

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

In the Matter of:

Delaware Station
Albany, New York 12209
(Delaware Area Neighborhood
Association, Petitioner)

Docket No. A2011-1

**UNITED STATES POSTAL SERVICE NOTICE OF FILING AND APPLICATION
FOR NON-PUBLIC STATUS**
(January 6, 2011)

On November 5, 2010, the Postal Service filed the Final Determination to Close the Delaware Station, NY Classified Station and Provide Retail and Post Office Box Service through the Albany Hudson Avenue, NY Post Office.¹ On December 7, 2010, Petitioner filed a motion seeking to compel the Postal Service to file the complete administrative record,² and the Postal Service filed a reply to this motion on December 14, 2010.³ While ruling that its order “neither represents a ruling on the merits of the jurisdictional issue nor whether the discontinuance is subject to section 404(d),” the Commission granted Petitioner’s motion to compel on December 22, 2010.⁴

¹ Notice of United States Postal Service, PRC Docket No. A2011-1 (November 5, 2010).

² Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, PRC Docket No. A2011-1 (December 7, 2010). As part of its motion to compel, Petitioner requested “that the procedural schedule be modified to allow for supplements to the replies to the Postal Service’s answering brief.” The Commission granted Petitioner’s request for modification of the procedural schedule in its December 22 order.

³ Reply of United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record, PRC Docket No. A2011-1 (December 14, 2010).

⁴ Order Granting Motion to Compel, PRC Docket No. A2011-1 (December 22, 2010). Commissioner Blair dissented from the Order.

The Postal Service maintains its position that it has no obligation to provide the complete administrative record because the Commission lacks jurisdiction to hear Petitioner's appeal.⁵ But in the interest of resolving this matter, the Postal Service today files the complete administrative record.⁶ As set forth in its Application for Non-Public treatment, filed concurrently with this Notice as Attachment 1, the Postal Service files an unredacted version of the administrative record under seal to protect confidential information that the Postal Service, in the lawful exercise of its obligations under the Freedom of Information and Privacy Acts, redacted when the administrative record was supplied under a FOIA request. This approach accordingly protects the personal information of postal customers.

Petitioner has identified no compelling justification for obtaining the complete administrative record. As explained in her affidavit, Petitioner obtained the administrative record on December 18, 2010 in response to a FOIA request.

Updated Declaration of Susan J. Dubois in Support of Delaware Area
Neighborhood Association Motion for Leave to File an Updated Declaration, PRC

⁵ Because Delaware Station is not a Post Office, Commission jurisdiction under 39 U.S.C. § 404(d) does not attach. In addition, the procedural requirements of 39 U.S.C. § 404(d) do not apply because the discontinuance of Delaware Station does not qualify as a closure as envisioned by 39 U.S.C. § 404(d). See Notice of United States Postal Service (November 5, 2010); Reply of United States Postal Service in Response to Delaware Area Neighborhood Association Motion to Compel Postal Service to File Complete Administrative Record (December 14, 2010).

⁶ If, as the Postal Service argues, the Commission lacks subject matter jurisdiction to consider this matter under section 404(d), the Commission also may not examine the administrative record for purposes such as whether the notice to customers complied with the regulations or any of the other claims the Petitioner and other concerned customers articulate. Recognizing, however, that this case has drawn attention well beyond the bounds of this docket, and given the Commission's request that the administrative record be filed as a matter of "comity" (Order No. 620 at 3), the Postal Service has decided to respond affirmatively.

Docket No. A2011-1 (December 23, 2010) at 4. However, now Petitioner demands access to the confidential information of the Postal Service and personally identifying information of Postal Service customers that was redacted in accordance with FOIA requirements. *Id.* at 4-5. Petitioner does not articulate any particular reason why she needs access to the redacted information for purposes of this docket beyond her preference to that effect. Should Petitioner nonetheless seek access to the redacted information by agreeing to the Commission's own terms limiting the use and release of information filed under seal, the Postal Service has no objection to her doing so. In the alternative, she remains free to make any arguments she wishes using the information already in her (or her proxy's) possession.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing and Product
Support

Kenneth N. Hollies
James M. Mecone

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6525; Fax -6187
January 6, 2011

