



**OFFICE OF THE GENERAL COUNSEL**  
HEADQUARTERS, WASHINGTON, DC

IN RE, APPEAL OF CASE NO.  
2025-FPRO-01666

APPEAL No. 2025-APP-00110

ATTORNEY COLLEEN HIBBERT-KAPLER  
ON BEHALF OF GENERAL COUNSEL THOMAS J. MARSHALL

**OPINION AND ORDER**

After careful consideration, this office is affirming the action of Rashonda Williams, Manager Finance Business Support, on FOIA request 2025-FPRO-01666.

**I. STATEMENT OF FACTS**

1. In a letter dated March 11, 2025, and received by the Postal Service via PAL, the requester submitted a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, for records regarding refunds for when an item was not delivered according to the applicable service standard. Specifically, the requester sought the following information:

I am seeking cumulative data with no personal identifying information. I am generally seeking information concerning refunds of 'Guaranteed Delivery' costs where the item was not delivered according to the applicable service standard. I am interested in refund requests submitted online and am seeking a break down of requests which were approved and denied as well as the break down of requests where an appeal was submitted.

I am seeking annual totals since Jan 2017 up to 2025 with quarterly break downs for 2024 and any completed quarter in 2025 when the results computed.

I would like the number of refunds requested online for delayed delivery with guaranteed delivery with the average refund requested as well as standard deviation, maximum, and minimum.

Further I would an additional break down with a Group By of 'Refund Approved' and 'Refund Denied' in the initial application.

For the 'Refund Denied' group, I would like an additional Group By break down with 'No Appeal Submitted' or 'Appeal Submitted'.

For the 'Appeal Submitted' group, I would like an additional Group By by with 'Refund Denied' or 'Refund Approved'.

For the each of the 'Refund Approved' groups above, I would like an additional Group By break down with the bank to which the refund was routed to with:  
Chase,

Capital One,

American Express,

Bank of America,

Citibank,

Discover,

U.S. Bank,

Wells Fargo,

Other Bank, and

No Record of Bank Transfer

I am particularly interested in tracking number 9470103699300057573507 delivered late on 15 Apr 2021 and refund request submitted on 16 Apr 2021 and appeal updated to 'Dispute Paid' on 6 May 2021, but no transaction for the refund has been located to date (so the refund would be expected to be listed in the 'No Record of Bank Transfer').

2. By correspondence dated May 1, 2025, Rashonda Williams, Manager Finance Business Support, provided a response that identified 42 pages of responsive records. 39 pages of records were withheld in full pursuant to FOIA Exemption 3 in conjunction with 39 U.S.C. § 410(c), 2 pages were included with redactions pursuant to FOIA Exemption 3 in conjunction with 39 U.S.C. § 410(c), and 1 page was produced in full.
3. By correspondence dated May 1, 2025, the requester asked Ms. Williams for clarification about the meaning of "ptr\_call\_back" in the responsive records and received a response on the same day.
4. By correspondence dated May 2, 2025, the requester asked Ms. Williams to provide confirmation that the lack of a requested bank transaction ID for his specified tracking number indicated there was no matching transaction ID and that the record would be "No Record of Bank Transfer" in the cumulative results. Eboni Francis, Senior Government Information Specialist responded to the requester via email on May 6, 2025 informing the requester that transaction ID information was not a part of the initial request and under standard practice the Postal Service would not have records of banking routing information of its customers regarding issuing refunds for mail delivery failures.
5. By correspondence dated May 12, 2025, the requester sent a response seeking additional information and challenging the responses provided regarding the request as well as seeking information about how far back in time the search was conducted, requesting the search go back to 2017 as requested rather than 2021 as was provided, and the fee estimate. Ms. Francis responded to the requester via email on May 13, 2025, informing him that the data requested is not preserved prior to 2021 and confirming the fee estimate was accurate as to the number of hours it took to retrieve the requested records.
6. By correspondence dated May 14, 2025, and received on May 15, 2025, the requester appealed two aspects of the response. Specifically, the requester asserted the results for the specific tracking number cited "did not fully specify whether there was a banking record indicating that refund was actually paid" and challenging the redaction of records with no record of action payment as not commercial in nature. In the appeal, the requester stated there was no record returned of the actual payment for a specific requested transaction and asked the FOIA office to determine whether the refund record qualified for the "No Record of Bank Transfer" designation including conducting a search or information about that specific transaction ID and a statement that no record was found after conducting an extensive investigation into a specific refund, presumably referring to the one connected to the tracking number provided in the initial request.
7. This office learned that Ms. Williams along with Ms. Francis' guidance, used her knowledge of the organization of the Postal Service to conduct a search for the information requested in the Revenue and Field Accounting Department, as the location most likely to contain responsive records. In response to the requester's questions following the initial response, Ms. Williams and Ms. Francis provided additional information regarding the retention policies for the locations where responsive information would be located.

