

EXHIBIT 9



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

February 12, 2018

Mr. Seth A. Watkins
Watkins Law & Advocacy, PLLC
1455 Pennsylvania Ave NW Ste 400
Washington, DC 20004-1017

Re: Freedom of Information Act Appeal No. 2018-APP-00054
FOIA Case No. 2018-FPRO-00339

Dear Mr. Watkins:

This is in response to your letters dated January 15 and 18, 2018, which were received in our office on January 16 and 20, 2018, respectively. In your letter, you appealed from the action of Mail and Package Information Systems Manager Mark Owen on your request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for access to records concerning tracking information for item RR066777197PH. After carefully considering your appeal, we are affirming Mr. Owen's action on your request in full.

I. Background

On January 2, 2018 you requested:

"all Records relating to arrival/receipt in the U.S., or custody or control by USPS of a **registered letter** sent from the Philippines to the U.S. with **tracking number RR066777197PH**. The term "Records" includes but is not limited to all tracking information (particularly including any information not shown through a public tracking inquiry on the USPS web site) and/or any other details concerning the transfer of custody, control or responsibility for delivery of this registered letter from the Philippine Postal Corporation (PHLPOST) to USPS."

In a letter dated January 8, 2018, Mr. Owen responded to your request by providing four pages of documents which represented all records responsive to your request. In a letter dated January 15, 2018, you appealed Mr. Owen's response and made several new requests for information. We understand your appeal to allege that Mr. Owen's original response was incomplete because it did not contain a "print of the complete tracking for [Receptacle ID PHMNLAUSJFKAAUR70063003110044]." You appear to reach this conclusion based on the fact that the documents provided to you showed the referenced mail piece entering the referenced receptacle.

On January 16, 2018, Mr. Owen responded to your January 15, 2018 letter. In that letter, Mr. Owen denied your request for additional receptacle data, reasoning that the "data provides sensitive [commercial] information about how pieces of mail are transported from foreign posts to the Postal Service," and were therefore exempt from disclosure under FOIA Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2). Although Mr. Owen did not state so in his response, a search was conducted which produced two pages responsive to your request for receptacle tracking information. Both pages were withheld in full. In a letter dated January 18, 2018, you submitted further rebuttal to Mr. Owen's January 16, 2018 response. We understand your January 18, 2018 rebuttal to make three primary arguments: 1) the receptacle tracking information is not commercial in nature; 2) good business practice would be to disclose the receptacle tracking information; and 3) the Postal Service should provide any segregable portions of the withheld documents.

We note that on appeal you seek various additional records that were not in the scope of your original FOIA request. You may not on appeal expand the scope of your request, which was limited to records relating to a particular registered letter – not complete tracking information for a particular receptacle. Therefore, any additional searches conducted or information provided pursuant to your additional requests in your appeal were completely discretionary. Accordingly, to the extent that you now seek records concerning tracking for a particular receptacle, you may submit a new FOIA request to:

PRIVACY & RECORDS OFFICE
US POSTAL SERVICE
475 L'ENFANT PLAZA SW RM 1P830
WASHINGTON DC 20260-1101
Phone: (202) 268-2608
Fax: (202) 268-5353
FOIA Public Liaison: Jane Eyre

The impermissible expansion of your original request notwithstanding, the records responsive to your additional requests made on appeal were correctly withheld pursuant to Exemption 3 of the FOIA in conjunction with 39 U.S.C. § 410(c)(2). See *infra* Section II. Analysis (analyzing the applicability of the exemption). However, in the interest of transparency and customer service, we note that there was no additional information concerning tracking number RR066777197PH in the withheld records that was not already provided to you in Mr. Owen's initial response.

II. Analysis

Congress enacted the FOIA to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep't of the Air Force v. Rose*, 425 U.S. 352 (1976). Congress balanced this objective by recognizing that “legitimate governmental and private interests could be harmed by release of certain types of information.” *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 621 (1982). FOIA “requires federal agencies to make Government records available to the public, subject to nine exemptions.” *Milner v. Dep't of the Navy*, 562 U.S. 562, 562 (2011). In addition, other laws allow the Postal Service to withhold certain categories of records and information. See 39 U.S.C. § 410(c).

