

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

PUBLIC INQUIRY ON CHANGES ASSOCIATED  
WITH THE DELIVERING FOR AMERICA PLAN

Docket No. PI2023-4

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING  
OF LIBRARY REFERENCES AND APPLICATION FOR NON-PUBLIC TREATMENT**  
(July 19, 2023)

The Postal Service hereby provides notice of the following category 4 library references, filed in response to Chairman's Information Request No. 1 in this proceeding:

**Public**

**Title**

USPS-LR-PI2023-4-1

S&DC and Cost Savings Initiatives  
Information

**Nonpublic**

**Title**

USPS-LR-PI2023-4-NP1

Responsive Information to ChIR No.1,  
Questions 1-3

An application for non-public treatment and protective conditions for materials within the non-public library references listed above is attached to this Notice.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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July 19, 2023

## **APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R § 3011.201, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed under seal with the Postal Regulatory Commission (Commission). The materials covered by this application consist of nonpublic information filed in LR-PI2023-4-NP1 (“NP1”), which includes (1) facility plans that predate public announcement which have not been publicly disclosed in response to Questions 1 and 2 of Chairman’s Information Request No. 1 in this docket (“Questions 1 and 2”), and (2) forward-looking estimates responsive to Question 3 of that same information request (“Question 3”), which include cost saving initiatives associated with the Delivering for America Plan at the time it was published in 2021. NP1 supplements public information furnished in LR-PI2023-4-1 (“LR-1”), which includes publicly announced plans for Sorting & Delivery Centers, as well as aggregated, top level financial estimates of cost savings initiatives associated with the DFA Plan at the time it was published in 2021, which are supported by detailed, disaggregated data in NP1.

The Postal Service hereby furnishes below the justification for this application as required by 39 C.F.R. § 3011.201(b).

**(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.**

The materials designated as non-public in NP1 contain financial and operational projections and plans that are commercially sensitive. NP1 consists of data and plans that, under good business practice, would not be disclosed publicly. Based on the Postal Service’s longstanding and deep familiarity with the postal and communications businesses and markets generally, and our knowledge of many firms, including

competitors, mailers, and suppliers, the Postal Service does not believe that any commercial enterprise would voluntarily publish detailed, forward-looking, and preliminary operational plans and initiatives that are subject to change,<sup>1</sup> or detailed, disaggregated cost savings estimates of future planning efforts. Rather, this information would be exempt from mandatory disclosure pursuant to 5 U.S.C. §§ 552(b)(3) coupled with 39 U.S.C. § 410(c)(2).

With respect to the nonpublic information in NP1 relating to facility plans, 5 U.S.C. § 552(b)(5) serves as a separate, independent basis for filing planned facility changes under seal, on the grounds that lists of facility plans which predate widely public announcements are not yet final, and therefore by definition are subject to change. As such, they are both predecisional and deliberative, and subject to the deliberative process privilege.<sup>2</sup>

Because the materials filed non-publicly in this docket by the Postal Service fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support our determination that these materials are exempt from public disclosure and to grant the Postal Service's application for their non-public treatment.

**(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public**

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<sup>1</sup> See *Jud. Watch, Inc. v. U.S. Postal Serv.*, 297 F. Supp. 2d 252, 258–59 (D.D.C. 2004) (noting that the deliberative process privilege helps to prevent premature disclosure of proposed policies and protects against public confusion through the disclosure of documents suggesting reasons for policy decisions that were ultimately not taken).

<sup>2</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. See 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3 (June 27, 2018) at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

**materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section [39 C.F.R. § 3011.201] (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.**

The Postal Service has a proprietary interest in the information contained within the non-public materials.<sup>3</sup> The Postal Service identifies as an appropriate contact person Patrick Morin, Attorney, Global Business and Service Development, Corporate and Postal Business Law Section. Mr. Morin's phone number is (202) 268-2980, and his email address is [stephen.p.morin@usps.gov](mailto:stephen.p.morin@usps.gov).

