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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

DFC-LR-3

**Freedom of Information Act
Correspondence with the Postal Service
Concerning Removal of Collection Boxes
in Santa Clara, California**

PO Box 7868
Santa Cruz CA 95061-7868
April 1, 2002

Mr. Darrell L. Stoke
Postmaster
United States Postal Service
1200 Franklin Mall
Santa Clara CA 95050-9998

Re: Freedom of Information Act Request

Dear Mr. Stoke:

Pursuant to the Freedom of Information Act, for every collection box that the Santa Clara post office removed from service in 2001 or 2002, please send me records that, individually or collectively, will provide the box address, location ID number, posted weekday and Saturday collection times, and volume of mail collected. For the volume data, please provide only the volume data collected in closest proximity to the removal date of each box. For example, if volume data for a box were collected in both October 2000 and November 2001, and if the box was removed from service in December 2001, I would be requesting the volume data from November 2001 only.

At this time, I am not willing to pay any fees for the provision of this information. According to 39 C.F.R. § 265.9(g)(2)(i), fees shall not be charged for the first 100 pages of duplication and the first two hours of search time. If fees will need to be charged, please notify me in advance.

I look forward to receiving the information that I have requested within 20 working days of the date on which you receive this request.

Thank you for your time.

Sincerely,



Douglas F. Carlson

Due to a filing error, the May 13, 2002, letter from Ms. Sue Yeager, customer service analyst in the San Jose District, is unavailable at this time.

PO Box 7868
Santa Cruz CA 95061-7868
May 22, 2002

Ms. Sue Yeager
Customer Service Analyst
United States Postal Service
San Jose District
1750 Lundy Ave
San Jose CA 95101-7032

Dear Ms. Yeager:

On May 16, 2002, I received your letter dated May 13, 2002, concerning my Freedom of Information Act (FOIA) request dated April 1, 2002.

Although the first paragraph of your letter does not quote my FOIA request accurately, I trust that you recognized that I was requesting records only for collection boxes that the Santa Clara post office removed from service in 2001 or 2002. If not, please advise me.

I am writing to request clarification of the records that you will provide. You stated that you will provide "inventories for ZIP codes 95050, 95051, and 95054 dated 12/9/00, 11/15/00, and 9/13/00 respectively showing the location ID#, address, location description, and last pick up times as indicated on the label of every collection [sic] deleted from the database after those dates." I am unable to determine how provision of collection-box inventories with those three dates will allow me to derive any information concerning collection boxes that were removed from service in 2001 or 2002, the subject of my FOIA request. It also is not clear why inventories with those dates would show collection boxes that have been deleted from the database after those dates, unless the inventories show deleted collection boxes as well as active collection boxes.

I also question your determination that provision of three computer-generated collection-box inventories would require 0.75 hours of time on a personal computer, 2.75 managerial hours for manual research, and 1.0 clerical hours for manual research. Are these inventories stored in a computer? If so, why does the search implicate managerial hours and clerical hours as well? If the inventories are not stored in a computer, why does the search require computer time, and where are the inventories stored? I am unclear as to why a search for 10 pages of records would require such a wide-ranging, multimedia search.

Finally, you declined to provide volume data on the grounds that release of volume data is "prohibited." This conclusory statement is not the reason for, or justification of, the denial of my request that 39 C.F.R. § 265.7(d) requires the

Ms. Sue Yeager
May 22, 2002
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Postal Service to provide. In fact, this statement is not a justification at all, as FOIA does not prohibit disclosure of any types of records. The reason why volume data for a collection box that has been removed from service is not subject to mandatory disclosure under FOIA is far from obvious. I would appreciate receiving the required explanation for this decision to withhold these records.

Since my deadline for filing any appeal of your decision is June 12, 2002, I would appreciate receiving your clarification of the issues discussed in this letter by May 31, 2002.

Thank you.

