

Date: July 20, 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
Office of General Counsel
443 Lafayette Road N.
St. Paul, MN 55155

RE: Supplemental Memorandum in Support of Application for Temporary Classification of Government Data

This supplemental memorandum is submitted in support of the Department of Labor and Industry's ("Department") Application for Temporary Classification of Government Data. "Not public" data are any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic. Minn. Stat. § 13.02, subd. 8a. This memo specifies the types of not public data classifications requested for the data elements listed in the initial application and memorandum.

I. DRIVER-LEVEL TRIP DATA

The Department seeks to obtain driver-level trip data on all rideshare trips for all locations of service within Minnesota for the past year. The following sections address each data element and the specific not public data classifications requested.

Reference Numbers

- Trip reference number
- Driver reference number

The initial memorandum referred to these data elements as "trip ID" and "unique driver ID," respectively. They are relabeled here to avoid confusion. These data elements are code or reference numbers¹ used to represent each rideshare trip and driver. The reference numbers will facilitate cross referencing among the data elements to enable analysis at the scale of individual trips and drivers. However, the Department does not intend to request or receive an index of names or personal identifiers that the

¹ See Minn. R. 1205.0200, subp. 4 (defining "code number" as the labeling or enumeration of data by letter, number, or combination thereof used in place of an individual's name to represent particular individuals but constituting "data on individuals" when a list or index exists to cross reference the label to a name or other personal identifier).

Department could cross reference to identify individual persons. Accordingly, the Department is not requesting a not public data classification for the reference number data elements.

Per-Trip Data

- Passenger pick-up/drop-off locations
- Date and time
- Trip duration
- Trip miles
- Wheelchair accessible trip
- Shared ride
- Fare
- Vehicle VIN, make, model, year
- Driver earnings and tips per trip
- Driver daily hours worked
- Time driver activated app
- Time driver received ride request

As detailed in the initial memorandum, the above data elements, as a whole or when matched with other readily available data from sources outside the Department, carry a risk of identifying and revealing sensitive information about individuals or communities who rely on rideshare services that could jeopardize passenger and driver safety. The Department believes that the scope of the data warrants caution and justifies the application of nonpublic or private data on individuals classifications.

The Department is requesting temporary classification of the above data elements as nonpublic to the extent the data received are data not on individuals, and private data to the extent the data received are data on individuals. The private data classification would apply to any data received for which a specific individual could be identified by the Department as the subject of that data.²

While the per-trip data elements do not include names of individuals, the data element most likely to constitute data on individuals is the locational data concerning passenger pick-up and drop-offs. At this stage, having not yet received the data, it remains to be determined whether the locational data will identify pick-up and drop-off locations to the level of street addresses. If so, the data could reveal the residential addresses of riders, which would likely be identifying and constitute private data on individuals.³

² See Minn. Stat. § 13.02, subds. 5 and 8 (providing that “data on individuals” are data in which a natural person is or *can be* identified as the subject of that data).

³ See *e.g.*, Minn. Stat. §§ 13.43, subd. 19 (classifying state contractor employee home addresses as private data); 13.65, subd. 1(e) (classifying home protection line consumer addresses as private data on individuals); 13.72, subd. 10(b) (classifying residential addresses of applicants for or users of services providing transportation for people with disabilities or elderly individuals as private data on individuals); 13.201 (classifying residential addresses of participants of government-managed rideshare programs as private data); 13.548 (classifying social-program enrollee addresses as private data); *see also*, Minn. R. 1205.0200, subp. 4 (defining data on individuals to include street addresses).

To the extent the data received does not identify specific individuals to the Department, the risk remains that identifying information about riders and drivers could be ascertained through external sources or other publicly available knowledge, which justifies a nonpublic data classification. As set forth in the initial memorandum, the interest in protecting locational data is evidenced by several provisions of the Minnesota Government Data Practices Act (“MGDPA”).

To recap, Global Positioning System (“GPS”) data is listed in Minn. Stat. § 13.37, subd. 1(a), as data a responsible authority may determine to be security information. Security information is classified as nonpublic data with regard to data not on individuals, and private data with regard to data on individuals. Locational information pertaining to applicants or users of disability or elderly transportation services are classified as private data on individuals. Minn. Stat. § 13.72, subd. 10(a). Agricultural location and GPS data used by the Department of Agriculture or the University of Minnesota for research or assessment are classified as nonpublic data. Minn. Stat. § 13.643, subd. 7(2).

Locational data are also classified as not public in statutes outside of Chapter 13. For example, location data on minors received by the Department of Labor and Industry are classified as private data on individuals even after the individual is no longer a minor. Minn. Stat. § 181A.112. Location data on protected, endangered, or special-concern wildlife are classified as nonpublic data when disclosure may hinder management, propagation, or research, facilitate unlawful actions, or harm protection and restoration efforts. Minn. Stat. § 84.0872.

