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A FIRM WITH A GLOBAL PERSPECTIVE

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November 6, 2000

General Counsel  
United States Postal Service  
Washington, D.C. 20260

RE: FOIA 411-2000

To Whom It May Concern:

This letter is being submitted to appeal the denial of a Freedom of Information ("FOIA)/Privacy Acts requests that were made by Denise P. Blackburn through a Durable Power of Attorney, which has been attached hereto and labelled as Appendix A, that was issued to her husband, Jerry T. Blackburn, on July 13, 2000. A copy of the denial is attached hereto and labelled as Appendix B, and copies of the requests are attached hereto and labelled as Appendices C, D, and E. Ms. Blackburn is a client of this firm and, through the Durable Power of Attorney issued to her husband, she has asked this firm to appeal the denial of her request.

*Basis of Denial*

The ostensible basis for the denial is that the "material in question is being withheld from disclosure pursuant to title 5, United States Code, section 552(b)(7)(A), where release of information at this time could reasonably be expected to interfere with enforcement proceedings." With all due respect, the release of the information could not reasonably be expected to interfere with enforcement proceedings.

*No Law Enforcement Matter Involved*

The information relates to and was assembled over a dispute with the Office of Workers' Compensation Programs ("OWCP") of the U.S. Department of Labor and Denise P. Blackburn as to whether she was and is entitled to workers' compensation benefits under the Federal Employees Compensation Act ("FECA"). This is a civil matter and not a law enforcement matter. The Postal Inspection Service was not called upon to conduct a surveillance in its law enforcement capacity. Instead, it was called upon like any private investigator in an administrative matter

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involving a work-related injury. *See* Appendix G.

As the records of the Postal Service indicate, the information was not assembled for purposes of enforcing any federal statute. Rather, the information was assembled so as to assist the Postal Service in avoiding the payment of workers' compensation benefits under FECA. In so doing, the Postal Service and its Postal Inspection Service were acting no different than any other employer in seeking to avoid costs associated with the payment of workers' compensation benefits. In sum, there was no nexus or relationship between the Postal Inspection Service investigation and its law enforcement duties.

*No Harm to Pending or Prospective Proceedings.*

In addition, there is no law enforcement proceeding that is either pending or prospective. The Postal Inspection Service has furnished its Investigative Memorandum to the OWCP to influence the determination of whether Ms. Blackburn's benefits were terminated. The release of the information relating to the Investigative Memorandum, and, in particular, the source of its authorization and development could not possibly cause an articulable harm to the Postal Service or the Postal Inspection Service. Aside from not being a law enforcement proceeding, the OWCP has made its decision to terminate the benefits of Ms. Blackburn. Copies of the Notice of Termination and the Termination Decision are, respectively, located at Appendices F and H. From the perspective of the Postal Service, the proceedings are at an end.

*Investigation Conducted for Wrongful Purpose*

Many of the assertions made and the conclusions drawn in the Investigative Memorandum are misleading if not outright false. At the very least, it is reflective of misfeasance on the part of one or more officials of the Postal Service. At worst, it is reflective of malfeasance on the part of Postal Service officials. The evidence is overwhelming that Ms. Blackburn did not exceed her medical restrictions and, indeed, it suggests that evidence and information was knowingly withheld so as to influence a decision of the OWCP. *See* Appendix G. In short, the investigation was conducted for a wrongful purpose and therefore "Exemption 7" cannot apply.

*The Postal Inspection Service Cannot  
Rely Solely upon a FOIA Exemption*

The Postal Service cannot rely solely upon a FOIA exemption alone to deny Ms. Blackburn access to her records under the Privacy Act. *See* 5 U.S.C. § 552a(t)(1); *see also* *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1184 (D.C. Cir. 1987) ("If a FOIA exemption covers the documents, but a Privacy Act exemption does not, the documents must be released under the Privacy Act."). Here most if not all of the requested records relate to Ms.

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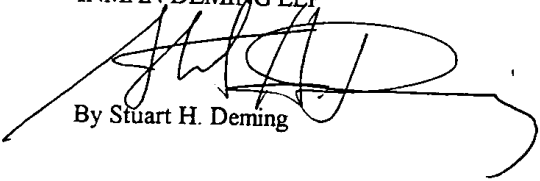
Blackburn and no Privacy Act exemption has been cited. Accordingly, the Postal Service cannot rely solely upon the FOIA exemption to deny Ms. Blackburn access.

*Relief Requested*

It is therefore requested that the denial of the records requested pursuant to the accompanying three FOIA/Privacy Act requests made to the United States Postal Inspection Service be reversed and that the requested records be produced without any further delay.

Sincerely,

INMAN DEMING LLP

  
By Stuart H. Deming

Appendices

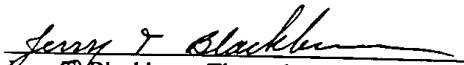
cc: Denise P. Blackburn  
(w/appendices)

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**AUTHORIZATION FOR INMAN DEMING LLP TO REPRESENT  
DENISE P. BLACKBURN WITH RESPECT TO HER FOIA/PRIVACY ACT CLAIMS**

November 6, 2000

  
Jerry T. Blackburn, Through Accompanying  
Durable Power of Attorney Issued By  
Denise P. Blackburn on July 13, 2000