ATTACHMENT 1

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Postal Regulatory Commission (Commission) in this docket. In particular, the Postal Service requests that customer identifying information, facility finance numbers, product-specific financial information, and utility account numbers associated with the Delaware Station discontinuance decision package be kept confidential. A non-public version of the materials will be filed under seal in accordance with 39 C.F.R. § 3007.10(a), while a redacted copy will be filed in accordance with 39 C.F.R. § 3001.9. The Postal Service furnishes the justification required for this application by 39 C.F.R. § 3007.21(c), below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Customer identifying information, such as names and addresses, is exempt from mandatory disclosure pursuant to 39 U.S.C. § 412(a) and 5 U.S.C. § 552(b)(3). 39 U.S.C. § 412(a) specifically states that “[e]xcept as specifically provided by subsection (b) or other law, no...employee of the Postal Service shall make available to the public...any...list of names or addresses (past or present) of postal patrons or other persons.” Persons who complete questionnaires or comment forms in connection with a station or branch discontinuance survey often record their names, addresses, phone

¹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1 (June 19, 2009).

numbers and other personal information on the forms they submit to the Postal Service. At the time, the Postal Service has no reason to give customers any indication that such information will become part of a public record. Accordingly, it is reasonable to conclude that they have a high expectation of privacy regarding such information.

A finance number is an assigned six-digit or ten-digit number that identifies a postal installation for processing its financial data.² In a way, it is akin to a social security number, in that if one knows the finance number for a facility, one could determine a wealth of financial data associated with that facility. Such information is information of a commercial nature, which under good business practice would not be publicly disclosed. It is also information that, if released, could compromise security, which is why the Postal Service controls the internal release of finance numbers. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. §§ 552(b)(2-3).³

Finance numbers are related solely to the internal rules and practices of the Postal Service, and are internal matters of a relatively limited value outside the Postal Service. On its own, the finance number of a facility does not reveal anything of significance to the public, but it constitutes a key that permits coordination of various internal accounting systems. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 5 U.S.C. § 552(b)(2).

² U.S. Postal Service, Publication 32, Glossary of Postal Terms (2007).

³ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1 (Mar. 20, 2009) at 11.

Because the Postal Service seeks to protect information that is not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure by granting its application for non-public treatment for finance numbers. The Commission has routinely recognized the sensitive nature of finance numbers in the past.

Product-specific financial information is of a commercial nature which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3). The Commission has also routinely recognized the sensitive nature of product-specific financial information in the past.

The utility account numbers would be exempt under 5 U.S.C. § 552(b)(2), as they are internal matters of no value to the public at large. Additionally, if released, there is the possibility that, if the account numbers are still active, they could be used for nefarious purposes.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

James M. Mecone
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-6525; Fax -6187
James.M.Mecone@usps.gov

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

The customer-identifying information is the names, addresses, and phone numbers of postal patrons, and may include other personally identifying information. A finance number is an assigned six-digit or ten-digit number that identifies a postal installation for processing its financial data. Product-specific financial information includes analyses of the amount of revenue received, by product, by that facility. Utility account numbers are the numbers assigned to the facility by utility companies, such as a telephone company.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

When postal patrons provide personally identifying information to the Postal Service, they do so with a high degree of expectation that the information will remain private unless explicitly told otherwise (as would be the case in a Post Office discontinuance study pursuant to 39 U.S.C. § 404(d)). Often, their completion of questionnaires and comment forms is conditioned upon an expectation of confidentiality. When such an expectation exists and is violated, the Postal Service and its customers face increased risks. The disclosure of the personally identifying customer information would expose Postal Service customers to an increased risk of identity theft and related crimes. The Postal Service—by means of filing these materials under seal with the Commission—divests itself of responsibility for the release of such personally identifying information. In addition to the risk faced by customers, the Postal Service faces the risk that patrons expecting such privacy will decline to complete questionnaires or provide comments, depriving the Postal Service of such intelligence

as the public input process may provide. Worse yet, customers may react to such a breach of privacy by choosing to rely less on the Postal Service for the transmission of mailable matter, which would diminish mail volume and have adverse economic consequences for the Postal Service.

If product-specific financial information is released publicly, the Postal Service considers it quite likely that it would suffer commercial harm. An analysis of the amount of a particular product purchased by customers in a particular area would give postal competitors valuable information they could use to tailor their own business strategies. This is why it has long been the practice of the Postal Service to avoid publicly filing product-specific financial information.

It has long been the practice of the Postal Service to avoid publicly filing its finance numbers. In fact, when the Postal Service has been required to file information that would allow for the comparative analysis of facilities, the Postal Service has gone to great length and expense to replace finance numbers with dummy numbers, in order to protect the financial data of its facilities. This has historically been true for the In-Office Cost System (IOCS).

As stated before, a finance number is an assigned six-digit or ten-digit number which identifies a postal installation for processing its financial data. If someone were to come across such a document where facilities are identified purely by finance number, in and of itself that may not cause much harm. However, if that someone was a competitor who was also provided a key that identified the facility name and address associated with each finance number, that person could potentially have access to a wealth of financial data associated with respective facilities. Such information could, for

example, be used to ascertain the best locations to establish competing businesses, perhaps plan theft of materials being transported by the Postal Service, or target the business of Postal Service customers.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Identified Harm: Disclosing personally identifying information of Postal Service customers would expose these customers to an increased risk of identity theft and related crimes.

