

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Complaint on First-Class Mail Service Standards

Docket No. C2001-3

PRESIDING OFFICER'S RULING CONCERNING
DFC/USPS-7 AND OTHER DISCOVERY MATTERS

(Issued August 27, 2003)

This ruling briefly reviews matters related to a previous ruling on discovery, clarifies the status of DFC/USPS-1, and addresses DFC/USPS-7.

1. Matters Related to Report Concerning P.O. Ruling No. C2001-3/35 (issued April 2, 2003) and Related Interrogatory Responses

Based on a review of a Postal Service filing in response to P.O. Ruling No. C2001-3/35 and related interrogatory responses, it appears that discovery issues pending at the time of issuance (with the exception of DFC-USPS-7) have been resolved in one of three ways. The Service has either provided available responsive material, expressed its willingness to make such material available, or has provided a satisfactory explanation as to why requested data and information cannot be provided. Report of the United States Postal Service in Reply to Presiding Officer's Ruling No. C2001-3/35, April 9, 2003 (Status Report) at 1. See *also*, Postal Service Answer to DFC/USPS-13 (filed April 11, 2003).

The Service also affirmatively addresses the issue of updating previous responses. It invokes a standard that requires expeditious submission of amendments or supplemental responses when "any previously filed responses need to be changed in any material way" Status Report at 1. Materiality is an appropriate guideline in this case, given the detailed nature and scope of much of the information already

provided, the routine, minor changes that are associated with local postal operations, and the time that has elapsed since discovery got underway. It is understood that the Service's interrogatory responses reflect adherence to this standard.

2. DFC/USPS-1 (daily volume data)

Interrogatory DFC/USPS-1 seeks, for each originating three-digit ZIP Code in referenced western states and New Jersey, typical daily volume of outgoing First-Class Mail destined to every three-digit ZIP Code in the country. This interrogatory was the subject of extensive pleadings earlier in this case. To clarify its status, I note that USPS-LR-C2001-3/10 provides responsive data under protective conditions. In addition, Mr. Carlson and the Postal Service have reached an agreement on an appropriate level of public disclosure for some of this material. DFC/USPS-LR-C2001-3/15 represents this agreement.¹ Accordingly, DFC/USPS-1 is deemed to have been resolved.

3. DFC/USPS-7

Participants in cases before the Commission have an impressive record of reaching informal agreement on many discovery issues. I appreciate the considerable effort and accommodation this reflects. For some time, I have held out hope that this success would extend to DFC/USPS-7. This is a broad question — posed at the outset of this proceeding — that seeks copies of all correspondence directed to the Postal Service on First-Class Mail service standard changes in fiscal years 2000 and 2001.

The parties in interest are now polarized, with Carlson insisting on nothing less than production, and the Service resisting anything other than stipulations. Given these positions, it is clear that allowing more time for negotiations is unlikely to elicit an acceptable compromise. This ruling, therefore, addresses the Motion of the United

¹ Assuming this is the case, there is no need for a further motion or other filing with respect to this interrogatory.

States Postal Service Requesting Adoption of Proposed Stipulations, February 13, 2003 (Postal Service Motion), as amplified by the additional stipulation submitted in Reply of the United States Postal Service to Opposition of Douglas Carlson to Proposed Stipulations, February 27, 2003 (Postal Service Reply).

Background. Several facts and circumstances are well established. First, it is beyond dispute that the Service initially indicated, in an answer to DFC/USPS-7, that it anticipated disclosing responsive records. Disclosure was to be subject to determining whether any records exist and to reaching an agreement with Mr. Carlson on appropriate protective conditions.² The need for an agreement was attributed to the Service's interest in consistency with a policy against public disclosure of copies of correspondence if such disclosure could result in an unwarranted invasion of the personal privacy of individuals.³ It is also apparent that the Service, for reasons identified below, has changed its original position, and now proposes the adoption of several stipulations in lieu of production of the requested correspondence. It is equally clear that the complainant takes issue with this change, and vigorously opposes the stipulations in the Postal Service Motion. See Douglas F. Carlson Answer in Opposition to Motion of the United States Postal Service Requesting Adoption of Proposed Stipulations, February 20, 2003 (Carlson Answer).

Second, the plain language of DFC/USPS-7 seeks "all correspondence" in the Service's possession. For some time, however, the Service's pleadings have referred to approximately 11,000 records (for the two years in question) maintained by the Service's Headquarters Office of Consumer Affairs that reflect comments from postal patrons on a range of service-related issues. The Service has clarified that these Headquarters records are not simply those directed to and received at Headquarters, but include correspondence from 85 Consumer Affairs field offices. Thus, the correspondence the Service has referred to includes a substantial number of records

² The Service's response to DFC/USPS-7 was included in a set of interrogatory responses filed November 19, 2001.

³ As an example, the Service noted that it ordinarily does not publicly disclose customers' names and addresses without their consent.

from across the nation. From the pleadings, it appeared that progress had been made on narrowing the scope of the inquiry to a manageable subset of correspondence, but the Service's eventual preference for stipulations in lieu of production has significantly altered the parameters of discovery.

