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August 11, 2023

via email only

Zachery Strachan
zachery.strachan@gmail.com

Trevor Byrd
Deputy City Attorney
trevor.byrd@portlandoregon.gov

Re: Petition of Zachery Strachan's request for data regarding Airbnb

Dear Mr. Strachan and Mr. Byrd:

Mr. Strachan has petitioned this office, as authorized by ORS 192.415, requesting that we order the City of Portland to provide a copy of the following data:

- 1) **All of the "disclosed data" as described by the Airbnb data sharing agreement for all monthly periods through April 2022.**
- 2) **All of the "disclosed data" as described by the Airbnb data sharing agreement for all monthly periods from April 2022 to today, whether or not it has yet been decrypted or otherwise processed.**
- 3) **All of the "disclosed data" through today for all time-periods, processed as required to make it accessible by Brenda Fahey's department.**

Petitioner submitted his initial public records request on May 8, 2023, to the Portland Bureau of Development Services. Petitioner was referred to the Revenue Division of the City of Portland. After a series of emails, petitioner filed a new public records request on June 15, 2023. Petitioner received data from the Bureau of Development Services on July 13, 2023, which included an Excel Workbook with more than 6,400 Airbnb registrations. The Excel Workbook is comprised of two different spreadsheets. The first spreadsheet includes 18 columns of data with 6,482 rows of registrations. Of those 18 columns, the following columns were redacted by the City of Portland:

- Owner Name
- Owner's Mailing Address

- Owner's Email Address
- Full Name
- Email
- Phone

The second spreadsheet includes 12 columns of data with 299,422 rows of transactions. Of those 12 columns, the following columns were redacted by the City:

- Check In Date
- Check Out Date
- Booking Date
- Booking Amount
- Guest Count
- Listing Address

Since the filing of this appeal, petitioner has clarified that he is not challenging the redactions made by the City pertaining to booking and transactional data. Petitioner has also clarified that he wants the data in the original form received by the City. Both the City and Airbnb have submitted arguments as to why the redactions made by the City are consistent with the Oregon Public Records law.

The data in question is maintained by the City, but is provided by Airbnb. Airbnb is a company, which describes its services as “an online marketplace that connects individuals who wish to offer accommodations, known as ‘Hosts,’ with those seeking to book accommodations, known as ‘Guests.’” Airbnb does not own any of the properties, but only facilitates the marketplace for Hosts and Guests for a fee.

As background information, in 2017 the City and Airbnb settled a lawsuit involving an administrative subpoena issued in July of 2017 for “all Host data for all active listings on AirBnB’s platform.” Airbnb objected to the subpoena, citing the Stored Communications Act (18 U.S.C. 2701). As a result of the settlement between the City and Airbnb, the parties entered into a Memorandum of Understanding (MOU), where Airbnb would disclose certain data to the City on a monthly basis. Hosts utilizing the Airbnb platform are no longer required to apply for an Accessory Short-Term Rental (ASTR)¹ permit. Due to the MOU, it is the responsibility of Airbnb to provide to the City all information necessary for the permit through a Pass-Through Registration Sharing process. If permits are not acquired through this process, or the permit information is deficient, the City will notify the individual hosts and Airbnb will remove the hosts from its online marketplace. If Airbnb chooses not to comply with the Pass-Through

¹ Portland City Code 33.207.040(C) Type A accessory short-term rental permit. The resident of a dwelling unit with a Type A accessory short-term rental must obtain a permit from the Bureau of Development Services. It is the responsibility of the resident to obtain the permit every two years. The permit requires the resident, and operator if the operator is not the resident, to agree to abide by the requirements of this section, and document that the required notification requirements have been met...

Registration Sharing process, Airbnb will only be allowed to engage in business in Portland by listing short-term rentals from the City's approved registry. See PCC 6.04.040 C and D.

Airbnb provides data to the City on a monthly basis, consistent with the MOU. The City has stated that its practice regarding the collection of this monthly data is that Airbnb sends a spreadsheet through a third-party secure repository. The City copies the information, adds it to a larger spreadsheet, and then discards the monthly spreadsheet. The City is not a custodian of the individual monthly spreadsheets and can only provide the data in the format in which it is currently maintained.

For the reasons discussed below, we conclude that the City appropriately redacted the data.

DISCUSSION

A. Email addresses - ORS 192.355(4)

ORS 192.355(4) exempts from disclosure under the public records law:

Electronic mail addresses in the possession or custody of [...] a local government or local service district, as defined in ORS 174.116.

The redactions by the City of all personal email addresses of Airbnb hosts contained within the Excel Workbook was permissible. The City of Portland is a local government. Where, as here, an exemption is unconditional, we may not consider the public interest when evaluating its applicability. *Petition of Borrud*, MCDA PRO 23-95 (2023) ("the unconditional nature of [an] exemption means that we are not authorized to weigh the public's interest in accessing these materials.")

B. 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).²

ORS 192.355(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:

² Trade secrets are also conditionally exempt from disclosure under ORS 192.355(4), however the more stringent unconditional exemption controls per the decision in *Pfizer*.

[I]nformation, 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 information submitted to the City by Airbnb contains data that, in the aggregate, comprises a customer list, which includes the property owner's name, mailing address, email address, and phone number for every host in the City of Portland that utilizes the Airbnb platform. Any of this data would identify the host.

The remainder of redacted entries in the spreadsheet include Check In Date, Check Out Date, Booking Date, Booking Amount, and Guest Count. This information qualifies as pattern data under ORS 646.461(4), as this information is used by Airbnb to analyze booking trends monthly, seasonally, and yearly, as well as to assess business strategy in the Portland market.

However, to be a trade secret, this information must also derive value from not generally being known to the public, and efforts taken to maintain the secrecy of the information must be reasonable. "Information that is generally known in an industry is not a trade secret." *Peterson Machinery Co. v. May*, 313 Or. App. 454, 466 (2021).

In reviewing the submissions by Airbnb, guests only receive information pertaining to the location of the property, the full identity of the host, and contact information for the host when a guest books an accommodation. This information is not available to people that simply view the listings on the Airbnb platform.

Further, Airbnb has gone to significant lengths to protect this information by entering into the MOU with the City. Airbnb provides data to the City through a secure link to credentialed City employees. Public data regarding short-term rental permits on PortlandMaps, a City of Portland website, does not reveal information concerning the identity of the host or property owner.

Host information is limited to a few individuals internally at Airbnb. This information is not shared externally with other parties. By taking these measures to secure the information, Airbnb has demonstrated its capacity to protect the customer list and the cost data from its competitors. If the data was publicly available, competitors could target Airbnb hosts, which could result in the loss of booking fees and market share for Airbnb.

On these facts, we conclude that Airbnb derives independent economic value from the data, that this data is not generally known, and Airbnb has taken reasonable steps to maintain the secrecy of this data. As this is an unconditional exemption, we are not authorized to weigh the public's interest in revealing this data.

The City also has argued that ORS 192.355(4), confidential submissions, applies to the data. We need not determine whether this data does, in fact, qualify as a confidential submission, as we have determined that the data qualifies as a trade secret.

ORDER

Accordingly, the petition is denied.

Regards,

A handwritten signature in black ink, appearing to read "Mike Schmidt", with a stylized flourish at the end.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon