



DEVELOPING A DEMAND RESPONSIVE TRANSPORTATION DATA AND PRIVACY REGULATORY FRAMEWORK

**Matthew Daus, Transportation Research
Center, The City College of NY at The City
University of New York**

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Matthew W. Daus, Esq.



- **Former Commissioner/Chair & General Counsel, New York City Taxi & Limousine Commission**
- **President, IATR**
 - *International Association of Transportation Regulators*
www.iatr.global
- **Transportation Technology Chair, CUNY-UTRC, CCNY**
 - *University Transportation Research Center, City University of New York at The City College of NY* www.utrc2.org
- **Partner & Chairman, Transportation Practice**
 - *Windels Marx Lane & Mittendorf, LLP*
www.windelsmarx.com

Contact: mdaus@windelsmarx.com

212-237-1106

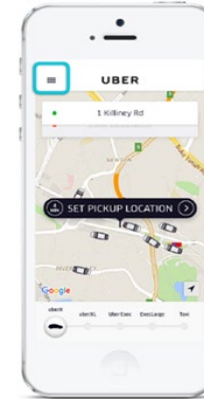
THE ORIGINS OF GROUND TRANSPORTATION DATA – NEW YORK CITY TLC (MID-2000s): EVOLUTION OF T-PEP TO SMARTPHONE APPS & BEYOND

NYC Taxicab Passenger Enhancement Program (T-PEP)

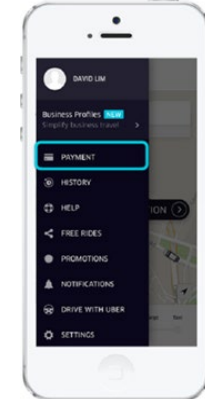


Captures data such as:

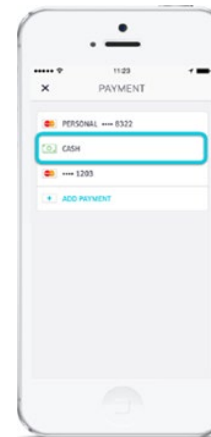
- number of trips,
- fares collected,
- number of active vehicles and drivers,
- and credit card usage



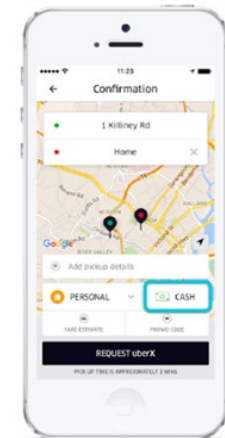
Pick-up and drop-off



Passenger's Name



Payment information



Trip history

Laws Applicable to Transportation Data Access By Government Agencies & Third Parties

Methods to access private transportation data provided to or controlled by the Government:

- Agreements between governmental entities and private companies or academic institutions
- Regulations regarding data access to enforce laws
- Freedom of Information Laws (“FOIL or FOIA”)



Freedom of Information Laws

- Freedom of Information Acts – Open Government or Sunshine Laws
 - Enacted in 1966 after steep rise in government secrecy
 - Amended in 1974 in the wake of the Watergate scandal (1st of many amendments)
- State laws vary from state to state but have the same intent: **government transparency and openness**
- **Broad definitions of “public record”**
- Presumption = everything is public, unless specifically exempted.



Federal Freedom of Information Act

Freedom of Information Act (FOIA), 5 U.S.C. § 552

*For a document to be subject to **Freedom of Information Act (FOIA)** request, it must first be an "**agency record**," which requires that: (1) agency either **created or obtained** the requested materials, and (2) **agency is in control** of requested materials at the time the FOIA request is made. 5 U.S.C.A. § 552. *Houghton v. U.S. Dept. of State*, 875 F. Supp. 2d 22 (D.D.C. 2012)*

- Creates an individual right to obtain access to the records of federal agencies.
- There are nine exemptions, such as national security, legally privileged information, and trade secrets.
 - The trade secrets exemption covers “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.”



FOIL- FOIA Law Exemptions



Though exemptions vary from state to state, typical exemptions include, but are not limited to:

- Personal information contained within public records, the disclosure of which would constitute a clearly **unwarranted invasion of personal privacy**
- Records compiled for **law enforcement purposes** (subject to conditions)
- **Trade secrets and commercial or financial information are protected by many state laws** (subject to conditions)
 - *e.g.: Illinois (5 ILCS 140/7); California (California Public Records Act), New York (Public Officers Law, Article 6), Massachusetts (Gen. Laws. Chap. 4 Sec. 7 (26)).*

State Freedom of Information Laws

- Small differences in a law's wording can determine whether some information is subject to disclosure.
 - Thus, the interpretation of one state's FOIA has little value in determining the likely interpretation of another state's FOIA.
- States with identically worded FOIAs could ultimately reach different conclusions.
 - In turn, these state-to-state variations could lead to a great deal of uncertainty, with public institutions getting clear guidance only after they've been sued under a state FOIA request.



