

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

Postal Rate and Fee Changes, 2006

Docket No. R2006-1

**DOUGLAS F. CARLSON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORY DFC/USPS-49**

July 24, 2006

On June 19, 2006, I filed interrogatory DFC/USPS-35.¹ This interrogatory reads:

Please provide the following information, in a PC-readable format such as a text file or Microsoft Excel file, from the Collection Point Management System database for every collection box in the database: location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

The Postal Service filed an objection on June 29, 2006.² On July 11, 2006, I moved to compel a response.³ The Postal Service filed an answer in opposition to my motion on July 18, 2006.⁴

¹ Douglas F. Carlson Interrogatory to the United States Postal Service (DFC/USPS-35), filed June 19, 2006.

² Objection of the United States Postal Service to Interrogatory of Douglas Carlson (DFC/USPS-35) ("Objection"), filed June 29, 2006.

³ Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-35 ("Motion"), filed July 11, 2006.

⁴ Response of the United States Postal Service in Opposition to Douglas Carlson Motion to Compel a Response to DFC/USPS-35 ("Opposition"), filed July 18, 2006.

My motion to compel explains my plan to analyze collection services over time.⁵ Interrogatory DFC/USPS-35 seeks current data on collection boxes. My request for admission, DFC/USPS-RA-1,⁶ asks the Postal Service to confirm that data from January 2005 that the Postal Service provided to me in response to a court order, and that I filed in DFC-LR-1, are genuine. The Postal Service objected to my request for admission on the grounds of relevance, materiality, and burden.⁷

In response to the Postal Service's objection concerning burden, on July 11, 2006, I filed an interrogatory, DFC/USPS-49,⁸ that simply asks the Postal Service to provide the same files that it provided in response to the court order. This interrogatory states:

Please provide the electronic files of Collection Box Management System data that the Postal Service provided to me on September 16, 2005, in response to a court order in *Douglas F. Carlson v. United States Postal Service*. The files subject to this interrogatory contain, for every collection box in the database, the location ID number, box address, description of address, service class, type of box, area of box, posted weekday collection times, posted Saturday collection times, and posted holiday collection times.

The Postal Service objected to this interrogatory on the grounds of relevance and materiality.⁹

I hereby move to compel the Postal Service to respond to DFC/USPS-49 or, in the alternative, to respond to DFC/USPS-RA-1.

⁵ See, e.g., Motion at 4.

⁶ Douglas F. Carlson Request for Admission from the United States Postal Service (DFC/USPS-RA-1), filed June 28, 2006.

⁷ Objection of the United States Postal Service to Request for Admission of Douglas Carlson (DFC/USPS-RA-1), filed July 10, 2006.

⁸ Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-49-50), filed July 11, 2006.

⁹ Objection of the United States Postal Service to Douglas F. Carlson Requests for Production (DFC/USPS-49-50), filed July 21, 2006.

My request for admission was a standard discovery technique to establish that data that I filed in DFC-LR-1 are genuine. I take no position on whether the burden on the Postal Service in responding to this request for admission would be undue because interrogatory DFC/USPS-49 will provide the same data with no burden. In fact, the Postal Service does not object to DFC/USPS-49 on the grounds of burden. As long as the Postal Service can provide a response to DFC/USPS-49, a response to DFC/USPS-RA-1 will be unnecessary.

Turning now to relevance and materiality, this motion to compel specifically incorporates the arguments on relevance and materiality that I stated in my motion to compel the Postal Service to respond to DFC/USPS-35. In short, the collection-box data from 2005 are relevant for the comparison of collection services over time that I plan to conduct. Moreover, my discovery plan is consistent with the Commission's previously stated philosophy, in the context of a dispute over production of the same data, to facilitate discovery "so that participants have the material that they need to proceed with their case."¹⁰

The Postal Service's opposition to my motion raises several issues to which I will respond in this motion. First, the Postal Service consumes several pages explaining why the Postal Service would not find the analyses that I propose concerning collection services to be convincing or otherwise informative about the value of collection services.¹¹ The Postal Service is free to argue with, question, or otherwise undermine my proposed analyses — by filing interrogatories to me in response to testimony that I file, by submitting rebuttal testimony, or on brief. But the Postal Service is not entitled to deny me access to the data that will allow me to conduct my analyses just because the Postal

¹⁰ POR C2001-1/10 at 7, filed August 10, 2001.

¹¹ The more pages the Postal Service writes to try to explain why data on collection boxes are not relevant to the value of First-Class Mail and Express Mail service, the more one is left with the impression that the data are relevant. If the data were clearly irrelevant, the Postal Service's explanation would have been concise.