Sincerely,



Douglas F. Carlson

OPERATIONS PROGRAMS SUPPORT
SAN JOSE DISTRICT



May 30, 2002

Mr. Douglas Carlson
P O Box 7868
Santa Cruz CA 95061-7868

Mr. Carlson,

In response to your letter of May 22, 2002 expressing some questions about my letter to you of May 13, 2002. You specifically mentioned questions about the data our office would provide to you and the time taken to gather said data.

Because of the way records are kept and my concern that I supply you with data for ALL removed boxes for the Zip Codes requested, I had a clerk manually search through our storage facility for the oldest hard copy inventories for the Zip Codes you requested. The oldest hard copy inventories we had available were for the dates mentioned; i.e., 95050-12/9/00, 95051-9/13/00, and 95054-11/15/00. These sheets provided me with a complete list of collection points available on those dates in those Zip Codes. I then compared those inventories to the hard copy requests to remove boxes; the computerized lists of removed boxes compiled by various employees, and the data file containing all current collections. Our clerk needed just over one hour to search and find the oldest inventories available. I spent the balance of the time mentioned, 0.75 hr of computer time and 2.75 hrs manual time, going over said inventories marking out data for collections still in place, and leaving the removed collections on the inventories per your request.

The terminology I used and that you referred to in paragraph five; i.e., "release of volume data is 'prohibited.'", would be more appropriately discussed with the Law Dept at USPS headquarters. I am not conversant with all the subtleties of FOIA statutes and not qualified to determine what is or is not prohibited.

Sincerely,

A handwritten signature in cursive script that reads "Dad Time for Sue Yeager".

Sue Yeager
Customer Service Analyst

1750 Lundy Ave

San Jose CA 95101-7032
408-437-6736
Fax: 408-437-1828

PO Box 7868
Santa Cruz CA 95061-7868
June 1, 2002

Ms. Sue Yeager
Customer Service Analyst
United States Postal Service
San Jose District
1750 Lundy Ave
San Jose CA 95101-7032

Dear Ms. Yeager:

Thank you for your letter dated May 30, 2002, concerning my Freedom of Information Act (FOIA) request dated April 1, 2002. I continue to hope that we can resolve my concerns before June 12, 2002, my deadline for submitting an appeal of any remaining issues.

Your letter cleared up my confusion. I understand now that you will provide inventories dated 9-13-00 (for ZIP Code 95051), 11-15-00 (for ZIP Code 95054), and 12-9-00 (for ZIP Code 95050) on which you have marked out the collection boxes that are still in service. Thus, the documents will show the collection boxes that have been removed from service.

The Freedom of Information Act permits a person to request agency records. The statute does not permit a person to request that the agency compile records, compare data contained in multiple records, and then amend those records to present, in a succinct form, the information that the requester seeks. Your response exceeds the requirements of FOIA. I believe that you, with the best of intentions, were trying to assist me by providing the information that I requested in a succinct format. Unfortunately, your additional analysis and amendment of the records exceed the requirements of FOIA and potentially will cause me to incur charges for search time that, based on your May 30, 2002, letter, appear unnecessary for a response to my FOIA request. Indeed, according to section 552(a)(4)(A)(iv) of the FOIA statute,

Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section.

5 U.S.C. § 552(a)(4)(A)(iv). The statute does not allow charges for time spent amending documents because amendment of documents exceeds the scope of FOIA.

Ms. Sue Yeager
June 1, 2002
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If I am not mistaken, you could have satisfied my FOIA request by sending the three inventories listed above, plus a current inventory for each of those three ZIP Codes. The inventories that I have identified in this paragraph *would* have allowed me to determine the box address, location ID number, and posted weekday and Saturday collection times of every collection box that was removed from service in 2001 and 2002 — the information that I sought. In short, a collection box that was removed from service in 2001 would appear on the inventory in 2000 but not on the current inventory; thus, these two inventories collectively would have provided me the information that I was seeking.

The “computerized lists of removed boxes compiled by various employees” appear to be responsive records that could have or should have been provided to me.

