RAYMONA HOLT
MANAGER, FINANCIAL REPORTING

UNITED STATES
POSTAL SERVICE

June 9, 2020

Mr. Austin Evers
American Oversight
1030 15th Street NW Suite B255
Washington, DC 20005

RE: Freedom of Information Act Request – FOIA Case No. 2020-FPRO-01104

Dear Mr. Evers:

This is in response to your Freedom of Information Act (FOIA) request, which was received in our office on May 12, 2020. In your request, you seek access to Postal Service records in order to shed light on whether and to what extent political pressures are influencing decision-making regarding the Postal Service and the critical services it provides to the American people. Specifically, you requested (1) any final assessments or analyses regarding the impact of the coronavirus outbreak, including economic consequences of the outbreak and responses to the outbreak, on USPS' ability to perform mail delivery; and (2) any final assessments or analyses regarding the impact of not receiving the federal assistance allocated in the CARES Act on USPS' ability to perform daily mail services, fulfill its obligations to deliver census materials, or prepare for expected increased demand for USPS' services, as voters turn to vote by mail methods in the lead up to the November 2020 election.

To locate responsive records the management team responsible for developing financial forecasts has reviewed their electronic files and emails for the period beginning March 15, 2020, through May 20, 2020. This search produced a total of one responsive record, a slide deck that was presented to the Board of Governors. This slide deck is disclosed via attachment, with redactions.

Exemption 3 allows an agency to withhold information that is "specifically exempted from disclosure by statute." 5 U.S.C. § 552(b)(3). Section 410(c)(2) of the Postal Reorganization Act qualifies as an Exemption 3 statute. 39 U.S.C. § 410(c)(2). 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." 39 U.S.C. § 410(c)(2). Information of a commercial nature under Section 410(c)(2) is broadly defined to include all information that "relates to commerce, trade, profit, or the Postal Service's ability to conduct itself in a businesslike manner." 39 C.F.R. § 265.14(b)(3). In determining whether particular information is commercial in nature, the Postal Service considers six factors relating to whether the information is more akin to its role as a business entity, a competitor in the market or a provider of basic public services. 39 C.F.R. § 265.14(b)(3)(i). In addition, the Postal Service has identified an extensive, though not exhaustive, list of information that is commercial in nature and, thus, exempt from disclosure under Section 410(c)(2). 39 C.F.R. § 265.14(b)(3)(ii).

Here, we find that the financial projections and commercial strategy contained in some of the slides qualifies as "information of a commercial nature" under Section 410I(2). This information is commercial in nature because it inherently implicates the organization's financials, strategy in the marketplace, and the outlook of competitive services and products. We also find that this information would not be released "under good business practice" because our competitors and other entities in the private sector do not publicly release their internal projections and forecasts. Accordingly, this information is exempt from disclosure under Exemption 3 of the FOIA and Section 410(c)(2).

Exemption 5 permits the Postal Service to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.” 5 U.S.C. § 552(b)(5). Courts have found Exemption 5 to “exempt those documents, and only those documents, that are normally privileged in the civil discovery context,” including the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975); *see Martin v. Office of Special Counsel*, 819 F.2d 1181, 1184 (D.C. Cir. 1987). To meet the “inter-agency or intra-agency memorandums” threshold requirement, the “source [of the withheld records] must be a Government agency,” *Dep’t of the Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 2 (2001), or the source of the withheld records could be a consultant if the agency sought outside advice and the consultant functioned as an agency employee in providing advice similar to that of an agency employee. *Nat’l Inst. Of Military Justice v. Dep’t of Defense*, 404 F. Supp. 2d 325, 345 (D.D.C. 2005).

The deliberative process privilege of Exemption 5 protects from disclosure records that reflect opinions, advice, recommendations, and other deliberations comprising part of a process by which federal governmental decisions and policies are formulated. *Klamath*, 532 U.S. at 8. The privilege protects pre-decisional, deliberative records that were created less than 25 years before the date on which the records were requested. 5 U.S.C. § 552(b)(5). Certain slides withheld here consist of projections and strategy options, all of which are pre-decisional and deliberative in nature. These documents contain analyses, options, advice, and considerations to be used in the decision making process regarding the subject matter of the request and, therefore, are within the scope of the deliberative process privilege. Accordingly, they have been withheld from disclosure.