EXAMPLES OF STATE FREEDOM OF INFORMATION LAWS

- **Texas Public Information Act**, Texas Government Code, *Title 5, Section 552*:
 - Gives public the right to request access to government information. Creates exceptions for: trade secrets “obtained from a person and privileged or confidential”; and **commercial or financial information**, the disclosure of which would cause **substantial competitive harm** to the person from whom the information was obtained.



EXAMPLES OF STATE FREEDOM OF INFORMATION LAWS

- **Washington Public Records Act, Revised Code of Washington Chapter 42.56:**
 - Guarantees public's right to access public records **“prepared, owned, used, or retained”** by government bodies. Creates an exception for financial, commercial, and proprietary information.



EXAMPLES OF STATE FREEDOM OF INFORMATION LAWS



Washington Case Law – 3rd Party Vendors.....

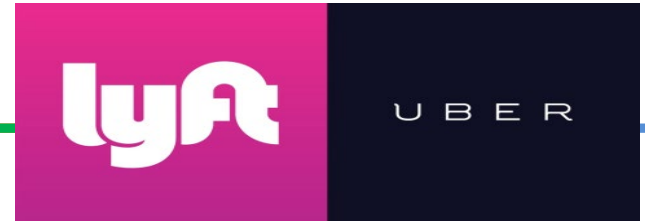
- In a 2017 case, the question arose whether documents held by a **third-party vendor** are records “prepared, owned, used, or retained” by an agency. The Court decided not to expand the definition to include such records held by a third-party vendor. ***Baker v. Department of Corrections***, No. 34967-5-III (Wash. App. June 29, 2017).
- In *Baker*, a Washington Department of Corrections (DOC) inmate requested copies of checks and money orders deposited by DOC into his ***inmate trust subaccount at Bank of America***. The records were scanned using BOA’s proprietary software and were not in DOC’s possession.
- The court concluded that, without certain key facts, it could not decide whether documents in BOA’s possession comprised records that DOC “prepared, owned, used, or retained” and that contained information relating to the conduct of government.

EXAMPLES OF STATE FREEDOM OF INFORMATION LAWS



- **Alaska Public Records Act Section AS 40.25.220(3)**
 - “Books, papers, files, accounts, writings, including drafts and memorializations of conversations, and other items, ***regardless of format or physical characteristics***, that are developed or received by a public agency, ***or by a private contractor for a public agency***, and that are preserved for their informational value or as evidence of the organization or operation of the public agency; **‘public records’ does not include proprietary software programs.**”

FOIL & TNC DATA



TNC data exempt from disclosure?

- **City of Columbus v. Lyft**, 22 N.E.3d 304 (2014) - Ohio state court case
 - drivers' names and contact information = trade secret exempt from disclosure
 - drivers' dates of birth and contact information = sensitive, personally identifiable information exempt from disclosure
 - drivers' physical descriptors, proof of citizenship, prior felony descriptions, and vehicle descriptions not exempt from disclosure.
- **Lyft v. Pennsylvania Public Utilities Commission**, 145 A.3d 1235 (2016) - Pennsylvania state court case
 - Lyft's statistics on the number of trips provided are not proprietary data and can be disclosed.
- **Rasier-DC, LLC v. B& L Service, Inc. and Broward County, Florida**, No. 4D16-3070 (Jan. 10, 2018, Florida District Ct. of Appeal, 4th District) - Florida state court case
 - Uber's aggregate trip and fee data was not a trade secret and was subject to disclosure.

TNC DATA ACCESS: FOIL WORK-AROUNDS

- FOIL laws, when created, did not take into consideration Big Data → but some jurisdictions have developed protocols for TNCs:
 - provide specific and accurate data;
 - protect the privacy of TNC passengers and drivers; and
 - do not limit TNC competition.

