

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,

Plaintiff,

V.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action No. 20-2927 (JDB)

## **DEFENDANT’S MOTION FOR SUMMARY JUDGEMENT**

Defendant, the United States Postal Service (“Postal Service”), by and through its undersigned counsel, respectfully moves for summary judgment on the Freedom of Information Act (“FOIA”) claims brought by Plaintiff, Citizens for Responsibility and Ethics in Washington (hereinafter “CREW” or “Plaintiff”). Plaintiff challenges the search and exemptions asserted by Defendant.

Defendant conducted a reasonable search designed to locate any responsive records, moreover, the Defendant appropriately applied the FOIA to all potentially responsive records located. Because Defendant fulfilled its obligations under the FOIA, 5 U.S.C. § 552, it respectfully request that this Court enter summary judgment in its favor pursuant to Rule 56 of the Federal Rules of Civil Procedure.

For these reasons and the other reasons set forth in detail in the accompanying memorandum of points and authorities, Defendant is entitled to summary judgment on all Plaintiff's claims.

Dated: February 3, 2021

Respectfully submitted,

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**DEFENDANT'S STATEMENT OF MATERIAL FACTS  
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Local Civil Rule 7(h), Defendant the United States Postal Service (“Postal Service”) submits this statement of material facts as to which there is no genuine issue.

## PROCEDURAL HISTORY

1. Plaintiff submitted a Freedom of Information Act (“FOIA”) request to the Postal Service dated August 11, 2020, seeking five sets of records:

- a. “All ethics agreements, records of recusals and screening arrangements pertaining to Postmaster General Louis DeJoy;
- b. All other records identifying matters from which Mr. DeJoy must recuse;
- c. All records of guidance provided to Mr. DeJoy regarding his recusal obligations by Postal Service ethics officials;
- d. All other records identifying financial interests from which Mr. DeJoy or his spouse must divest; and

- e. All records of communications between Mr. DeJoy and Postal Service officials regarding his reported purchase of a “call option” for Amazon stock on June 24, 2020.”

Declaration of Janine Castorina (“Castorina Decl.”) ¶ 5; *see* Compl., ECF No. 1, ¶ 11.

2. On October 13, 2020, Plaintiff filed this lawsuit. ECF No. 1.
3. On December 1, 2020, Defendant filed its Answer. ECF No. 7.

#### **DEFENDANT’S RESPONSE TO PLAINTIFF’S FOIA REQUEST**

4. Upon receipt of Plaintiff’s FOIA request, Plaintiff’s FOIA request was assigned number 2020-FPRO-01619. Castorina Decl. ¶ 6.

5. Defendant tasked Jessica Brewster-Johnson, Defendant’s Senior Ethics Counsel, to conduct a search for potentially responsive records, as she is in the best position of any person at the Postal Service to know and understand what records are available in response to Plaintiff’s request. *Id.* ¶ 10.

6. Ms. Brewster-Johnson searched the paper and electronic files of the Ethics Office and the Postmaster General’s office for any responsive records within the scope of the request. *Id.*

7. This search uncovered limited responsive records to categories 1, 3 and 4 of Plaintiff’s FOIA request. *Id.*

8. In searching for records responsive to category 2 of Plaintiff’s FOIA request, Defendant found no additional responsive documents beyond the documents already located for categories 1, 3, and 4. *Id.* ¶¶ 7, 10.

9. Defendant found no responsive records to category 5 of Plaintiff’s FOIA request. *Id.*

10. On September 9, 2020, an initial decision was issued by Jessica Brewster-Johnson. *Id.* ¶ 7.

11. The final decision stated that three pages of recusal agreements, one page of recusal guidance, nine of pages of certificate of divestiture documents, and one page of recusal guidance were located that were responsive to categories 1, 3 and 4 of Plaintiff's FOIA request; that no responsive documents were located in conjunction for with the search regarding category 2 of Plaintiff's FOIA request; and no responsive documents were located in conjunction with the search for records with regard to request 5. *Id.*

12. All responsive records produced withheld in full pursuant to FOIA Exemptions 5 and 6. *Id.*

13. On September 10, 2020, Plaintiff submitted an appeal of the initial decision, stating that records were improperly withheld and that the search was inadequate. *Id.* ¶ 8.

14. In an opinion dated October 23, 2020, Plaintiff's appeal was rejected by Defendant. *Id.* ¶ 9.

#### **PLAINTIFF'S CHALLENGES TO DEFENDANT'S PRODUCTION**

15. Plaintiff challenges the search done by Defendant. ECF No. 8 ¶ 5.

16. Plaintiff challenges all withholdings made by Defendant pursuant to certain information pursuant to FOIA Exemptions 3, 5, and 6. *Id.*

#### **SEGREGATION OF NONEXEMPT INFORMATION**

17. While applying withholdings to the records, Defendant evaluated all withheld documents and segregated non-exempt information from exempt information; however, all records were found to be wholly exempt from disclosure. Castorina Decl. ¶¶ 29-31.

18. Defendant conducted an appropriate foreseeable harm analysis on the withheld information while reviewing redactions. *Id.* ¶ 32-34.

Dated: February 3, 2021

Respectfully submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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## **INTRODUCTION**

This case involves a Freedom of Information Act (“FOIA”) request made by Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) to the United States Postal Service (“Postal Service”), which sought records about any potential conflicts of interests related to Postmaster General Louis DeJoy. Defendant undertook appropriate efforts to search for responsive documents and appropriately withheld the potentially responsive records in full pursuant to FOIA Exemptions 3, 5, and 6. As explained herein, in the attached Statement of Facts, declaration, and the *Vaughn* index, no material questions of fact remain and Defendant is entitled to judgment as a matter of law.

## **BACKGROUND**

Defendant hereby incorporates its Statement of Facts; the declaration prepared by Janine Castorina (“Castorina Decl”); and the Postal Service’s *Vaughn* index (attached as Exhibit 1). Plaintiff challenges Defendant’s searches and further contends they have a right to the withheld records in their entirety. However, Defendant undertook reasonable searches designed to uncover all responsive records and appropriately withheld the materials pursuant to the FOIA.

## **LEGAL STANDARDS**

Summary judgment is appropriate when the pleadings and evidence “show[] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The burden is on the party moving for summary judgment to demonstrate the absence of a genuine issue of material fact. *See id.* at 323. A genuine issue is one that “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. Once the moving party has met its burden, the nonmoving party “may not rest upon

the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” *Id.*

“[T]he vast majority of FOIA cases can be resolved on summary judgment.” *Brayton v. Off. of U.S. Trade Rep.*, 641 F.3d 521, 527 (D.C. Cir. 2011); *see also Media Research Ctr. v. Dep’t of Justice*, 818 F. Supp. 2d 131, 136 (D.D.C. 2011) (“FOIA cases typically and appropriately are decided on motions for summary judgment.”) (quoting *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 87 (D.D.C. 2009)). A government agency may obtain summary judgment in a FOIA case by relying on “relatively detailed” and “nonconclusory” declarations. *McGehee v. CIA*, 697 F.2d 1095, 1102 (D.C. Cir. 1983). “[T]he Court may award summary judgment solely on the basis of information provided by the department or agency in declarations when the declarations describe ‘the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’” *CREW v. Dep’t of Labor*, 478 F. Supp. 2d 77, 80 (D.D.C. 2007) (quoting *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981)). “[A]n agency’s justification for invoking a FOIA exemption is sufficient if it appears ‘logical’ or ‘plausible.’” *Media Research*, 818 F. Supp. 2d at 137 (quoting *Larson v. Dep’t of State*, 565 F.3d 857, 862 (D.C. Cir. 2009)). Courts give agency declarations “a presumption of good faith, which cannot be rebutted by ‘purely speculative claims about the existence and discoverability of other documents.’” *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991) (quoting *Ground Saucer Watch, Inc. v. CIA*, 692 F.2d 770, 771 (D.C. Cir. 1981)).