**(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.**

The materials in NP1 relating to upcoming facility changes contain commercially sensitive and predecisional information concerning the Postal Service's multi-year, region-by-region network modernization initiative, which is subject to continuous monitoring and amenable to adjustments where necessary and appropriate as impacts are assessed; they also contain commercially sensitive and predecisional information concerning a

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<sup>3</sup> The Postal Service redacted certain information in the non-public materials filed in this matter that is, among other things, proprietary to third parties, primarily suppliers of the Postal Service. Such information could reveal the unit pricing of such entities. This information is commercially sensitive and relates to confidential third-party procurement and business information. See *Canadian Com. Corp. v. Dep't of Air Force*, 514 F.3d 37, 40 (D.C. Cir. 2008) (reaffirming that constituent or line-item pricing information in a government contract falls within Freedom of Information Act (FOIA) Exemption 4 for privileged or confidential trade secrets and commercial or financial information, if its disclosure would "impair the government's ability to obtain necessary information in the future" or "cause substantial harm to the competitive position of the person from whom the information was obtained") (citing *McDonnell Douglas Corp. v. U.S. Dep't of the Air Force*, 375 F.3d 1182, 1203 (D.C. Cir. 2004) (noting that line-item pricing information in a government contract was likely to cause provider substantial competitive harm, and thus was exempt from disclosure under FOIA Exemption 4)). This information is not critical to the overall financial projections underlying the cost savings estimates, and thus the Postal Service submits its redaction does not undermine the Commission's review in this matter. Moreover, such information could not be filed under seal at this time due to the burden of having to notify these various parties about the proposed disclosures and having to coordinate any related responses and possible objections. The Postal Service does not believe that undertaking the burden of such efforts is necessary, considering the lack of relevancy of the information. Relatedly, the Postal Service incorporates by reference in this filing the redacted cost change projections filed publicly in Docket No. N2021-1, USPS-LR-N2021-1-4; corresponding non-public materials can be found in Docket No. N2021-1, USPS-LR-N2021-1-1-NP2.

systematic and particularized reassessment of the Postal Service's network. These initiatives involve upcoming changes to facilities that have not been publicly announced and that remain subject to change; as such, they should remain confidential.<sup>4</sup>

NP1 materials relating to Question 3 contain commercially sensitive information which pertain to the preliminary plans and initiatives including cost saving measures across the Postal Service, such as mail processing, transportation, retail, delivery, and administration efficiency. These detailed cost savings estimates contain a trove of information related to future costs of the Postal Service, as well as efforts to tame their growth or reduce their overall impact as a result of operational changes introduced or considered as part of the Delivering for America Plan. Moreover, as discussed in the response to Question 3, the Plan constitutes a living plan, and the specific initiatives being pursued by the Postal Service have evolved, meaning these materials simply reflect preliminary and predecisional initiatives developed at a specific point in time regarding initiatives that were being considered and as they were understood when the Plan was issued. As such, they are not in all instances the initiatives currently being pursued by the Postal Service, and some of the initiatives being pursued have evolved as reflective of a

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<sup>4</sup> As explained in the Postal Service's response to Question 1, NP1 contains the list of facilities that are in active transition planning, for which notifications to the Postal Service's organized labor unions have been delivered pursuant to the applicable collective bargaining agreements. At the time of disclosure to the organized labor unions, the Postal Service had a reasonable basis for believing that the unions would keep the disclosed information confidential. See *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 836 (D.C. Cir. 2001) (holding that photographs "plainly d[id] not fall within" the public-domain doctrine because they "were not released to the general public," and only certain outside parties were allowed to see them); *Judicial Watch, Inc. v. U.S. Dep't of Def.*, 963 F.Supp.2d 6, 16 (D.D.C. 2013) (holding that the public-domain doctrine did not apply where information had not been released to the general public, but only disclosed to a select group of filmmakers); see also *United States v. Deloitte LLP*, 610 F.3d 129, 140 (D.C. Cir. 2010) (noting that pursuant to the so-called "maintenance of secrecy" standard as related to the disclosure of confidential information subject to the work product doctrine, courts inquire whether the proponent "had a reasonable basis for believing that the recipient would keep the disclosed material confidential"). The Postal Service intends to update this listing as further planning occurs and more notifications are delivered consistent with our contractual obligations to our unions and other regulatory requirements. The Postal Service intends for this Application to apply with equal force to all such subsequent filings. Of course, as the plant changes are disclosed to all affected stakeholders (such that disclosure in this docket would no longer be premature), the Postal Service also intends to supplement LR-1 with the publicly available lists of affected facilities.

living plan. The Postal Service maintains that the non-public portions of these materials should remain confidential.

**(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.**

If the information the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, the Postal Service considers it quite likely that we would suffer commercial harm. This information is commercially sensitive to the Postal Service, and the Postal Service does not believe that it would be disclosed under good business practice. In this regard, the Postal Service is not aware of any business with which we compete (or in any other commercial enterprise), either within industries engaged in the carriage and delivery of materials and hard copy messages or packages, or those engaged in communications generally, that would disclose publicly information and data of comparable nature and detail.