If you are not satisfied with this response, you may file an administrative appeal within 90 days of the date of this response letter by writing to the General Counsel U.S. Postal Service 475 L’Enfant Plaza SW Washington, DC 20260 or via email at FOIAAppeal@usps.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. The letter of appeal should include, as applicable:

> (1) A copy of the request, of any notification of denial or other action, and of any other related correspondence;
> (2) The FOIA tracking number assigned to the request;
> (3) A statement of the action, or failure to act, from which the appeal is taken;
> (4) A statement identifying the specific redactions to responsive records that the requester is challenging;
> (5) A statement of the relief sought; and
> (6) A statement of the reasons why the requester believes the action or failure to act is erroneous.

For further assistance with the appeal process, you may use the contact information below.

- HQ FOIA Requester Service Center
  Email: FOIA12@usps.gov
  Phone: 202-268-2608

- FOIA Public Liaison:
  Name: Nancy Chavannes-Battle
  Phone: (202) 268-2608

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Raymona Holt

Raymona Holt

Attachment

Financial Impact
COVID-19

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Short-Term Outlook – Volume

[redacted]

Exemption 3 +39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process).

Index value – Pre-COVID

Volume Index	2019Q3 Actual	2019Q4 Actual	2020Q1 Actual	[redacted]
First Class	100	100	100	[redacted]
Marketing Mail	100	100	100	[redacted]
Periodicals	100	100	100	[redacted]
Shipping & Packages	100	100	100	[redacted]
International	100	100	100	[redacted]
Other	100	100	100	[redacted]
Total	100	100	100	[redacted]

Volume:	2019Q3 Actual	2019Q4 Actual	2020Q1 Actual	[redacted]
First Class	13,101	12,712	14,318	[redacted]
Marketing Mail	17,673	18,293	20,302	[redacted]
Periodicals	1,183	1,091	1,109	[redacted]
Shipping & Packages	1,420	1,451	1,737	[redacted]
International	202	180	240	[redacted]
Other	85	72	94	[redacted]
Total	*33,664*	*33,799*	*37,801*	[redacted]
4 Quarter Rolling Total:				[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Short-Term P&L and Cash Flow Statement Impacts

FY2020 Actual/Forecast	Actual	Actual	Actual	Actual	Actual
$-Millions	Oct	Nov	Dec	Jan	Feb
Revenue	$ 6,205	$ 6,042	$ 7,148	$ 6,089	$ 5,717
Controllable Expenses	$ 6,310	$ 6,090	$ 7,382	$ 6,478	$ 5,872
Controllable income (Loss)	$ (105)	$ (48)	$ (235)	$ (389)	$ (155)
Non-Controllable Expenses	$ 265	$ 63	$ 33	$ 1,188	$ 1,132
Net income (Loss)	$ (370)	$ (111)	$ (267)	$ (1,577)	$ (1,287)
Cash Balance (No changes)	$ 8,507	$ 7,670	$ 8,430	$ 8,892	$ 9,148
+Social Security Holiday					
+Borrow $3.4B					
+Borrow $10B Additional					
+Default of FERS Normal Cost					

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Short-Term Strategies to Remain Liquid

✓ - BOG approved strategies

($ in millions)

✓ ✓

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

Exemption 3 +39 U.S.C. § 410(c)(2)

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process

Long-Term Comparison of Pre-COVID and Post-COVID 10 Year Impacts

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Short-Term Legislative Relief:

1. $25B grant to cover COVID losses over the next two year period
2. $25B modernization grant to ensure USPS can maintain and modernize the infrastructure to support the nation
3. Debt forgiveness of the $14.4B in outstanding debt
4. Unrestricted borrowing authority up to $25B

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Financial Scenario – Short-Term Legislative Relief and Scenario 3

Exemption 3 + 39 U.S.C. § 410(c)(2)

[redacted]

S&IC Recommendation

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Next Steps - 10 Year Strategy

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

USPS-20-1216-A-000014

UNITED STATES POSTAL SERVICE®

APPENDIX

UNITED STATES POSTAL SERVICE®

Additional Regulatory Reform Proposals

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Additional Regulatory Reform Proposals

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

Exemption 3 + 39 U.S.C. § 410(c)(2) and Exemption 5 (pre-decisional material/deliberative process)

[redacted]

SEC. 2302. DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES.

