

data,⁴ driver compensation data,⁵ driver personal contact and employment data,⁶ and motor vehicle data.⁷ The Department is requesting the rideshare data from companies operating in Minnesota that maintain the data privately. Upon receipt by the Department, the data will become subject to the Minnesota Government Data Practices Act (“MGDPA”) and presumptively public unless classified otherwise by state or federal law. The results of the study will be shared with the Committee in a published report and contain aggregate, deidentified data. The individual data elements would remain not public even after publication of the report.

II. JUSTIFICATION OF COMPELLING NEED

The rideshare data maintained by private companies contain information related to riders and TNC drivers that could jeopardize public safety, driver safety, and contravene the purposes of the Executive Order if made public. The Department is taking precautions to deindividualize the data collected, however, the characteristics of rideshare data carry a risk that sensitive information could be ascertained even if individuals are not identified. The geolocational data, for instance, alone or in combination with other data elements or external knowledge, may reveal information about the patterns, habits, and destinations of riders or communities that rely on rideshare. This creates potential public safety and security risks should the data become public and be misused. For example, riders may use rideshare services to visit domestic abuse shelters, obtain medical services (e.g., at a clinic providing abortions), or attend treatment for substance abuse. Moreover, these public safety and security risks may disproportionately impact riders in the disability community, low-income communities, and other disadvantaged individuals who rely on rideshare services for their mobility, commuting, and safety needs.

The rideshare data will also contain personal information related to TNC drivers. This includes personal email address, personal telephone number, compensation data, and information specific to their vehicles like make, model, and VIN. The personal information combined with geolocational data could create safety and security risks for TNC drivers if information about their driving patterns, routes, and locations could be ascertained from the data set. In addition, data on deactivations (i.e., employment discharges) and reinstatements will be requested to assess the fair treatment and working conditions of TNC drivers. If publicly available, these data could adversely affect a driver’s reputation, which is contrary to the purpose of collecting the data.

III. JUSTIFICATION BASED ON SIMILAR DATA CLASSIFICATIONS AND PROGRAM WORKABILITY

The Department is unaware of a provision in state or federal law that categorically applies to the rideshare data; however, several provisions in the MGDPA arguably apply or classify similar data as not public.

⁴ E.g., trip ID, duration, date, time, mileage, shared ride, wheelchair-accessible ride, fare, time driver turned on app, and time driver received ride request.

⁵ E.g., driver earnings, deductions, and daily hours worked.

⁶ E.g., driver email address, telephone number, unique driver ID, and deactivation/reinstatement/reason(s)/date/city of residence.

⁷ E.g., vehicle identification number (“VIN”), make, model, and year.

A. SIMILAR DATA CLASSIFICATIONS

First, the MGDPA protects security information that the responsible authority determines would be substantially likely to jeopardize the security of information, people, or property against improper use. Minn. Stat. §§ 13.37, subs. 1(a) and 2(a). Security information includes geolocational data. *Id.* As described above, geolocational data will be embedded in the rideshare data that the Department is requesting. The data are expected to cover the timeframe of at least one year. It is difficult to assess the ways in which geolocational data could be manipulated or the likelihood of harm to individuals prior to the Department receiving the data. Nonetheless, the Department believes that any potential safety risks to individuals arising from misuse of geolocational data justifies an abundance of caution.

The interest in protecting locational data is evidenced by other provisions of the MGDPA. For example, locational data pertaining to applicants and users of disability or elderly transportation services are classified as private data on individuals. Minn. Stat. § 13.72, subd. 10(a). The Department intends to collect data on wheelchair-assisted rides in its study to evaluate the impacts of potential legislative proposals on individuals with disabilities who rely on rideshare services. Location data related to safe-at-home program participants are classified as private and may only be disseminated to other government entities under certain conditions. Minn. Stat. § 13.045. The use of rideshare by individuals to meet their safety needs is a key consideration in the Executive Order. Locational and GPS data are also classified as not public when collected by the Department of Agriculture or the University of Minnesota during research and assessment activities. Minn. Stat. § 13.643, subd. 7. The locational data collected by the Department will similarly serve research purposes.⁸

Second, the MGDPA classifies data that the responsible authority determines to be trade secret information as not public. Minn. Stat. §§ 13.37, subs. 1(b) and 2(a). Trade secret information is defined as (1) data supplied by an external organization, (2) that are subject to reasonable efforts to maintain secretly and, (3) from which an actual or perceived economic value can be derived from neither being known nor ascertainable by others, (4) who, in turn, can obtain economic value from its disclosure or use. *Id.* The Commissioner of the Department of Administration has opined that the trade secret provision should be interpreted narrowly.⁹

Here, the first two prongs are likely met because the data would be supplied by external rideshare companies who can demonstrate that the data are maintained privately and not publicly available. The application of the third and fourth prongs, related to the potential economic value of the data, is uncertain. While the government entity is typically in the best position to make a determination, in this instance, the Department has yet to receive the data and therefore cannot fully assess the potential economic value. Further, the companies may assert that the rideshare data are proprietary and seek assurances against public disclosure *before* providing the data to the Department. These circumstances support a temporary classification of the data so that the

⁸ See also Advisory Opinion 05-033, available at <https://mn.gov/admin/data-practices/opinions/library/opinions-library.jsp?id=36-267558> (concluding that underlying raw research data collected to prepare public research study are public data unless classified otherwise) (last accessed on June 26, 2023).