Once the court determines that an agency has released all non-exempt material, it has no further judicial function to perform under FOIA and the FOIA claim is moot. *See Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982).

## **ARGUMENT**

### **I. DEFENDANT PERFORMED A REASONABLE SEARCH**

#### **A. Applicable Standards**

Under FOIA, an agency must undertake a search that is “reasonably calculated to uncover all relevant documents.” *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). A search is not inadequate merely because it failed to “uncover[] every document extant.” *SafeCard Servs.*, 926 F.2d at 1201; *see Judicial Watch v. Rossotti*, 285 F. Supp. 2d 17, 26 (D.D.C. 2003) (noting that “[p]erfection is not the standard by which the reasonableness of a FOIA search is measured”). It is appropriate for an agency to search for responsive records in accordance with the manner in which its records systems are indexed. *Greenberg v. Dep’t of Treasury*, 10 F. Supp. 2d 3, 13 (D.D.C. 1998).

Where an agency affidavit attests that a reasonable search was conducted, the agency is entitled to a presumption of good faith. *Defenders of Wildlife v. Dep’t of Interior*, 314 F. Supp. 2d 1, 8 (D.D.C. 2004). “An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was ‘reasonably calculated to uncover all relevant documents.’” *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (quoting *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)). FOIA does not require that an agency search every division or field office on its own initiative in response to a FOIA request if responsive documents are likely to be located in a particular place. *Kowalczyk v. Dep’t of Justice*, 73 F.3d 386, 388 (D.C. Cir. 1996); *Marks v. Dep’t of Justice*, 578 F.2d 261, 263 (9th Cir. 1978). Nor does FOIA require

that an agency search every record system. *Oglesby v. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

“To meet its burden, the agency may submit affidavits or declarations that explain in reasonable detail the scope and method of the agency’s search.” *Defenders of Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 91 (D.D.C. 2009). However, “the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was adequate.” *Weisberg v. Dep't of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). The process of conducting an adequate search for documents requires “both systemic and case-specific exercises of discretion and administrative judgment and expertise,” and it is “hardly an area in which the courts should attempt to micromanage the executive branch.” *Schrecker v. Dep't of Justice*, 349 F.3d 657, 662 (D.C. Cir. 2003) (internal quotation marks and citation omitted).

“[T]he sufficiency of the agency’s identification or retrieval procedure” must be “genuinely in issue” in order for summary judgment in the agency’s favor to be inappropriate based on the adequacy of the search. *Weisberg v. Dep't of Justice*, 627 F.2d 365, 370 (D.C. Cir. 1980) (quoting *Founding Church of Scientology v. NSA*, 610 F.2d 824, 836 (D.C. Cir. 1979)). A plaintiff “cannot rebut the good faith presumption” afforded to an agency’s supporting affidavits “through purely speculative claims about the existence and discoverability of other documents.” *Brown v. Dep't of Justice*, 724 F. Supp. 2d 126, 129 (D.D.C. 2010) (quoting *SafeCard Servs.*, 926 F.2d at 1200); accord *Steinberg v. Dep't of Justice*, 23 F.3d 548, 552 (D.C. Cir. 1994) (a plaintiff’s “mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them”); *SafeCard Servs.*, 926 F.2d at 1201 (“When a plaintiff questions the adequacy of the search an agency made in order to satisfy its FOIA request,

the factual question it raises is whether the search was reasonably calculated to discover the requested documents, not whether it actually uncovered every document extant.”).

Moreover, in responding to a FOIA request, an agency looks to the “reasonabl[e] descri[ption]” of the records sought. 5 U.S.C. § 552(a)(3)(A). That is, a professional agency employee familiar with the subject area must, in light of the FOIA request framed by the requestor, be able to locate the requested records with a “reasonable amount of effort.” H.R. Rep. No. 93-876, at 6 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6271. The agency must be able to determine “precisely” which records are being requested. *Tax Analysts v. IRS*, 117 F.3d 607, 610 (D.C. Cir. 1997) (citation and internal quotation marks omitted). The agency then is obligated to perform a “reasonable” search in response to the request framed by the requestor. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986); *Zemansky v. EPA*, 767 F.2d 569, 571-73 (9th Cir. 1985). An agency, however, is “not obligated to look beyond the four corners of the request for leads to the location of responsive documents.” *Kowalczyk*, 73 F.3d at 389; *see also Williams v. Ashcroft*, 30 F. App’x 5, 6 (D.C. Cir. 2002) (agency need not look for records not sought in initial FOIA request). Additionally, an agency employee who is familiar with agency records can identify if certain records are not maintained by an agency and thus if a search is not necessary. *See, e.g., Am.-Arab Anti-Discrimination Comm. v. Dep’t of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007) (because agency employee, due to his position, was “presumed able to familiarize himself with what statistics” the agency maintained, his explanation that the agency did not maintain a particular type of statistical data was sufficient to justify why a search for responsive records was not even necessary).

#### **B. Defendant’s Search Was Reasonable and Legally Sufficient**

Here, there is no material doubt that the searches performed were adequate under FOIA. As explained in the Castorina Declaration, the Senior Ethics Counsel of the Postal Service is

familiar with the Postal Service's ethics and conflict of interest matters, and is the best position of any person at the Postal Service to know and understand what records are available in response to Plaintiff's request. Castorina Decl. ¶¶ 7, 10. Defendant received Plaintiff's FOIA request, dated August 11, 2020, and assigned it tracking number 2020-FPRO-01619. *Id.* ¶¶ 5-6. The request sought five categories of records including but not limited to ethics agreements, recusals, financial interests, screening arrangements, and stock purchases as they related to Postmaster Louis DeJoy (and his spouse). *Id.* ¶ 5.

As the Senior Ethics Counsel, Mrs. Brewster-Johnson is in the best position of any person at the Postal Service to know and understand what records are available in response to Plaintiff's request. *Id.* ¶ 10. In her role, Mrs. Brewster-Johnson is in a position to have reviewed all ethics items that are generated. *Id.* Moreover, she is responsible for storing and archiving all ethics advice and matters. *Id.* Mrs. Brewster-Johnson performed a search of electronic and paper files of the Postal Service Ethics Office and the Postmaster General's office for records responsive to Plaintiff's request. *Id.* Mrs. Brewster-Johnson also searched in all network locations for the responsive records and reached out to other individuals who might have responsive documents. *Id.* This search uncovered limited responsive records to categories 1, 3 and 5 of Plaintiff's FOIA request, and found that no additional documents could be located for category 2, beyond what was already located for categories 1, 3, and 4. *Id.* While individuals at the Postal Service familiar with the subject matter of this request, including Mrs. Brewster-Johnson, did not expect to find responsive records as to record category 5, but nevertheless searched and found no responsive records for category 5 of Plaintiff's FOIA request. *Id.*

Overall, Defendant has given the Court enough detail to show that it put forth good faith efforts to conduct an adequate search calculated to uncover all responsive records for the very

specific record categories at issue in Plaintiff's FOIA request, and the Court should grant summary judgment to Defendant.

## II. DEFENDANT PROPERLY APPLIED FOIA EXEMPTIONS TO RECORDS

FOIA does not allow the public to have unfettered access to government files. *McCutchen v. Dep't of Health & Human Servs.*, 30 F.3d 183, 184 (D.C. Cir. 1994). Although disclosure is the dominant objective of FOIA, there are several exemptions to the statute's disclosure requirements. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 494 (1994). FOIA requires that an agency release all records responsive to a properly submitted request unless such records are protected from disclosure by one or more of the Act's nine exemptions. 5 U.S.C. § 552(b); *Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 150-51 (1989). To protect materials from disclosure, the agency must show that they come within one of the FOIA exemptions. *Pub. Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 904 (D.C. Cir. 1999). "Ultimately, an agency's justification for invoking a FOIA exemption is sufficient if it appears 'logical' or 'plausible.'" *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

An agency may meet its burden to establish the applicability of an exemption by providing a *Vaughn* index that "permit[s] adequate adversary testing of the agency's claimed right to an exemption." *Nat'l Treasury Emps. Union v. U.S. Customs Serv.*, 802 F.2d 525, 527 (D.C. Cir. 1986) (citing *Mead Data Cent., Inc. v. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)); *Vaughn v. Rosen*, 484 F.2d 820, 828 (D.C. Cir. 1973)). The index must contain "an adequate description of the records" and "a plain statement of the exemptions relied upon to withhold each record." *Nat'l Treasury*, 802 F.2d at 527 n.9.

