

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Regulations to Establish Procedures
for the Freedom of Information Act

Docket No. RM2009-6

PUBLIC REPRESENTATIVE COMMENTS
ON PROPOSED RULEMAKING TO ESTABLISH PROCEDURES
FOR THE FREEDOM OF INFORMATION ACT

(August 12, 2009)

The Public Representative submits the following comments in response to the Postal Regulatory Commission's (Commission) Notice and Order¹ proposing to establish procedures for the Freedom of Information Act (FOIA). The interests of the general public are at the center of the Freedom of Information Act. FOIA was passed to make information held by government agencies available to the public. The Public Representative commends the Commission on its timely action amending its rules to reflect the President's memorandum² and the OPEN Government Act.³ Also, the Public

¹ Notice and Order of Rulemaking to Establish Procedures for the Freedom of Information Act, Order No. 230, July 1, 2009.

² Memorandum for the Heads of Executive Departments and Agencies, January 21, 2009 (74 FR 4683 (January 26, 2009)).

³ The Openness Promotes Effectiveness in our National Government Act of 2007, Pub. L. No 110-175, 121 Stat. 2524 (December 31, 2007).

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Representative commends the Commission on proposed rule 3002.42 which will make tracking FOIA request easier for the general public.

Overall, the proposed changes appear to be in the interests of the general public. However, the Public Representative has some concerns. The following will discuss public and non-public records and duplication fees.

Public and Non-Public Records

President Barack Obama states that the presumption of disclosure should be applied to all decisions involving FOIA in his January 21, 2009 Memorandum. In its Notice the Commission states that proposed rule 3004.2 is added to recognize the "presumption of openness" mandated by the President. *Id* at 5. At first glance, it appears that proposed rules 3004.10 and 3004.11 limits the scope of documents which the members of the general public can request.

Proposed rule 3004.10 lists several documents and records and refers to them as the public records of the Commission. This list includes: 1) requests of the Postal Service for decisions; 2) financial, statistical and other reports to the Commission; and 3) all answers, replies, responses, objections, and briefs in any matter or proceeding. Proposed section 3004.11, entitled Non-Public Records lists the first seven FOIA exemptions. In proposed section 3004.11(b) the Commission lists examples of non-public records. This list includes: 1) written communications between or among the Commission; 2) Reports and records compiled by the Inspector General; and 3) unaccepted offers of settlement in matter. These two sections do not signify the presumption of disclosure called for by President Obama.

All records kept by the Commission are public records. By labeling records as public and non-public, members of the general public may interpret this to mean that they can only request some records. However, this is not the case. All records may be requested by the general public. Records (public or non-public) which fall within one of the nine exemptions do not have to be released if their release would harm an interest protected by the exemption. The Commission should clarify its regulations or eliminate the categories because the public may find them confusing.

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The Public Representative believes that members of the general public should be aware that they may request any information, but their requests are subject to the nine FOIA exemptions. The proposed rules may lead the public to think that they may only request the documents listed as public. The Public Representative encourages the Commission to modify these two sections or provide further explanation.

Fees

Section 3004.53, entitled Fee schedule, describes how fees will be calculated. The formula for calculating fees appears to include the costs for the search, duplication costs and additional services. The Public Representative is concerned with the 15 cent duplication fee. Though 15 cents may seem to be a minor cost, it can become a major hurdle if the requester requests several pages of records. It is in the interest of the general public to incur the least possible cost for duplications. As technology improves and becomes more efficient, the cost of certain items should decrease. The Public Representative respectfully suggests that the Commission re-evaluate its reproduction costs. While some agencies continue to charge the standard 15 cents copy fee, others have re-evaluated their reproduction costs and decreased their duplication fees.

The Public Representative encourages the Commission to re-evaluate its reproduction costs and consider reducing duplication fees if possible.

Conclusion

The Public Representative respectfully offers the preceding comments for the Commission's consideration.

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