

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Delaware Station Post Office,)
Albany, New York 12209)

Docket No. A2011-1

JOINT MOTION FOR LEAVE TO FILE A DECLARATION TO CLARIFY
FACTS SURROUNDING DELAWARE AREA NEIGHBORHOOD ASSOCIATION
FREEDOM OF INFORMATION ACT REQUEST

(December 16, 2010)

The Delaware Area Neighborhood Association (DANA) and the Public Representative hereby file this Joint Motion for Leave to File a Declaration to Clarify Facts Surrounding Delaware Area Neighborhood Association Freedom of Information Act Request.

In its Reply of the United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, the Postal Service incorrectly suggests that DANA delayed filing a Freedom of Information Act (FOIA) request for the complete Administrative Record in this case until an unidentified time after the November 15, 2010 phone conversation with Postal Service's counsel.¹ As the attached Declaration of Susan J. DuBois clearly demonstrates, DANA member and Albany Council Member Cathy Fahey filed a timely FOIA request for that information well in advance – 28 days in advance – of the November 15, 2010 phone call with Postal Service counsel. To date, DANA has not

¹ Reply of the United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, December 14, 2010 at 2 n.5.

received the Administrative Record for the Postal Service's decision to close the Delaware Station Post Office or any documents in fulfillment of the FOIA request. Without such information via a FOIA request response or via a response to formal and informal requests in this proceeding, DANA and the other appellants are severely prejudiced in their prosecution of this appeal to the Postal Regulatory Commission.

Accordingly, DANA and the Public Representative seek leave to file the attached Declaration of Susan J. DuBois in order to clarify the record on the timeliness of the FOIA request with respect to the Administrative Record for the Postal Service's decision to close the Delaware Station Post Office.

Respectfully Submitted,

/s/ Susan J. DuBois

Susan J. DuBois, Treasurer
Delaware Area Neighborhood
Association

Post Office Box 9085
Albany, New York 12209

/s/ Robert Sidman

Robert Sidman
Public Representative for
Docket No. A2011-1

901 New York Avenue, N.W., Suite 200
Washington, DC 20268-0001
(202) 789-6827; Fax (202) 789-6891
e-mail: robert.sidman@prc.gov

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Delaware Station Post Office,)
Albany, New York 12209)

Docket No. A2011-1

DECLARATION OF SUSAN J. DUBOIS IN SUPPORT OF JOINT MOTION FOR
LEAVE TO FILE A DECLARATION TO CLARIFY FACTS SURROUNDING
DELAWARE AREA NEIGHBORHOOD ASSOCIATION FREEDOM OF INFORMATION
ACT REQUEST

(December 16, 2010)

1. My name is Susan J. DuBois, and I am the Treasurer of the Delaware Area Neighborhood Association (DANA). I make this declaration in support of the Joint Motion for Leave to File a Declaration to Clarify Facts Surrounding Delaware Area Neighborhood Association Freedom of Information Act Request.

2. As I outline in the facts below, a Freedom of Information Act (FOIA) request was made for a copy of any and all written information and any record in its entirety pertaining to the process of determining whether or not to close Delaware Station and including the eventual decision to close it. The FOIA request was made on October 18, 2010, one day before the October 19, 2010 postmark date of DANA's Post Office Closing Appeal. To date, the requested information has not been received.

3. The statements herein are made to the best of my knowledge, information and belief.

4. In the Reply of the United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, the Postal Service incorrectly suggests that DANA delayed filing a FOIA request for the complete Administrative Record in this case.¹

5. As the attached November 17, 2010 letter (Attachment A) from the Postal Service states, the Postal Service received a FOIA request from Albany Council Member Catherine Fahey. Ms. Fahey is also a member of DANA. The request was for a copy of any and all written information and any record in its entirety pertaining to the process of determining whether or not to close Delaware Station and including the eventual decision to close it. The Postal Service's letter acknowledges that Ms. Fahey's request was dated October 18, 2010.²

6. The letter also states that the Postal Service found that the request raised "unusual circumstances" and that as such, the Postal Service required additional time to fulfill the request. The Postal Service expected to contact Ms. Fahey to fulfill the request "before or immediately after December 16, 2010."

7. I filed DANA's appeal in this case on October 19, 2010, one day after Ms. Fahey's FOIA request was sent to the Postal Service.

¹ Reply of the United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, December 14, 2010 at 2 n.5.

² On or about November 26 or 27, 2010, I received from Ms. Fahey a copy of the Postal Service's November 17, 2010 letter to her. Ms. Fahey had mailed it to me on November 24, 2010, as indicated by the postmark on her envelope.

8. When I realized that the Postal Service did not file the complete Administrative Record regarding its decision to close the Delaware Station Post Office in this appeal, and instead filed a selected excerpt, I called Postal Service Counsel Kenneth Hollies on November 12, 2010 and left a message for him with his Co-counsel James Mecone, to call me back. Mr. Hollies called me back on November 15, 2010.

9. When I spoke with Mr. Hollies, he stated that the Postal Service was not willing to file the complete Administrative Record in this case, but he would be willing to treat my request as a FOIA request for the materials. I said I wanted to think about it before asking him to treat my request as a FOIA request. He provided the address of the Postal Service's FOIA office.

10. I did not ask Mr. Hollies to treat my informal request for the Administrative Record in this case as a FOIA request because it was my understanding, based upon my discussions and e-mail communications with Ms. Fahey, that she had already made a FOIA request.

11. At the time of my conversation with Mr. Hollies, I did not think it was useful to have two simultaneous FOIA requests outstanding on the same topic. I also was concerned that an additional request might somehow delay the Postal Service's response to the request Ms. Fahey had already made. At the time of my conversation with Mr. Hollies, I did not have specific information about the dates involved in Ms. Fahey's request and I did not feel it was a good idea to have a discussion about such a request with incomplete information.

12. I also did not believe that DANA had anything additional to gain by making a second FOIA request when Ms. Fahey's request was already in progress.

13. As of today, I have not received the Postal Service's Administrative Record in this case. I contacted Ms. Fahey on December 15, 2010 and she told me that she had not yet received a response to her FOIA request as of that date. I believe that DANA is prejudiced in pursuing this appeal as a result of not having received the Administrative Record.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 16, 2010.

/s/ Susan J. DuBois

Susan J. DuBois
Treasurer
Delaware Area Neighborhood
Association

Attachment A

RECORDS OFFICE



November 17, 2010

Catherine Fahey
City of Albany Common Council
32 Lawnridge Ave
Albany, NY 12208

RE: FOIA Case No. 2011-FPRO-00048

Dear Ms. Fahey:

This responds to your Freedom of Information Act (FOIA) request dated October 18, 2010 in which you seek access to Postal Service records.

We have received your check and are processing your request.

The FOIA, 5 USC §552, allows agencies 20 working days (exclusive of Saturdays, Sundays and federal holidays) in which to process requests. In unusual circumstances, agencies may qualify for further extensions, and may request a modified FOIA request and/or time frame for response (5 USC §552(a)(6)(B)). Unusual circumstances are defined to include requests that involve voluminous and/or dispersed records, or requests that require consultation with other agencies having a substantial interest in requested records.

Your request qualifies for "unusual circumstances," and involves voluminous and dispersed records.

Because your request involves voluminous and dispersed records we are extending the response period ten working days (title 39 CFR 265.7(b)(4)(iii)(B)).

You will be contacted before or immediately after December 16, 2010.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gayla Gorman".

Gayla Gorman
Consumer Research Analyst