Service would analyze collection services in a different way. In the context of a previous dispute over production of the same data, the presiding officer stated:

The Commission historically has taken reasonable steps to assist and assure that participants have access to the information necessary to argue their case before the Commission. The general philosophy is to facilitate access to information to the extent possible, allow participants to make their arguments based on the available information, and then weigh the significance of the information and arguments in deliberation of the matter.”¹²

An important element of arguing my case is to argue it my way, not the Postal Service’s way, with the issues framed my way, not the Postal Service’s way. The Postal Service has failed to establish that my analysis would be uninformative to the Commission — and therefore immaterial to issues in this case. One can only imagine the chaos that would ensue if parties could strike evidence from the record because they found the underlying analyses to be incomplete or unpersuasive or because they would prefer a different analytical approach to the problem.

Second, the Postal Service cites POR R2005-1/42 in support of its opposition to my motion to compel a response to DFC/USPS-35.¹³ In reality, the presiding officer’s ruling directly supports my motion to compel a response to DFC/USPS-35 and DFC/USPS-49 (or, in the alternative, DFC/USPS-RA-1). The ruling states that “a pattern of change in the receptacles and other resources available to the public for depositing mail could well shed light on how value of service may have changed over time[.]”¹⁴ I am proposing exactly this analysis. Therefore, data from January 2005 need to be in evidence in this proceeding. This motion seeks to accomplish this goal. Interrogatory DFC/USPS-35 will provide current data. Together, the data will allow me to conduct my comparative

¹² POR C2001-1/10 at 5, filed August 10, 2001.

¹³ Opposition at 7.

¹⁴ POR R2005-1 at 4, filed July 7, 2005.

analysis. The relevance issues facing the presiding officer in this discovery dispute appear to be settled.

Third, the Postal Service is off base when it cites the Kappel Report for guidance on how to interpret 39 U.S.C. § 3622(b)(2).¹⁵ This statute requires the Commission to consider “the value of the mail service actually provided each class or type of mail service to both the sender and the recipient, including but not limited to the *collection*, mode of transportation, and priority of delivery” [emphasis added]. 39 U.S.C. § 3622(b)(2). By its plain language, the statute declares that the value of the mail service *includes* collection. The statute also focuses on the service *actually provided*. The convenience and availability of collection services actually provided undeniably are elements of the value of collection services. A detour into legislative history is unnecessary when the plain language of a statute is clear.¹⁶

Not only does no ambiguity exist sufficient to warrant close examination of the legislative history of this statute, but the Postal Service also does not even provide legislative history. Instead, the Postal Service cites the report of a presidential commission. The Postal Service quotes the Kappel Report¹⁷ and asserts that the report was the “clear genesis” of the statutory language. Maybe it was, and maybe it was not, but in any event, the Kappel Report does not reflect the intent of Congress. Moreover, Congress changed the language when it wrote the statute. The

¹⁵ Opposition at 2.

¹⁶ In fact, a decision-maker must use caution when considering legislative history, particularly when the plain language is clear, because legislative history does not necessarily reflect congressional intent. A speech by one congressman on the floor of the House that is recorded in *Congressional Record* does not necessarily reflect the intent of the legislative body. The report of a congressional committee may be more informative than a quote from one congressman, but again, the decision-maker must use caution.

¹⁷ My interpretation of the statutory language is not, in fact, inconsistent with the language of the Kappel Report. Nothing in the Kappel Report suggests that the Commission should not consider the convenience of collection services in determining the value of a mail service. The Kappel Report focuses on justifying the *inclusion* of certain factors, not the exclusion of others.

Postal Service's proposed reliance on language in the Kappel Report would render careful congressional drafting irrelevant, replacing congressional intent with the words of the Kappel Report. In reality, the only language whose meaning is important is the language of the statute that Congress ultimately enacted into law. The statute clearly includes collection service actually provided as an element of the value of a mail service.

Finally, in my motion to compel the Postal Service to respond to DFC/USPS-35, I took the prudent step, based on prior experience, of attempting to preempt Postal Service speculation into my motives for filing DFC/USPS-35. I reviewed relevant history and stated in advance that I “reject any suggestion that the arguments in this motion reflect anything other than a true and complete statement of my intentions and my positions on the factual and legal issues.”¹⁸ With that tactic largely, but not completely, removed from its rhetorical arsenal,¹⁹ the Postal Service, in the context of a dispute over the burden to respond to DFC/USPS-35, now charges that “it is difficult to engage in civil (to say nothing of productive) discourse with someone who is prepared to question your basic integrity and veracity.” As a participant who has a 10-year record of nothing short of cooperative, civil, honest, and truthful actions in Commission proceedings, who has provided numerous valuable insights into postal operations, and who has informed numerous Commission decisions, I find the implications of the Postal Service's statement to be offensive and misleading. Since a large federal agency is posting these comments about me in a public forum, I am compelled to respond now to set the record straight and to preempt further suggestions from the Postal Service that I have obstructed any discourse on the issues relating to this dispute.

