



# GARY R. BARKSDALE

CHIEF POSTAL INSPECTOR

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UNITED STATES POSTAL INSPECTION SERVICE

June 23, 2023

The Honorable Ron Wyden  
The Honorable Rand Paul  
The Honorable Edward J. Markey  
The Honorable Cynthia M. Lummis  
The Honorable Elizabeth Warren  
The Honorable Michael S. Lee  
The Honorable Cory A. Booker  
The Honorable Steve Daines

United States Senate  
Washington, DC 20510

Dear Senators:

This letter is in response to your correspondence dated May 17, 2023, urging the U.S. Postal Inspection Service (USPIS) to reform its policies on mail covers. Mail covers are an invaluable tool utilized to investigate criminal actions and protect national security, and the U.S. Postal Service (USPS) and USPIS are dedicated to protecting the privacy and liberty interests of the American people. As a result, USPS maintains rigid control and supervision over the use of mail covers. The regulations concerning mail covers are set forth in 39 C.F.R. § 233.3. It is the position of USPIS that the regulations and current agency policies concerning mail covers adequately protect privacy and liberty interests, while still allowing postal inspectors, other law enforcement agencies, and national security agencies to obtain critical information needed to carry out their missions and protect the American public. From time to time, misunderstandings arise about mail covers, and I hope the following information will address your concerns.

Since *Ex parte Jackson*<sup>1</sup> in 1878, it has been settled that the Fourth Amendment protects against the warrantless opening of sealed letters and packages to examine the contents.<sup>2</sup> The year after *Jackson*, the Post Office Department issued mail cover regulations, interpreting *Jackson* to allow for mail covers, as the information obtained by mail covers did not require a warrant.<sup>3</sup> These regulations acknowledged the sanctity of correspondence, while setting forth the ability of the Post Office to provide information on the outside of mail matter to law enforcement. U.S. courts have consistently held that there is no reasonable expectation of privacy with respect to information contained on the outside of mail matter, and the constitutionality of mail covers in general, both prior to the Supreme Court's holding in *Katz v. United States*,<sup>4</sup> as well as in subsequent decisions.<sup>5</sup>

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<sup>1</sup> 96 U.S. 727.

<sup>2</sup> *United States v. Choate*, 576 F.2d 165, 174 (9<sup>th</sup> Cir. 1978) (citing *Ex parte Jackson*, 96 U.S. 727 (1878)).

<sup>3</sup> *Id.* at 177.

<sup>4</sup> 389 U.S. 347 (1967).

<sup>5</sup> *E.g.*, *United States v. Gering*, 716 F.2d 615, 619-620 (9<sup>th</sup> Cir. 1983).

It is important to emphasize that a mail cover is a recording of the outside of the sealed mail piece only. That is, what a postal employee would view to route the mail piece to its intended destination. A mail cover in no way involves a search or review of the content inside a sealed class of mail. Under federal law and USPS policy, the opening of a sealed class of mail requires a federal search warrant,<sup>6</sup> absent specific emergent situations such as mail believed to contain explosives or hazardous substances.<sup>7</sup>

As noted in your letter, mail covers were a topic of investigation for the Church Committee in 1976. Specifically, the Committee discovered that beginning in 1953, outside federal law enforcement and intelligence agencies were opening certain mail involving the Soviet Union under the guise of mail covers. The Committee revealed that the opening of the mail was done without the knowledge of the Post Office Department and Postal Inspection Service, that the opening of mail was done despite express instructions that no mail was to be opened, and that steps were taken to conceal these openings from the Post Office Department and USPIS. Simply put, what was done under the guise of a mail cover was not a mail cover, and the conduct of the outside agencies violated the Fourth Amendment.

In your letter you referred to the Committee's recommendation that the Attorney General have the sole authority to authorize requests for mail covers. This recommendation was not implemented and is problematic. It is a consolidation of authority and is contrary to the statutory authority granted to the USPS under Title 39.<sup>8</sup> However, in response to the conduct investigated by the Church Committee and other congressional committee investigations, the Postmaster General did issue new and more rigid regulations. To make the regulations regarding mail covers more accessible to the public and to discourage confusion regarding the nature of mail covers, USPS republished the mail cover regulations in the Federal Register 40 FR 11579 (1975) (codified in 39 CFR 233.2 and later redesignated 233.3 in 46 FR 34330 (1981)). The mail cover regulations have been updated several times since then to clarify and strengthen safeguards and protections.

