

ORIGINAL

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

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MAILING ONLINE SERVICE

Docket No. MC98-1

RESPONSES OF THE UNITED STATES POSTAL SERVICE
TO QUESTIONS POSED BY CHAIRMAN GLEIMAN
DURING THE PREHEARING CONFERENCE AND HEARINGS

The United States Postal Service hereby provides institutional responses to four inquiries posed by Chairman Gleiman during the prehearing conference on August 14, 1998 and one posed during evidentiary hearings on August 26, 1998.

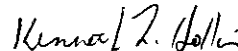
Each inquiry is paraphrased (with citation to the Transcript) and followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

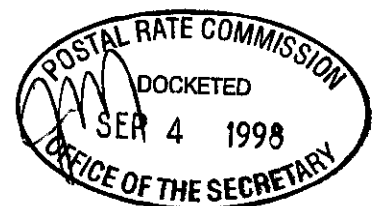
By its attorneys:

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September 4, 1998



RESPONSE OF THE UNITED STATES POSTAL SERVICE
TO QUESTIONS POSED BY CHAIRMAN GLEIMAN AT HEARINGS

Tr. Vol. 1, page 89 (August 14, 1998)

Question (1) beginning on line 11:

Do the Postal Service's many routine uses that allow disclosure of information from files contained in Privacy Act systems of records apply to the following system of records: USPS 040.050, Customer Programs -- Customer Electronic Document Preparation and Delivery Service Records?

RESPONSE:

Customers' Mailing Online transactions result in the establishment of agency records which, because they can be referenced by an individual's name or Mailing Online customer number, are subject to the conditions of maintenance, access and disclosure established by or under the Privacy Act (5 U.S.C. § 552a). The May 21, 1998, Federal Register notice (63 Fed Reg 28016-18) referenced in the August 10, 1998, response to OCA/USPS-T1-22, reflects that there are four Privacy Act routine uses applicable to records maintained in USPS 040.050. The Postal Service is reviewing its Privacy Act regulations for the purpose of determining the need to clarify that the portions of records in USPS 040.050 which reflect the content of the messages which the Mailing Online customer intends to send will be treated as mail matter sealed against inspection and that portions of records which reflect the names and addresses to which the messages are intended to be sent will be afforded the same privacy protections as name and address information on mail piece covers.

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Tr. Vol. 1, page 89 (August 14, 1998)

Question (2) beginning on line 13:

Are records maintained in USPS 040.050 available for law enforcement purposes and the like?

RESPONSE:

Under subsection (b)(1) of the Privacy Act, 5 U.S.C. 552a, all records contained in Postal Service Privacy Act systems of records are subject to examination by the Postal Inspection Service when it has a need for such records in the course of law enforcement investigations within the scope of its jurisdiction. Similarly, in accordance with subsection (b)(7) of the Privacy Act, these same records may be disclosed

to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if that activity is authorized by law, and if the head of the agency or instrumentality has made a written request to . . . [the Postal Service] specifying the particular portion desired and the law enforcement activity for which the record is sought.

Under subsection (b)(3), which operates in conjunction with subsections (a)(7) and (e)(4)(D) of the Privacy Act, the Postal Service may disclose information from a Privacy Act system of records for a "routine use" which is compatible with the purpose for which the record is maintained, provided that the Postal Service publishes a Federal Register notice which includes each routine use, the categories of users and the purpose of such use. The Privacy Act system notice for USPS 040.050, at 63 Fed Reg 28018, indicates that the routine uses of records from this system include disclosure:

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Response to Question 2 (page 2)

[w]hen the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or in response to the appropriate agency's request on a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether federal, state, local or foreign, charged with responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

That Federal Register notice, at page 28017, emphasizes that no routine use permits the disclosure of mailing lists submitted by Mailing Online customers which may be contained in USPS 040.050.