Additionally, although a *Vaughn* index is a common device used by agencies to meet their burden of proof, "the Court may award summary judgment solely on the basis of information

provided by the department or agency in declarations when the declarations describe ‘the documents and the justifications for nondisclosure with reasonably specific detail, demonstrate that the information withheld logically falls within the claimed exemption, and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.’” *CREW v. Dep’t of Labor*, 478 F. Supp. 2d 77, 80 (D.D.C. 2007) (quoting *Military Audit Project*, 656 F.2d at 738); *see also Spirko v. U.S. Postal Serv.*, 147 F.3d 992, 998 n.4 (D.C. Cir. 1998) (“The form of the *Vaughn* index is unimportant and affidavits providing similar information can suffice.”) (citing *Gallant v. NLRB*, 26 F.3d 168, 172-73 (D.C. Cir. 1994)).

As shown in the attached declarations and accompanying *Vaughn* indexed, Defendant properly and judiciously applied FOIA Exemptions 3, 5, and 6 to withhold limited information within the responsive records, including: information protected by 39 U.S.C. § 410(c)(2); written materials protected by the deliberative process and attorney-client privilege; and personal information of Postal Service employees. Moreover, in each case, Defendant evaluated the requirement that, to invoke an exemption, an agency must show that it “reasonably foresees that disclosure would harm an interest protected by [the] exemption.” 5 U.S.C. § 552(a)(8)(A)(i)(I); *see Castorina Decl.* ¶¶ 20, 22, 32-34. Defendant describes each of these exemptions and the bases for their application below.

**A. Defendant’s Assertion of FOIA Exemption 3 is Appropriate**

In response to Plaintiff’s request for these documents, Defendant appropriately withheld commercially sensitive information that would not be publicly disclosed under good business practice under Exemption 3 and the Postal Reorganization Act, 39 U.S.C. § 410(c)(2).

FOIA Exemption 3 provides that matters are exempt from disclosure when “a statute requires that . . . matters be withheld from the public in such a manner as to leave no discretion

on the issue . . . or establishes particular criteria for withholding or refers to particular types of matters to be withheld.” 5 U.S.C. § 552(b)(3). When determining whether FOIA Exemption 3 applies, the court “must first determine whether the statute is a withholding statute . . . that . . . specifically exempt[s] matters from disclosure.” *Pub. Citizen, Inc. v. Rubber Mfrs. Ass’n*, 533 F.3d 810, 813 (D.C. Cir. 2008) (citation omitted).

If the statute is determined to be a withholding statute under FOIA Exemption 3, then the court must determine whether it is one that does so under the conditions articulated in FOIA Exemption 3. *Id.* To determine whether a statute is a withholding statute that prohibits disclosure, the court looks at the language of the statute on its face. *See Reporters Comm. for Freedom of Press v. Dep’t of Justice*, 816 F.2d 730, 735 (D.C. Cir. 1987) (explaining that whether FOIA Exemption 3 applies to the statute is determined by the actual words of the statute), *rev’d on other grounds*, 489 U.S. 749 (1989).

The Postal Reorganization Act provides that the Postal Service is subject to FOIA. *See* 39 U.S.C. § 410(b)(1) (“The following provisions [of chapters 5 and 7 of title 5] shall apply to the Postal Service: (1) . . . section 552(a) (records about individuals).”). The statute, however, contains exceptions to FOIA’s applicability. One of those exceptions states as follows: “Subsection (b)(1) of this section shall not require the disclosure of—. . . (2) 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).

On its face, the statute “describes information for which mandatory disclosure is not required” and thus is a qualifying statute under Exemption 3. *See Piper & Marbury, L.L.P. v. U.S. Postal Serv.*, Civ. A. No. 99-2382 (JMF/CKK), 2001 WL 214217, at \*3 (D.D.C. 2001) (Section 410(c)(2) satisfies Section 552(b)(3) of FOIA); *see also Braun v. U.S. Postal Serv.*, 317 F. Supp.

3d 540, 549 (D.D.C. 2018); *Airline Pilots Ass’n, Int’l v. U.S. Postal Serv.*, Civ. A. No. 03-2384, 2004 WL 5050900, at \*5 (D.D.C. June 24, 2004). Indeed, “Congress spoke loudly through the Postal Reorganization Act, providing the Postal Service with broad release from many FOIA disclosure requirements with which other agencies must comply.” *Wickwire Gavin, P.C. v. U.S. Postal Serv.*, 356 F.3d 588, 592 (4th Cir. 2004).

In this case, there can be no reasonable dispute that Defendant appropriately redacted the “information of a commercial nature” in these documents. Information of a commercial nature under Section 410(c)(2) is broadly defined by Postal Service regulations 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). The documents consist of three pages of recusal agreements, one page of recusal guidance, nine of pages of certificate of divestiture documents, and one page of recusal guidance regarding Postmaster DeJoy’s financial interests. Castorina Decl. ¶ 7. In addition, Federal courts have interpreted 39 U.S.C. § 410(b)(1) broadly to encompass many types of commercial information. *See, e.g., Wickwire Gavin, P.C.*, 356 F.3d at 590 (4th Cir. 2004) (spreadsheets concerning purchase information pursuant to the Postal Service’s contract with Hallmark, including income statements and list item retail value); *Reid v. U.S. Postal Serv.*, Civ. A. No. 05-0294, 2006 WL 1876682, \*5-9 (S.D. Ill. July 5, 2006) (customer’s postage statements and the Postal Service’s daily financial reports); *Airline Pilots Ass’n*, 2004 WL 5050900, at \*1 (pricing and rate information, operational details and specifications, performance requirements and obligations, and negotiated general terms and conditions from an agreement between the Postal Service and Federal Express); *Robinett v. U.S. Postal Serv.*, Civ. A. No. 02-1094, 2002 WL 1728582 (E.D. La. July 24, 2002) (evaluation of the plaintiff’s



employment application); *Am. Postal Workers Union v. U.S. Postal Serv.*, 742 F. Supp. 2d 76 (D.D.C. 2010) (Pay for Performance Program information, including bonuses or pay increases).

In determining whether particular information is commercial in nature, the Postal Service must consider 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. *See* 39 C.F.R. § 265.14(b)(3)(i). In this case, Defendant considered each of the six factors in determining whether information related to the Postmaster General’s Certificate of Divestiture documents and documents related to the recusal requirements within the ethics rules constituted information of a commercial nature. Castorina Decl. ¶ 13. Specifically, Defendant found that under factors (B) (“relates to the Postal Service’s activities that are analogous to a private business in the marketplace) and (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”), the information contained in these records constitutes commercial information. *Id.* Overall, Defendant determined that this commercial information “which under good business practice would not be publicly disclosed,” and thus, the information contained in these deliberative and preliminary documents is properly withheld under Exemption 3 in conjunction with Section 410(c)(2) *Id.* ¶ 13.

