



October 15, 2021

Mr. Jacob Bogage
The Washington Post
1301 K Street NW
Washington, DC 20071
via email: Jacob.Bogage@WashPost.com

Re: FOIA Case No. 2021-FPRO-03019

Dear Mr. Bogage:

This responds to your Freedom of Information Act (FOIA) request dated August 18, 2021. Your request was assigned case number FOIA Case No. 2021-FPRO-03019. In your email, you requested the following records pertaining to Postmaster General Louis DeJoy under the Freedom of Information Act (FOIA), 5 U.S.C. § 552:

1. All ethics agreements, records of recusals and screening arrangements pertaining to Postmaster General Louis DeJoy.
2. All other records identifying matters from which Mr. DeJoy must recuse.
3. All records of guidance provided to Mr. DeJoy regarding his recusal obligations by USPS ethics officials.
4. All other records identifying financial interests from which Mr. DeJoy or his spouse must divest.
5. All records of communications between Mr. DeJoy and USPS officials regarding his reported purchase of a "call option" for Amazon stock on June 24, 2020.

A search has been conducted of the records of the Ethics Office and the Postmaster General Office, to our knowledge, the only locations in which these records would be located. Ten pages of recusal agreements, one page of recusal guidance, and twenty pages of documents concerning divestiture have been located as responsive to your request. We are producing these documents with redactions pursuant to Exemption 5 and Exemption 6. Although we conducted a thorough search for records responsive to items # 2 and # 5, no responsive records were located.

It is unclear whether you intended to request the final certificates of divestiture issued by the Office of Government Ethics. Please note that these documents are available to the public outside of the FOIA process. You must submit OGE Form 201 directly to the Office of Government Ethics to receive these documents.

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. *Nat'l Labor Relations Bd. 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. See *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 Water Users Protective Ass'n*, 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). Some information is redacted from the certificate of divestiture requests under Exemption 5 because this information constitutes deliberative material that was created as part of an on-going iterative decision-making process with the Office of Government Ethics related to the Postmaster General's divestiture requirements, under the ethics regulations. This information is therefore within the scope of the deliberative process privilege. It has been redacted to protect pre-decisional, deliberative information.

Under Exemption 6, the Postal Service may withhold "personnel files and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). This exemption covers all records and information about an individual and is not limited to intimate details or highly personal information. See *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 600–02 (1982). Exemption 6 protects records and information that expressly identify an individual, as well as records and information from which an individual's identity could be deduced. *Id.* The personal privacy interests protected under Exemption 6 include, but are not limited to, an individual's interest in avoiding embarrassment, harassment, retaliation, annoyance, or other adverse effect that would result from the public disclosure of the information pertaining to the individual.

Under Exemption 6, a requester may overcome an individual's privacy interest only if the requester shows that the requester seeks to advance a public interest and disclosure of the records will advance that public interest. See *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). The only public interest cognizable under Exemption 6 is the extent to which public disclosure of the record or information would significantly contribute to public understanding of the federal government's operations or activities. *Id.* Under Exemption 6, even a very slight privacy interest by an individual may be enough "to outweigh a negligible or non-existent public interest." *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 497, 500 (1994).

Here, the records responsive to your request contain personal information pertaining to the Postmaster General. The Postmaster General has a privacy interest in the number of shares that he owned in a particular business entity, which is nonpublic information. Therefore, we redacted the number of shares he owned from the certificate of divestiture requests pursuant to Exemption 6. You failed to provide any evidence that releasing the number of shares that the Postmaster General owns in a particular business entity would contribute to the public's understanding of the Postal Service's operations or activities. To the contrary, this personal financial information was provided to OGE only for the purpose of furthering the Certificate of Divestiture request. It does not concern the Postmaster General's ability to perform his postal duties, nor does it otherwise involve postal operations. Accordingly, this information is properly redacted under Exemption 6.

In addition, an employee's postal email address and postal mobile telephone number appears in an email to the Office of Government Ethics and in the certificate of divestiture request. An employee has a privacy interest in his or her postal email address because Postal Service employees have been subjected to phishing schemes *via* email on multiple occasions in the past. Because Postal Service employees take postal mobile phones home, there is potential for harassment while off duty and out of the office if postal mobile phone numbers are publicly released. Thus, Postal Service

employees have a privacy interest in their postal mobile phone numbers. For these reasons, an employee's postal email address and postal mobile phone number have been redacted from the responsive records pursuant to Exemption 6. You failed to demonstrate how releasing this information would contribute to the public's understanding of the Postal Service's operations or activities.

If you are not satisfied with the response to this request, 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 and to discuss any aspect of your request, you may contact any of the following:

Name of agency official, records custodian, or FOIA Coordinator that processed your request:

Jackie Connelly
Law Department FOIA Coordinator
475 L'ENFANT PLAZA SW
WASHINGTON, DC 20260-1101
Phone: (202) 268-4815

FOIA Requester Service Center and FOIA Public Liaison:

MANAGER, PRIVACY AND RECORDS MANAGEMENT OFFICE
U.S. POSTAL SERVICE
475 L'ENFANT PLAZA SW RM 1P830
WASHINGTON, DC 20260-1101
Phone: (202) 268-2608
Fax: (202) 268-5353

FOIA Public Liaison:
Name: Nancy Chavannes-Battle
Phone: (202) 268-2030

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,

Jessica Y. Brewster-Johnson
Senior Ethics Counsel

cc: Brenda L. Rahe
Jacqueline Connelly