## II. APPLICABLE LAW

Congress enacted the FOIA to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352 (1976). Congress balanced this objective by recognizing that “legitimate governmental and private interests could be harmed by release of certain types of information.” *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 621 (1982). The FOIA “requires federal agencies to make Government records available to the public, subject to nine exemptions.” *Milner v. Dep’t of the Navy*, 562 U.S. 562, 562 (2011). In addition, other laws allow the Postal Service to withhold certain categories of records and information. See 39 U.S.C. § 410(c).

The FOIA does not require federal agencies to create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. See *Students Against Genocide v. Dep’t of State*, 257 F.3d 828, 837 (D.C. Cir. 2001). Further, the FOIA establishes a right of access to existing agency records only. See *Nat'l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975).

### Adequate Search

Generally, upon a “request for records,” 5 U.S.C. § 552(a)(3)(A), an agency must conduct an adequate search for all records responsive to the request. See *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). The agency must provide all responsive records found, except insofar as they fall within any of several exemptions enumerated in the FOIA. *Milner*, 562 U.S. at 564.

“An agency has an obligation under FOIA to conduct an adequate search for responsive records.” *Edelman v. Sec. & Exch. Comm’n*, 172 F.Supp.3d 133, 144 (D.D.C. 2016). 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.” *Truitt*, 897 F.2d at 542 (quoting *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (1983)). The adequacy of an agency’s search for documents under the FOIA “is judged by a standard of reasonableness and depends . . . upon the facts of each case.” *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984). See also *Physicians for Human Rights v. U.S. Dep’t. of Def.*, 675 F. Supp. 2d 149, 157 (D.D.C. 2009) (“The adequacy of an agency’s search is measured by a standard of reasonableness, and is dependent upon the circumstances of the case” (citing *Weisberg*, 705 F.2d at 1351)). “[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). “There is no requirement that an agency search every record system.” *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). “FOIA demands only a reasonable search tailored to the nature of a particular request.” *Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 28 (D.C. Cir. 1998).

An agency’s search for responsive records is adequate when all the offices that could be in possession of responsive documents are sent copies of the request with instructions to search for responsive documents and each office searches for responsive records. *Judicial Watch, Inc. v. U.S. Dep’t of Health & Human Svcs.*, 27 F. Supp. 2d 240, 241, 244 (D.D.C. 1998). See also *Larson v. Dep’t of State*, 565 F.3d 857, 869 (D.C. Cir. 2009) (affirming adequacy of search based on agency’s reasonable determination regarding records being requested and searched accordingly); *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 849 F. Supp. 2d 47, 55-58 (D.D.C. 2012) (concluding that agency’s search was adequate because agency determined that all responsive records were located in particular location created for express purpose of collecting records related to subject of request and searched that location).

An “agency’s failure to turn up a particular document, or mere speculation that as yet uncovered documents might exist, does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. Cent. Intelligence Agency*, 355 F.3d 675,

678 (D.C. Cir. 2004) (citing *Iturralde*, 315 F.3d at 314; *SafeCard Servs., Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991)); see also *Burke v. U.S. Dep’t of Homeland Sec.*, 270 F. Supp. 3d 99, 106 (D.D.C. 2017) (stating that a requester’s “bare assertion” records must exist does not overcome the adequacy of an agency’s search); *Strunk v. U.S. Dep’t of State*, 770 F. Supp. 2d 10, 16 (D.D.C. 2011) (noting that the requester’s “assertion that an adequate search would have yielded more documents is mere speculation” and such speculation as to the existence of responsive records is not relevant); *Media Rsch. Ctr. v. U.S. Dep’t of Just.*, 818 F. Supp. 2d 131, 138 (D.D.C. 2011) (rejecting the requester’s argument as “simply conjecture” where it argued that certain documents must have existed because meetings occurred during the relevant timeframe).

Further, the FOIA “does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained.” *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980); see also *Yeager v. Drug Enforcement Admin.*, 678 F.2d 315, 321 (D.C. Cir. 1982) (“It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request.” (citing *Nat’l Labor Relations Bd. v. Sears*, 421 U.S. at 161-62)).

Finally, the FOIA does not require federal agencies to answer questions or create records in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. See *Harrison v. Fed. Bureau of Prisons*, 681 F. Supp. 2d 76, 83 (D.D.C. 2010). Additionally, the FOIA does not require agencies to conduct research. *Id.* The “FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Dale v. Internal Rev. Serv.*, 238 F.Supp.2d 99, 104 (D.D.C. 2002).

