

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

File L

July 29, 1999

John E. McKeever  
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Philadelphia, PA 19103-2762

Dear Mr. McKeever,

The Commission prepared a report on the cost, revenues, and volumes of the international mail handled by the United States Postal Service during fiscal year 1998, as required by 39 U.S.C. § 3663. You requested a copy of that report on July 19, 1999.

A copy of the report that you requested is enclosed. Portions of the report and its appendices have been redacted. Under the Commission's rules, the Commission is authorized to withhold those portions of its records that are exempt from the disclosure requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(b). Portions of the report that you requested appear to fall within exemption (b)(3) of that Act, which exempts from public disclosure records that are made specifically exempt by statute. There is a possibility that some of redacted portions are also exempt from disclosure under exemption (b)(4) of the Act, which exempts confidential commercially sensitive information obtained from a person, and under exemption (b)(5) of the Act, which exempts predecisional inter-agency memoranda from disclosure. These exemptions are incorporated in parts 42(b)(12)(iii), (iv), and (v), respectively of the Commission's Rules of Practice. 39 CFR § 3001.42(b)(12)(iii), (iv), (v). Since, in the present context, the (b)(3) exemption (for records made specifically exempt by statute) is considerably broader than either the (b)(4) and (b)(5) exemptions, the Commission's determinations rest on exemption (b)(3).

Virtually all of the underlying data presented and analyzed in the Commission's international mail report were provided by the Postal Service at the Commission's request. At the time the information was provided, the Postal Service accompanied it with a notice that it considered much of it to be commercially sensitive, and would not be disclosed under good business practice. See Letter to Margaret P. Crenshaw, Secretary, Postal Rate Commission, from William P. Johnstone, Managing Counsel, International Law and Ratemaking, dated March 15, 1999, accompanying its filing of the FY 1998 International Cost and Revenue Analysis report. The Postal Service elaborated on the rationale underlying its conclusion in Comments of the United States

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Postal Service on the Commission's 39 U.S.C. § 3663 Report, filed April 8, 1999, in Docket No. IM99-1.

When the Commission received your FOIA request, the Commission asked the Postal Service to identify the specific portions of the Commission's report on international mail that the Postal Service considered to be commercially sensitive, and to provide an explanation of the legal basis for claiming that those portions should be exempt from public disclosure. Letter from Cyril J. Pittack, Acting Secretary, Postal Rate Commission, to Mary Elcano, General Counsel, United States Postal Service, dated July 14, 1999.

The Postal Service responded on July 21, 1999, by filing a copy of the Commission's international mail report marked with the Postal Service's proposed redactions. The Postal Service accompanied that marked copy with a memorandum containing the factual assertions and legal rationale supporting its proposed redactions, as well as a table correlating its withholding rationale with the specific portions of the report that it proposed be redacted. A copy of the Postal Service's memorandum and correlating table is enclosed.

For the most part, the Commission accepts the rationale provided by the Postal Service supporting its proposed redactions. The Postal Service relies primarily on the relationship of § 410 of the Postal Reorganization Act [39 U.S.C. § 410] to the Freedom of Information Act [5 U.S.C. § 552], as it has been interpreted by Federal courts. Section 410(b)(1) makes the FOIA applicable to the Postal Service. Though applicable, § 410(c) provides that the FOIA shall not require the disclosure of

(2) information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.

Section 3604(e) of the Postal Reorganization Act makes the provisions of § 410 applicable to the Commission, "as appropriate." This would appear to include §410(c)(2).

The Postal Service memorandum of July 21, 1999, that accompanied the filing of its proposed redactions, cites two Federal District court cases that have interpreted the "good business practice" withholding criterion of § 410(c)(2) as sufficiently specific to come within 5 U.S.C. § 552(b)(3). That provision of the FOIA exempts from mandatory disclosure records that are "specifically exempted from disclosure by statute." See *Weres Corporation v. United States Postal Service*, C.A. No. 95-1984, at 3-5 (D.D.C. 1996) (unpublished Memorandum Opinion); and *National Western Life v. United States*,

512 F.Supp. 454, 458-59 (N.D. Tex. 1980). These opinions are cited in the enclosed United States Postal Service Memorandum Concerning Categories of Information that Should be Deleted from Commission Report to Congress on International Mail Costs, Volumes, and Revenues, filed July 21, 1999 (Memorandum) at 9-14.

