



January 18, 2001

Stuart H. Deming, Esquire
INMAN DEMING, LLP
600 Fourteenth Street, NW – Suite 600
Washington, DC 20005-2004

Freedom of Information Act Appeal 01-021

Dear Mr. Deming:

This responds to your letter dated November 6, 2000 in which you appeal the decision of J.G. Eyre, Information Disclosure Specialist to deny the request for information pursuant to the Freedom of Information Act, 5 U.S.C. § 552.

In a letter dated July 19, 2000, Jerry T. Blackburn requested information related to a Postal Inspection Service investigation concerning records regarding Denise P. Blackburn. In a decision dated October 6, 2000, J. G. Eyre, Information Disclosure Specialist, denied your request on the grounds that the requested information is exempt from disclosure pursuant to the Freedom of Information Act citing exemption 7(A). Ms. Eyre also noted in her decision that certain of the documents compiled in the investigation qualify for exemption from mandatory disclosure under exemptions 2, 3, 4, 5, 6, 7 (C) and 7(D).

The Freedom of Information Act (FOIA) generally requires government agencies to disclose records within their possession. The Act contains several exemptions, however, that permit agencies to withhold certain records from disclosure. 5 U.S.C. § 552(b)(1)-(9). In this case, the withheld records are exempt from disclosure pursuant to FOIA exemption 7(A) and we upholding Ms. Eyre's decision for the reasons stated below.

FOIA exemption 7(A) permits agencies to withhold "records or information compiled for law enforcement purposes" to the extent that disclosure of such records or information "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). You state that exemption 7(A) should not apply in this case because proceedings based on the investigation have been completed. Even records concerning "closed" matters may be withheld under the exemption, however, when there are related, pending

enforcement proceedings. See New England Medical Ctr. Hosp. v. NLRB, 548 F.2d 377, 385-87 (1st Cir. 1976), reh'g denied, 548 F.2d 387 (1st Cir. 1977); Freedberg v. Department of the Navy, 581 F. Supp. 3, 4 (D.D.C. 1982).

For purposes of exemption 7(A), the term "enforcement proceedings" is not limited; appeal proceedings also qualify as enforcement proceedings under exemption 7(A). See Injex Indus. v. NLRB, 699 F. Supp. 1417, 1420 (N.D. Cal. 1986). We have been advised that the parties in this case are pursuing an appeal related to the termination of OWCP compensation. Therefore, proceedings related to appeals are enforcement proceedings within the meaning of the exemption. Accordingly, the exemption may apply to the records you are requesting. See Mapother v. Department of Justice, 3 F.3d 1533, 1541 (D.C. Cir. 1993); Timken v. United States Customs Serv., 531 F. Supp. 194, 199 (D.D.C. 1981).

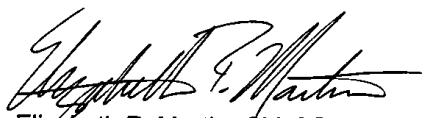
Once records qualify for the application of exemption 7(A), an agency may withhold those categories of information that, if disclosed, would be likely to interfere with enforcement proceedings. NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 236 (1978); Lewis v. IRS, 823 F.2d 375 (9th Cir. 1987). Information provided by witnesses, investigative reports, and other information obtained during the course of an investigation are categories of information that may be withheld pursuant to exemption 7(A). See Curran v. Department of Justice, 813 F.2d 473, 476 (1st Cir. 1987). We have concluded that disclosure of the records withheld in this case could reasonably be expected to interfere with enforcement proceedings. Accordingly, the records are exempt from disclosure pursuant to FOIA exemption 7(A).

As noted in the initial response to your request, some of the records may also be exempt from disclosure pursuant to other FOIA exemptions, but we do not consider it necessary to discuss the application of the other exemptions at this time. Exemption 7(A) may cease to apply to the withheld records at such time that release of the records will not be likely to interfere with enforcement proceedings. Accordingly, this decision is made without prejudice to a future request for the records at such time that exemption 7(A) no longer applies to them.

In addition, we note that your appeal makes reference to Ms. Blackburn's right of access to her records under the Privacy Act; specifically, 5 U.S.C. §552(a)(1). The Privacy Act generally permits individuals to obtain access to "records" pertaining to themselves that are maintained in agency "systems of records." 5 U.S.C. § 552a(d)(1). Under the Act, however, agencies are permitted to exempt systems of records maintained for law enforcement purposes from the Act's access provisions. 5 U.S.C. §§ 552a(j)(2), (k)(2). The Postal Service has applied these exemptions to its investigative records by the adoption of appropriate regulations. 39 C.F.R. § 266.9. Therefore, the Privacy Act does not provide you with any right of access to the requested records in this case.

This is the final decision of the Postal Service on your right of access to these records pursuant to the Freedom of Information Act and Privacy Act. 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.

For the General Counsel,

A handwritten signature in black ink, appearing to read "Elizabeth P. Martin". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth P. Martin, Chief Counsel
Customer Protection and Privacy
Corporate Law Department