



POSTAL SERVICE

39 CFR Parts 265 and 266

Production or Disclosure of Material or Information

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its Freedom of Information Act (FOIA) and Privacy Act regulations. These changes would improve clarity, make technical corrections, and create a definition of “information of a commercial nature” as it pertains to the Postal Reorganization Act’s provisions concerning disclosure of information under the Freedom of Information Act.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Mail or deliver written comments to: Associate General Counsel and Chief Ethics & Compliance Officer, 475 L'Enfant Plaza SW., Room 6000, Washington, DC 20260-1135. Email and faxed comments are not accepted. You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC, 20260. These records are available for review on Monday through Friday, 9 am - 4 pm, by calling 202-268-2904.

FOR FURTHER INFORMATION CONTACT: Ruth B. Stevenson, Attorney, Federal Compliance, ruth.b.stevenson@usps.gov, 202-268-6627.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to amend 39 CFR part 265 to make technical corrections to conform to the FOIA and to establish a definition of information of a commercial nature. The amendments to Sections 265.1 and 265.3 correct citations. The amendment to Section 265.6 adds paragraph (e)(2) so as to conform to the FOIA Improvement Act of 2016. (130 Stat. 544). The amendment to Section 265.9 eliminates an internal cross reference to the CFR by stating the dollar amount to be charged by Postal Service personnel when reviewing records in response to a FOIA request. The amendments to Section 265.14 establish a definition of “information of a commercial nature” to comply with applicable case law and to provide examples of the type of information that may be commercial in nature. Section 265.14 is further amended to clarify that the Postal Service will release change of address information submitted by a business. It is further amended to limit the disclosure of change of address information submitted by domestic violence shelters. Finally, the Postal Service proposes to amend 39 CFR part 266 to conform with Privacy Act provisions pertaining to disclosure of information and to define a court of competent jurisdiction.

List of Subjects

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

39 CFR Part 266

Privacy.

For the reasons stated in the preamble, the Postal Service proposes to amend 39 CFR chapter I as follows:

PART 265 – PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114-185.

2. Amend § 265.1 to revise paragraph (a)(1) to read as follows:

§ 265.1 General provisions

(a) * * *

(1) This subpart contains the regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, insofar as the Act applies to the Postal Service. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines). The Postal Service FOIA Requester's Guide, an easy-to-read guide for making Postal Service FOIA requests, is available at <http://about.usps.com/who-we-are/foia/welcome.htm>.

* * * * *

3. Amend § 265.3 to revise paragraphs (d) and (e) to read as follows:

§265.3 Procedure for submitting a FOIA request.

* * * * *

(d) *First-party requests.* A requester who is making a request for records about himself must provide verification of identity sufficient to satisfy the component as to his identity prior to release of the record. For Privacy Act-protected records, the requester must further comply with the procedures set forth in 39 CFR 266.5.

(e) *Third-party requests.* Where a FOIA request seeks disclosure of records that pertain to a third party, a requester may receive greater access by submitting a written authorization signed by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). As an exercise of administrative discretion, each component can require a requester to supply a notarized authorization, a declaration, a completed Privacy Waiver as set forth in 39 CFR 266.5(b)(2)(iii), or other additional information if necessary in order to verify that a particular individual has consented to disclosure.

* * * * *

4. Amend § 265.6 to add paragraph (e)(2) to read as follows:

§265.6 Responses to requests.

* * * * *

(e) * * *

(2) Any component invoking an exclusion must maintain an administrative record of the process of invocation and approval of exclusion by OIP.

5. Amend § 265.9 to revise paragraph (c)(3) to read as follows:

§265.9 Fees.

* * * * *

(c) * * *

(3) *Review.* Commercial-use requesters shall be charged review fees at the rate of \$21.00 for each half hour by personnel reviewing the records. Review fees shall be assessed in connection with the initial review of the record, i.e., the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with a component's re-review of the records in order to consider the use of other exemptions may be assessed as review fees.

* * * * *

6. Amend § 265.14 to revise paragraphs (b), (d)(1), and (d)(2) to read as follows:

§265.14 Rules concerning specific categories of records.

* * * * *

(b) *Information not subject to mandatory public disclosure.* Certain types of information are exempt from mandatory disclosure under exemptions contained in the Freedom of Information Act and in 39 U.S.C. 410(c). The Postal Service will exercise its discretion, in accordance with the policy stated in § 265.1(c), as implemented by instructions issued by the Records Office with the approval of the General Counsel in determining whether the public interest is served by the inspection or copying of records that are:

(1) Related solely to the internal personnel rules and practices of the Postal Service.

(2) Trade secrets, or privileged or confidential commercial or financial information, obtained from any person.

(3) 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. Information is of a commercial nature if it relates to commerce, trade, profit, or the Postal Service's ability to conduct itself in a businesslike manner.