I was, and remain, willing to compare the old and new inventories and, possibly, the lists of removed boxes, as I can perform this analysis at a lower cost to me than paying the Postal Service to perform this analysis. My FOIA request and the Postal Service’s response thereto were governed by the FOIA statute. Since the FOIA statute permits me to request only records, not analysis and amendment of those records, the Postal Service should have provided records that would have allowed me to determine the information that I sought. Your additional analysis, which was well intentioned and, in other circumstances, would have been welcome and appreciated, unfortunately has unnecessarily driven up the cost of providing the records that I requested.

Therefore, I request that you provide me with a new estimate for the cost of search time and duplication for providing records that, individually or collectively, will provide the box address, location ID number, and posted weekday and Saturday collection times of collection boxes in Santa Clara that were removed from service in 2001 and 2002. I interpret responsive records to be the three inventories you identified from 2000, a current inventory, and the “computerized lists of removed boxes compiled by various employees.” In providing your revised estimate, please note that the FOIA statute prohibits the Postal Service from charging me for the first two hours of search time or the first 100 pages of duplication. Once time spent amending records is removed from your original total, I believe that the Postal Service can provide a response to my FOIA request in well under the two hours of free search time and within the 100 pages of free duplication that the statute provides.

Finally, I must once again renew my request that you provide me with your reasons for denial of my FOIA request for volume data. I disagree that it would be appropriate for me to discuss this issue with the Law Department because 39

Ms. Sue Yeager
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C.F.R. § 265.7(d)(1)(i) requires the *postal official denying the FOIA request* to provide the reasons for, or justification of, the denial of the FOIA request. According to this regulation, the Postal Service's reply denying a FOIA request in whole or in part shall include:

A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the *provision or provisions of Sec. 265.6 [of C.F.R. Title 39]* authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

Simply stating that release of the volume data is "prohibited" does not fulfill the requirement of this regulation. This regulation exists to ensure that a valid reason exists for denial of a FOIA request. No valid reason has been presented to me so far. Also, by requiring this information to be provided at the time that the FOIA request is denied, the regulation seeks to expedite the appeal process by allowing the requester to respond, in his appeal, to the reasons why the FOIA request was denied.

I look forward to receiving your response by June 9, 2002, to ensure that I will have time — albeit a brief period of time — to file my appeal if unresolved issues persist.

Thank you for your time.

Sincerely,



Douglas F. Carlson

OPERATIONS PROGRAMS SUPPORT
SAN JOSE DISTRICT



June 3, 2002

Mr. Douglas Carlson
P O Box 7868
Santa Cruz CA 95061-7868

Mr. Carlson,

Thank you for your kind letter of June 1, 2002.

Unfortunately I have no authority to reduce or eliminate the fees as you request.

Please send any such request to the General Counsel, U. S. Postal Service, Washington, D. C., 20260-1100.

Sincerely,

A handwritten signature in cursive script that reads "Sue Yeager".

Sue Yeager
Customer Service Analyst

cc: Winton A. Burnett, District Manager, Customer Service & Sales
Manager Operations Programs Support
Postmaster, Santa Clara
FOIA Administration Office, L'Enfant Plaza

1750 LUNDY AVE
SAN JOSE CA 95101-7032
408-437-6736
FAX: 408-437-1828

PO Box 7868
Santa Cruz CA 95061-7868
August 10, 2002

Ms. Sue Yeager
Customer Service Analyst
United States Postal Service
San Jose District
1750 Lundy Ave
San Jose CA 95101-7032

Re: Freedom of Information Act Request

Dear Ms. Yeager:

Thank you for your time earlier this year in responding to my follow-up correspondence concerning your initial response to my Freedom of Information Act request dated April 1, 2002, for records relating to collection boxes that the Santa Clara post office removed from service in 2001 or 2002.

As a consequence of the time demands related to litigation of my two active formal complaint cases at the Postal Rate Commission, I was unable to meet the June 12, 2002, deadline to file an appeal of your response to my FOIA request. Moreover, I will not be providing payment for the fees that you requested because I do not believe that the Postal Service complied with FOIA in responding to my FOIA request and in attempting to assess the fees specified in your response.