Under current regulations a mail cover may only be obtained for one of the following reasons: (i) to protect national security, (ii) to locate a fugitive, (iii) to obtain evidence regarding the commission or attempted commission of a crime, (iv) to obtain evidence of a criminal violation or attempted criminal violation of a postal statute, or (v) to assist in the identification of property, proceeds or assets forfeitable under law.<sup>9</sup>

Mail covers are not a large-scale surveillance apparatus of Americans' mail. The mail cover process is a mechanism by which information provided to postal inspectors, other law enforcement agencies, and intelligence agencies is controlled. The process to obtain a mail cover is strictly regulated and there are a number of requirements that must be met to obtain a mail cover. Mail covers are authorized only when all requirements are met within the written request. USPIS reviews each request to ensure it fully complies with all regulation requirements. USPIS does decline both internal and external mail cover requests for failing to meet required criteria.

In your letter you asked four specific questions on mail covers. Questions one to three have been forwarded to our Freedom of Information Act (FOIA) unit for processing and response. Question four asks if USPIS has evaluated the mail cover program after the Supreme Court's decision in

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<sup>6</sup> *U.S. v. Van Leeuwen*, 397 U.S. 249, 251 (1970); *see also* 39 U.S.C. 404(c).

<sup>7</sup> 39 CFR 233.11, Mail Reasonably Believed of Being Dangerous to Persons or Property.

<sup>8</sup> 39 U.S.C. §§ 401(10), 404(6) (2018).

<sup>9</sup> 39 CFR 233.13; *see also* USPS Administrative Support Manual (ASM) 213; USPS Procedures, Mail Cover Requests, Publication 55, April, 2020.

*Carpenter v. United States*.<sup>10</sup> USPS and USPIIS constantly review, reevaluate, and update policies and procedures in light of changing circumstances or new guidance from Congress and the courts. As stated in your letter, in *Carpenter v. United States*, the U.S. Supreme Court found that the Fourth Amendment protects certain digital information revealed to third parties. However, the Court's decision in *Carpenter* does not suggest that a search warrant or court order is now required for mail covers, as the information at issue in *Carpenter* is readily distinguishable from mail covers. *Carpenter* is an explicitly narrow decision focused on certain cellular location data that tracks the movement of an individual carrying a cellular device. It leaves in place the doctrine that an individual has a reduced expectation of privacy in information knowingly shared with another. In the words of the Court:

Our decision today is a narrow one. We do not express a view on matters not before us: real-time CSLI [cell-site location information] or "tower dumps" (a download of information on all the devices that connected to a particular cell site during a particular interval). **We do not disturb the application of *Smith* and *Miller* or call into question conventional surveillance techniques and tools**, such as security cameras. **Nor do we address other business records that might incidentally reveal location information.** Further, our opinion does not consider other collection techniques involving foreign affairs or national security.<sup>11</sup>

(emphasis added). As such, *Carpenter* explicitly leaves in place the holdings in *United States v. Miller*<sup>12</sup> and *Smith v. Maryland*<sup>13</sup> and does not apply to conventional surveillance techniques such as mail covers. The court further stated, "There is a world of difference between the limited types of information addressed in *Smith* and *Miller* and the exhaustive chronicle of location information casually collected by wireless carriers today."<sup>14</sup> Similarly, there is a notable difference between knowing the origin and destination of a mail piece and knowing where a person has been for every minute over several years.

In closing, USPS and USPIIS are dedicated to protecting the privacy and liberty interests of the American people. While courts have consistently found that no warrant is required to gather the information that law enforcement and intelligence agencies obtain via mail covers, USPS and USPIIS have implemented stringent regulations, policies, and safeguards on mail covers. These are in place to balance privacy and liberty interests with the need of law enforcement and intelligence agencies to obtain information necessary to protect the American public.

  
Gary R. Barksdale  
Chief Postal Inspector

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<sup>10</sup> 138 S.Ct. 2206 (2018).

<sup>11</sup> *Id.* at 2220.

<sup>12</sup> 425 U.S. 435 (1976).

<sup>13</sup> 442 U.S. 735 (1979).

<sup>14</sup> 138 S.Ct. 2206, 2210 (2018).



