

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

RECEIVED
Nov 13 4 54 PM '01
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

MOTION FOR PROTECTIVE CONDITIONS FOR RESULTS OF
CUSTOMER SATISFACTION SURVEYS
(November 13, 2001)

The United States Postal Service hereby moves for protective conditions to cover the release of customer satisfaction measurement surveys on the grounds that this data is commercially sensitive and under business practices would not be disclosed. In POR-2001/1-7, the Presiding Officer ordered that any motion for protective conditions for survey results responsive to OCA/USPS-7 be file by today. On November 9, 2001, the Postal Service offered to narrow the discovery dispute in OC/USPS-51-57 by agreeing to provide survey data similar to that ordered in POR 2001-1/7. See Opposition of the United States Postal Service to the Office of the Consumer Advocate's Motion to Compel Production of Documents Requested in OCA/USPS-51-57 at page 2. For purposes of economy, the Postal Service is requesting an order for protective conditions that covers all of the results of customer satisfaction surveys at issue from both USPS-7 and OCA-51-57, even though only selected portions of the results will be disclosed.

I. Preliminary Statement

On September 28, 2001, the Office of Consumer Advocate (OCA) filed Interrogatory OCA/USPS-7, which requested data for the Business Satisfaction and

Residential Customer Satisfaction surveys for FY2000 and FY2001. On October 5, 2001, OCA filed interrogatories OCA/USPS-51-57, which requested survey data of a broader scope. The Postal Service was willing to provide survey data from class-specific questions and the OCA joined its two motions for protective conditions. The Presiding Officer granted the joint motions for protective conditions and the data has been filed thereunder. See POR-2001-1/2 and 3 and USPS-LR-J-148 and 162.

In POR-2001-1/7, which only dealt with OCA/USPS-7, the Presiding Officer directed the Postal Service to provide additional survey results for the following questions: U.S. Postal Service Customer Satisfaction Survey (Residential): 1 a, b, e, and g; 2 b, d, and e; 5 a-f; 6-7; 11 a, b, f, g, and j; 15; and 18-23; U.S. Postal Service Business Customer Satisfaction Survey: 1 a, d, h, k, and l; 3 a and b; 6; 8 a and b; 10; 13; 17-19; 26; and 29-30. Ruling No. R2001-1/7, at 3 n.4.

In its Opposition to the OCA's Motion to Compel on OCA/USPS-51057, the Postal Service has agreed to provide, pursuant to a grant of protective conditions, similar information for the following surveys: the USPS Business Customer Satisfaction Survey, FY94 and FY 97; USPS Customer Satisfaction Survey (Residential), FY94 and FY97; National Account Survey, FY94, FY97, FY00 and FY01 and the Premier Account Survey, FY94, FY97, FY00 and FY01. Most of the data for FY 94 and 97 has been archived and the survey forms themselves have not yet been retrieved. It is not possible yet to provide an exact cite to the questions that most closely parallel the ones ordered above. Therefore, the Postal Service is asking that protective conditions be ordered to protect any of the data that is provided from the four surveys identified above for the years FY94, FY97, FY2000 and FY2001.

II. Protective Conditions are Warranted.

A review of the survey information to be provided reveals its highly commercially sensitive nature. It asks not only for a rating of the overall performance of the Postal Service but it also asks for a detailed breakdown. It covers satisfaction with almost every aspect of the mail the customer sends, the mail received and their experiences at their local post offices. It covers, for example, whether customers think that the products and services are a good value for the price, the consistency of delivering mail to a location, and the timeliness of delivery. Almost any of this information could be used by postal competitors to the detriment of the Postal Service.¹ Every competitor would gain insights into every market in which our products and services compete.

Moreover, this data is clearly not the type that is traditionally disclosed by a business. Every year, the Postal Service spends several millions of dollars collecting this data. Its use is almost entirely internal to the Postal Service. The Postal Service only discloses one data item publicly: the aggregate of favorable responses on the overall performance question.

Congress has appreciated the need to protect this type of data from public dissemination. The Postal Service routinely shares with Congress the results of many of the questions from the surveys at issue. Yet, to the best of our knowledge, Congress has never divulged these results to the media or disseminated them publicly.

¹ This is not to say that the requested data is necessarily negative. A competitor could use this data to better position their products. Moreover, a clever marketer could selectively take even favorable data and mold it to its purposes when comparing products.

Furthermore, the Postal Service has not been required to produce this information in response to a Freedom of Information Act request.

When the Postal Service was founded, Congress formally recognized the need to protect the commercially sensitive business information from disclosure. 39 U.S.C. § 410(c)(2) provides that the Postal Service shall not be required to disclose "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." Clearly, this is data a company would not disclose. Its value to the Postal Service is too precious and the potential harm from disclosure is too great. By comparison, this is not a public survey conducted independently of the Postal Service, such as the American Customer Satisfaction Index. See Response of the United States Postal Service to OCA/USPS-64. The Postal Service could not bar the release of the publicly available data.

The Federal Rules of Civil Procedure has long recognized the need to protect sensitive business data from wide-ranging disclosure. Rule 26(c)(7) states that a motion for a protective order may provide that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designate way. Courts have assessed the merits of a request to protect commercially sensitive information from disclosure by evaluating 1) the extent to which information is known outside the business; 2) the extent to which information is known to those inside the business, 3) the measures taken to guard the secrecy of the information; and 4) the value of the information to the business and its competitors.

Reliance Insurance Co. v. Barron's, 428 F. Supp. 200, 203 (S.D.N.Y. 1977). The facts as stated above clearly support the issuance of protective conditions.

The harm from releasing this information cannot be understated. At a time when the Postal Service operates in an increasingly competitive marketplace and where the progressive diversion from our core products has become a reality, the last thing needed is a font of data for the competitors to use against the Postal Service. The fact remains that this data is worth millions of dollars to the Postal Service and it should not be shared publicly.

Indeed, an order granting protective conditions would appropriately balance the ability for the litigants to have access to the information with the immense harm that would be suffered from the public release of the data. Therefore, the Postal Service respectfully requests that a motion for protective conditions be granted that would cover the results of the following surveys: the USPS Business Customer Satisfaction Survey, FY94, FY 97, FY 2000, and FY 2001; USPS Customer Satisfaction Survey (Residential), FY94, FY 97, FY 2000, and FY 2001; National Account Survey, FY94, FY97, FY00 and FY01 and the Premier Account Survey, FY94, FY97, FY00 and FY01.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking


Nan K. McKenzie

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



Nan K. McKenzie

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3089 Fax -5402
November 13, 2001