⁹ See Advisory Opinion 19-009, available at <https://mn.gov/admin/data-practices/opinions/library/opinions-library.jsp?id=36-386246> (citing past opinions interpreting the trade secret provision) (last accessed on June 26, 2023).

Department may work with the companies to collect the data voluntarily without the uncertainty of the data's classification working as a barrier to receiving the data at all.

Third, the MGDPA contains provisions that classify data like the personal information requested on TNC drivers as private data on individuals. The Department anticipates collecting personal email addresses and telephone numbers to survey drivers about their working conditions. The MGDPA contains a provision specific to the Department of Transportation that classifies home email addresses and telephone numbers as private data on individuals when obtained for a survey. Minn. Stat. § 13.72, subd. 14. Similarly, telephone numbers and email addresses are private data on individuals when collected from study participants during research and assessment by the Department of Agriculture or the University of Minnesota. Minn. Stat. § 13.643, subd. 7. Government data collected on individuals for notification purposes that include telephone number and email address are also classified as private data on individuals. Minn. Stat. § 13.356.

As to the personal driver information related to deactivations, reinstatements, and compensation, the data compares with the type of employment data collected on Minnesota workers to administer unemployment insurance. Minn. Stat. § 268.19, subd. 1, establishes the presumption that all data collected from individuals, organizations, and private or public entities to administer unemployment are not public data except as provided in the section. The section then details several exceptions that generally limit the disclosure of the data to other government agencies for the purposes of administering their public programs. The employment data made not public include information on wages, discharges, suspensions, and employment misconduct.¹⁰ These data compare with the data that the Department seeks to collect to assess the working conditions of TNC drivers.

Fourth, the motor vehicle data related to TNC drivers may be security information under Minn. Stat. §§ 13.37, subds. 1(a) and 2(a). The Department of Public Safety is the state agency with direct responsibility over the collection, protection, and dissemination of such data. As the facts of Advisory Opinion 13-010 demonstrate, the DPS responsible authority issued a security information declaration classifying "license plate" data, which included the VIN, year, make, and model, as not public data under the security information provision.¹¹ The Department believes that a similar cautious approach that is protective of TNC drivers and their property is warranted here.¹²

Lastly, the Department identified two additional sections of the MGDPA classifying data as not public that are analogous to the interests reflected in this request. Pursuant to Minn. Stat. § 13.605, the preliminary drafts of legislative proposals by state agencies operating under direction of the Governor are classified as protected nonpublic data. The Department is working to collect data on TNC services at the direction of the Governor via the Executive Order, which the Governor's Committee will use to issue legislative recommendations and proposals. Section 13.605 illustrates recognition by the MGDPA that certain preliminary data may be protected to

¹⁰ See generally, Minn. Stat. §§ 268.044 (defining wage reporting requirements), 268.095 (defining ineligibility criteria, discharge, and employment misconduct).

¹¹ Available at <https://mn.gov/admin/data-practices/opinions/library/opinions-library.jsp?id=36-267892> (last accessed June 26, 2023).

¹² See also, Minn. Stat. § 13.824, subd. 2 (classifying all data captured by an automated license plate reader, including license plate numbers, date, time, locational data, and pictures of license plates, vehicles, and areas surrounding vehicles, as not public data unless excepted by Section 13.82).

best serve the interests of the legislative process. The same is true here. In addition, Minn. Stat. § 6.715, classification of state auditor’s data, protects data collected for the purposes of conducting the legislative audit until the final report is published. The statute also provides that data on individuals are private if the individual would not have provided the data without the assurance of privacy or the state auditor reasonably believes that to be the case. The Department is in the similar position of working with private companies to collect data that may seek assurances that the underlying data will remain private.

B. PROGRAM WORKABILITY

As a further practical consideration, the rideshare companies may be reluctant or unwilling to share comprehensive data if the data they provide will be made publicly available. The companies themselves are not subject to the MGDPA and the Department cannot compel production of the data. The companies may treat the rideshare data they maintain as propriety or having commercial value. In particular, the geolocational and transit data could reveal routes and methods that the companies choose not to disclose to their market competitors. Continuing to maintain the companies’ data as not public after collection will minimize proprietary and commercial concerns and encourage the companies to provide the most useful data to the Department. It is in the interests of the Department, state government, and Minnesotans that the objectives established by the Executive Order are achieved using the most accurate and comprehensive data available.

As indicated throughout this memo, the purpose of the Department’s data collection is to inform the Governor’s Committee by comprehensively studying the working conditions of TNC drivers and any impacts on access and cost to riders. The Committee’s charge is to advance proposals for action by the legislature that benefit both TNC drivers and the Minnesotans who rely on them for their transportation needs. Given the high-visibility nature of the issues and the Committee’s work, the TNC study and underlying data could generate significant public interest and inquiry. In the absence of a data classification that protects the data, the objective of the Executive Order will be frustrated if the underlying data are subject to public data requests and put to other uses that expose riders, communities, and drivers to safety risks.

Sincerely,



Nicole Blissenbach
Commissioner