Protecting this sensitive commercial information is critical to the Postal Service’s ability to generate revenue in a highly competitive marketplace and allows the Postal Service to operate more like a business, as Congress intended. *Id.* ¶ 14. Disclosure of information that reveals how the Postal Services thinks about its business opportunities, contracts, or the finances of its officers—other than those finances that are required to be public—would provide another

company with a competitive advantage over the Postal Service, thereby disadvantaging the Postal Service and harming its business. *Id.*

Moreover, Defendant has fully complied with the requirements that certain officers, including the Postmaster General, make certain financial information public. *Id.* ¶ 15. Individuals submit financial information to the Postal Service ethics officials for the purpose of complying with these ethics regulations. *Id.* This information concerns the finances of third parties; as such, it is “commercial information” within the scope of this provision and should be afforded the protections of Section 410(c)(2). *Id.* In addition, it would be difficult for Postal Service ethics officials to procure the necessary information from individuals to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials or some degree of certainty as to what information is protected and what is not. *Id.* Fortunately, the ethics rules and regulations clearly state what must be made public; extending this regulated public disclosure to include financial materials that the Office of Government Ethics (“OGE”) uses to build the public documents would harm the Postal Service and would put it at a competitive disadvantage. *Id.*

For these reasons, Defendant appropriately withheld “information of a commercial nature” that “under good business practice would not be publicly disclosed” under FOIA Exemption 3. 39 U.S.C. § 410(b)(1), 410(c)(2).

**B. Defendant’s Assertion of FOIA Exemption 5 is Appropriate**

Exemption 5 protects “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.” 5 U.S.C. § 552(b)(5). This exemption shields documents of the type that would be privileged in the civil

discovery context, including materials protected by the attorney-client privilege, the attorney work-product doctrine, and the deliberative-process privilege. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975); see *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1113 (D.C. Cir. 2004); *Rockwell Int'l. Corp. v. Dep't of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001). Defendant invoked the attorney work-client privilege and the deliberative-process privilege.

*i. Attorney Client Privilege*

The attorney-client privilege covers “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data*, 566 F.2d at 252. This privilege protects “communications from attorneys to their clients if the communications ‘rest on confidential information obtained from the client.’” *Tax Analysts*, 117 F.3d at 618 (quoting *In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984)). Courts may infer confidentiality where communications suggest that “the Government is dealing with its attorneys as would any private party seeking advice to protect personal interests,” *Coastal States*, 617 F.2d at 863, courts may infer confidentiality. See *Tax Analysts*, 117 F.3d at 618 (“In the government context, the ‘client’ may be the agency and the attorney may be an agency lawyer.”). The privilege “protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege.” *Fisher v. United States*, 425 U.S. 391, 403 (1976).

The request to OGE for a Certificate of Divestiture and associated attachments are the direct product of legal advice provided to the Postmaster General by Postal Service attorneys, as it relates the OGE filings for a certificate of divestiture and the Postmaster General’s own financial information. Castorina Decl. ¶ 24. Additionally, any documents related to recusal are the product of legal advice provided to the Postmaster General by Postal Service lawyers, related to the potential recusal of the Postmaster General and the potentially necessary OGE filings for a

certificate of divestiture. *Id.* To the extent that these document contain the product of confidential legal discussions and guidance between government attorneys and their client, the Postmaster General, regarding government ethics and public disclosure, the information was withheld properly pursuant to FOIA Exemption 5 and the attorney-client privilege. *Id.*

***ii. Deliberative Process Privilege***

The deliberative-process privilege protects intra- or inter-agency documents that are “both pre-decisional and deliberative.” *Mapother v. Dep’t of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993).

The D.C. Circuit has held:

A document is predecisional if it was prepared in order to assist an agency decisionmaker in arriving at his decision, rather than to support a decision already made. Material is deliberative if it reflects the give-and-take of the consultative process. Our recent decisions on the deliberativeness inquiry have focused on whether disclosure of the requested material would tend to discourage candid discussion within an agency.

*Petroleum Info. Corp. v. Dep’t of Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992). “Examples of predecisional documents include ‘recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.’” *Cleveland v. United States*, 128 F. Supp. 3d 284, 298-99 (D.D.C. 2015) (quoting *Coastal States*, 617 F.2d at 866).

The deliberative process privilege protects “materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997) (citation omitted). This privilege rests “on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government.” *Dep’t of Interior v. Klamath Water Users*

*Protective Ass’n*, 532 U.S. 1, 8-9 (2001). The deliberative process privilege is designed to prevent injury to the quality of agency decisions by (1) encouraging open, frank discussions on matters of policy between subordinates and superiors; (2) protecting against premature disclosure of proposed policies before they are adopted; and (3) protecting against public confusion that might result from the disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s decision. See *Sears*, 421 U.S. at 151-53; *Coastal States*, 617 F.2d at 866; *CREW v. Dep’t of Homeland Sec.*, 648 F. Supp. 2d 152, 156 (D.D.C. 2009); *FPL Grp. Inc. v. IRS*, 698 F. Supp. 2d 66, 81 (D.D.C. 2010). The “ultimate aim” of the deliberative process privilege set forth in Exemption 5 is to “prevent injury to the quality of agency decisions.” *Petroleum Info.*, 976 F.2d at 1433-34 (internal quotations omitted). “There should be considerable deference to the [agency’s] judgment as to what constitutes . . . ‘part of the agency give-and-take—of the deliberative process—by which the decision itself is made’” because the agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions[.]’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151).

As the Castorina Declaration and accompanying *Vaughn* index explains in more detail, Defendant applied the Exemption 5 deliberative process privilege to the withheld documents and attachments that were a part of the submission to OGE for a Certification of Divestiture. Castorina Decl. ¶ 19. These materials were part of an on-going iterative decision-making process related to legal ethics divestiture requirements. *Id.* The withheld documents are not the final certificate of divestiture issued by OGE, nor are they or the information within the documents contained in their entirety in the final divestiture documents. *Id.* As a result, this information is pre-decisional and deliberative because the decision-making process was on-going when these documents were

generated. *Id.* Moreover, they continue to be deliberative because they do not, in full, reflect the final determination of OGE. *Id.* Defendant conducted a foreseeable harm analysis of these records and determined that release of these documents would harm the Postal Service by having a chilling effect on Agency decision-making processes and cause public confusion about the actual Agency decision, which is not contained in the documents or reflected in the final determination of OGE. *Id.* ¶¶ 20, 34. Agency officials would not be able to have a full and open discussion with executives concerning compliance with ethics regulations and other such legal requirements, if such conversations would be on full display to the public, and agency executives would be reluctant to share with accurate details with counsel and other agency ethics officials regarding what may or may not be required for legal compliance. *Id.* ¶ 20.

Documents relating to divestiture are also deliberative in nature because they are a part of an on-going iterative decision-making process related to the Postmaster General's divestiture and recusal requirements, as per ethics regulations. *Id.* ¶ 21. As with the above documents related to the OGE submittal for the Certification of Divestiture, the withheld documents are not part of the final certificate of divestiture issued by OGE, nor were they done in relation to the Postmaster General's public filing requirements. *Id.* Instead, these documents represent an iterative process, to determine the Postmaster General's actual divestiture and/or recusal requirements. *Id.* Because this does not represent a final agency decision and is not in any way represented in a final agency decision, this information is pre-decisional and deliberative. *Id.*

Defendant conducted a foreseeable harm analysis of these records and determined that release of these documents would harm the Postal Service by having a chilling effect on Agency decision-making processes and cause public confusion about the actual Agency decision, which is not contained in the documents or reflected in the final determination of either the Postal Service

or OGE. *Id.* ¶¶ 22, 34. Agency officials would not be able to have a full and open discussion with executives regarding compliance with ethics regulations and other such legal requirements, if such conversations would be on full display to the public. *Id.* Agency executives would be reluctant to share with accurate details with counsel and other agency ethics officials regarding what may or may not be required for legal compliance. *Id.*

Because the materials are pre-decisional and deliberative, these records are properly protected under FOIA Exemption 5.