¹⁸ Motion at 9.

¹⁹ See pp. 10–11, *infra*.

A reasonable reader would infer from the Postal Service's statement that the Postal Service has tried but failed to engage in a civil or productive discourse with me concerning this discovery dispute. In reality, the Postal Service made no attempt to contact me before filing an objection to my interrogatory. Instead, in the spirit of cooperation, I contacted the Postal Service before filing my motion. I sent an e-mail message to Postal Service counsel. He replied to me. I responded to him. He did not respond to me.²⁰ I did not take offense at the absence of a response, even though I was expecting one.²¹ However, the Postal Service now implies publicly that it cannot engage in a civil and productive discourse with me. A discourse implies that a dialogue exists. I started one, but the Postal Service stopped it. The facts speak for themselves.

The Postal Service also states that it "will not attempt to burden the record by addressing every one of the historical accusations flung by Mr. Carlson." The Postal Service is the party that has repeatedly flung accusations about my motivations — accusations that fall nothing short of questioning my integrity and the veracity of representations that I have made before the Commission.²² My review of the record in Docket No. C2001-1, in the context of almost an identical dispute over production of collection-box data, reveals these quotes that substantiate my concern:

Mr. Carlson's failure to tailor his motion to the types of data he has asserted he would use, or even to acknowledge that he is seeking far more information than he has asserted he would use, would be less troubling if it were not already clear that Mr. Carlson has long

²⁰ I assume that the fact that I did not receive a response indicates that he did not send one. This assumption is usually, but not always, accurate for electronic mail.

²¹ In fact, I stated one position on the issue of burden in both the unanswered e-mail message and in my motion, and the Postal Service waited until the opposition to my motion to respond.

²² In the past, I have questioned the Postal Service's motivations for withholding collection-box data, as I never believed the agency's claim that releasing publicly available information posted on collection boxes could pose a security threat. A federal judge ruled in 2005 that I had debunked the Postal Service's argument that disclosing collection-box information might facilitate lawlessness, and he ordered the Postal Service to release the data. *Douglas F. Carlson v. United States Postal Service*, Northern District of California, Civil Action, File No. 02-05471 RMW, March 31, 2005 (2005 WL 756573). The federal court decision lends independent credibility to my suspicions about the Postal Service's motivations and claims.

sought these data in other contexts, for other purposes. * * *
A healthy skepticism should be maintained that Mr. Carlson's motion to compel is anything more than a post hoc attempt to justify an extremely broad-based fishing expedition [emphasis added].²³

Parties with broad-ranging interest in local, regional, and national postal matters, no matter how benign their motivation, cannot be allowed to make sweeping demands for massive amounts of information under the pretext that such material is necessary to address what is initiated as a relatively narrow service complaint proceeding, if their *true intent* is to use that information for other purposes. * * * The unwillingness of the parties to accept the terms of the protective conditions speaks far louder about their *true motivation* than any rhetoric that the Postal Service could possibly bring to bear [emphasis added].²⁴

Moreover, his contention at page 4 that acceptance of the protective conditions in this proceeding would continue to cloud his ability to use information he obtained in the future under the FOIA is *disingenuous* [emphasis added].²⁵

The fact that he instead chose to claim a need for nationwide collection-box level data to address these types of questions himself, when at the same time constantly emphasizing the limited resources he has available as an individual litigant, *suggests that his primary interest in the CBMS database extends well beyond its application for purposes of this proceeding* [emphasis added].²⁶

This argument, which simply does not pass the straight face test, is the best Mr. Carlson could come up with in his second attempt.²⁷

It may be necessary, however, to further emphasize the depth of the Postal Service's concerns respecting Mr. Carlson's purpose in seeking access to the disputed information in the absence of appropriate protective conditions.²⁸

²³ Response of the United States Postal Service in Opposition to the Carlson Motion to Compel Regarding DFC/USPS-19-21 at 8, filed July 9, 2001.

²⁴ Response of the United States Postal Service to Carlson Cross-Motion for Reconsideration and Response Regarding DFC/USPS-19 and Presiding Officer's Ruling No. C2001-1/6 at 4-5, filed August 9, 2001.

²⁵ *Id.* at 7.

²⁶ Motion of the United States Postal Service for Certification of Appeal From Presiding Officer's Ruling No. C2001-1/10 at 9, filed August 28, 2001.

²⁷ *Id.* at 15.

²⁸ *Id.* at 20.

