

ORDER NO. 1245

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Before Commissioners: Edward J. Gleiman, Chairman;  
W.H. "Trey" LeBlanc III, Vice Chairman;  
Dana B. Covington, Sr.; Ruth Y. Goldway;  
and George A. Omas

International Mail Report

Docket No. IM99-1

ORDER DENYING UNITED PARCEL SERVICE MOTION TO  
PROVIDE PUBLIC ACCESS TO INTERNATIONAL MAIL DATA

(Issued May 21, 1999)

The Postal Rate Commission is required to submit a comprehensive report to Congress on the costs, volumes, and revenues of the Postal Service's international mail services by July 1 of each year. See 39 U.S.C. § 3663(a), enacted in Pub. L. 105-277 (1998). By March 15 of each year, the Postal Service is required to give the Commission the data that it needs to prepare its § 3663 report. See 39 U.S.C. § 3663(b). In Order No. 1228, the Commission identified the basic data that it needs to prepare its initial § 3663 report covering FY 1998. The Postal Service provided much of the requested data in its March 15, 1999 response. Its cover letter, at 2, characterized the data provided on the costs, volumes, and revenues of international mail as "internal documents of a commercially sensitive nature that under good business practices it would not normally disclose publicly." It asked that the Commission not publicly disclose this information.

United Parcel Service (UPS) filed a motion to gain access to those data and to file public comments on how those data should be used in the Commission's report.

Motion of United Parcel Service to Provide Public Access to International Mail Data Requested in Order No. 1228 and for Opportunity to Provide Public Comment, filed March 26, 1999 (Motion). UPS contends that disclosing international mail data is consistent with the broad public policy reflected in the Freedom of Information Act (FOIA) that favors full disclosure of government information. UPS argues that full disclosure of these data is necessary so that the Postal Service's competitors and the public can verify for themselves that the Postal Service is not subsidizing some or all of its international services with revenues from other services. Motion at 2-3.

UPS argues that because the time and resources available to the Commission to prepare its § 3663 report are short, and the task is novel, the Commission's report would benefit from the input of interested parties. UPS asserts that the burden to justify withholding of data provided in response to Order No. 1228 is on the Postal Service. It argues that in those limited instances where disclosure of specific international mail data might cause the Postal Service commercial harm, the Commission can require that such data be provided under appropriate protective conditions. *Id.* at 4.

The Postal Service responded to the UPS motion by conceding that public comment on the Commission's § 3663 report might be worthwhile. It argues, however, that the Commission is an expert body that is equal to the task assigned by § 3663, and that the value of public input to the Commission's first effort at developing that report would be outweighed by the competitive harm to the Postal Service that would result from publicly disclosing commercially sensitive international mail data. United States Postal Service Response to Motion of United Parcel Service to Provide Public Access to International Data Requested in Order No. 1228 and for Opportunity to Provide Public Comment, filed April 5, 1999, at 7-8.

The Postal Service notes that the UPS motion is not a FOIA request. *Id.* at 4. If FOIA principles should guide the § 3663 reporting process, the Postal Service argues, it should be remembered that the FOIA itself exempts certain categories of agency records, including trade secrets, from its general policy of mandatory disclosure. The

Postal Service points to 39 U.S.C. § 410(c) of the Postal Reorganization Act which reaffirms that the FOIA shall not require the disclosure of

information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.

Id. at 3.

The Postal Service notes that § 3663 only requires that the Commission provide a report on international mail to Congress, and does not provide for public hearings or even public access to that report. The Postal Service argues that it is significant that Congress did not provide for public hearings or public access to the Commission's § 3663 report, since Congress specifically subjects other Commission functions to these requirements of the Administrative Procedures Act (APA). Id at 6. The Postal Service adds that the Commission has deferred establishing through rulemaking any specific procedures for carrying out its § 3663 responsibilities. It argues that it would be premature for the Commission to publicly disclose commercially sensitive international mail data before it explores the implications of doing so through formal rulemaking procedures. Id. at 5, 7. In its comments of April 8, 1999, the Postal Service also undertakes to identify more specifically the international mail data that it believes should not be publicly disclosed in the Commission's § 3663 report. It describes three categories of international mail data that it considers especially commercially sensitive.

If the UPS motion were made in the context of a Commission proceeding on a formal record, where the provisions of the APA apply, the role of the Commission would be clear. As part of the Commission's quasi-judicial function to find facts and recommend rates, the Commission would have the responsibility to balance the interests of UPS as a litigant in discovering and cross-examining relevant facts, and the Postal Service's interest in protecting sensitive commercial information, in determining what international data to protect. The UPS motion, however, is made in the context of

a requirement that the Commission provide a provide a report to Congress. In this context, the Commission is not functioning in its usual role as a quasi-judicial body applying the record hearing procedures of the APA.

The Postal Service correctly observes that in 39 U.S.C § 410(c), Congress has expressed its intent that the FOIA not be used to require the Postal Service to disclose information that “under good business practice would not be publicly disclosed.” Congress did not expressly override that determination with respect to the international mail data that the Postal Service must provide under § 3663 by subjecting it to the public participation procedures of the APA. On the other hand, UPS plausibly infers that the interests of the competitors of the Postal Service’s international mail services are among those the Congress sought to protect by establishing the § 3663 reporting requirement.

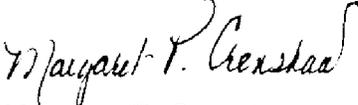
The Commission believes that in adopting § 3663, Congress was aware of the competing concerns of the Postal Service in keeping certain data on international mail confidential, and of the concerns of the Postal Service’s international mail competitors in verifying that international mail services are covering their costs. By not imposing the APA procedures of public hearings, discovery, and cross-examination on the § 3663 reporting process, and by requiring only that the Commission report its findings to Congress, Congress appears to have contemplated that existing information disclosure laws and policies provide appropriate means for weighing these competing interests.

As the Postal Service notes, the UPS motion is not a FOIA request. Instead, it is an informal request that the Commission fashion an ad hoc disclosure policy with respect to data elicited under § 3663. Rather than attempt to fashion ad hoc disclosure policies with respect to such requests, the Commission will respond to them within the framework of existing information disclosure laws and policies.

IT IS ORDERED:

The Motion of United Parcel Service to Provide Public Access to International Mail Data Requested in Order No. 1228 and for Opportunity for Public Comment, filed March 26, 1999, is denied.

By the Commission.  
(S E A L)

  
Margaret P. Crenshaw  
Secretary