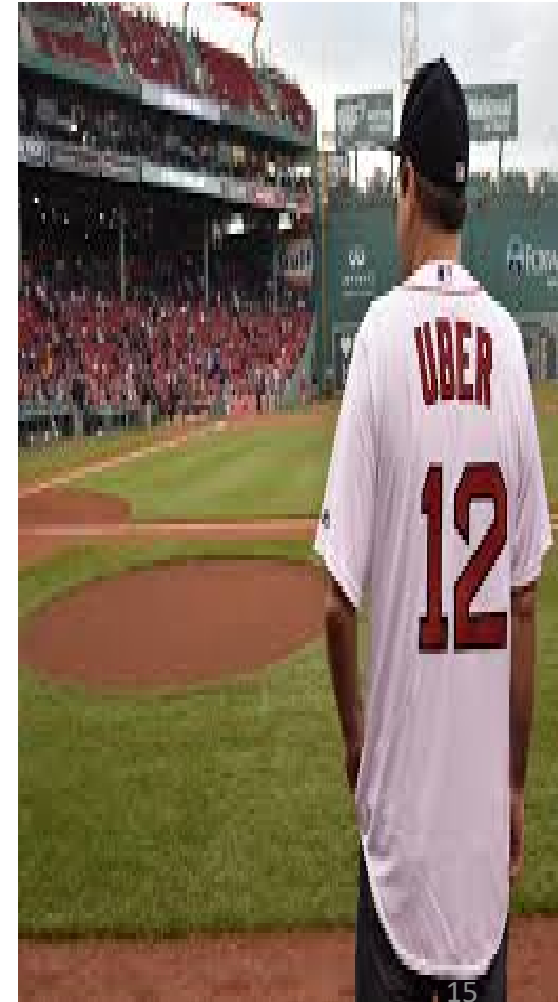


TNC DATA – BOSTON (CONTRACT)



Boston/Uber – January 2015 Agreement

- **Data Collected:**
 - Anonymous pick-up and drop-off location of each trip, by Zip Code Tabulation Area and by neighborhood;
 - Date-stamp and approximate time-stamp of each trip;
 - Duration of each trip;
 - Wait time for TNC vehicles to arrive if similar data is provided to the City by taxi companies.
- **Data = trade secrets or commercial or financial information exempt from disclosure under FOIL**
- **Limitations on disclosure** (not applicable when Uber consents to disclosure)
- **Access limitation and confidentiality obligations**



CALIFORNIA DATA COLLECTION-TNC STATE REGULATIONS

California Public Utilities Commission

- TNCs are required to submit *reports on an annual basis*.
- Data collected include:
 - Date and time of request;
 - zip code of requester (at the time of request);
 - date and time that request was accepted;
 - zip code of driver (at the time request was accepted);
 - zip code of where the ride began and ended;
 - miles traveled;
 - amount paid/ donated.
- January 14, 2016/Uber: **\$7.6 million penalty for failure to fully and timely comply with the CPUC's reporting requirements + \$1,000 fine.**



TNC DATA – CHICAGO (LOCAL LAW)

Chicago (*Municipal Code, Chap. 9-115-210*)



Data to be submitted to the Chicago Commissioner of Business Affairs and Consumer Protection includes:

- the number and percentage of the licensee's customers within requesting wheelchair accessible vehicles and the number of filled requests;
- information on any of the licensee's drivers who were alleged to have committed a violation or who have been suspended or banned from driving for the licensee, including any zero-tolerance complaints and the outcome of the investigation into those complaints;
- information on any accident or other incident that involved the licensee's driver and that was reported to the licensee, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident;
- the average and mean number of hours and miles each of the licensee's drivers spent driving for the licensee;
- for purposes of law enforcement or emergency response, **real-time tracking of the licensee's drivers and vehicles, including access to the driver's identifying information, GPS location data, and whether or not the driver is engaged with a passenger.**

TNC DATA – NEW YORK CITY (LOCAL RULES)

NYC Taxi & Limousine Commission



- **Revised Driver Fatigue Rules** approved in **February 2017** => Additional FOR-HIRE VEHICLE - FHV Trip Data reporting requirements
- Require FHV bases to regularly transmit to the TLC **drop-off date, time, and location (in addition to pick-up date, time, and location)**
 - Either an address, intersection, or airport, or the corresponding [latitude/longitude](#) for those locations.
 - If bases provide an address, intersection, or airport, then they do not have to provide latitude/longitude.
- Require FHV bases to indicate when trips are shared
- **OUTSIDE NYC – TNCs are EXEMPT from the FOIL Law!**
- **Penalties:**
 - \$100 fine if plead guilty before a hearing and suspension until compliance
 - \$150 if found guilty following a hearing and suspension until compliance

New NYC High Volume Vehicle App Local Law

- Under this law , a new license class for **High-Volume For-Hire Services (“HVFHS”)** would be required for app companies with an average of 10,000 or more trips per day through the app.
 - Apply for a separate license - **\$190,000 annual fee**;
 - Provide **detailed trip and revenue data** on an ongoing basis.