C. **Defendant's Assertion of FOIA Exemption 6 is Appropriate**

Exemption 6 permits the withholding of “personnel and medical files and similar files” when the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The term “similar files” is broadly construed and includes “government records on an individual which can be identified as applying to that individual.” *Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 602 (1982); *Lepelletier v. FDIC*, 164 F.3d 37, 47 (D.C. Cir. 1999) (“The Supreme Court has interpreted the phrase ‘similar files’ to include all information that applies to a particular individual.”); *Govt. Accountability Project v. Dep’t of State*, 699 F. Supp. 2d 97, 105-06 (D.D.C. 2010). In assessing the applicability of Exemption 6, courts weigh the “privacy interest in non-disclosure against the public interest in the release of the records in order to determine whether, on balance, the disclosure would work a clearly unwarranted invasion of personal privacy.” *Lepelletier*, 164 F.3d at 46; *Chang v. Dep’t of Navy*, 314 F. Supp. 2d 35, 43 (D.D.C. 2004). “[T]he only relevant public interest in the FOIA balancing analysis [is] the extent to which disclosure of the information sought would ‘she[d] light on an agency’s performance of its statutory duties’ or otherwise let citizens know ‘what their government is up to.’” *Lepelletier*, 164 F.3d at 47 (quoting *Dep’t of Def. v. Fed. Labor Relations*

*Auth.*, 510 U.S. 487, 497 (1994)) (alterations in original); *Beck v. Dep't of Justice*, 997 F.2d 1489, 1492 (D.C. Cir. 1993) (quoting *Reporters Comm.*, 489 U.S. at 773). “Information that ‘reveals little or nothing about an agency’s own conduct’ does not further the statutory purpose.” *Beck*, 997 F.2d at 1492.

Importantly, “[t]he privacy interest at stake belongs to the individual, not the agency.” *Amuso v. Dep't of Justice*, 600 F. Supp. 2d 78, 93 (D.D.C. 2009); accord *Reporters Comm.*, 489 U.S. at 763-65. And “the concept of personal privacy . . . is not some limited or ‘cramped notion’ of that idea,” *NARA v. Favish*, 541 U.S. 157, 165-70 (2004) (construing analogous Exemption 7(C)), but rather is grounded in “both the common law and the literal understandings of privacy [that] encompass the individual’s control of information concerning his or her person.” *Reporters Comm.*, 489 U.S. at 763. “Even seemingly innocuous information can be enough to trigger the protections of Exemption 6.” *Horowitz v. Peace Corps*, 428 F.3d 271, 279 (D.C. Cir. 2005). An individual’s privacy interest “is not limited to [personal information] of an embarrassing or intimate nature.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 304 (D.D.C. 2007); accord *Appleton v. FDA*, 451 F. Supp. 2d 129, 145 (D.D.C. 2006). Moreover, “where there is a substantial probability that disclosure will cause an interference with personal privacy, it matters not that there may be two or three links in the causal chain.” *Nat’l Ass’n of Retired Fed. Emps. v. Horner*, 879 F.2d 873, 878 (D.C. Cir. 1989). Under Exemption 6, any personal privacy interest greater than *de minimis* is considered to be “substantial.” *Consumers’ Checkbook Ctr. for the Study of Servs. v. Dep’t of Health & Human Servs.*, 554 F.3d 1046, 1050 (D.C. Cir. 2009).

Here, Defendant invoked Exemption 6 to withhold all records at issue. Castorina Decl. ¶ 7. These documents contain financial information about the Postmaster General, which is



clearly a type of personal information. The request for a certificate of divestiture and its associated attachments are the product of an iterative process that does not represent the final determination of OGE. *Id.* ¶ 27. And to that extent, there are items listed in the request that are not reflected in the final version as approved by OGE, which is publicly available. *Id.* As such, those items represent the private interests of the Postmaster General, absent some showing that his privacy interest is by the public interest. *Id.* No such showing has been made. *Id.*

Additionally, the recusal documents withheld are not part of the final certificate of divestiture issued by OGE, nor were they created or done in relation to the Postmaster General's public filing requirements. *Id.* ¶ 28. Instead, those documents represent an ongoing process to determine the Postmaster General's actual divestiture or recusal requirements. *Id.* Because these documents relate to the Postmaster General's finances, and do not relate to a public filing and/or any information found in any required public filings, the Postmaster General has a privacy interest in these documents, absent some showing that his privacy interest is by the public interest. *Id.* No such showing has been made. *Id.*

The information that was required by law to be publicly disclosed was included on the documents released by OGE or in public filing documents. *Id.* Any information that was not necessary to publicly disclose remains the Postmaster General's private information about his finances and if released, would constitute a clearly unwarranted invasion of personal privacy. *Id.* Moreover, release of this information about a Postal Service employee's finances, which would constitute a clearly unwarranted invasion of personal privacy, would also not shed light on the Postal Service's performance of its statutory duties' or otherwise let citizens know what their government is up to. Therefore, Defendant properly involved FOIA Exemption 6 to withhold responsive records in full.

### III. DEFENDANT RELEASED REASONABLY SEGREGABLE INFORMATION

If a responsive record contains information exempt from disclosure, any “reasonably segregable” nonexempt information must be disclosed. 5 U.S.C. § 552(b). Nonexempt portions of records need not be disclosed, however, if they are “inextricably intertwined with exempt portions.” *Mead Data*, 566 F.2d at 260. To establish that all reasonably segregable, nonexempt information has been disclosed, an agency need only show “with ‘reasonable specificity’” that the information it has withheld cannot be further segregated. *Armstrong v. Exec. Off. of the President*, 97 F.3d 575, 578-79 (D.C. Cir. 1996); *Canning v. Dep’t of Justice*, 567 F. Supp. 2d 104, 110 (D.D.C. 2008). “Agencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material,” which must be overcome by some “quantum of evidence” by the requester. *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007).

Here, as demonstrated by the Castorina declaration, Defendant examined and processed all of the found records responsive to Plaintiff’s request. Castorina Decl. ¶¶ 29-31. There was no information that was found to be non-exempt, and Defendant did not withhold any non-exempt information on the grounds that it was non-segregable. *Id.* Therefore, all reasonably segregable information has been released and Defendant is entitled to summary judgment.

### CONCLUSION

For the reasons set forth above, Defendant respectfully requests that this Court grant summary judgment in favor of Defendant as to all claims in this case.

\* \* \*

Date: February 3, 2021

Respectfully submitted,

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*Counsel for Defendant*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendants.

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Civil Action No. 20-2927 (JDB)

**DECLARATION OF JANINE CASTORINA**

I, Janine Castorina, make the following Declaration in lieu of affidavit in accordance with the provisions of 28 U.S.C. § 1746. I understand that my declaration may be introduced into the record of the above captioned action, or any other grievance, administrative proceeding, or suit pending in a court of law.

1. I am over the age of 18, am competent to testify, and have personal knowledge of the facts and information set forth in this declaration.

2. I currently hold the position of Chief Privacy and Records Management Officer for the United States Postal Service. Prior to holding my current position, I was an Attorney in the Commercial and Appellate Litigation section, from October 2011 to March 2016.

3. In my official capacity as Chief Privacy and Records Management Officer, I am responsible for establishing Postal Service policies relating to information disclosure, privacy, and records management; ensuring compliance with privacy and records statutes, regulations, and policies; and providing oversight and supervision of the Postal Service Privacy and Records Office, which, among other things, receives, tracks, and advises postal officials on how to respond

to FOIA requests. My responsibilities also include managing and coordinating the Postal Service's response to certain litigation arising under the FOIA, including the present complaint.

4. As the Chief Privacy and Records Management Officer, it is my responsibility, and that of my group within the Postal Service, to assist internal stakeholders with responses to FOIA requests and to help those stakeholders understand and navigate the FOIA exemptions—including Exemption 3 in conjunction with Section 410(c)(2). To that end, I must be conversant with the Postal Service's policies and practices relating to management of proprietary and commercial information.

### **The FOIA Request, Appeal, and Litigation**

5. By correspondence dated and received August 11, 2020, Plaintiff submitted a Freedom of Information Act ("FOIA") request under 5 U.S.C. § 552. The requester sought: 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, and 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.

