



## Uber vs. Cab Companies: Trade Secret Edition

Insights

7.06.16

A state court in Florida recently ruled that the same categories of information maintained and possessed by government officials relating to two different companies can be both a public record and a trade secret, depending on how the information is used and protected by the companies at issue. The decision underscores the importance of ensuring that trade secrets meet the applicable statutory definition, as well as vigorously opposing any attempts by anyone to force trade secret disclosure.

The case, *B&L Service Inc. v. Broward County, Florida*, was the latest in a string of public record requests filed by Yellow Cab (whose corporate name is B&L Service Inc.) in an apparent effort to collect as much information as possible about Uber, one of Yellow Cab's chief competitors. The information at issue was a log of Uber's pickups and drop offs at an airport and a seaport in Broward County, Florida. All customer pickups and drop offs at the airport or seaport are logged on a report maintained by the County government that contains details about the date and time of the event, and the license plate of the driver making the pick up or drop off. The County is subject to open records laws, which are designed to make government records accessible to taxpayers upon request.

Yellow Cab argued that Uber's logs were public records subject to disclosure under Florida's open records laws. When the County refused to disclose the information, citing an exception to the open records law that allows the County to refuse to disclose trade secret information, Yellow Cab filed suit, and asked the court to order the County to disclose the information. Uber was permitted to appear in the lawsuit and argued that the information constituted protectable trade secrets, even though it was in the possession of government officials, and the exact same categories of information for Uber's main competitor, Lyft, had previously been disclosed by the County. Additionally, the same categories of information pertaining to Yellow Cab's pickups and drop offs at the airport and seaport had long been considered to be a public record.

Uber convincingly showed that it uses the information to plan key aspects of its business, and further showed that the information would be extremely valuable to a competitor such as Yellow Cab, which could use the information about when pickups and drop offs were at peak levels to compete unfairly with Uber. Uber also made the novel argument that its customers are not the passengers who use its mobile application, but instead the company argued that its customers are its drivers themselves. Thus, Uber argued the log was essentially a customer list because it

contained license plate information about its drivers that could be used by its competitors to target Uber's customers and entice them to begin driving for competitors instead of Uber.

Uber also made a persuasive argument that the fact that Lyft and Yellow Cab's logs had been disclosed as public records had no bearing on this case, since Uber could not be affected by Lyft or Yellow Cab's failure to fight the disclosure of their logs. Uber argued that if the trade secret status of its records could be affected by disclosure of similar records of other companies, a competitor could unfairly destroy Uber's trade secret protection by intentionally allowing its own records to be disclosed.

In the end, the Court agreed with Uber on virtually all of its arguments, and stated that the logs did not have to be disclosed because they met the statutory requirements for trade secret protection. The Court held that the logs were a compilation of confidential information that would be valuable to Uber's competitors. Thus, even though the logs for other companies had been disclosed in the past on multiple occasions, Uber's logs were entitled to trade secret protection in this case.

This case is unique and illustrative for a few reasons:

- First, it demonstrates that identical categories of information can be both a public record and a trade secret, depending on how the information is used and protected by a particular company.
- Second, it shows the importance of vigorously defending trade secrets from disclosure, especially from disclosure pursuant to open records requests. In this case, Lyft did not fight the disclosure of its information, and the information was disclosed and likely has now lost any trade secret protection it may have enjoyed.
- Third, it demonstrates the importance of having top notch counsel in trade secrets matters. In this case, the court's order reads as though it was drafted by Uber's counsel. In other words, the court adopted most, if not all, of Uber's arguments, while at the same time it essentially rejected all of the arguments advanced by Yellow Cab.