For the Postal Service to view that result [provision of CBMS data without protective conditions] as anything other than an abuse of process, it would have to be convinced that potential access to the CBMS database was not a significant motivation behind the initiation of this case, and that quantification of alleged “harm” [from early collections on eves of holidays] was something more than a convenient rationalization to obtain access to previously-sought information.²⁹

Indeed, the very fact that he is unwilling to restrict his use of the database to the purpose for which he claims it was requested is at the heart of the issue that has troubled the Postal Service from the beginning, namely, *the actual purpose for which it was requested* [emphasis added].³⁰

The Commission heard the Postal Service’s repeated accusations about my motives. In certifying the discovery issue for appeal to the Commission, the presiding officer stated, “The Postal Service alleges that Carlson may have ulterior motives for requesting access to the CBMS database, or in some way may be abusing the discovery process to gather information that would otherwise not be available to him.”³¹ The presiding officer asked the Postal Service to “provide any specific evidence that indicates Carlson seeks the requested information for purposes unrelated to this Complaint, and a description of what those purposes are.”³² Called upon to support the repeated accusations of its counsel, who also is presiding over this discovery dispute, the Postal Service provided not one word in response to the presiding officer’s question to support the Postal Service’s baseless allegations.³³

In Docket No. C2001-1, the Postal Service repeatedly questioned my integrity and veracity in the context of a previous discovery dispute over the

²⁹ *Id.* at 21–22.

³⁰ Response of the United States Postal Service to Presiding Officer’s Ruling No. C2001-1/13 at 4, fn. 2, filed October 9, 2001.

³¹ POR C2001-1/13 at 6, filed September 19, 2001.

³² *Id.* at 7.

³³ See Response of the United States Postal Service to Presiding Officer’s Ruling No. C2001-1/13, filed October 9, 2001.

same set of data. The Postal Service may, at its option, disbelieve everything I write and criticize every position I take on postal matters, no matter how meritorious or representative of public concerns my views may be. However, the Postal Service's suggestion that I am at fault for inhibiting a civil and productive discourse in this case — a discourse that I initiated and the Postal Service cut off — is untrue. Moreover, the facts relating to burden that I cited in my motion to compel a response to DFC/USPS-35, which prompted the Postal Service's outburst of indignation, do not lie. In Docket No. C2001-1, the Postal Service *did* state that not only would it be too expensive to extract data from the CBMS database, but it also would be too expensive even to determine how expensive the project would be. I debunked this statement only because I happened to have documents from the Postal Service — ironically, from Freedom of Information Act correspondence — indicating that the scope of the project was minimal. If I had not had these documents, the Postal Service would have successfully impeded my access to the data based on a false undue-burden argument. Moreover, in 2005, the Postal Service *did* try to charge me \$6,290 to provide collection times at 13 stations and branches in New Orleans — before suddenly providing the data for free. Based on this rich history of conflict over access to data on collection boxes and the Postal Service's excessive cost estimates, I would be remiss to have done anything other than to suggest in my motion to compel that the Postal Service's latest cost estimate of \$7,600 was inflated. I stand by this suggestion, and I continue to believe that this cost estimate may be another attempt by the Postal Service to use cost estimates as a weapon to prevent disclosure of information about collection boxes when the law does not support the Postal Service's desire to withhold the information.

Unfortunately, the Postal Service's speculations about my motivations have not entirely ceased. Now the Postal Service resorts to innuendo, suggesting that the fact that I sought CPMS data under FOIA undermines my

discovery request in the rate case.³⁴ The Postal Service offers its observation “[w]ithout further comment[.]”³⁵ I freely admit that I sought CPMS data under FOIA because the data are interesting and useful for my various postal-related activities and analyses, and I live in a country in which a statute affords me access to these records. However, I am seeking the data *in this proceeding* to conduct the analyses described in my motion to compel a response to DFC/USPS-35. These analyses are related to pricing issues *in this proceeding*. My FOIA requests are irrelevant. The Postal Service has not substantiated a single prior accusation about my motivations for discovery requests, and when the Commission called the Postal Service on these repeated allegations in Docket No. C2001-1, the Postal Service ignored the Commission’s inquiry.³⁶ The Postal Service once again cannot establish that I do not intend to conduct the analyses that I propose. Indeed, the phrase “without further comment” is a convenient escape clause when, as here, the facts are insufficient to support the conclusion that the Postal Service wants the presiding officer to draw. Further “comment” would only expose the fallacy of the Postal Service’s argument.

In short, a party’s otherwise-valid discovery request cannot be rendered invalid simply because the party sought some or all of the information previously under another legally available option such as FOIA. The Postal Service should argue its position on the merits and stop relying on unsubstantiated speculation and misleading comments.

For the reasons described herein, I move to compel a response to DFC/USPS-49 or, in the alternative, to DFC/USPS-RA-1.

Respectfully submitted,

Dated: July 24, 2006

DOUGLAS F. CARLSON

³⁴ Opposition at 10–11, fn. 5.

³⁵ *Id.*

³⁶ See Response of the United States Postal Service to Presiding Officer’s Ruling No. C2001-1/13, filed October 9, 2001.