



**ROD UNDERHILL**, District Attorney for Multnomah County

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November 2, 2017

Paresh Dave  
Reuters  
paresh.dave@tr.com (via email only)

Rachel Monahan  
Willamette Week  
2220 N.W. Quimby Street  
Portland, Oregon 97210

Ken McGair  
Senior Deputy City Attorney  
City Attorney's Office  
1221 S.W. Fourth Avenue, Suite 430  
Portland, Oregon 97204

Re: Petitions of Paresh Dave and Rachel Monahan seeking records from the City of Portland relating to Uber's "Greyball" program

Dear Mr. Dave, Ms. Monahan, and Mr. McGair:

In their public records petitions, dated October 5, 2017, petitioners Paresh Dave, on behalf of Reuters, and Rachel Monahan, on behalf of Willamette Week, each requested that this office order the City of Portland to disclose records it received during its investigation of Uber, Inc.

On July 3, 2017 Ms. Monahan made a public records request for "all documents received by City Council in response to their legislative subpoena of Uber." On September 27, 2017 Mr. Dave requested "records from the Uber Greyball investigation that show Uber's internal strategy and detail its program related to Greyball."

Uber is a ride-share company that connects drivers using their personal vehicles with passengers looking for transportation by means of a smartphone app. Uber's entry into the Portland market in 2014 was initially unsanctioned and was controversial. Uber has since regularized its operations and is regulated as a Transportation Network Company by the Portland Bureau of Transportation.

In March of this year, a *New York Times* article revealed that during its contentious early days in Portland, among other cities, Uber utilized a software program known as "Greyball" to make it difficult for regulators to obtain an accurate view of Uber's network of vehicles. On May 10, 2017 the Portland City Council directed the city attorney to issue a legislative subpoena to Uber seeking its business records that would reveal the nature and extent of Greyball's use in Portland.<sup>1</sup>

<sup>1</sup> Council Resolution 37284 (May 10, 2017)

After issuance of the subpoena, but before the date by which Uber was required to comply, Uber and the city entered into an agreement whereby the parties agreed to “toll” the subpoena. Under this agreement, Uber would voluntarily, and upon assurance of confidentiality, provide certain records to the city. If the response was satisfactory to the city, neither party would need to further litigate the enforceability of the subpoena. Uber did then provide certain documents to the city, a subset of which are at issue in this appeal.

Certain of the records submitted to the city were not, or are no longer, designated “confidential” by Uber; the city has already released these documents. As to those that remain, the city asserts that they are protected as confidential submissions under ORS 192.502(4) and as trade secrets under the Uniform Trade Secrets Act, which is incorporated into the public records law by ORS 192.502(9).

We conclude that the documents remaining at issue are trade secrets, unconditionally exempt from disclosure. As a result, we need not consider whether or not they are also confidential submissions.

## DISCUSSION

### A. Uniform Trade Secrets Act – ORS 646.461 et seq.

Oregon law provides that trade secrets, as defined by the Uniform Trade Secrets Act, are unconditionally exempt from disclosure under the Oregon Public Records Law. *Pfizer Inc. v. Oregon Dep’t of Justice*, 254 Or. App. 144 (2012).<sup>2</sup>

ORS 192.502(9)(a) exempts from disclosure

Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

ORS 646.461(4) defines a trade secret as,

information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The records submitted to the city by Uber contain operating instructions for employees that could reveal detail about the structure of Uber’s employee-facing software, corporate policies still in effect relating to use of the software, and spreadsheets providing information about individual rides given to customers. As to this last category of record, our circuit court has already concluded in a similar context that data revealing details of individual Uber rides constituted a trade secret under ORS 646.461. *Raiser v. City of Portland*, Multnomah County

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<sup>2</sup> Trade secrets are also conditionally exempt from disclosure under ORS 192.501(4), however the more stringent, unconditional, exemption controls as per the decision in *Pfizer*.

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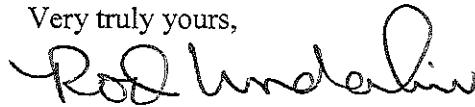
Circuit Court 16CV31985 (Matarazzo, J.). As to the others, we find that information that could show a competitor the technical mechanisms used by Uber to run its operations constitutes a trade secret where, as here, substantial legal efforts have been made to ensure its secrecy.

We may not consider petitioners' well-developed argument about the public's interest in disclosure because unconditional exemptions do not allow for public interest balancing. Because the records are exempt as trade secrets we need not consider whether they also qualify as confidential submissions under ORS 192.502(4).

**ORDER**

Accordingly, the petition is denied.

Very truly yours,

A handwritten signature in cursive script that reads "Rod Underhill". The signature is written in black ink and is positioned above the printed name.

ROD UNDERHILL

District Attorney

Multnomah County, Oregon