Neither of these opinions defines "good business practice," but in *National Western Life*, the court held that

"Good business practice" is readily ascertainable by looking to the commercial world, management techniques, and business law, as well as to the standards of practice adhered to by large corporations.

512 F.Supp. at 459.

The Postal Service asserts that with respect to its outbound international services, the costs and revenues associated with specific products "reflect fundamental measurements of product strengths and weaknesses that would be of immeasurable value to the Postal Service's competitors." Memorandum at 4. It asserts that product-specific cost data are routinely treated as trade secrets by private competitors. It argues that if combined with product-specific revenue data, it would give competitors a "pricing roadmap that would give firms the capability of diverting business from competitors." Memorandum at 5.

With respect to its inbound international services, the Postal Service concedes that the commercial sensitivity of cost and revenue information for specific products is less obvious because the Postal Service doesn't directly determine the rates charged by foreign postal administrations for inbound products. The Postal Service argues, however, that the actual costs it incurs delivering specific inbound products, if disclosed to foreign postal administrations, would give those administrations a tactical advantage in negotiating future charges for specific inbound services. Memorandum at 7-8.

The Postal Service's memorandum does not discuss the competitive situation with respect to any specific outbound or inbound international postal service in any specific geographic market. Accordingly, its assertions of commercial sensitivity would probably be too conclusory to sustain a claim that such information is exempt under § 552(b)(4) or (b)(5) of the FOIA. Those exemptions are strictly construed, and specific showings of likely commercial harm in specific product and geographic markets would likely be required. See Commission Order No.1025 in Docket No. R94-1, at 11-12. The "good business practice" standard of § 410(c)(2), however, appears to intend that the Postal Service be placed on an equal footing with private competitors with respect

to its disclosure obligations, at least when the public hearing provisions of Chapter 36 of the Postal Reorganization Act do not apply.

The Commission accepts as plausible the Postal Service's contention that for most international postal products, the custom of private competitors is generally not to disclose cost and revenue data from which the profitability of specific product offerings could be inferred. Accordingly, most of the Postal Service's proposed redactions that are based on this rationale are accepted by the Commission as valid applications of the "good business practice" withholding criterion of § 410(c)(2).

The Postal Service's memorandum articulates a number of variants of its basic rationale that in the markets for international postal products, financial information revealing the profitability of specific products is not customarily disclosed. With respect to its outbound international services, the Postal Service does not object to disclosing product-specific volume and revenue data. It contends, however, that product-specific attributable cost and cost coverage data is customarily not disclosed by private competitors, and would be particularly harmful if it were publicly disclosed. Accordingly, it proposes to redact product-specific attributable costs for its outbound services from the Commission's report. Memorandum at 5-6. The Postal Service also argues that disclosing product-specific cost coverages would cause competitive harm because they could be used in conjunction with the product-specific volume and revenue data that is publicly available to derive product-specific costs. Memorandum at 6. The Commission accepts this rationale as adequate for withholding product-specific costs and cost coverages for outbound international services under the "good business practice" standard of 39 U.S.C. § 410(c)(2). The Postal Service does not object to disclosing costs and cost coverages for "surface products" in aggregate, and "air" products in aggregate.

The Postal Service asserts that its recently-introduced outbound international "initiatives" are especially vulnerable to competitive harm from disclosure of financial details because they have yet to become established in their respective markets. It argues that for these outbound "initiatives," competitive harm would result not just from disclosing product-specific costs, but from disclosing product-specific volumes and revenues, as well. Accordingly, it proposes to redact product-specific volumes and revenues, as well as costs for these outbound "initiatives." Memorandum at 6-7. The Commission accepts this withholding rationale as adequate under the "good business practice" standard of 39 U.S.C. § 410(c)(2). The Postal Service does not object to disclosing volumes, revenues, costs, and cost coverages for its outbound "initiatives" in aggregate.

The Postal Service does not object to disclosing volumes and revenues for inbound international mail products, or to disclosing costs and cost coverages for "surface" and "air" subtotals. As with its outbound products, the Postal Service asserts that it may suffer commercial harm from disclosing attributable costs and cost coverages for specific inbound products. It argues that it negotiates the amount that it charges for delivering some inbound products with individual countries, and that disclosure of the attributable costs of domestic delivery of such products could undermine its ability to negotiate such charges with foreign postal administrations. Although the Postal Service has described it elsewhere, its memorandum does not identify the specific products whose inbound charges are negotiated with individual countries. Memorandum at 7.