The comparison statutes show that locational data are often classified as not public data, whether as nonpublic data or private data on individuals. This supports a temporary classification of the pick-up and drop-off location data as nonpublic or private data on individuals depending on whether the data identifies any individual person.

With regard to vehicles, the Department’s concern is that the specificity of the vehicle information (VIN, make, model, year) could identify certain drivers and their patterns of rideshare operation particularly when matched with external knowledge. Some drivers’ vehicles are more unique than others. Consequently, the vehicle information could uniquely identify the driver. Moreover, providing the driver’s vehicle information, data on when the driver commenced work and responded to a ride request, and information on ridership (e.g., wheelchair-accessible ride) may reveal information that could be misused and create safety risks. Accordingly, the Department also requests nonpublic classification of the vehicle data element.

As to the other per-trip data elements, these include detailed information on transit services,⁴ driver earnings, tips, hours worked, and fares. These data resemble motor carrier operating data collected by the Department of Transportation. Minn. Stat. § 13.72, subd. 8. The subdivision classifies as nonpublic all payroll reports including wages, hours or miles worked, hours earned, employee benefit data, and terminal and route-specific operating data including percentage of revenues paid to agent operated terminals, line-haul load factors, pickup and delivery (PUD) activity, and peddle driver activity. Comparable data elements in this

⁴ I.e., trip duration, trip miles, shared ride, wheelchair-accessible ride, time driver activated app, and time driver received ride request.

request include driver earnings, trip miles, trip duration, ride type, and driver activity in fielding and receiving ride requests. The Department similarly requests classification of the data as nonpublic.

II. DRIVER COMPENSATION DATA

These data elements include driver earnings, deductions, and hours worked *not* on a per-trip basis. As cited above, Minn. Stat. § 13.72, subd. 8, classifies similar motor carrier operating data as nonpublic. Specifically, data from payroll reports that include wages, hours worked, and employee benefit data are classified as nonpublic. In addition, comparable private-employer data collected by the state to administer unemployment benefits, including payroll, wages, and hours-worked data, are classified as nonpublic data not on individuals and private data on individuals.⁵ In this instance, the driver compensation data requested will not include corresponding names or identifiers. As a result, the Department requests nonpublic classification of these data elements.

III. DRIVER PERSONAL CONTACT DATA

The Department seeks to collect personal email addresses and phone numbers to survey TNC drivers about their working conditions. Personal contact information is identifying data and constitutes data on individuals under Minn. Stat. § 13.02, subd. 5.⁶ The data compare with Minn. Stat. §§ 13.643, subd. 7, and 13.72, subd. 14, which classify email addresses and home phone numbers as private data on individuals when collected by the Department of Agriculture, University of Minnesota, or Department of Transportation for surveying and research. The Department similarly requests classification of the driver personal contact data as private data on individuals.

IV. DRIVER-LEVEL DEACTIVATION DATA

The Department is seeking driver-level deactivation data⁷ covering the past four years. The specific data elements are driver reference number, VIN, date of deactivation, reason(s) for deactivation, date of any reinstatement, and city of residence of the deactivated driver. These data elements compare with certain data gathered from private employers and individuals to administer unemployment insurance benefits. Such unemployment data may contain sensitive information related to the circumstances of a discharge or alleged employment misconduct.⁸ Unemployment data are classified as nonpublic data not on individuals and private data on individuals. Minn. Stat. § 268.19, subd. 1.

The deactivation data will not include driver name or other identifying information from which the Department could identify specific individual drivers. However, the data elements regarding vehicle

⁵ See Minn. Stat. §§ 268.044 (wage reporting), and 268.19 (data privacy).

⁶ See also, Minn. R. 1205.0200, subp. 4 (providing that data on individuals include “street addresses, job titles, and so forth where the particular data could only describe or identify one individual”).

⁷ The initial memorandum labeled these data as employment data. They are relabeled here to avoid confusion with other employment-related data elements such as wages, deductions, and hours worked.

⁸ See *generally*, Minn. Stat. § 268.095 (defining employment misconduct and discharge for which data may be gathered to make eligibility determinations).

identification, date of deactivation, information about the reason(s) for deactivation, and city of residence, in addition to any publicly known facts about a particular deactivation, could uniquely identify a driver. The identification of a driver and release of information about the reasons for deactivation could subject that individual to reputational harms. Such harms would be antithetical to the Executive Order and go to establishing a compelling need for temporary classification of the data under Minn. Stat. § 13.06, subd. 3. For this reason, the Department requests classification of the driver employment data related to deactivation and reinstatement as nonpublic data.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Blissenbach". The signature is written in a cursive style with a large initial "N" and "B".

Nicole Blissenbach
Commissioner