

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Six-Day to Five-Day Street Delivery  
and Related Service Changes

Docket No. N2010-1

PRESIDING OFFICER'S RULING DENYING  
POSTAL SERVICE MOTION FOR RECONSIDERATION

(Issued August 5, 2010)

On July 23, 2010, the Postal Service filed a motion for reconsideration of P.O. Ruling N2010-1/21, issued July 19, 2010.<sup>1</sup>

*Background.* The complete factual background prior to this Ruling is set forth in P.O. Ruling N2010-1/21 at 1-2. In summary, it involves a Douglas F. Carlson (Carlson) interrogatory requesting cost savings estimates for each Saturday mail processing consolidation plan.<sup>2</sup> The Postal Service initially answered the interrogatory with a statement that consolidations are a local decision and there is no headquarters-sponsored plan or requirement for savings estimates. Thus, there is not material

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<sup>1</sup> Motion of the United States Postal Service for Reconsideration of Presiding Officer's Ruling N2010-1/21, July 23, 2010 (Motion).

<sup>2</sup> Douglas F. Carlson Interrogatories and Requests for Production of Documents to United States Postal Service Witness Frank Neri (DFC/USPS-T4-10-16), April 20, 2010; Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-T4-14, May 10, 2010 (Motion to Compel); Douglas F. Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4, July 7, 2010 (Carlson Motion for Reconsideration).

responsive to the discovery request as there is no headquarters' "plan" to consolidate Saturday mail processing operations.<sup>3</sup>

The Presiding Officer initially denied the Carlson Motion to Compel on the basis that information responsive to Carlson's interrogatory does not exist. See P.O. Ruling N2010-1/4, May 19, 2010, at 2-3. The ruling noted that if such information did exist, according to the Postal Service, it would be difficult to access and not be comparable across districts. *Id.* at 2. The ruling also referenced Commission rule 3001.26(a), which requires a participant, during discovery, to furnish only such information 'as is available to the participant.' *Id.* at 3, n.5. P.O. Ruling N2010-1/4 sets forth the factual basis for denying Carlson's motion: the Postal Service's statement that information responsive to Carlson's interrogatory does not exist, and that information that exists is not comparable across districts.

Carlson sought reconsideration, noting that P.O. Ruling N2010-1/4 is "based on the Postal Service's representation that no responsive records exist." Carlson Motion for Reconsideration at 3. Carlson states that he received through a Freedom of Information Act (FOIA) request cost savings estimates for one particular Saturday mail processing consolidation. *Id.* at 4. Carlson appended the Postal Service's response to his FOIA request to the Carlson Motion for Reconsideration. That response shows that in the lead up to the consolidation of mail processing, local managers in San Diego developed and then communicated cost savings estimates with Postal Service headquarters' personnel. See *id.*, Exhibit 1. Subsequently the San Diego local managers prepared adjustments to the cost savings estimates and shared them with Postal Service headquarters' personnel. *Id.*

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<sup>3</sup> See Response of United States Postal Service Witness Neri to Interrogatories of Douglas Carlson (DFC/USPS-T4-10 through 14, 16), May 4, 2010 (Response to Interrogatory); Opposition of the United States Postal Service to Carlson Motion to Compel Response to DFC/USPS-T4-14, May 17, 2010, at 1-2 (Opposition to Motion to Compel); Opposition of the United States Postal Service to Carlson Motion for Reconsideration of Presiding Officer's Ruling N2010-1/4, July 8, 2010, at 2-3 (Opposition to Carlson Motion for Reconsideration).

In its Opposition to Carlson's Motion for Reconsideration, the Postal Service characterizes the information Carlson garnered from his FOIA request as "an informal estimate, [by local area staff]...of the potential cost savings associated with the consolidation of the Saturday outgoing processing operations" in one local area. Opposition to Carlson Motion for Reconsideration at 1. The Postal Service notes that it never meant to convey that records concerning cost savings from Saturday mail processing "absolutely do not exist," but only meant to say that records responsive to Carlson's interrogatory do not exist. *Id.* at 2-3.