This rationale is sufficiently plausible to establish that it would not be "good business practice" to disclose attributable costs for inbound services for which the Postal Service negotiates inward charges with individual countries (International Express Mail), or for which the Postal Service can unilaterally set inbound delivery charges by country group (International parcel post). It is not, however, sufficient to establish that "good business practice" would not disclose the aggregate attributable costs of delivering inbound LC/AO mail. The Postal Service does not directly determine the level of terminal dues for such mail.

With respect to inbound LC/AO mail, the Postal Service memorandum argues that making it easier to compare terminal dues and foreign postal rates with the actual costs that the Postal Service incurs delivering inbound mail could give remailers information that would help them divert domestic mail to inbound foreign mail, which is less lucrative for the Postal Service. The Postal Service states that it is "confident that in the typical business environment, no service-specific commercial data would be made available by competing firms." Memorandum at 7-8.

Arguing what practices are followed in the "typical business environment" is relevant to outbound LC/AO mail because the Postal Service sets prices for such mail, and both private firms and foreign postal administrations compete with the Postal Service to provide outbound LC/AO mail service. It is not apparent, however, that the concerns that govern disclosure of commercial information in the "typical business environment" apply to inbound LC/AO mail. The Postal Service does not market, and does not set prices for inbound LC/AO mail service. The Postal Service observes that remailers might try to divert domestic mail into an inbound LC/AO mailstream (a practice known as ABA remail). The Postal Service, however, offers no plausible ground for concluding that remailers would base their remail strategies on the cost to *the Postal Service* of delivering inbound LC/AO mail, rather than on the cost to

*themselves* of having that mail delivered. Logically, the remailer need only consider the spread between the domestic rate for such mail, and the combined cost of transporting his mail to the foreign postal administration and paying the foreign postal administration to deposit its mail in the United States' postal system.

Congress adopted "good business practice" as the criterion for withholding commercially sensitive information under § 410(c)(2). In doing so it must have intended a test somewhat more rigorous than simply "standard business practice" or it would have articulated its test in those terms. Even though "good business practice" is a rather broad justification for withholding commercial information, the Postal Service must still carry the burden of demonstrating what good business practice would be with respect to specific international services and markets. In the Commission's view, the Postal Service must identify some plausible scenario under which disclosure of commercial information could cause commercial harm before withholding that information may be considered "good business practice." It is not enough to simply speculate that in the "typical business environment" no private firm would disclose product-specific commercial information if the typical business environment is not relevant to a specific service, such as inbound LC/AO mail. Because the Postal Service has not demonstrated that it would be "good business practice" to withhold attributable cost and cost coverage data for inbound LC/AO mail, the Commission generally has not redacted that information from the copy of its report that it is providing. The copy of the report that the Commission is providing discloses an aggregate loss figure for inbound surface and air LC/AO that the Postal Service had proposed be redacted. See page 37. It also discloses, at page 34, Table IV-2, attributable costs for inbound air LC/AO that the Postal Service proposed be redacted. It redacts attributable costs for inbound surface LC/AO. Providing the attributable costs for inbound surface LC/AO would allow the attributable costs for inbound surface parcel post to be derived by simply subtracting the "surface LC/AO" figure from the "surface total" figure. The Postal Service has plausibly argued that attributable costs and cost coverages for inbound surface parcel post is commercially sensitive.

The Postal Service has expressed its willingness to disclose attributable cost and cost coverage subtotals for the inbound "surface" and the inbound "air" categories. Memorandum at 7. Nevertheless, on page 9 of the copy of the report that it furnished to the Commission, it appears to have inadvertently marked those subtotals for redaction from Table II-1. The copy of the report that the Commission is providing does not redact that information.

The Postal Service argues that service-specific cost data disaggregated by cost component or element is commercially sensitive. For this reason, it proposes redacting

such data from Appendix C, pp. 15-16, and Appendix F, Tables F-2 through 5. The Commission accepts this assertion as plausible for the same reasons that it agrees that total attributable costs for specific services can be considered commercially sensitive within the meaning of § 410(c)(2). The copy of the report that the Postal Service furnished to the Commission, however, marks for redaction several cost component figures that are not service specific. At page 20, line 24, and page 21, line 7, it marks for redaction the percentage of total attributable cost for outbound services comprised of average settlement costs and international transportation costs. Since the Postal Service has not provided a ground for concluding that such information aggregated for all outbound services is commercially sensitive, the copy of the report that the Commission is providing does not redact that information.