MOD

MOBILITY ON DEMAND

Federal Sandbox Program



FTA'S MOD SANDBOX

→ WHAT ROLE DO FUNDING MECHANISMS OR GRANT PROGRAMS PLAY IN THE DATA ACCESS LEGAL FRAMEWORK?

- **49 U.S.C. § 5312** allows the Secretary of Transportation to “make grants and enter into contracts, cooperative agreements, and other agreements for research, development, demonstration, and deployment projects, and evaluation of research and technology of national significance to public transportation.”
- Under this funding authority, the FTA created the MOD Sandbox Program, with the goal of providing a “platform where integrated MOD concepts and solutions are supported and demonstrated through local partnerships in a real-world setting.” The FTA allocated \$8 million for the Sandbox Program.



FEDERAL TRANSIT ADMINISTRATION'S MOBILITY ON DEMAND (MOD) SANDBOX

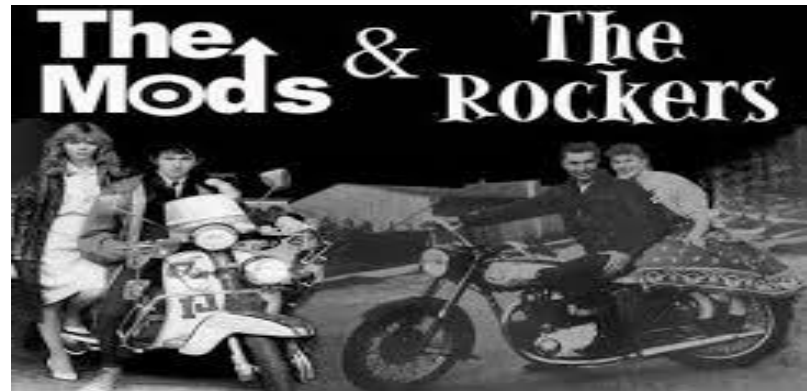
- The FTA ultimately received 78 eligible proposals requesting over \$57 million in grants.
- The FTA decided to fund **11 projects, with a total allocation of \$7,931,080.**
 - Regional Transportation Authority of Pima County- AZ, Valley Metro Rail, Inc- AZ, City of Palo Alto-CA, LA County MTA-CA, BART-CA, Pinellas Suncoast Transit Authority-FL, Chicago Transit Authority- IL, Tri-County Metropolitan Transportation District-OR, DART-TX, Vermont Agency of Transportation-VT, Pierce County Public Transportation Benefit Area Corporation-WA



MOD SANDBOX

In its Notice of Funding Opportunity, the FTA provided a list of **suggested MOD applications** as part of its announcement of the Program:

- **Innovative Use Cases:**
 - Ex: First mile/last mile connectivity; Provisioning of ADA paratransit services; Urban center/community short distance mobility
- **Collaborative Multimodal Service:**
 - Ex: Augmentation of existing public transportation resources; Shared-use, on demand services; Paratransit, or demand-response services
- **Enabling Technologies and Enhanced Service Capabilities:**
 - Ex: Integrated or open payment systems; Internet of Things/Smart City applications; **Open data and big data analytics**; and Connected/automated vehicles



MOD Sandbox Service Project

Contracts Governing Data Disclosure

- Los Angeles County Metro-Via:



- *Explores the viability of first/last mile solutions for trips originating and ending at select transit stops.*

- Uses personally identifying information (PII) and trade secret exemptions to protect disaggregated location/travel data. The agency may make such aggregated information publicly available.

- Pierce Transit (WA)-Lyft (1st & last mile):



- Monthly data that Lyft is required to report is redacted from the contract. Per the terms of the contract, Lyft contract materials are subject to standard WA Public Records Act disclosure/exemptions.

- King County Metro (WA)-Via (1st/last mile)

- Uses PII and trade secret exemptions to protect disaggregated location/travel data.



MOD Sandbox App Project

Contracts Governing Data Disclosure



- Valley Metro (Phoenix, AZ)

- *Routematch: smart phone mobility platform*

- Relies on commercial agreement between Routematch and Lyft for trip-planning app (**not yet signed**); software is considered confidential.