Third, the procedures in place at the time the correspondence in issue was received have not been challenged. In brief, prior to being answered, each document was reviewed for the purpose of identifying (or tallying) the matters addressed therein. Each tally was then recorded and indexed in an Office of Consumer Affairs database by class of mail (or special service) and by pre-established subject matter categories. There are six such categories, with "Time/Service Objectives" the most relevant to this case and to DFC/USPS-7.⁴ Pursuant to the Service's implementation of the Privacy Act, the correspondence apparently has been maintained in a system of records filed alphabetically by the correspondent's name. The records are retrievable alphabetically by name, but not by mail class, subject matter, or via electronic means.⁵ Status Report at 1 (including fn.1).

Finally, the text and scope of the proposed stipulations are clear, even if their appropriateness as an alternative to production is in contention. The Service initially proposed two stipulations, both relating exclusively to a numerical count. They read as follows:

The number of pieces of correspondence that raise the issue of the service standard changes in FY 2000 is somewhere between 0 and 26.

The number of pieces of correspondence that raise the issue of the service standard changes in FY 2001 is somewhere between 0 and 81.

Postal Service Motion at 2-3.

⁴ The other categories are Classification/Mailability; Forms/Labels; Rates/Fees; Service Not Available; and Size/Weight Standards.

⁵ The FY 2000-2001 Headquarters correspondence was not electronically scanned. Postal Service Motion at 2.

Subsequently, in an attempt to meet concerns raised by Mr. Carlson, the Service proposed the following (third) stipulation:

The service standard changes at issue have had different effects on different mailers. Some of these mailers may find that some of the changes result in service that does not meet all of their needs to some degree. Some of these mailers may find that the resulting service is not adequate to some degree. These mailers' needs may be outside the scope of Complainant's experience and knowledge, given the socioeconomic and geographical diversity among senders and recipients of First-Class Mail.

Postal Service Reply at 8.

The Service's rationale for the proposed stipulations. In support of its proposal, the Service reviews several considerations. It notes the relatively small number of pieces, relative to "Time/Service Objectives," that are captured in the Headquarters index for each of the fiscal years in question. It also observes that Headquarters personnel with subject matter expertise with respect to the service standard changes do not recall being consulted by the Office of Consumer Affairs regarding any service-related correspondence. The Service emphasizes that the body of correspondence for those years has not been electronically scanned, and must be manually retrieved and searched to isolate each piece identified as pertaining to "Time/Service Objectives." Postal Service Motion at 2. Moreover, it considers it "inconceivable" that the precise number of pieces or "quality or tone of the prose" in any such correspondence will have any bearing on the resolution of issues in this case. *Id.* at 3.

The Service says the fact that one or more persons may have written to express sentiments aligned with those underlying this complaint "may be of great personal interest" to Mr. Carlson, but asserts that this personal interest does not justify the expenditure of the workhours (conservatively estimated at a minimum of 90 hours) that would be required for compliance with the request, especially given the lack of value

that such information would have in resolving the material issues in this proceeding. *Ibid.*; Status Report of the Postal Service (February 5, 2003) at 3 (fn.2).

Carlson's position. In general, Carlson maintains he asked for all correspondence from the outset, and that simply knowing the *number* of pieces of correspondence is not of interest to him. More specifically, he objects to the Service's motion on grounds that it amounts to an objection to DFC/USPS-7 on the basis of undue burden, and is therefore untimely. He also says it fails to describe with particularity the burden associated with reviewing the documents and overlooks the significance of the requested documents to complainant's case. Carlson Answer at 5. He adamantly opposes the two stipulations in the Service's Motion, but has not specifically addressed the additional stipulation presented in the Service's Reply. This stipulation, as indicated above, goes beyond the numbers in the index by mentioning certain potentially important qualitative considerations.

The Service's reply to Carlson's opposition. In response to Carlson's opposition, the Service explains why the estimate reflected in its earlier proposal should be considered conservative. It emphasizes that supervisory time, time for preparation of redacted versions to protect the names and addresses of correspondents, and for review by counsel were not included in its original estimate.⁶ Postal Service Reply at 8. Moreover, the Service asserts that when reduced to its essence, Mr. Carlson's opposition is reduced to fulfilling a desire to validate the undisputed assertion that others, besides him, disapprove of the service standard changes, and to corroborate his undisputed belief that some other customers somewhere might conclude that the resulting service does not meet their needs or is inadequate to some degree, "in a manner that is outside the realm of his experience and that has not yet crossed his mind." *Id.* at 9.

⁶ Motion of the United States Postal Service for Leave to File a Reply to the Opposition of Douglas Carlson to Proposed Stipulations, February 27, 2003 (Postal Service Motion for Leave). This Motion was not opposed, and is hereby granted.