(a) IN GENERAL.—

(1) TAXES.—Notwithstanding any other provision of law, the payment for applicable employment taxes for the payroll tax deferral period shall not be due before the applicable date.

(2) DEPOSITS.—Notwithstanding section 6302 of the Internal Revenue Code of 1986, an employer shall be treated as having timely made all deposits of applicable employment taxes that are required to be made (without regard to this section) for such taxes during the payroll tax deferral period if all such deposits are made not later than the applicable date.

(3) EXCEPTION.—This subsection shall not apply to any taxpayer if such taxpayer has had indebtedness forgiven under section 1106 of this Act with respect to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, or indebtedness forgiven under section 1109 of this Act.

(b) SECA.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the payment for 50 percent of the taxes imposed under section 1401(a) of the Internal Revenue Code of 1986 for the payroll tax deferral period shall not be due before the applicable date.

(2) ESTIMATED TAXES.—For purposes of applying section 6654 of the Internal Revenue Code of 1986 to any taxable year which includes any part of the payroll tax deferral period, 50 percent of the taxes imposed under section 1401(a) of such Code for the payroll tax deferral period shall not be treated as taxes to which such section 6654 applies.

(c) LIABILITY OF THIRD PARTIES.—

(1) ACTS TO BE PERFORMED BY AGENTS.—For purposes of section 3504 of the Internal Revenue Code of 1986, in the case of any person designated pursuant to such section (and any regulations or other guidance issued by the Secretary with respect to such section) to perform acts otherwise required to be performed by an employer under such Code, if such employer directs such person to defer payment of any applicable employment taxes during the payroll tax deferral period under this section, such employer shall be solely liable for the payment of such applicable employment taxes before the applicable date for any wages paid by such person on behalf of such employer during such period.

(2) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—For purposes of section 3511, in the case of a certified professional employer organization (as defined in subsection (a) of section 7705 of the Internal Revenue Code of 1986) that has entered into a service contract described in subsection (e)(2) of such section with a customer, if such customer directs such organization to defer payment of any applicable employment taxes during the payroll tax deferral period under this section, such customer shall, notwithstanding subsections (a) and (c) of section 3511, be solely liable for the payment of such applicable employment taxes before the applicable date for any wages paid by such organization to any work site employee performing services for such customer during such period.

(d) DEFINITIONS.—For purposes of this section—

(1) APPLICABLE EMPLOYMENT TAXES.—The term “applicable employment taxes” means the following:

(A) The taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

(B) So much of the taxes imposed under section 3211(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

(C) So much of the taxes imposed under section 3221(a) of such Code as are attributable to the rate in effect under section 3111(a) of such Code.

(2) PAYROLL TAX DEFERRAL PERIOD.—The term “payroll tax deferral period” means the period beginning on the date of the enactment of this Act and ending before January 1, 2021.

(3) APPLICABLE DATE.—The term “applicable date” means—

(A) December 31, 2021, with respect to 50 percent of the amounts to which subsection (a) or (b), as the case may be, apply, and

(B) December 31, 2022, with respect to the remaining such amounts.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Treasury (or the Secretary's delegate).

(e) TRUST FUNDS HELD HARMLESS.—There are hereby appropriated (out of any money in the Treasury not otherwise appropriated) for each fiscal year to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund established under section 201 of the Social Security Act (42 U.S.C. 401) and the Social Security Equivalent Benefit Account established under section 15A(a) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(a)) an amount equal to the reduction in the transfers to such fund for such fiscal year by reason of this section. Amounts appropriated by the preceding sentence shall be transferred from the general fund at such times and in such manner as to replicate to the extent possible the transfers which would have occurred to such Trust Fund had such amendments not been enacted.

(f) REGULATORY AUTHORITY.—The Secretary shall issue such regulations or other guidance as necessary to carry out the purposes of this section, including rules for the administration and enforcement of subsection (c).