Because the Postal Service intends to treat those portions of Mailing Online customers' records which reflect message content as mail matter sealed against inspection, all law enforcement access to such information will be governed by the same restrictions which apply to other mail matter sealed against inspection. Likewise, because the Postal Service intends to treat the names and addresses of a Mailing Online customer's correspondents in USPS 040.050 as if they were on the covers of mail pieces, law enforcement access to Mailing Online customer mailing lists in USPS 040.050 will be afforded the same level of privacy protection as other name and address information on mail piece covers. Law enforcement access to other portions of USPS 040.050 Mailing Online files will be subject to the aforementioned provisions of the Privacy Act.

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Tr. Vol. 1, page 90 (August 14, 1998)

Question (3) beginning on line 1:

Among the many routine uses that apply to almost all Privacy Act systems of records maintained by the Postal Service is the availability of that information for law enforcement purposes and the like. Do these routine uses apply to USPS 040.050 in such a manner that, while a site visit may be inappropriate, that law enforcement people or others could have access to that information?

RESPONSE:

As indicated in response to Question 2, the Privacy Act, at 5 U.S.C. 552a(b)(7), permits disclosure of some information from USPS 040.050 to law enforcement agencies. It is the Postal Service's intention that disclosure of a Mailing Online customer's message content and the names and addresses of that customer's correspondents be subject to the same protections afforded mail matter sealed against inspection and the requirements which currently govern mail covers. A review of existing Privacy Act implementing regulations is presently underway to consider any necessary clarifications.

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Tr. Vol. 1, page 90 (August 14, 1998)

Question (4) beginning on line 15:

This question has to do with security and protection of data generated by Mailing Online transactions which is maintained by the Postal Service. It has been implied by the Postal Service that its electronic data reflecting the content of Mailing Online messages (which Mailing Online customers intend for the Postal Service to convert into hard copy mail pieces that are then delivered to correspondents on their mailing lists) are sealed against inspection. Who can have access to the data reflecting the contents of Mailing Online customer messages? To what extent do electronic Mailing Online data files consist of mail matter sealed against inspection if, in accordance with the USPS 040.050 Privacy Act notice, access to them may be obtained by various law enforcement agencies?

RESPONSE:

All postal records generated in connection with the provision of Mailing Online service are subject to the terms and conditions of the contract between the Postal Service and its contract printer which spell out the security and privacy requirements. See USPS-LR-5/MC98-1, pages 11-12, 29-31. As indicated in the responses to questions 1 through 3, it is the Postal Service's intention to insure that Mailing Online message content is afforded the same protection as mail matter sealed against inspection and that access to addressee information also is restricted. Accordingly, the agency currently is reviewing its Privacy Act implementing regulations, the provisions of USPS Administrative Support Manual § 274 pertaining to mail matter sealed against inspection and mail covers, and the Electronic Communications Privacy Act, 18 U.S.C. § 2701 *et seq.*, to determine what administrative, technical and physical safeguards may be necessary and appropriate to insure the security and confidentiality of sensitive Mailing Online records.

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Response to Question 4 (page 2)

It also should be noted that lists of names and addresses generated as a result of Mailing Online transactions are subject to the general prohibition against Postal Service disclosure of mailing lists to the public (39 U.S.C. § 412). By operation of 39 U.S.C. § 410(c)(2), Mailing Online records reflecting the name or address of any postal patron (whether or not compiled as part of a list) also are exempted from the mandatory public disclosure provisions of the Freedom of Information Act (5 U.S.C. § 552).

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Question (5), beginning on line 12:

What, if any, interaction exists between Mailing Online and 39 U.S.C. §3005 [false representations and lotteries]?

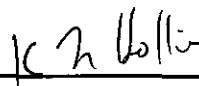
RESPONSE:

Mail matter containing false representations or lotteries is actionable under 39 U.S.C. § 3005. Since Mailing Online introduces physical mail into the mail stream, Mailing Online mailpieces are covered by that section of the Reorganization Act. No monitoring of the content of Mailing Online pieces takes place during the electronic processing of Mailing Online pieces. Physical Mailing Online mail would accordingly be subject to the same scrutiny under section 3005 as any other mail.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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