**GARY R. BARKSDALE**  
CHIEF POSTAL INSPECTOR

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UNITED STATES POSTAL INSPECTION SERVICE

June 13, 2024

The Honorable Ron Wyden  
The Honorable Rand Paul  
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The Honorable Elizabeth Warren  
The Honorable Michael S. Lee  
The Honorable Cory A. Booker  
The Honorable Steve Daines

United States Senate  
221 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senators:

This letter is in response to your inquiry regarding the statistics for mail covers requested by postal inspectors and other government agencies and the statistics of mail covers approved, for each of the years between 2015 and 2023<sup>1</sup>.

It is the U.S. Postal Service's policy to maintain rigid control and supervision with respect to the use of mail covers as an investigative technique for law enforcement or the protection of national security. Mail covers are governed by 39 CFR § 233.3. As we discussed with your staff during our conference call on May 9, 2024, the term mail cover refers to the process by which a non-consensual record is made of any data appearing on the outside of any sealed or unsealed class of mail matter, or the contents of any unsealed class of mail matter as allowed by law to obtain information to:

- a. Protect national security.
- b. Locate a fugitive.
- c. Obtain evidence of the commission or attempted commission of a crime.
- d. Obtain evidence of a violation or attempted violation of a postal statute.
- e. Assist in the identification of property, proceeds, or assets forfeitable under criminal law.

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<sup>1</sup> Letter from Sen. Ron Wyden et al. to Gary R. Barksdale, Chief Postal Inspector, U.S. Postal Inspection Serv. 3 (May 17, 2023), [https://www.wyden.senate.gov/imo/media/doc/bipartisan\\_senate\\_postal\\_surveillance\\_letter.pdf](https://www.wyden.senate.gov/imo/media/doc/bipartisan_senate_postal_surveillance_letter.pdf).

Please find below two tables summarizing the requested data.

Table one provides statistics on mail covers that authorize the recording of data from the exterior of mail matter addressed to or from specific subjects, addresses, or operations. These mail covers normally cover multiple days and mail matter. The statistics are broken out by requests from the United States Postal Inspection Service (USPIS), other federal agencies, and non-federal agencies in a format consistent with the United States Postal Service Office of Inspector General's (USPS-OIG) 2015 audit report on mail covers.<sup>2</sup>

TABLE ONE

	USPIS Requested	USPIS Approved	External Federal Requested	External Federal Approved	External non-Federal Requested	External non-Federal Approved	Total Requested	Total Approved
2015	3,129	3,066	4,520	4,417	1,084	1,027	8,733	8,510
2016	2,579	2,509	4,324	4,173	971	931	7874	7,613
2017	2,372	2,318	3,827	3,695	823	784	7022	6,797
2018	2,040	2,003	3,871	3,723	729	666	6640	6,392
2019	1,597	1,555	3,769	3,660	626	598	5992	5,813
2020	1,665	1,642	2,882	2,821	451	419	4998	4,882
2021	3,553	3,391	2,611	2,584	444	423	6608	6,398
2022	3,821	3,580	2,433	2,395	424	373	6678	6,348
2023	3,481	3,340	2,651	2,599	282	258	6414	6,197

In addition, there are situations where Postal Inspectors need to record data appearing on the outside of individual piece(s) of mail (e.g. to contact the sender/addressee or to obtain a search warrant for that piece of mail). In these cases, the Postal Inspector must obtain a mail cover for this/these piece(s). Table two provides statistics on the mail covers obtained in these situations:

TABLE TWO

	Individual Piece Mail Covers
2015	51,732
2016	55,608
2017	52,092
2018	29,810
2019	22,848
2020	20,072

<sup>2</sup> U.S. Postal Serv. Office of Inspector Gen., Report No. HR-AR-15-007, Audit Report: Postal Service Mail Covers Program 13 (2015), [https://www.uspsaig.gov/sites/default/files/reports/2023-01/hr-ar-15-007\\_0.pdf](https://www.uspsaig.gov/sites/default/files/reports/2023-01/hr-ar-15-007_0.pdf).

2021	17,052
2022	14,663
2023	48,413

As discussed, the U.S. Postal Service and the U.S. Postal Inspection Service are dedicated to protecting the privacy and liberty interests of the American people. We continuously review mail cover regulations, policies, and safeguards to ensure we meet the high level of trust the public has placed in us. As such, we agree with your request to proactively publicly disclose the above mail cover statistics in our annual report, beginning in the FY 2024 report.

If you have any further questions or need additional information regarding this matter, please contact Program Manager Brian Bone at [bdbone@uspis.gov](mailto:bdbone@uspis.gov).

Sincerely,



Gary R. Barksdale  
Chief Postal Inspector