(i) When assessing whether information is commercial in nature, the Postal Service will consider whether the information:

(A) Relates to products or services subject to economic competition, including, but not limited to, "competitive" products or services as defined in 39 U.S.C. 3631 and by

regulations and decisions of the Postal Regulatory Commission, an inbound international service, or an outbound international service for which rates or service features are treated as nonpublic in regulatory filings;

(B) Relates to the Postal Service's activities that are analogous to a private business in the marketplace;

(C) Would be of potential benefit to individuals or entities in economic competition with the Postal Service, its customers, suppliers, affiliates, or business partners or could be used to cause harm to a commercial interest of the Postal Service, its customers, suppliers, affiliates, or business partners;

(D) Is proprietary or includes conditions or protections on distribution and disclosure, is subject to a nondisclosure agreement, or a third party has otherwise expressed an interest in protecting such information from disclosure;

(E) Is the result of negotiations, agreements, contracts or business deals between the Postal Service and a business entity; or

(F) Relates primarily to the Postal Service's governmental functions or its activities as a provider of basic public services.

(ii) No one factor is determinative. Rather, each factor should be considered in conjunction with the other factors and the overall

character of the particular information. Some examples of commercial information include, but are not limited to:

- (A) Information related to methods of handling valuable registered mail.
- (B) Records of money orders except as provided in Section 509.3 of the Domestic Mail Manual.
- (C) Technical information concerning postage meters and prototypes submitted for Postal Service approval prior to leasing to mailers.
- (D) Quantitative data, whether historical or current, reflecting the number of postage meters or PC postage accounts.
- (E) Reports of market surveys conducted by or under contract on behalf of the Postal Service.
- (F) Records indicating carrier or delivery lines of travel.
- (G) Information which, if publicly disclosed, could materially increase procurement costs.
- (H) Information which, if publicly disclosed, could compromise testing or examination materials.
- (I) Service performance data on competitive services.
- (J) Facility specific volume, revenue, and cost information.
- (K) Country-specific international mail volume and revenue data.
- (L) Non-public international volume, revenue and cost data.

(M) Pricing and negotiated terms in bilateral arrangements with foreign postal operators.

(N) Information identifying USPS business customers.

(O) Financial information in or the identities of parties to Negotiated Service Agreements or Package Incentive Agreements.

(P) Negotiated terms in contracts.

(Q) Negotiated terms in leases.

(R) Geolocation data.

(S) Proprietary algorithms or software created by the Postal Service.

(T) Sales performance goals, standards, or requirements.

(U) Technical information or specifications concerning mail processing equipment.

* * * * *

(d) * * *

(1) *Change of address.* The new address of any specific business or organization that has filed a permanent change of address order (by submitting PS Form 3575, a hand written order, or an electronically communicated order) will be furnished to any person upon request. If a domestic violence shelter has filed a letter on official letterhead from a domestic violence coalition stating:

(i) That such domestic violence coalition meets the requirements of 42 U.S.C. 10410; and

(ii) That the organization filing the change of address is a domestic violence shelter, the new address shall not be released except pursuant to applicable routine uses. The new address of any individual or family that has filed a permanent or temporary change of address order will be furnished only in those circumstances stated at paragraph (d)(5) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order). The Postal Service reserves the right not to disclose the address of an individual for the protection of the individual's personal safety. Other information on PS Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section.

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit on behalf of a holder will be furnished to any person upon request. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

* * * * *

PART 266 – PRIVACY OF INFORMATION

7. The authority citation for part 266 continues to read as follows:

Authority: 5 U.S.C. 552a; 39 U.S.C. 401

8. Amend § 266.3 to revise the introductory text of paragraph (a), paragraphs (a)(1)(iii) and (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(iii), (b)(2) introductory text, (b)(2)(iii), (b)(2)(xi), and the paragraph heading of (b)(5) to read as follows:

§266.3 Collection and disclosure of information about individuals.

(a) This section governs the collection of information about individuals, as defined in the Privacy Act of 1974, throughout the United States Postal Service and across its operations;

* * *

(3) The Postal Service will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

* * * * *

(b) * * *

(1) *Limitations.* The Postal Service will not disclose information about an individual unless reasonable efforts have been made to assure that the

information is accurate, complete, timely and relevant to the extent provided by the Privacy Act and unless:

(i) The individual to whom the record pertains has requested in writing, or with the prior written consent of the individual to whom the record pertains, that the information be disclosed, unless the individual would not be entitled to access to the record under the Postal Reorganization Act, the Privacy Act, or other law;

* * * * *

(iii) The disclosure is in accordance with paragraph (b)(2) of this section.

(2) *Conditions of Disclosure.* Disclosure of personal information maintained in a system of records may be made:

* * *

(iii) For a routine use as contained in the system of records notices published in the Federal Register;

* * * * *

(xi) Pursuant to the order of a court of competent jurisdiction. A court of competent jurisdiction is defined in Article III of the United States Constitution including, but not limited to any United States District Court, any United States or Federal Court of Appeals, the United States Court of Federal Claims, and the United States

Supreme Court. For purposes of this section, state courts are not courts of competent jurisdiction.

* * * * *

(5) *Employment status.* * * *

* * * * *

Ruth Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2018-12858 Filed: 6/14/2018 8:45 am; Publication Date: 6/15/2018]