- Pinellas Suncoast Transit Authority (FL)

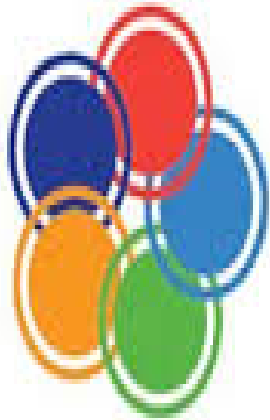
- **Getgoin'**: paratransit demonstration

- Relies on commercial agreement for trip-planning app (**not yet signed**);
 - software considered confidential.



NEW WHITE PAPER ON MOD DATA SHARING

*Coming
Soon!*



SHARED-USE
MOBILITY CENTER

Legal Issues - Affecting the Data Paradigm

1. Can municipalities or states enter into agreements or pass regulations that may contradict the FOIL laws?
2. Can Federal grant regulations or Federal funding authorization statutes shield and protect data collected from private entities consistent with the FOIL laws?
3. Does the FOIL law even apply if a third party private entity holds the data in a lockbox? Or if a private university serves as a repository?



INDUSTRY - DRIVEN METHODS OF DATA COLLECTION? (E.G., TRUCKING INDUSTRY) – 3RD PARTY VALIDATION?

Reebie Associate's Motor Carrier Data Exchange Program

- Provides information on actual market-to-market trucking industry movement activity
- The Data Exchange Program includes carriers from both the private and for-hire segments of the industry and both the truckload (TL) and less-than-truckload (LTL) sectors
- In total, information is received on over **75 million individual truck shipments** (comparatively, the government's Commodity Flow Survey covers about 12 million shipments, spread across all modes)





***International Laws Applicable to Data Access
By Government Agencies & Third Parties***

U.S. Consumer Protection & Privacy Laws- Transportation Data



Protection of consumers' personal data/privacy => various laws enacted at both the federal and state level

- **Example/Federal law: Telephone Consumer Protection Act (“TCPA”)**
August 2017: Uber agreed in Illinois federal court to pay \$20 million to settle a proposed class action alleging that Uber violated the TCPA by **sending unsolicited texts to potential drivers and riders.** (*Vergara, et al. v. Uber Technologies, Inc.*, No. 1:15-CV-06942 (N.D. Ill.))
- **Examples/State laws:**
- **New York State Breach Notification Law (N.Y. Gen. Bus. Law § 899-AA)**
January 2016: Uber agrees to pay \$20,000 for failure to provide notice of data breach to drivers (Settlement with the NYS Attorney General)
- **California Electronic Communication Privacy Act and California Invasion of Privacy Act**
April 2017: Uber was sued by a former Lyft driver who claimed that the company was engaging in the “Hell” program in which they tracked Uber drivers who were also driving for Lyft. The case was dismissed, with leave to amend and refile.

Europe: General Data Protection Regulation (GDPR)

The **General Data Protection Regulation** is a regulation in EU law on *data protection and privacy for all individuals* within the European Union (EU) and the European Economic Area (EEA). It also addresses the export of personal data outside the EU and EEA areas.

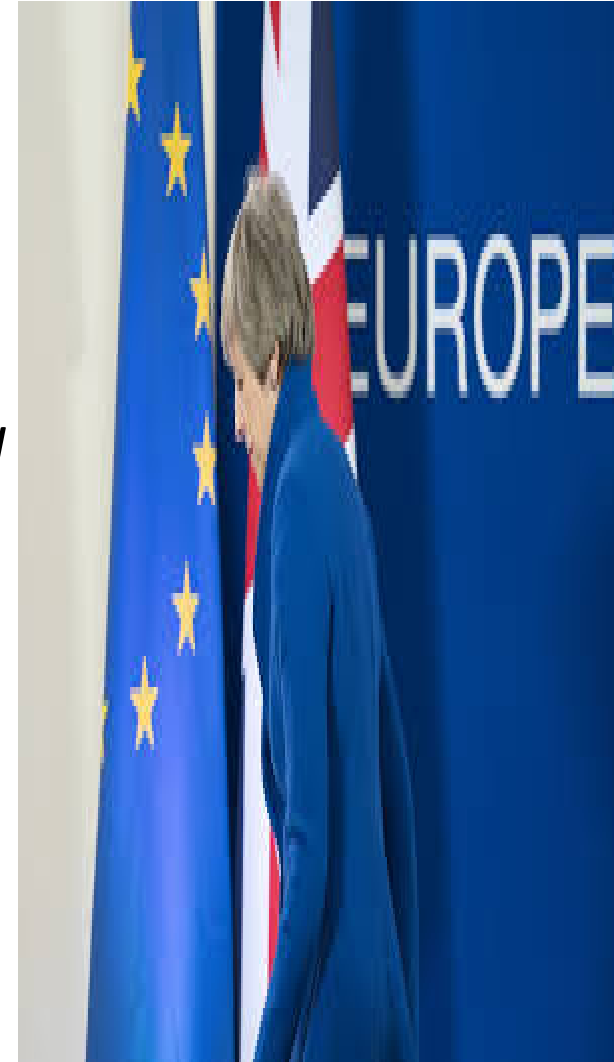
- Applies to all companies processing the personal data of data subjects residing in the Union, regardless of the company's location (inside the EU or not).
- Non- EU businesses processing the data of EU citizens have to appoint a representative in the EU.