P.O. Ruling N2010-1/21 summarizes the parties' arguments, including the Postal Service's argument that the information Carlson garnered from his FOIA request does not change the fact that records responsive to Carlson's interrogatory do not exist. See P.O. Ruling N2010-1/21 at 3. It granted reconsideration, finding that recent pleadings clarified a misunderstanding of the underlying interrogatory, stemming from the Postal Service's focus on the word "plan" within the initial interrogatory. *Id.* P.O Ruling N2010-1/21 narrowed the interrogatory to a 12 month period and reaffirmed that the Postal Service was not expected to recreate records which do not currently exist. *Id.*

*Postal Service Motion.* The Postal Service now asks the Presiding Officer to reconsider P.O. Ruling N2010-1/21. Motion at 1. The Postal Service enumerates two reasons it believes the Presiding Officer should reconsider P.O. Ruling N2010-1/21: that the ruling fails to consider the Postal Service's arguments made in its Opposition to Carlson Motion for Reconsideration, and that the ruling fails to reverse a prior ruling "without articulating any new factual or legal basis..." *Id.*<sup>4</sup>

The Postal Service claims that the ruling did not take into account the Postal Service's argument that it has always acknowledged that records of the kind produced

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<sup>4</sup> The Motion cites *Motor Vehicles Mfrs. Assn. of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), which stands for the proposition that an agency rule, which was created through notice and comment rulemaking, challenged and subsequently upheld in court, could not be rescinded without reasoned analysis. That is not the factual situation here.

from Carlson's FOIA request exist, and did not address what the "misunderstanding" concerning the scope of the interrogatory entailed. *Id.* at 2-3.

The Postal Service's two arguments overlap. In essence the Postal Service argues: P.O. Ruling N2010-1/21 failed to address the Postal Service's argument that Carlson's revelation does not conflict with the Postal Service's initial statement, and thus the ruling did not articulate a change in factual basis justifying the reversal of the previous ruling.

The Postal Service's contention that P.O. Ruling N2010-1/21 failed to address an argument in the Opposition to Carlson's Motion for Reconsideration, namely that the Postal Service had always acknowledged that information might exist at the local level, is not well taken. P.O. Ruling N2010-1/4 acknowledges that informal estimates may exist. That ruling reflected the Presiding Officer's understanding that such informal estimates, removed from review or oversight by Postal Service headquarters, would not constitute responsive records. The ruling made clear that the basis for this finding was that the Postal Service's claim that material responsive to Carlson's interrogatory "does not exist." P.O. Ruling N2010-1/4 at 3.

P.O. Ruling N2010-1/21 finds that the pleading process clarified that there was a misunderstanding as to the meaning of the interrogatory, *i.e.*, what records would be responsive to the interrogatory. The Postal Service states that records of the type produced in response to Carlson's FOIA request were exactly the kind of informal, non-responsive records it was describing in its previous filings. However, Carlson persuasively points to the records responsive to the FOIA request as proof that responsive records to the interrogatory do, in fact, exist.

Clarification of this misunderstanding, through the identification of what documents exist, obviates the Postal Service's second argument, that there is no changed factual circumstance on which to base the reversal of a previous ruling.

The material provided in response to Carlson's FOIA request show that there are cost savings estimates prepared for Saturday mail processing consolidations that are reviewed by Postal Service headquarters. The estimate provided by Carlson was even

revised and *resubmitted* to Postal Service headquarters. The FOIA materials clearly show that documents responsive to Carlson's interrogatory do exist at least for one mail processing consolidation. The Postal Service's explanation that such materials are informal, and not utilized beyond the local level is belied by the fact that this cost savings estimate was shared not once, but twice with Postal Service headquarters.

In sum, the Postal Service's arguments for reconsideration of P.O. Ruling N2010-1/21 fall short. First, the P.O. Ruling N2010-1/21 addressed and rejected the Postal Service's argument that the Carlson Motion for Reconsideration was a repeat of the initial arguments made during the Motion to Compel, and that the material responsive to the FOIA request did not constitute a record responsive to Carlson's interrogatory. Second, that ruling explained how the pleading process (including the FOIA material) clarified the misunderstanding as to the nature of records that would be responsive to the original discovery request.

The previous limitations on the scope of the interrogatory discussed in P.O. Ruling N2010-1/21, limiting the scope to a specific timeframe and records that exist, remain in place.

The Presiding Officer is aware that the deadline for submitting rebuttal testimony has passed. Under the circumstances of this controversy, Carlson is granted 14 days from the date the Postal Service responds to the underlying interrogatory to submit testimony relying on those materials.

RULING

1. The Motion of the United States Postal Service for Reconsideration of Presiding Officer's Ruling N2010-1/21, filed July 23, 2010, is denied.
2. Douglas F. Carlson is granted 14 days from the date of the Postal Service's response to submit rebuttal testimony relying on those materials.

Ruth Y. Goldway  
Presiding Officer