Similarly, the copy of the report that the Postal Service furnished to the Commission, at page 34, Table IV-2, marks for redaction the figure for overall inbound Air Conveyance Dues and transit revenue. The rationale cited by the Postal Service's correlating table is "D" which refers to the section of its memorandum that contains its justification for redacting product-specific attributable costs and cost coverages for inbound services. The Postal Service offers no rationale for withholding inbound revenue data, especially inbound revenue data that is not product specific. Accordingly, the copy of the report that the Commission is providing does not redact overall inbound Air Conveyance Dues and transit revenue.

The Postal Service argues that the cost coverage t-values for individual products that appear in the text of the report at page 27, and in Tables III-2 and D-2, are commercially sensitive. The Postal Service validly observes that cost coverages for individual products could be derived from the unit cost CVs and the cost coverage t-values provided in these tables, based on the arithmetic relationship between these values that is explained on page 24 on the report. For reasons described above, the Commission accepts the Postal Service's rationale for considering product-specific cost coverages to be commercially sensitive. Because they could be derived from cost coverage t-values for specific products, cost coverage t-values for specific products are redacted from the copy of the report that the Commission is providing.

The Postal Service argues that volume, revenue, and cost data that are disaggregated by country or country group in Appendix E, Table E-1, are commercially sensitive. The Postal Service's memorandum cites pages 3-5 of its Comments filed April 8, 1999, in Docket IM99-1. There the Postal Service argues that most international mail services are used primarily by a few large customers. Therefore, it contends, country-specific volume and revenue information would allow the identity of those customers and the amount of business they generate to be inferred by

competitors, making it easier for competitors to target the business of those customers. With respect to outbound mail, the Postal Service argues that country-specific cost data could allow competitors to know on a country-by-country basis, how far they could go in adjusting prices to compete with the Postal Service. Memorandum at 8.

The Commission has accepted the Postal Service's argument that costs for specific outbound international mail services may be considered commercially sensitive within the meaning of § 410(c)(2). It follows that costs specific to a country or country group for individual outbound services may be considered commercially sensitive as well. Accordingly, the copy of the report that the Commission is providing redacts from Table E-1 cost information that is specific to country and country group.

The comments of April 8, 1999, in Docket No. IM99-1 on which the Postal Service relies do not, however, provide a rationale for withholding outbound volume and revenue data by country group, especially the broad country groups that are presented in Table E-1. That table presents volume and revenue data separately for Canada and Mexico, but aggregates the data for all countries that make up the European Bilateral Group, and for all remaining UPU countries. The latter two groups are so broad that it is difficult to ascertain the commercial harm that might result from disaggregating outbound volumes and revenues to that minimal degree. The concerns expressed in the Postal Service's Comments of April 8 that disclosing country-specific data might allow competitors to target the business of particular mailers would appear to be inapplicable to country groupings that are this broad. Accordingly, the copy of the report that the Commission is providing does not redact volume and revenue figures for the European Bilateral Group and for remaining UPU countries, except where redaction is needed to prevent country-specific data from being disclosed indirectly. (For ISAL and IPAS, country-specific amounts can be identified as residual amounts when group figures are subtracted from product totals available elsewhere in the report.)

Finally, Tables F-1 and F-5 in Appendix F compare the effect of calculating outbound international air transportation costs by the traditional method and by the Postal Service's recently adopted method. The Postal Service has proposed redacting product-specific attributable cost figures that are presented there using both methods, but also proposes redacting the percent differences in attributable costs for specific products that result from applying the new method. See Postal Service correlation table, page 4. No reason is offered, and none is apparent, for concluding that the percent difference in attributable costs for specific outbound products resulting from applying the new method would be commercially sensitive, in the absence of the underlying attributable cost figures. Accordingly, the percent difference columns in Tables F-1 and F-5 are not redacted in the copy that the Commission is providing.

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Since the Commission has, in part, denied your request for a complete copy of the its international mail report, you may appeal this denial to the Commission within 20 days. See 39 U.S.C. § 3001.42(c)(2).

Sincerely,

A handwritten signature in cursive script that reads "Margaret P. Crenshaw". The signature is written in black ink and is positioned above the typed name.

Margaret P. Crenshaw  
Secretary