Your letter dated May 30, 2002, revealed a better way for me to formulate my request for records. Therefore, pursuant to FOIA, for every collection box that the Santa Clara post office removed from service in 2001 or 2002, please send me a copy of every hard-copy request to remove the box. In addition, please send me a copy of "the computerized lists of removed boxes compiled by various employees." Finally, please send a copy of each record that will provide the volume of mail that each box collected in the survey period closest to the removal date of the box. This letter constitutes a new FOIA request for only the records specified in this paragraph.

At this time, I am not willing to pay any fees for the provision of this information. According to FOIA, ***fees shall not be charged for the first 100 pages of duplication or the first two hours of search time.*** If fees will need to be charged, please notify me in advance.

I look forward to receiving the records that I have requested within 20 working days of the date on which you receive this request, as FOIA requires.

Please contact me if you need to clarify any part of my request.

Thank you for your time.

Sincerely,



Douglas F. Carlson



August 22, 2002

Mr. Douglas F. Carlson
PO Box 7868
Santa Cruz, CA 95061-7868

Dear Mr. Carlson:

Your August 10 Freedom of Information Act request addressed to the San Jose District was forwarded to this office for response.

At the time your August 10 letter was sent, you would not have received my August 16 and August 20 letters. Your August 10 letter states you are not willing to pay any fees for providing information to you. As outlined in my earlier letters, any request for a waiver of fees must include the information outlined in *Administrative Service Manual*, Section 352.514.

As also described in the August 16 and August 20 letters, each inquiry should also follow a specific format that includes all relevant information. Please be sure that each inquiry specifically cites the section(s) in the postal handbook or manual involved, quotes relevant passages from any referenced letters or memorandums, and includes copies of all relevant and/or referenced correspondence. In addition, please be sure that each inquiry or Freedom of Information Act request follows the appropriate format outlined in the governing postal manual.

Since complete information required under the appropriate postal standard was not submitted with your original request, your request is returned to you. Please resubmit your request to this office, including the following information required under ASM 352.514:

1. how the information will be used;
2. who else might be provided with the information;
3. if you intend to use the information for resale at a fee above actual cost;
4. any personal or commercial benefit you expect from disclosure;
5. how the general public is to benefit from disclosure;
6. as related to the identity of those that may use the information and how the information will be used: a description of any other person or organization involved in the request for information, whether directly or indirectly involved;
7. your qualifications in relation to the information requested;
8. your expertise in the subject area; and,
9. your intention to disseminate the information to the public.

We can proceed with further review of the request after receipt of the required information.

Sincerely,

A handwritten signature in black ink that reads "Roy E. Gamble".

Roy E. Gamble
Manager, Delivery Support

cc: Customer Service Analyst, San Jose District

PO Box 7868
Santa Cruz CA 95061-7868
August 30, 2002

VIA FACSIMILE AND U.S. MAIL

Mr. Roy E. Gamble
Manager, Delivery Support
United States Postal Service
475 L'Enfant Plz SW Rm 7142
Washington DC 20260-2802

Re: FOIA Request to San Jose District

Dear Mr. Gamble:

I am writing in response to your August 22, 2002, letter concerning my Freedom of Information Act (FOIA) request to the San Jose District dated August 10, 2002.

You and I agree that my letter does not state a request for a waiver of fees that conforms to the requirements in ASM section 352.514. However, my letter does not intend to state a request for a waiver of fees, nor does my letter request a waiver of fees. The language in question in my letter reads, "At this time, I am not willing to pay any fees for the provision of this information." This sentence indicates that I am not willing to pay fees. This sentence does not request that the Postal Service waive fees. I included this sentence in my FOIA request because ASM section 352.762 states, "To protect the public from unwittingly incurring liability for unexpectedly large fees, the custodian must notify the requester if the estimated cost is expected to exceed \$25." Moreover, ASM section 352.763 states that advance payment of fees is not required except under three circumstances, none of which applies to my FOIA request. Thus, under these two ASM sections, I conceivably could incur fees of \$25 or less without advance notification. To prevent this result, I notified the Postal Service in my original FOIA request dated August 10, 2002, that I was not willing to pay any fees for the provision of this information. In a subsequent sentence, I asked the Postal Service to notify me in advance if any fees would need to be charged.