#### Exemption 3 and 39 U.S.C. § 410(c)(2)

If information is “specifically exempted from disclosure by statute,” then it is also exempt from mandatory disclosure under the FOIA by incorporation. 5 U.S.C. § 552(b)(3) (“Exemption 3”). One statute that exempts information from disclosure is Section 410(c)(2) of the Postal Reorganization Act. 39 U.S.C. § 410(c)(2) (“Section 410(c)(2)”; see also *Wickwire Gavin v. U.S. Postal Serv.*, 356 F.3d 588, 592 n.6 (4th Cir. 2004); *Carlson v. U.S. Postal Serv.*, No. 13-cv-06017-JSC, 2015 WL 9258072, at \*4 (N.D. Cal. Dec. 18, 2015); *Airline Pilots Ass’n v. U.S. Postal Serv.*, No. 03-2384 (ESH), 2004 WL 5050900, at \*5 (D.D.C. June 24, 2004)). This statute operates independently of the FOIA to exempt certain information from mandatory disclosure. Section 410(c)(2) “comports with Congress’s overall purposes in passing the Postal Reorganization Act, which include assuring that USPS ‘be run more like a business than had its predecessor, the Post Office Department.’” *Wickwire Gavin*, 356 F.3d at 590 (citation omitted). Congress “indicated that it wished the Postal Service to be run more like a business than had its predecessor,” *Franchise Tax Bd. v. U.S. Postal Serv.*, 467 U.S. 512, 519-20 (1984), and that the Postal Service should become “self supporting” and “no longer rely on massive annual infusions of general revenues . . . at the taxpayers’ expense,” H.R. Rep. No. 91-1104 at 17 (1970). Congress thus sought to “[e]liminate serious handicaps” previously “imposed on the postal service by certain legislative [and other] policies” to allow the Postal Service to follow “modern management and business practices.” *Id.* at 2. “Congress spoke loudly through the Postal Reorganization Act, providing USPS with a broad release from many FOIA disclosure requirements with which other agencies must comply.” *Wickwire Gavin*, 356 F.3d at 592.

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 is of a commercial nature if it relates to commerce, trade, profit, or the Postal Service’s ability to conduct itself in a businesslike manner.” 39 C.F.R. § 265.14(b)(3); see also *Carlson v. U.S. Postal Serv.*, 504 F.3d 1123, 1128-29 (9th Cir. 2007) (applying the common meaning of the term “commercial” to include all information that relates to commerce, trade, or profit). Section 410(c)(2) permits the withholding of a broader range of commercial information than similar FOIA exemptions. See *Carlson*, 504 F.3d at 1129 (applying the “common meaning”

of the term “commercial”). Courts have ruled that, under Section 410(c)(2), information is “commercial” at least if it relates to commerce, trade, or profit. See *Bloomberg L.P. v. U.S. Postal Serv.*, No. 22CV6112 (DLC), 2023 WL 3976010, at \*4–5 (S.D.N.Y. June 13, 2023), *aff’d*, No. 23-1005, 2024 WL 4293872 (2d Cir. Sept. 26, 2024) (citing *Carlson*, 504 F.3d at 1123). This broader scope exists because the Postal Service is commissioned to operate like a private corporation and, therefore, must follow sound business principles. *Carlson*, 504 F.3d at 1127–28.

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 competing in the market or its role as a provider of public services. See 39 C.F.R. § 265.14(b)(3)(i). Specifically, the Postal Service considers whether the information:

- (A) Relates to products or services subject to economic competition…;
- (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, 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.

No single factor is determinative but all are considered to determine the overall character of the information. 39 C.F.R. § 265.14(b)(3)(ii). In addition, the Postal Service has identified an extensive, though not exhaustive, list of types of information that are considered commercial and, thus, exempt from disclosure under Section 410(c)(2). See 39 C.F.R. § 265.14(b)(3)(ii).

If the information is commercial in nature and would not be disclosed “under good business practice,” then the FOIA does not require the Postal Service to disclose the information. *Wickwire Gavin*, 356 F.3d at 594–95. No separate analysis is necessary to consider whether disclosure would cause competitive harm or to balance the commercial interest with the public’s interest in knowing the information. See *id.* at 594–95; *Carlson*, 2015 WL 9258072 at \*8–10. “[T]he contours of the good business practice exemption [are] to be gleaned by looking to the commercial world, management techniques, and business law, as well as to the standards of practice adhered to by large corporations.” *Wickwire Gavin*, 356 F.3d at 592.