6. Plaintiff's FOIA request was assigned number 2020-FPRO-01619.

7. On September 9, 2020, an initial decision was issued by Jessica Brewster-Johnson. Mrs. Brewster-Johnson is the Senior Ethics Counsel for the United States Postal Service. In this decision, it was noted that three pages of recusal agreements, one page of recusal guidance, nine of pages of certificate of divestiture documents, and one page of recusal guidance were located, pursuant to FOIA requests 1, 3 and 4. All responsive withheld in full pursuant to Exemptions 5

and 6 of the FOIA. A search was conducted for records responsive to request number 2 and no additional responsive documents were located, beyond those already located in response to the previous requests. No responsive documents were located in conjunction with the search for records with regard to request number 5.

8. On September 10, 2020, the Plaintiff submitted an appeal of the initial decision. Plaintiff asserted that the records were improperly withheld and that the search was inadequate.

9. In an opinion dated October 23, 2020, Plaintiff's appeal was rejected, and this lawsuit ensued.

### **Adequacy of Search**

10. The Postal Service conducted a thorough search for records. The Postal Service searched the electronic and paper files of the Ethics Office and the Postmaster General's office for any responsive records within the scope of the request. This search uncovered limited responsive records to request numbers 1, 3 and 5; no additional responsive records to request number 2, beyond those located for the previous requests, and no responsive records to request number 5. The individuals at the Postal Service familiar with the subject matter of this request, including Mrs. Brewster-Johnson, did not expect to find responsive records as to request number 5. *See, e.g., Am.-Arab Anti-Discrimination Comm. v. U.S. Dep't of Homeland Sec.*, 516 F.Supp.2d 83, 88 (D.D.C. 2007) (because agency employee, due to his position, was "presumed able to familiarize himself with what statistics" the agency maintained, his explanation that the agency did not maintain a particular type of statistical data was sufficient to justify why a search for responsive records was not even necessary). As the Senior Ethics Counsel, Mrs. Brewster-Johnson is in the best position of any person at the Postal Service to know and understand what records are available in response to Plaintiff's request. As the Senior Ethics Counsel, Mrs. Brewster-Johnson is in a

position to have reviewed all ethics items that are generated. Moreover, she is responsible for storing and archiving all ethics advice and matters. Mrs. Brewster-Johnson searched in all network locations for the responsive records and also reached out to other individuals, who might have responsive documents.

### **Exemptions Relied Upon**

11. **Exemption 3:** Congress has repeatedly instructed that the Postal Service be run more like a private business, including through passage of several pieces of legislation. For example, the Postal Accountability and Enhancement Act of 2006 (P.L. 109-435) granted the Postal Service significantly more flexibility with respect to competitive products in order to the agency the ability to compete fairly within the marketplace. Most relevantly, Congress enacted the Postal Reorganization Act of 1970, which abolished the United States Post Office Department and reorganized the Postal Service to operate more like a private enterprise. *See Franchise Tax Bd. v. USPS*, 467 U.S. 512, 519–520 (1984) (“In passing the Postal Reorganization Act of 1970 . . . Congress [] indicated that it wished the Postal Service to be run more like a business than had its predecessor, the Post Office Department.”). The Postal Reorganization Act provided the Postal Service with a broad exemption under FOIA, enacted at 39 U.S.C. § 410(c)(2), which allows the Postal Service to withhold business-sensitive information under best business practices.

12. Exemption 3 allows an agency to withhold information that is “specifically exempted from disclosure by statute.” 5 U.S.C. § 552(b)(3). The Postal Service has long understood the Postal Reorganizational Act to constitute a withholding statute for purposes of Exemption 3 under FOIA. Courts have routinely upheld the Postal Service’s right to withhold materials that fall within the scope of the Act under FOIA. 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 by Postal Service regulations 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).

13. 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. *See* 39 C.F.R. § 265.14(b)(3)(i). The factors are as follows:

**(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, an inbound international service, or an outbound international service for which rates or service features are treated as nonpublic;

**(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.

The Postal Service considered each factor here in determining whether information related to the Postmaster General’s Certificate of Divestiture documents and documents related to the recusal requirements within the ethics rules constituted information of a commercial nature.



14. Protecting sensitive commercial information is critical to the Postal Service's ability to generate revenue in a highly competitive marketplace and allows the Postal Service to operate more like a business, as Congress intended. Disclosure of information that reveals how the Postal Services thinks about its business opportunities, contracts, or the finances of its officers – other than those finances that are required to be public – would provide another company with a competitive advantage over the Postal Service, thereby disadvantaging the Postal Service and harming its business.

15. There are requirements that certain officers, including the Postmaster General, make certain financial information public. That has been done and that information is viewable to the public. Financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations, is not all public and should not be. This information concerns the finances of third parties and is thus “commercial information” within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials or some degree of certainty as to what information is protected and what is not. The ethics rules state what must be public, to take that certainty away and make other things – not published by Office of Government Ethics (“OGE”) – public harms the Postal Service and would put the Postal Service at a competitive disadvantage.

16. Accordingly, this information would not be disclosed under good business practice by other businesses and thus, the information contained in these deliberative and preliminary documents is properly withheld under Exemption 3 in conjunction with 410(c)(2).

17. **Exemption 5:** 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,” *DOI 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. DOD*, 404 F. Supp. 2d 325, 345 (D.D.C. 2005).

18. **Deliberative Process Privilege:** 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).

19. The withheld document and attachments that were a part of the submission to OGE for a Certification of Divestiture were part of an on-going iterative decision-making process related to legal ethics divestiture requirements. The withheld documents are not the final certificate of

divestiture issued by OGE, nor are they or the information within the documents contained in their entirety in the final divestiture documents. As a result, this information is pre-decisional and deliberative because the decision-making process was on-going when these documents were generated. Moreover, they continue to be deliberative because they do not, in full, reflect the final determination of OGE.

20. Release of these documents would harm the Postal Service by having a chilling effect on Agency decision-making processes and cause public confusion about the actual Agency decision, which is not contained in the documents or reflected in the final determination of OGE. Agency officials would not be able to have a full and open discussion with executives concerning compliance with ethics regulations and other such legal requirements, if such conversations would be on full display to the public. Agency executives would be reluctant to share with accurate details with counsel and other agency ethics officials regarding what may or may not be required for legal compliance.

21. Documents relating to divestiture are also deliberative in nature because they are a part of an on-going iterative decision-making process related to the Postmaster General's divestiture and recusal requirements, under the ethics regulations. As with the above documents related to the OGE submittal for the Certification of Divestiture, the withheld documents are not part of the final certificate of divestiture issued by OGE, nor were they done in relation to the Postmaster General's public filing requirements. Instead these documents represent an iterative process, to determine the Postmaster General's actual divestiture and/or recusal requirements. Because this does not represent a final agency decision and is not in any way represented in a final agency decision, this information is pre-decisional and deliberative.

22. Release of these documents would harm the Postal Service by having a chilling effect on Agency decision-making processes and cause public confusion about the actual Agency decision, which is not contained in the documents or reflected in the final determination of either the Postal Service or OGE. Agency officials would not be able to have a full and open discussion with executives regarding compliance with ethics regulations and other such legal requirements, if such conversations would be on full display to the public. Agency executives would be reluctant to share with accurate details with counsel and other agency ethics officials regarding what may or may not be required for legal compliance.

23. **Attorney-Client Privilege:** The attorney-client privilege of Exemption 5 protects from disclosure confidential communications between an attorney and his or her client relating to a legal matter for which the client has sought professional advice. *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). A federal agency is a “client” protected by this privilege. *See Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997).

24. The request to OGE for a Certificate of Divestiture and associated attachments, are the product of legal advice provided to the Postmaster General by Postal Service lawyers, related to the OGE filings for a certificate of divestiture. To the extent that these document contain the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.

25. Moreover, the documents related to recusal are the product of legal advice provided to the Postmaster General by Postal Service lawyers, related to the potential recusal of the PMG and the potentially necessary OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.