A close reading of my FOIA request in conjunction with applicable regulations confirms that I did not request a fee waiver. I reject the apparent contention that my declaration of an unwillingness to pay fees constitutes an incomplete request for a fee waiver that justifies suspension of the processing of my FOIA request. The additional information that I have provided in this letter should explain my purpose in writing the language in question.

Mr. Roy E. Gamble
August 30, 2002
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Since my August 10, 2002, letter does not request a fee waiver, I decline to provide the information that ASM section 352.514 would require for a fee waiver. This information is irrelevant to my FOIA request, and the Postal Service may not legally require that I provide this information before responding to my FOIA request. In fact, I consider this information to be personal and confidential.

You also asked that I "specifically cite[] the section(s) in the postal handbook or manual involved, quote[] relevant passages from any referenced letters or memorandums, and include[] copies of all relevant and/or referenced correspondence." I am unaware of any authority under the FOIA statute or Postal Service implementing regulations that would support a contention that I did not include any required information or documents along with my August 10, 2002, FOIA request. I am unable to identify any information or documents that I could or should submit. If you need additional documents from the San Jose District, please contact the San Jose District directly, as the San Jose District's response to my earlier FOIA request suggests that the San Jose District is the custodian of the records that I requested on August 10, 2002.

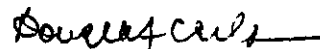
Finally, you stated, "[P]lease be sure that each inquiry or Freedom of Information Act request follows the appropriate format outlined in the governing postal manual." I believe that my August 10, 2002, FOIA request fully complies with the FOIA statute and all Postal Service implementing regulations. In fact, I have submitted more than 20 FOIA requests to the Postal Service. Even in the case of the FOIA request that became the subject of a lawsuit in federal court, the Postal Service has never before suggested that my FOIA requests did not follow the proper format, nor has any postal official interpreted the language in question in your letter as an improperly formatted request for a waiver of fees.

I look forward to prompt processing of my August 10, 2002, FOIA request by the appropriate custodian of record.

Please contact me if you have additional questions.

Thank you for your time.

Sincerely,



Douglas F. Carlson



September 20, 2002

Mr. Douglas F. Carlson
PO Box 7868
Santa Cruz, CA 95061-7868

Dear Mr. Carlson:

This responds to your August 30, 2002 letter, in further reference to your August 10 Freedom of Information Act (FOIA) request to the San Jose District.

My letter of August 22 directed you to the Administrative Service Manual section relevant to your "unwillingness" to pay fees associated with your FOIA request. The points outlined in your August 30 letter do not resolve this central fee issue, and you again repeat your refusal (or "unwillingness") to pay fees associated with producing the requested information.

It would be inappropriate to expend postal resources to search for or produce information sought under an FOIA request when the requestor has indicated a refusal to pay fees designed to defray the costs associated with that FOIA request. If needed, further information and the postal standards used to arrive at this decision, and responses to the points raised in your letters, can be found in my September 20 letter to you concerning your FOIA request to the postmaster, Pasadena (also dated today and enclosed in the same envelope with this letter).

The end of your letter asks why this office requested that your inquiries follow a specific format. We plan on asking all submitters of multiple requests for information to use this format to assure that their inquiries can be effectively and efficiently processed and to help resolve their complaint or request.

Sincerely,

A handwritten signature in black ink that reads "Roy E. Gamble".