Ruling. As a preliminary matter, Mr. Carlson's challenge to the Service's proposal as untimely warrants brief discussion. It is true that the Service has staked out a formal change of position regarding DFC/USPS-7 relatively late in this proceeding. At the same time, it appears that the original response was sincere and that the Service's intention, at the time, was to produce the requested correspondence. The pleadings also make two other things clear: there is a long history of informal exchanges regarding this interrogatory, and burden has been of concern to the Service from the outset. In other circumstances, this may not justify a late-stage correction, but I am unwilling to rule out the Postal Service Motion, in this instance, strictly on a timing technicality. Given that the case has come this far, it is preferable to address the Postal Service Motion on the merits, which entail matters such as the scope of the request, materiality, the burden of retrieval and review, and privacy.

Having carefully considered these more central issues, I have concluded that Mr. Carlson's position should prevail, subject to the scope identified below and to legitimate privacy concerns. I therefore direct the parties to expeditiously develop a plan that allows Mr. Carlson to review the documents in accordance with these conditions. I am mindful that this approach will entail additional time and effort on the part of both parties, but I have concluded that the interests of this complaint proceeding are better served in the long run if the documents are made available. At the same time, I also expect this review (and any related analysis Mr. Carlson finds necessary) to proceed at a pace that allows the remaining stages of this case to get underway no later than this Fall. Toward that end, I request a status report from Mr. Carlson within a reasonable time.

With respect to the scope of the request, it is without question that the interrogatory, on its face, is extremely broad. From the pleadings, it appears that the Service rightfully assumed that it had successfully negotiated an informal limitation of the scope of the interrogatory. At this point, the working subset that underlies the proposed stipulations is part of a corporate tracking system. This system produces counts that include tallies from 85 district Consumer Affairs offices, in addition to those

that may be received at Headquarters. I find that this is an appropriate narrowing of the scope of the question for purposes of this complaint. Expecting the Service to canvass every conceivable postal facility that might have received correspondence on the service standards change is clearly unreasonable, especially since there is a corporate activity designed to capture many patrons' observations.

As to the proposed alternative itself, I generally agree with Carlson's assertion that merely having the numbers (via stipulations) is an inadequate substitute for the correspondence. In fact, the Service's discussion with respects to the number of documents raises a straw man, as Mr. Carlson never asked for a numerical count. While I have found that the Service is within its rights to offer the proposed alternative at this stage of the proceeding, Mr. Carlson is also entitled to argue that he finds the proposal inadequate. The third stipulation goes some distance toward meeting some of Mr. Carlson's legitimate objections, but still falls short of the disclosure he seeks.

Materiality, undue burden and privacy emerge as the most significant factors in the balancing test. With respect to materiality, I find that the Service too readily dismisses the possibility that the correspondence may provide Mr. Carlson with information useful to the prosecution of his complaint. Again, the third stipulation is a step toward closing the gap, but I do not find Mr. Carlson's insistence on disclosure unreasonable, assuming the burden issue can be overcome.

The Service's strongest argument in this regard is that the burden associated with correspondence retrieval and review is undue, and outweighs any reasonable benefit to be gained from its production. Although Mr. Carlson challenges the time estimates the Service has provided, I think it is clear that the Service probably errs on the conservative side. At the same time, I do not think the burden likely to be entailed in complying with this ruling is undue. The Service stands in a vastly different posture than the complainant in terms of control of the correspondence in issue (as well as access to other data) and in terms of available resources. Barring information leading to a conclusion that retrieval and review of the correspondence is physically impossible,

requiring the Service to shoulder a greater burden that it would care to undertake is not unreasonable.

In this situation, this burden may entail devoting resources to resolving privacy concerns and addressing retrieval of the records. However, if the Service so chooses, it need incur little or no additional burden with respect to reviewing individual records in the database for a connection to the service standards issue. Instead, this review is a responsibility Mr. Carlson has indicated he is willing and able to undertake.⁷

I have considered privacy issues, which the Service has acknowledged as a concern from the time it submitted its initial answer. Mr. Carlson has not addressed privacy to any significant extent, but I think it is safe to assume that he would agree that redacted versions, which omit the names and addresses of correspondents, would be appropriate.

RULING

1. Interrogatory DFC/USPS-1 is deemed to have been answered in the form of USPS-LR-C2001-3/10 and USPS-LR-C2001-3/15.
2. The Motion of the United States Postal Service Requesting Adoption of Proposed Stipulations, filed February 13, 2003, is not granted.
3. The Motion of the United States Postal Service for Leave to File a Reply to the Opposition of Douglas Carlson to Proposed Stipulations, filed February 27, 2003, is granted.

⁷ If the Postal Service wishes to segregate records related to the service standard issue, it may do so. In that case, it should provide its response within 40 days. If it chooses only to redact mailer-specific information, it should provide its response within 14 days.

4. Access to the fiscal year 2000 and 2001 customer correspondence categorized as related to Time/Service Standards is to be provided consistent with the terms set out in the body of this ruling.
5. Discovery with respect to DFC/USPS-7 is to proceed expeditiously in accordance with the terms of this ruling. The Service's response, if filed, is due within 14 days if it redacts names and addresses. If it segregates records by issue, its response is due within 40 days.
6. Following an opportunity to review records the Service provides in response to this ruling, Mr. Carlson is directed to provide a status report that will facilitate further scheduling, consistent with the terms set out in P.O. Ruling No. C2001-3/19.

Ruth Y. Goldway
Presiding Officer