

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

-----  
Station and Branch )  
Optimization and )  
Consolidation Initiative, 2009 )  
-----  
Docket No. N2009-1

RESPONSE OF THE PUBLIC REPRESENTATIVE TO DAVID POPKIN MOTION

(September 14, 2009)

On September 2, 2009, the Postal Service filed two notices with applications for nonpublic treatment to place under seal “finance numbers” which are used to identify stations and branches.<sup>1</sup> On September 3, 2009, David B. Popkin filed a Motion which challenges the Postal Service’s claim that station and branch finance numbers should be protected from public disclosure.<sup>2</sup> The Public Representative supports the Postal Service’s application for non-public treatment because Mr. Popkin does not make the necessary showing of public need for the finance numbers. Further, with respect to this case, the Public Representative does not find any public interest in reviewing the station and branch finance numbers.

*Postal Service applications for non-public treatment.* The Postal Service claims that finance numbers for postal facilities are akin to a social security number and are used to categorize a “wealth of financial data associated with...[each] facility.” Notices

---

<sup>1</sup> Notice of United States Postal Service of Filing of Library Reference N2009-1/11 and Application for Non-Public Status, September 2, 2009; Notice of the United States Postal Service of Filing of Library Reference N2009-1/7 and Application for Non-Public Status, September 2, 2009 (Notices). Because the applications for non-public treatment attached to the notices are identical, the Public Representative cites page numbers to both documents simultaneously.

<sup>2</sup> David B. Popkin Motion, September 3, 2009 (Motion).

at 2. The Postal Service also states that the finance numbers are not of significant use to the public, as they are primarily used to coordinate internal accounting systems. *Id.* at 3. The Postal Service states that it avoids publicly filing its finance numbers, because competitors could use the finance numbers as a key to match volume with postal facility in other Postal Service documents. *Id.* at 5-7.

*David Popkin Motion.* Mr. Popkin argues that some of the finance numbers are released in the public domain in the *Postal Bulletin* and other publicly available documents. Motion at 2-4. Mr. Popkin argues that since some of the finance numbers are available to the public, they should not be protected. *Id.* at 4. Mr. Popkin also includes examples of documents in the public domain which include finance numbers. *Id.* at 5-9. Significantly, Mr. Popkin makes no claim that there is a public interest in the availability of the finance numbers.

*Analysis.* 39 CFR 3007.20 and 3007.21 require the Postal Service to file an “application for non-public treatment” when it seeks to protect materials from public disclosure. Section 3007.21 requires that the Postal Service identify and explain the commercial harm that is likely to result from public disclosure of the materials. The application is designed to fulfill the Postal Service’s burden of persuasion that the proposed “non-public materials should be withheld from the public.” See 39 CFR 3007.21(b).

Any person may request that non-public status be terminated under 39 CFR 3007.31. That rule, however, requires the person to provide a “detailed statement justifying why the non-public materials should be made public, giving specific recognition to any pertinent rationale(s) provided” by the Postal Service. See 39 CFR 3007.31(a).

If a request is made under rule 3007.31, the Commission must balance “the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.” See 39 CFR 3007.33.

Mr. Popkin does not allege any public interest in the public release of the finance numbers. Rather, Mr. Popkin challenges the sufficiency and weight of the application for non-public treatment in light of the fact that some of the numbers are available from other sources.

Under a similar standard from the Freedom of Information Act Exemption 4 (Competitive Harm), federal courts have stated that a party asserting that the material is publicly available carries the burden of production on that issue, and the requester must show that the identical information, in its entirety, must be readily available in the public realm. See *NW. Coalition for Alternatives to Pesticides v. Browner*, 941 F. Supp 197,t 202 (D.D.C. 1996); *Boyes v. DOE*, No. 03-1756, 2005 WL 607882 at \*7 (D.D.C. Mar. 16, 2005). Additionally, when an agency places “selected examples” of material claimed confidential to its website, they are only “limited disclosure[s] to a limited audience” and were “surely insufficient to render the data publicly available.” *OSHA Data/CIH, Inc. v. US Dept. of Labor*, 220 F.3d 153, 163 n.25 (3rd Cir. 2000).

Most importantly, Mr. Popkin’s Motion fails to articulate the “public interest in financial transparency” as required in the balancing test under the Commission’s rules for the treatment of non-public materials in part 3007. Further, Mr. Popkin’s Motion only offers anecdotal evidence of limited release of the data which does not rebut the Postal Service’s claim of confidentiality for the finance numbers.

The Public Representative agrees with the underlying concern articulated by Mr. Popkin. The Postal Service must adequately justify, and use sparingly, its decision to file materials under seal with the Commission. The Public Representative believes that Mr. Popkin’s Motion raises valid issues, and correctly calls on the Postal Service to support its justification for filing materials under seal. However, in this case the Public Representative concludes that the Postal Service is acting in good faith to restrict the availability of the station and branch finance numbers. Due to the lack of public interest, for purposes of this case, in reviewing the station and branch finance numbers, the Public Representative concludes that *any* possible commercial injury, however

remote or diminutive, outweighs the complete lack of public interest in reviewing the finance numbers.<sup>3</sup>

*Conclusion.* For the reasons discussed above, the Public Representative respectfully asks that the Commission deny Mr. Popkin's Motion.

Respectfully Submitted,

/s/ Christopher Laver

Assistant to the Public Representative  
for Docket No. N2009-1

901 New York Avenue, N.W.  
Washington, DC 20268-0001  
(202) 789-6889; Fax (202) 789-6891  
e-mail: [christopher.laver@prc.gov](mailto:christopher.laver@prc.gov)

---

<sup>3</sup> The Public Representative encourages the Postal Service to acknowledge in its applications for non-public treatment when some or all of the materials claimed to be non-public are available from other public sources, and the reasons that materials may now warrant non-public treatment.