### III. LEGAL ANALYSIS

#### Adequate Search

Under the FOIA, “there is no requirement that an agency search every record system.” *Oglesby*, 920 F.2d at 68. “FOIA demands only a reasonable search tailored to the nature of a particular request.” *Campbell*, 164 F.3d at 28. The Postal Service’s search in this case was adequate.

Here, the FOIA response consisted of multiple sorted categories of requested information regarding refunds of guaranteed delivery costs from January 2017 to 2025 and refund transaction information for a specified tracking number. The records custodian requested a search of the location most likely to contain the requested information and communicated with the individuals capable of locating and retrieving responsive records. The custodian has extensive knowledge of the Postal Service records and systems regarding the information requested. The records

custodian's efforts resulted in responsive records back to 2021, and she confirmed that responsive records are not retained prior to 2021.

The requester's follow-up emails to the response included a request for information beyond the scope of the initial request, specifically regarding an investigation into further details of banking or other payment records for a specific transaction record. "An agency's decision to conduct a 'targeted search' based on the scope of the [party's] request is proper under the FOIA." *Dillon v. Dep't of Just.*, 102 F. Supp. 3d 272, 286-87 (D.D.C. 2015) (citing *Bloomgarden v. U.S. Dep't of Just.*, 10 F. Supp. 3d 146, 153 (D.D.C. 2014) ("agreeing with agency's assertion that its 'targeted search for personnel documents...was reasonable in light of the narrow nature of [the] plaintiff's request that focused on the termination of [a particular Assistant United States Attorney]'"'; see also *Campbell v. U.S. Dep't of Just.*, 164 F.3d 20, 28 (D.C. Cir. 1998) ("FOIA demands only a reasonable search tailored to the nature of a particular request.")).

The fact the Postal Service's search did not locate banking or specific payment details of a single refund transaction, when those details were not requested in the initial request, and did not locate records prior to 2021 does not undermine the determination that its search was adequate. See *Wilbur*, 355 F.3d at 678. The mere fact requested information was not located does not make a search inadequate. *Iturralde*, 315 F.3d at 315. Further, the FOIA does not require the Postal Service to retain or create new records in order to respond to a FOIA request. See *Students Against Genocide*, 257 F.3d at 837. Rather, the requester has the right under the FOIA only to existing agency records. *Kissinger*, 445 U.S. at 152.

#### Exemption 3 and 39 U.S.C. § 410(c)(2)

In order for the Postal Service to properly withhold the requested information under Exemption 3 and Section 410(c)(2), it must be (1) commercial in nature and (2) information that would not be publicly disclosed under good business practice. 39 U.S.C. § 410(c)(2). The responsive records subject to redaction and withholding are reports displaying the number of guaranteed service refund claims and resulting refunds, payments, denials, appeals, and appeal results as well as the dollar totals for the related records. After reviewing the record in unredacted form, we find that the information was properly withheld under Exemption 3 and Section 410(c)(2).

The Postal Service will consider six factors when determining whether information is commercial in nature. Here, the information was properly classified as commercial in nature, as the information "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;" "relates to the Postal Service's activities that are analogous to a private business in the marketplace;" "[w]ould be of potential benefit to individuals or entities in economic competition with the Postal Service...or could be used to cause harm to a commercial interest of the Postal Service," and "is the result of negotiations, agreements, contracts or business deals between the Postal Service and a business entity." 39 CFR § 265.14(b)(3)(i)(A)-(E).

Here we find that data related to service standards and performance qualifies as "information of a commercial nature" under Section 410(c)(2) as it related to commerce, profit and the Postal Service's ability to conduct itself in a businesslike manner. In addition, the redacted information falls under Postal Service regulations identifying types of information already assessed to be commercial. "Sales performance goals, standards, or requirements" are considered information that is commercial in nature. 39 C.F.R. § 265.14(b)(3)(ii)(T).

We also find that the requested information would not be publicly released as part of good business practice. To make this determination, we look to the techniques and standards of practice in the commercial world and followed by large corporations. See *Wickwire Gavin*, 355 F.3d at 592. The responsive records involve information on the number of service failures and refunds for a competitive product. This product competes against companies that provide similar

service, and those companies would not publicly disclose how many failures have occurred or how many refunds they have given.

Therefore, because the information meets both criteria set forth under Section 410(c)(2), and Ms. Williams reviewed each line of information on the responsive records and made individual determinations as to what information is exempt from disclosure and what information is not exempt and disclosed the non-exempt portions of the records, the redactions made by Ms. Williams were proper.

IV. CONCLUSION

For the foregoing reasons, Ms. Williams' actions are affirmed in full.

For the General Counsel,

Colleen Hibbert-Kapler  
Attorney, Ethics & Legal Compliance