Roy E. Gamble
Manager, Delivery Support

cc: FOIA Office
Customer Service Analyst, 1750 Lundy Ave., San Jose, CA 95101-7032
Consumer Affairs Office, 1750 Lundy Ave., San Jose, CA 95101-7032
General Counsel, Headquarters

PO Box 7868
Santa Cruz CA 95061-7868
September 27, 2002

General Counsel
United States Postal Service
475 L'Enfant Plz SW
Washington DC 20260-1100

Re: Freedom of Information Act Appeal

Dear Sir or Madam:

I am writing to appeal the Postal Service's failure to comply with the FOIA statute and implementing regulations in processing my August 10, 2002, FOIA request to Ms. Sue Yeager, customer service analyst in the San Jose District. Specifically, I appeal the Postal Service's improper withholding of the records that I requested, the Postal Service's determination or suggestion that my FOIA request was not formatted consistent with the requirements of the FOIA statute and implementing regulations, the Postal Service's determination or suggestion that I requested a fee waiver, and the Postal Service's refusal to provide two free hours of search time and 100 free pages of duplication. I have enclosed a copy of my FOIA request, a letter dated August 22, 2002, from Mr. Roy E. Gamble, manager, Delivery Support, my letter to Mr. Gamble dated August 30, 2002, and Mr. Gamble's letter dated September 20, 2002.

The Postal Service has focused on the following paragraph in my FOIA request to attempt to justify its failure to provide the records that I requested:

At this time, I am not willing to pay any fees for the provision of this information. According to FOIA, *fees shall not be charged for the first 100 pages of duplication or the first two hours of search time.* If fees will need to be charged, please notify me in advance.

(Emphasis in original.) For the reasons that I explained in my letter to Mr. Gamble dated September 6, 2002, this statement does not constitute a request for a fee waiver. According to 39 C.F.R. § 265.7(a)(4), "The requester may ask that fees or the advance payment of fees be waived in whole or in part." Under no reasonable interpretation does my paragraph "ask that fees * * * be *waived* in whole or in part" (emphasis added). While section 265.7(a)(4) requires a person requesting a fee waiver to provide certain information, this section is irrelevant to my FOIA request because I did not request a fee waiver. My FOIA request is properly formatted and complies with the FOIA statute and implementing regulations.

Far from constituting an improperly formatted request for a fee waiver, the paragraph in question provides the information that ASM section 352.511 solicits.

According to this section, "The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice." The first sentence in my paragraph provides this information. My paragraph also leaves open the possibility that I might be willing to pay fees in the future if notified in advance.

The Postal Service's processing of my FOIA request also attempts to deny me the two free hours of search time and 100 free pages of duplication to which I am entitled for every FOIA request. 5 U.S.C. § 552(a)(4)(A)(iv). Even though I stated, consistent with ASM section 352.511, that I was unwilling, as of August 10, 2002, to pay fees for the provision of these records, the Postal Service was required to search for and provide records until my free search time and 100 free pages of duplication were exhausted. At that time, the Postal Service should have offered me the records, if any, that it located and duplicated within the mandated free search time and duplication, then advised me of the fees, if any, that would be necessary to complete processing of the FOIA request. Indeed, the Postal Service has declined to process my FOIA request despite not having provided any determination that the records that I requested cannot be provided without exceeding two hours of search time and 100 pages of duplication. The Postal Service has not yet asserted that it could legally assess any fees in responding to my FOIA request. Therefore, Mr. Gamble's preoccupation with my willingness to pay fees is misguided and premature.

The paragraph in question leads to three inescapable conclusions. First, at the time of filing the FOIA request, I was not willing to pay any fees for the provision of the records. Second, I asserted my right to receive two free hours of search time and 100 free pages of duplication. Third, I wished to be notified in advance if fees would need to be charged. My FOIA request is fully consistent with the FOIA statute and implementing regulations. Therefore, the Postal Service must comply with my FOIA request by providing the free search time and duplication to which I am entitled and notifying me in advance if any fees will need to be charged to complete processing of my FOIA request. If, upon receiving that notification, I decline to pay the fees, the Postal Service must provide the records that it located and duplicated within the free search time and duplication to which I am entitled.

Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), I look forward to receiving your response to my appeal within 20 working days.

Sincerely,



Douglas F. Carlson

Enclosures