Europe: General Data Protection Regulation (GDPR)

Scope:

- According to the European Commission, "*personal data is any information relating to an individual*, whether it relates to his or her private, professional or public life. It can be anything from a name, a home address, a photo, an email address, bank details, posts on social networking websites, medical information, or a computer's IP address."
- The regulation does not purport to apply to the processing of personal data for national security activities or law enforcement of the EU.



Source: [European Commission's press release announcing the proposed comprehensive reform of data protection rules Archived](#) 24 December 2012. 25 January 2012. Retrieved 10 April 2019.

Freedom of Information Laws: Finland (MaaS Impact)

Act on the Openness of Government Activities



- Passed in 1951 with the most recent inclusions made in 2002
- In addition to the Act itself, there is a separate *Decree on the Openness of Government Activities and on Good Practice in Information Management*
 - This provides guidelines for government officials working with information management and FOI issues.



The main principle of the Act is that official documents are in the public domain unless specifically otherwise provided for.

- All state authorities are subject to the Act, including state administrative authorities, courts of law, state enterprises, municipal authorities and parliamentary agencies and institutions.
 - The Act applies to both documents created by an authority and those delivered to an authority.



Freedom of Information Laws: Austria (MaaS Impact)

The National Data Protection Law (DSG)

- Article 20 of the 1987 Constitution sets out requirements on secrecy and requires that government bodies and corporations must provide information to citizens.

The laws concerning the implementation of the GDPR have been adopted gradually.

- In summer 2017, the existing Data Protection Act 2000 (*Datenschutzgesetz 2000*) was amended by the **Data Protection Amendment Act 2018**.
 - In addition to the GDPR, it is now the central piece of legislation in Austria regulating data privacy.
- **The Privacy Deregulation Act 2018** (*Datenschutz-Deregulierungs-Gesetz 2018*) further amended the DSG. The DSG, as amended by the Privacy Deregulation Act 2018, came into force on May 25, 2018.
- In addition to the DSG, further amendments to other statutory laws were adopted in order to implement the GDPR (mostly to adapt to the terminology of the GDPR).



Further Reading Materials

“Transportation Network Companies: Passenger Data Security and Privacy Issues”

Author: Matthew W. Daus, Esq., 2017

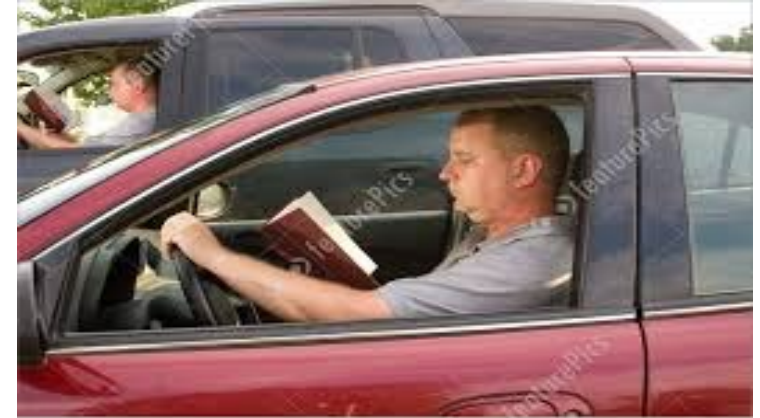


- The full article can be accessed on Westlaw, or by contacting mdaus@windelsmarx.com.

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FURTHER READING MATERIALS



“Ground Transportation Big Data Analytics and Third Party Validation – Solutions for a New Era of Regulation and Private Sector Innovation”

Author: Matthew W. Daus, Esq., 2018



Questions Anyone?



Thank You!!