

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

Postal Rate and Fee Changes

Docket No. R2005-1

PRESIDING OFFICER'S RULING
ON DAVID B. POPKIN MOTION TO COMPEL
RESPONSES TO INTERROGATORY

(Issued September 16, 2005)

On September 6, 2005, David B. Popkin filed a motion to compel a response to his interrogatory DBP/USPS-305.¹ The Postal Service objected to this discovery request on August 22, 2005.²

The Service explains the genesis of this controversy in its Objection. In Ruling No. 43 in this docket, I granted Mr. Popkin's motion to compel a response to DBP/USPS-129(a) and (b), with the condition that the Postal Service's response provide size and weight information about envelopes used in generating data related to the Postal Service's EXFC service performance measurement system, but no further information.³ The Service filed its compelled response on July 18, 2005.⁴

Following an informal request by Mr. Popkin to go a step further by providing the specific dimensions and weights for each of the 19 different EXFC test cards, letters and flats, the Service says it agreed to provide these particulars informally, subject to

¹ David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-305, September 6, 2005 (Motion).

² Objection of the United States Postal Service to Interrogatory of David Popkin [DBP/USPS-305], August 22, 2005 (Objection).

³ Presiding Officer's Ruling No. R2005-1/43, July 8, 2005, at 6.

⁴ Compelled Response of the United States Postal Service to Interrogatory of David Popkin [DBP/USPS-129], July 18, 2005.

Mr. Popkin's agreement that he forego pursuing further weight data beyond the general information provided in response to DBP/USPS-129. According to the Service, the table of data incorporated in DBP/USPS-305 includes the information provided under this informal arrangement.⁵

Mr. Popkin also directed a new interrogatory to the Postal Service, DBP/USPS-281 on July 20, 2005, which referred to the Service's response to other subparts of DBP/USPS-129 and sought the dimensions and weight of the mailpieces associated with each of 19 categories, together with requests to confirm two statements of fact. The Postal Service responded to DBP/USPS-281 on August 3, 2005. To the requests for dimension and weight information in DBP/USPS-281(a) and (b), the Service replied: "The Ruling [No. 43] compelled a general response to the interrogatory, which is what the Postal Service provided."⁶

Mr. Popkin subsequently filed DBP/USPS-305 on August 10, 2005. The interrogatory refers to the Service's general response to DBP/USPS-281(a) and (b) quoted above, declares that he has used the information provided by the Service regarding the 19 various categories of EXFC mailpieces to prepare a chart of the data, which he attaches, and asks to "please advise the differences or distinctions between" three of the EXFC envelopes for which associated data are displayed in his chart. Under the circumstances described above, the Postal Service objects to the question as impermissible follow-up beyond the scope of Presiding Officer's Ruling No. R2005-1/43.⁷

In his Motion, Mr. Popkin states that DBP/USPS-305 is part of a series of interrogatories related to evaluating the EXFC program and the performance of different categories of mailpieces used in the program, and reviews its procedural history at length, including his informal dealings with the Postal Service following issuance of

⁵ Objection at 1.

⁶ Responses of the United States Postal Service to Interrogatories of David Popkin [DBP/USPS-281 and 282], August 3, 2005, at 2.

⁷ Objection at 2.

Ruling No. 43.⁸ He then argues that DBP/USPS-305 is both timely and appropriate as follow-up to DBP/USPS-281 in light of what he perceives to be a potential error or inconsistency with the data that had been provided in preceding responses. Mr. Popkin asserts that the Service “should not be allowed to provide all of these responses and then not be compelled to clarify a potential error or inconsistency.”⁹

In a Reply¹⁰ filed on September 13, the Postal Service opposes the Motion on several grounds. While conceding that the overall quality of service performance for the various classes and subclasses of mail is relevant to value of service considerations under § 3622(b)(2), the Service denies the relevance and materiality of the information requested in the interrogatory because it pursues distinctions among different mailpiece types that are all within the same subclass, in a proceeding lacking Postal Service or intervenor proposals for classification changes based on any such distinctions.¹¹ The Service also argues that the interrogatory is an improper follow-up question because it seeks extraneous information that is beyond the ambit of compliance required by Ruling No. 43.¹² As a final argument, the Service asserts that, “[t]o the extent that DBP/USPS-305 is a back-door attempt to circumvent Ruling No. R2005-1/43 or Mr. Popkin’s agreement to forego piece-specific weight data for EXFC test pieces, it should be rejected on that basis alone.”¹³

I shall deny the Motion to compel a response to this interrogatory. The procedural history reviewed above indicates that the Postal Service has been more than forthcoming in its compliance with Ruling No. 43 and accommodation of Mr. Popkin’s ongoing quest for increasingly finer mail characteristics data, either through its formal responses or informally. Further, by asking the Service to “advise the differences or

⁸ Motion at 3-9.

⁹ *Id.* at 10.

¹⁰ United States Postal Service Reply in Opposition to David Popkin Motion to Compel a Response to Interrogatory DBP/USPS-305, September 13, 2005 (Reply).

¹¹ *Id.* at 3-4.

¹² *Id.* at 4-5.

¹³ *Id.* at 6.

distinctions between these three categories” of mailpieces that have the same characteristics, DBP/USPS-305 seeks information beyond the bounds of the relief granted in Ruling No. 43, which encompassed “size and weight information on the EXFC envelopes...[,]” but not any comparative analysis of their characteristics. The request for such analysis represents a new line of inquiry, and thus is not permissible as a follow-up interrogatory.¹⁴

RULING

The David B. Popkin Motion to Compel Response to Interrogatory DBP/USPS-305, filed September 6, 2005, is denied.

George Omas
Presiding Officer

¹⁴ See Presiding Officer’s Ruling No. R2005-1/80, September 13, 2005, at 3-4.