The materials responsive to Questions 1 and 2 contain information that the Postal Service considers to be non-public and consist of commercially sensitive information that is antecedent to a final, publicly announced decision; it is therefore deliberative and predecisional as it pertains to possible changes to the Postal Service's network and operations plans. The Postal Service routinely consults with industry prior to implementing such changes and provides notice to other stakeholders at different times in the course of rolling out facility changes. Premature public disclosure of the information contained in these non-public documents, which relate to plans that are subject to further development and change, would be detrimental to the Postal Service, such as for instance impeding the Postal Service's ability to effectively consult with stakeholders in the future and to share information with measured and tailored collateral to convey the information that each stakeholder audience would find useful and practical for their own future

planning purposes. It would also have a chilling effect on the Postal Service's ability to engage in internal deliberations, and to roll out our communications in an appropriate manner and effectively develop and revise, as necessary, network and delivery initiatives based on feedback from each stakeholder group. Premature disclosure would present very real risks of confusion among stakeholders regarding future plans for facilities. If premature, public disclosure as a result of these proceedings became a regular course of business, the Postal Service would be unable to effectively manage our business, as we would be unable to engage freely in internal deliberations and would be distracted by each stakeholder group's particular concerns before communications tailored to those groups ripened and were ready for dissemination. This would be unlike any other federal agency with a public mission.

The materials responsive to Question 3 contain information which pertain to preliminary plans and initiatives, including cost saving measures across the Postal Service, which could be used by competitors to assess future planning initiatives to determine strengths or weaknesses of the Postal Service's current and future network design. Competitors could use this information to their advantage and, by understanding possible comparative vulnerabilities and future detailed costs of the enterprise, cause commercial harm to the Postal Service. Disclosing such information would also chill the Postal Service's ability to engage in internal deliberations, including creating analyses to support such deliberations, which would hinder the Postal Service's ability to effectively manage our business.

**(5) At least one specific hypothetical, illustrative example of each alleged harm.**

**Harm: Public disclosure of the NP1 would disclose commercially sensitive strategic plans which competitors would find useful in developing their own strategies, and also could result in efforts to mimic or adjust parallel integrated networks that capitalize on the business intelligence of the planned changes.**



**Hypothetical:** Non-Public information in response to Question 3 is revealed to a competitor. The competitor then uses this information to focus on its own efficiency improvement efforts or direct its capital or labor resources to exploit potential gaps in the Postal Service's mail processing and delivery networks, and thereby maintains or gains a competitive advantage in the industry to the detriment of the Postal Service. For instance, the competitor uses this non-public information to assess future planning, and to determine the strengths and/or weaknesses of the Postal Service's future retail, transportation, processing, and delivery networks. It could also use the information to assess the Postal Service's future costs in order to identify the markets in which it may wish to compete against the Postal Service. The competitor then devises business strategies to gain a competitive advantage in areas covered by discrete cost savings initiatives, and/or exploits information to assert targeted advertising claims.

**Harm: Public disclosure of the Postal Service's preliminary plans to modify its network and operating plans, would result in premature disclosure of the Postal Service's strategic business initiatives and thereby result in confusion as well as chill further efforts to plan and communicate with stakeholders about network changes.**

**Hypothetical:** Non-Public information in response to Questions 1 and 2 is disclosed publicly, before plans for public communications and consultations with stakeholders, such as mailer organizations, have taken place. Such premature public disclosure of this information, which relate to plans that are subject to further development and change, would cause confusion as stakeholders would acquire information that is not necessarily tailored to their needs, and thereby result in Postal Service management having to direct time and resources to addressing questions and comments before communications plans have been devised. This would be detrimental to the Postal Service including by impeding the Postal Service's ability to effectively consult with these stakeholders in the

future. It would also have a chilling effect on the Postal Service's ability to effectively develop and revise, as necessary, network and delivery initiatives.

**(6) The extent of protection from public disclosure deemed to be necessary.**

The Postal Service maintains that the materials filed non-publicly should be withheld from persons involved in competitive decision-making for any entity that might gain competitive advantage from use of this information, including persons acting on behalf of the respective subjects of the non-public information, as well as their consultants and attorneys.

**(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). However, because the non-public materials are related to relationships with key stakeholders that often continue for decades, or at least beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b-c).

**(8) Any other relevant factors or reasons to support the application.**

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.