26. **Exemption 6:** 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 DOS v. Wash. Post Co.*, 456 U.S. 595, 600-602 (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. *See Judicial Watch, Inc. v. DOS*, 875 F. Supp. 2d 37, 46 (D.D.C. 2012) (collecting cases). 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.” *DOD v. FLRA*, 510 U.S. 487, 497, 500 (1994).

27. The request for a certificate of divestiture, and associated attachments, are the product of an iterative process that does not represent the final determination of OGE. And to that extent, there are items listed in the request that are not reflected in the final version as approved by OGE. Those items that do not overlap represent the private interests of the Postmaster General

and are not subject to release absent some showing that the privacy interests are outweighed by the public interest. No such showing was made.

28. Additionally, the recusal documents withheld are not part of the final certificate of divestiture issued by OGE, nor were they created or done in relation to the Postmaster General's public filing requirements. Instead those documents represent an ongoing process to determine the Postmaster General's actual divestiture or recusal requirements. Because these documents relate to the Postmaster General's finances and do not relate to a public filing and the information is not found in any required public filings, the Postmaster General has a privacy interest in these documents, absent some showing that his privacy interest is by the public interest. No showing has been made.

## **I. SEGREGABILITY**

29. 5 U.S.C. § 552(b) requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt."

30. A line-by-line review was conducted to identify information exempt from disclosure or for which a discretionary waiver of exemption could be applied.

31. There was no information that was found to be non-exempt; the Postal Service did not withhold any non-exempt information on the grounds that it was non-segregable.

## **II. FORESEEABLE-HARM REQUIREMENT**

32. Upon assuming office in 2009, then-President Barack Obama issued direction to Executive Branch agencies on implementation of FOIA. Shortly thereafter, then-Attorney General Eric Holder implemented the President's directive by establishing the foreseeable harm requirement. *See* Memorandum from Eric Holder, Attorney Gen., U.S. Dep't of Justice, to Heads

of Exec. Dep't & Agencies (March 19, 2009), [https://www.justice.gov/sites/default/files/ag/legacy/2009/0624/foia-memo-march 2009.pdf](https://www.justice.gov/sites/default/files/ag/legacy/2009/0624/foia-memo-march%202009.pdf). In his memorandum to Executive Branch agencies, Attorney General Holder explained that to “realize[ ]” the presumption of openness “in practice,” “an agency should not withhold information simply because it may so legally” or “merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption. *Id.* at 1. Rather the Department of Justice would now “defend a denial of a FOIA request only if (1) the agency reasonably fores[aw] that disclosure would harm an interest protected by one [FOIA’s] statutory exemptions, or (2) disclosure [was] prohibited by law. *Id.* at 2. Congress decided to make the “presumption of openness” established by the Presidential Memorandum in 2009 “a permanent requirement for agencies with respect to FOIA.” *Id.* at 9; *see also* S. REP. NO. 114-4, at 7.

33. In order to establish foreseeable-harm, defendant must provide “context or insight into the specific decision-making process or deliberations at issue, and how they in particular would be harmed by disclosure.” *Center for Investigative Reporting v. U.S. Customs and Border Protection and U.S. Dep’t of Homeland Security*, 436 F. Supp. 3d. 90, 107 (D.D.C. 2019) citing *Judicial Watch, Inc. v. Dep’t of Justice*, (Judicial Watch II), 2019 WL 4644029, at \*5, *see also* *NRDC v. EPA*, 2019 WL 4142735 at \*5 (S.D.N.Y., Aug. 30, 2019) (finding foreseeable-harm requirement satisfied where agency gave “context for the decision making processes in question and the harms that would reasonably ensue from disclosure of the material.”).

34. As stated above, it is imperative that the Postal Service review panels are able to freely discuss ethics regulations and other such legal requirements, if such conversations would be on full display to the public. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information; agency

executives would be reluctant to share with accurate details with counsel and other agency ethics officials regarding what may or may not be required for legal compliance. This would result in a chilling effect on agency communications and interfere with USPS's ability to best advise their executives about ethics.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing declaration is true and correct. Executed in Washington, D.C., on February 3, 2021.

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Janine Castorina



*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service, 20-cv-2927 (D.C.C.) – Vaughn Index*

No.	Date	Time	From	To	Subject	Exemption
1	8/14/2020	4:25 pm	Natalie Bonanno	<a href="mailto:CD@OGE.gov">CD@OGE.gov</a>	<p>Certificate of Divestiture Request</p> <p>This email from the Designated Agency Ethics Official forwards the materials related to a request for a certificate of divestiture.</p>	<p>Exemption 5 -- Deliberative Process Privilege The withheld document and attachments were part of an on-going iterative decision-making process related to the PMG's divestiture requirements.</p> <p>The withheld documents are not the final certificate of divestiture issued by OGE, nor are they or the information within the documents contained in their entirety in the final divestiture documents.</p> <p>This information is pre-decisional and deliberative because the decision-making process was on-going when these documents were generated.</p> <p>Release would have a chilling effect on Agency decision-making processes and cause public confusion about the actual Agency decision, which is not contained in the documents.</p> <p>Exemption 5 -- Attorney-Client Privilege The email and associated attachments contain the product of legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p> <p>Exemption 6: The request for a certificate of divestiture and the iterative process that results from the request, does not represent the final determination of OGE. And to that extent, there are</p>

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						<p>items listed in the request that are not reflected in the final version as approved by OGE. Those items that do not overlap represent the private interests of the PMG and are not subject to release absent some showing that the privacy interests are outweighed by the public interest. No such showing was made.</p> <p>Ex 3, in conjunction with 39 U.S.C. § 410(c)(2), protects financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations. This information concerns the finances of third parties and is thus “commercial information” within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials. Accordingly, this information would not be disclosed under good business practice. Thus, the information contained in these deliberative and preliminary documents is also properly withheld under Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).</p>
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2	8/13/2020	N/A	Louis DeJoy		<p>List of Holdings</p> <p>This is an attachment to the certificate of divestiture request email providing the list of holdings to be divested.</p>	<p>Exemption 5 -- Deliberative Process Privilege</p> <p>The withheld attachment, associated with the aforementioned submission, was a part of an on-going iterative decision-making process related to the PMG's divestiture requirements.</p> <p>The withheld document is not the final certificate of divestiture issued by OGE, nor is it or the information within the document contained in its entirety in the final divestiture documents.</p> <p>This information is pre-decisional and deliberative because the decision-making process was on-going when this document was generated.</p> <p>Release would have a chilling effect on Agency decision-making Processes and cause public confusion about the actual Agency decision, which is not contained in the documents.</p> <p>Exemption 5 -- Attorney-Client Privilege</p> <p>The attachment, associated with the aforementioned submission, is the product of legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p> <p>Exemption 6: The request for a certificate of divestiture and the iterative process that results from the request, does not represent the final</p>
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						<p>determination of OGE. And to that extent, there are items listed in the request that are not reflected in the final version as approved by OGE. Those items that do not overlap represent the private interests of the PMG and are not subject to release absent some showing that the privacy interests are outweighed by the public interest. No such showing was made.</p> <p>Ex 3, in conjunction with 39 U.S.C. § 410(c)(2), protects financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations. This information concerns the finances of third parties and is thus “commercial information” within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials. Accordingly, this information would not be disclosed under good business practice. Thus, the information contained in these deliberative and preliminary documents is also properly withheld under Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).</p>
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3	8/14/2020		Louis DeJoy		<p>Request for a Certificate of Divestiture Form</p> <p>This is an attachment to the certificate of divestiture request email. This is the completed version of the form OGE provides to effectuate such a request.</p>	<p>Exemption 5 -- Deliberative Process Privilege The withheld attachment, associated with the aforementioned submission, was a part of an on-going iterative decision-making process related to the PMG's divestiture requirements.</p> <p>The withheld document is not the final certificate of divestiture issued by OGE, nor is it or the information within the document contained in its entirety in the final divestiture documents.</p> <p>This information is pre-decisional and deliberative because the decision-making process was on-going when this document was generated.</p> <p>Release would have a chilling effect on Agency decision-making Processes and cause public confusion about the actual Agency decision, which is not contained in the documents.</p> <p>Exemption 5 -- Attorney-Client Privilege The attachment, associated with the aforementioned submission, is the product of legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p> <p>Exemption 6: The request for a certificate of divestiture and the iterative process that results from the request, does not represent the final</p>
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*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service*, 20-cv-2927 (D.C.C.) – Vaughn Index