Hypothetical: A party uses the personally identifying information of Postal Service customers to steal a customer's identity and open up credit cards and take out loans in the customer's name. This has a negative impact on the customer's credit status, and prevents the customer from engaging in financial transactions in the future.

Identified harm: Revealing names, addresses, phone numbers or other personal information provided by customers could cause commercial harm to the Postal Service.

Hypothetical: Such information is revealed to the public. Offended customers decline to provide similar information in response to similar future solicitations for public input. Or they react by choosing competitors' services and relying on alternate media for the transmission of mailable matter. By not meeting customers' privacy expectations, the Postal Service would lose volume and revenue and face a greater risk of making decisions that are less informed by customer concerns, to its operational and fiscal detriment.

Identified harm: Revealing finance numbers and product-specific financial information could cause commercial harm to the Postal Service.

Hypothetical: The product-specific analysis in this study is revealed to the public. The analysis reveals that a large number of money orders is routinely processed by the facility. A competitor in the money-order business comes across this information, and thus decides to open money-order facilities in the vicinity.

Hypothetical: The facility finance numbers in both lists are revealed to the public, beside the name and physical location of each facility. A competing expedited delivery service comes across an internal Postal Service document that lists large Express Mail customers according to the office of entry, each of which is identified by finance number. The release of the station and branch finance numbers matches a number on the list, telling the competitor where to target its marketing efforts. By using the lists filed in this docket, the competitor is able to identify some of the retail locations that take in large amounts of Express Mail. Consequently, the competitor decides to focus expedited delivery business in those locations.

Identified harm: Revealing finance numbers could cause commercial harm to the Postal Service.

Hypothetical: The facility finance numbers in both lists are revealed to the public, beside the name and physical location of each facility. A member of the public comes

across a document that reveals the volume of Registered Mail processed by each facility, by finance number. By using the lists filed in this docket, he is able to determine that a large volume of Registered Mail is taken in at a retail location nearby, and attempts to rob that retail location.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should generally be withheld from all persons except those members of the Commission who need to see this information for purposes of this docket.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Postal Service believes that all of the redacted information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. The Postal Service is prohibited from making public lists of names or addresses of postal patrons except as specified by special circumstances (not applicable here), or by other law. As discussed above, finance numbers are akin to social security numbers, and disclosure of customer-identifying information leaves the Postal Service vulnerable to competitive “cherry-picking.” Revealing product-specific information publicly could also potentially cause great competitive harm to the Postal Service, in the same way. Finally, the account numbers should remain protected in the event those numbers are re-used. Therefore, the Postal Service seeks indefinite non-public treatment of the redacted information in the non-public materials.

(8) Any other factors or reasons relevant to support the application.

The Postal Service exercise of its obligations pursuant to the Privacy Act, and Freedom of Information Act, with respect to the request for a copy of the administrative record underlying the formal decision to discontinue the Delaware Station of the Albany, NY Post Office, was undertaken by Postal Service employees who have no advisory, professional or other obligations relating to or involvement in PRC Docket No. A2011-1. Moreover, the managers, professional and other staff involved in this docket expressly refused to suggest that the existence of this docket, or any related matters, should, in any way, impact consideration of how the FOIA request was handled; rather, that process should proceed in full and exclusive concordance with its usual standards.

As the Commission learned during the course of PRC Docket N2009-1 (SBOC), a discontinuance study for a station or branch, such as the Delaware Station of the Albany, NY Post Office, is not undertaken pursuant to the standards for a discontinuance study affecting an independent Post Office, wherein a formal proposal is posted for sixty days, with the underlying administrative record also then made available for inspection. In discontinuance studies subject to section 404(d), customers participating in or providing input for the discontinuance study's purposes are customarily advised that their input may become part of a public record, a fact which customers may want to consider as they craft their comments or other input. With respect to participants in a discontinuance study affecting a station or branch, such as Delaware Station, however, study participants are not necessarily made aware that their input may become part of a public record. The Postal Service instead proceeds with an expectation that, consistent with obligations pursuant to 39 U.S.C. § 412 and 5 U.S.C. §

552(b)(6), customer expectations of privacy and related needs to protect information proprietary to the Postal Service will be honored by other federal agencies who will also keep such information confidential.

Conclusion

For the reasons discussed, the Postal Service requests that the Commission grant this application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment be extended indefinitely.