Section (b)(3) of the FOIA, 5 U.S.C. § 552(b)(3) (“Exemption 3”), allows an agency to withhold information that is “specifically exempted from disclosure by statute.” Section 410(c)(2) of the Postal Reorganization Act, 39 U.S.C. § 410(c)(2) (“Section 410(c)(2)”), qualifies as a statute that specifically exempts certain information from disclosure under Exemption 3 of the FOIA. See *Wickwire Gavin v. U.S. Postal Serv.*, 356 F.3d 588, 592 n.6 (4th Cir. 2004); *Carlson v. U.S. Postal Serv.*, No. 13-cv-06017-JSC, 2015 WL 9258072, at *4 (N.D. Cal. Dec. 18, 2015); *Airline Pilots Ass'n v. U.S. Postal Serv.*, No. 03-2384 (ESH), 2004 WL 5050900, at *5 (D.D.C. June 24, 2004). Section 410(c)(2) also operates independently of the FOIA to exempt information from disclosure. Section 410(c)(2) permits the Postal Service to withhold “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.”

In accordance with the Postal Reorganization Act, an act intended to establish the Postal Service on a corporate model and to conduct its operations in accordance with sound business principles, Section 410(c)(2) permits the Postal Service to withhold a broader range of commercial information when compared to similar FOIA exemptions applicable to other agencies. First, information of a commercial nature under Section 410(c)(2) is broadly defined to include all information that relates to commerce, trade, or profit. See *Carlson v. U.S. Postal Serv.*, 504 F.3d 1123, 1129 (9th Cir. 2007) (applying the “common meaning” of the term). Second, as long as the information would not be disclosed “under good business practice,” disclosure of the information need not result in competitive harm in order to qualify as exempt under Section 410(c)(2), nor must commercial interests outweigh the public interest in disclosure. See *Wickwire Gavin*, 356 F.3d at 594-95; *Carlson*, 2015 WL 9258072 at *8. In order to

determine whether commercial information would be disclosed under good business practice, courts look to the common practices of other businesses. *See id.*

Here, we find that detailed tracking information for particular international mail receptacles qualifies as "commercial information" under Section 410(c)(2). Such information would reveal sensitive aspects of how mail is transported from foreign posts to the Postal Service, including, disaggregated inbound international mail volumes from particular posts and potential lines of travel between particular foreign posts and domestic destinations. We also find that this information would not be released "under good business practice" because it could potentially compromise the security of Postal Service operations and its employees and contains operational information at a much more granular level than what is typically disclosed publicly. Accordingly, this information is exempt from disclosure under Exemption 3 of the FOIA and Section 410(c)(2).

The FOIA provides that an agency must provide to a requester "[a]ny reasonably segregable portion of a record . . . after deletion of the portions which are exempt under [the FOIA]". *See* 5 U.S.C. § 552(b). However, agencies need not "commit significant time and resources to the separation of disjointed words, phrases or even sentences which taken separately or together have minimal or no information[al] content" in order to comply with the segregation requirement. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977). Moreover, there is no duty to segregate materials which are wholly exempt from disclosure. *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 432 F.3d 366, 371 (D.C. Cir. 2005). Here, nearly all of the information contained in the withheld documents would be exempt from disclosure as commercial information. Attempts to redact these documents to segregate releasable portions would leave nothing more than disjointed words or phrases containing minimal or no informational content. As such, it was proper to withhold them in full.

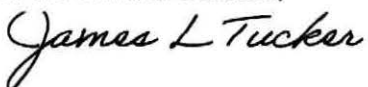
III. Conclusion

This is the final decision of the Postal Service regarding your right of access to records requested pursuant to the FOIA. You may seek judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

The Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
Room 2510
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll free: 1-877-684-6448
Facsimile: 202-741-5769

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