						<p>determination of OGE. And to that extent, there are items listed in the request that are not reflected in the final version as approved by OGE. Those items that do not overlap represent the private interests of the PMG and are not subject to release absent some showing that the privacy interests are outweighed by the public interest. No such showing was made.</p> <p>Ex 3, in conjunction with 39 U.S.C. §410(c)(2), protects financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations. This information concerns the finances of third parties and is thus “commercial information” within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials. Accordingly, this information would not be disclosed under good business practice. Thus, the information contained in these deliberative and preliminary documents is also properly withheld under Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).</p>
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4	8/13/2020		Louis DeJoy	USPS Ethics Office	<p>Memorandum re Divestiture</p> <p>This is an attachment to the certificate of divestiture request email. This is the memorandum OGE requires from an employee requesting a divestiture.</p>	<p>Exemption 5 -- Deliberative Process Privilege The withheld attachment, associated with the aforementioned submission, was a part of an on-going iterative decision-making process related to the PMG's divestiture requirements.</p> <p>The withheld document is not the final certificate of divestiture issued by OGE, nor is it or the information within the document contained in its entirety in the final divestiture documents.</p> <p>This information is pre-decisional and deliberative because the decision-making process was on-going when this document was generated.</p> <p>Release would have a chilling effect on Agency decision-making Processes and cause public confusion about the actual Agency decision, which is not contained in the documents.</p> <p>Exemption 5 -- Attorney-Client Privilege The attachment, associated with the aforementioned submission, is the product of legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p> <p>Exemption 6: The request for a certificate of divestiture and the iterative process that results</p>
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*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service*, 20-cv-2927 (D.C.C.) – Vaughn Index

						<p>from the request, does not represent the final determination of OGE. And to that extent, there are items listed in the request that are not reflected in the final version as approved by OGE. Those items that do not overlap represent the private interests of the PMG and are not subject to release absent some showing that the privacy interests are outweighed by the public interest. No such showing was made.</p> <p>Ex 3, in conjunction with 39 U.S.C. § 410(c)(2), protects financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations. This information concerns the finances of third parties and is thus “commercial information” within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials. Accordingly, this information would not be disclosed under good business practice. Thus, the information contained in these deliberative and preliminary documents is also properly withheld under Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).</p>
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5	7/21/2020		Louis DeJoy	USPS Ethics Office and Katherine Sigler, Acting Secretary of the Board of Governors	<p>Notification of Commitment to Recuse and Screening Arrangement</p> <p>This is a memorandum establishing a recusal and screening arrangement regarding certain entities.</p>	<p>Exemption 5 -- Deliberative Process Privilege The document is a part of an on-going iterative decision-making process related to the PMG's divestiture and recusal requirements.</p> <p>The withheld document is not part of the final certificate of divestiture issued by OGE, nor is it done in relation to his public filing requirements. Instead it's an iterative process, to determine his actual divestiture or recusal requirements.</p> <p>This information is pre-decisional and deliberative because the decision-making process is on-going when this document was generated and to this date.</p> <p>Release would have a chilling effect on Agency decision-making Processes and cause public confusion about the actual Agency decision, which is not contained in the documents.</p> <p>Exemption 5 -- Attorney-Client Privilege The attachment, is the product of legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p> <p>Exemption 6: The withheld document is not part of the final certificate of divestiture issued by OGE, nor is it done in relation to his public filing requirements. Instead it's part of an ongoing</p>
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*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service*, 20-cv-2927 (D.C.C.) – Vaughn Index

						<p>process to determine his actual divestiture or recusal requirements. Because this relates to the PMG's finances and not related to a public filing and the information is not found in any required public filings, the PMG has a privacy interest in this document, absent some showing that his privacy interest is outweighed by the public interest. No showing has been made.</p> <p>Ex 3, in conjunction with 39 U.S.C. § 410(c)(2), protects financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations. This information concerns the finances of third parties and is thus "commercial information" within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials. Accordingly, this information would not be disclosed under good business practice. Thus, the information contained in these deliberative and preliminary documents is also properly withheld under Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).</p>
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*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service, 20-cv-2927 (D.C.C.) – Vaughn Index*

6	8/3/2020		Louis DeJoy	USPS Ethics Office and Katherine Sigler, Acting Secretary of the Board of Governors	<p>Notification of Commitment to Recuse and Screening Arrangement</p> <p>This is a memorandum establishing a recusal and screening arrangement regarding an additional entity.</p>	<p>Exemption 5 -- Deliberative Process Privilege The document is a part of an on-going iterative decision-making process related to the PMG's divestiture and recusal requirements.</p> <p>The withheld document is not part of the final certificate of divestiture issued by OGE, nor is it done in relation to his public filing requirements. Instead it's an iterative process, to determine his actual divestiture or recusal requirements.</p> <p>This information is pre-decisional and deliberative because the decision-making process is on-going when this document was generated and to this date.</p> <p>Release would have a chilling effect on Agency decision-making processes and cause public confusion about the actual Agency decision, which is not contained in the documents.</p> <p>Exemption 5 -- Attorney-Client Privilege The attachment, is the product of legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p> <p>Exemption 6: The withheld document is not part of the final certificate of divestiture issued by OGE, nor is it done in relation to his public filing requirements. Instead it's part of an ongoing</p>
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*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service*, 20-cv-2927 (D.C.C.) – Vaughn Index

						<p>process to determine his actual divestiture or recusal requirements. Because this relates to the PMG's finances and not related to a public filing and the information is not found in any required public filings, the PMG has a privacy interest in this document, absent some showing that his privacy interest is outweighed by the public interest. No showing has been made.</p> <p>Ex 3, in conjunction with 39 U.S.C. § 410(c)(2), protects financial information that individuals submit to Postal Service ethics officials for the purpose of complying with ethics regulations. This information concerns the finances of third parties and is thus "commercial information" within the scope of this provision. In addition, it would be difficult for ethics officials to procure information from individuals that is necessary to comply with these regulations, and perhaps even difficult to attract qualified candidates to serve in particular positions, if the Postal Service could not afford some degree of protection to financial information submitted to ethics officials. Accordingly, this information would not be disclosed under good business practice. Thus, the information contained in these deliberative and preliminary documents is also properly withheld under Exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).</p>
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*Citizens for Responsibility and Ethics in Washington v. U.S. Postal Service*, 20-cv-2927 (D.C.C.) – Vaughn Index

7			Natalie Bonanno	Louis DeJoy	<p>Financial Conflicts of Interest</p> <p>This is guidance provided to Mr. DeJoy regarding his recusal obligations.</p>	<p>Exemption 5 -- Attorney-Client Privilege</p> <p>This document is legal advice provided to the PMG by USPS lawyers, related to the OGE filings for a certificate of divestiture. To the extent that this document contains the product of confidential legal discussions between government attorneys and their client(s), the information was withheld.</p>
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON,

Plaintiff,

V.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil Action No. 20-2927 (JDB)

**[PROPOSED] ORDER**

UPON CONSIDERATION of Defendant's motion for summary judgment and the memoranda in support thereof and in opposition thereto, it is hereby

ORDERED that the motion is GRANTED, and it is further

ORDERED that summary judgment is awarded to Defendant on all claims in Plaintiff's complaint.

Dated: \_\_\_\_\_

The Honorable John D. Bates  
United States District Judge