

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**Newport News, VA**

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**Issue Date: 16 April 2024**

Case No.: 2024-STA-00017

*In the Matter of:*

DEQUANNE SIMON,  
*Complainant,*

v.

SWIFT TRANSPORTATION CO. OF ARIZONA, LLC,  
*Respondent.*

**ORDER GRANTING MOTION TO FILE SETTLEMENT AGREEMENT**  
**UNDER SEAL**

This matter arises from a complaint filed under the provisions of the Surface Transportation Assistance Act of 1982, U.S. Code Title 49, Section 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA"), and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978. Pursuant to federal regulations at 29 CFR § 1978.107, the proceedings will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR § 18.10 to § 18.95).

On April 15, 2024, the parties submitted a *Joint Motion for Leave to File Settlement Agreement Under Seal*. The motion requested leave to file an unredacted version of the Settlement Agreement under seal, "because the unredacted Agreement contains financial and business information that is privileged or confidential within the meaning of 5 U.S.C. § 552(b)(4)." The parties separately filed a *Joint Motion for Approval of Settlement and Dismissal with Prejudice* and a redacted version of the Settlement Agreement on the public docket.

The procedural rules applicable to matters before the OALJ permit parties to move to seal documents from public access. 29 C.F.R. § 18.85(b). I find that sealing the parties' unredacted settlement agreement is appropriate. The specific consideration and release terms set forth in the parties' *Settlement and Release of Claims Agreement*, which the parties have requested to file under seal, may be treated as "confidential commercial information" under 29 C.F.R. § 70.26. That regulation provides: "A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time

thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4.” 29 C.F.R. § 70.26(b).

The Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (1988) (FOIA), requires federal agencies to disclose requested documents unless they are exempt from disclosure. *Faust v. Chemical Leaman Tank Lines, Inc.*, Case Nos. 92-SWD-2 and 93-STA-15, ARB Final Order Approving Settlement and Dismissing Complaint, March 31, 1998. Exemption 4 of FOIA protects “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

Courts examining Exemption 4 give the terms “commercial” or “financial” information their ordinary meanings. For example, the D.C. Circuit has held that records are commercial so long as the submitter has a “commercial interest” in them (see *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)) and the Second Circuit has held that the term “commercial” “surely . . . means anything pertaining or relating to or dealing with commerce” (see *Am. Airlines, Inc. v. Nat’l Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978)). Under these straightforward meanings, the information in the *Settlement and Release of Claims Agreement* appears properly considered as “confidential commercial information.” Further, Respondent qualifies as a “person” under Exemption 4, because that term encompasses corporations. See, e.g., *Nadler v. FDIC*, 92 F.3d 93, 95 (2d Cir. 1996) (the term “person” includes “an individual, partnership, corporation, association, or public or private organization other than an agency”); *FlightSafety Servs. v. Dep’t of Labor*, 326 F.3d 607, 611 (5th Cir. 2003) (*per curiam*) (the term “person” includes business establishments). Finally, the information is properly considered “privileged or confidential,” as it is not otherwise in the public domain nor is it otherwise required to be made public. Given the public policy of favoring settlements, the parties have a strong argument that the settlement agreement is “privileged or confidential.” Therefore, I find that the unredacted *Settlement and Release of Claims Agreement* is properly treated as “confidential commercial information” in accordance with 29 C.F.R. § 70.26.

Confidential business information “will be disclosed under the FOIA only in accordance” with 29 C.F.R. § 70.26. That regulation requires pre-disclosure notice to the submitter of commercial information; an opportunity to object to disclosure and state why the information is commercial or financial information that is privileged or confidential; consideration of the submitter’s timely objections and arguments for non-disclosure; and, if the objections are not sustained, written notice stating why the objections were not sustained and providing particular information about the information to be disclosed. 29 C.F.R. § 70.26(c)-(f).

OALJ’s procedural rule at 29 C.F.R. § 18.85 provides: “Notwithstanding the judge’s order [sealing material], all parts of the record remain subject to statutes and regulations pertaining to public access to agency records.” Thus, an order sealing the *Settlement and Release of Claims Agreement* in this case does not bar public access if such access is appropriate under the pertinent statutes and regulations, including 29 C.F.R. § 70.26.

The strength of the parties' contention that the document is confidential commercial information protected from disclosure outweighs the presumption of public access in this instance. Accordingly, the request to file the unredacted *Settlement and Release of Claims Agreement* under seal is **GRANTED**.

**SO ORDERED.**

MONICA MARKLEY  
Administrative Law Judge