

*Surface Transportation Board
Washington, D.C. 20423-0001
Office of Economics*

October 22, 2024

Jack P. Schley
Page, Scrantom, Sprouse, Tucker & Ford, P.C.
Attorney
Synovus Centre
1111 Bay Avenue, 3rd Floor
P.O. Box 1199
Columbus, Georgia 31901-1199

Re: Waybill Request WB24-45

Dear Mr. Schley:

This letter responds to your request under 49 C.F.R. § 1244.9(c) of September 4, 2024 on behalf of the Consolidated Government of Columbus, Georgia (City) for access to the unmasked Confidential Carload Waybill Sample (CCWS) for the year of 2022 for railroad traffic originating, terminating, or passing through Columbus, Muscogee County, Georgia. You requested the data as part of a project intended to update the data previously shared with the City as part of a rail yard relocation feasibility study conducted in 2010. You state that the data is needed “so the City may understand the rail traffic in its jurisdiction,” and that the data “will be used to compare the data studied in 2010 to understand how local rail traffic has changed in the last decade, and to evaluate the City’s reversionary interest in certain railyard parcels within its jurisdiction.” You state that your “objective is to determine whether the City should pursue its reversionary interest through formal proceedings before the Surface Transportation Board.” You also request that access be granted to S&P Global “so that the firm can provide a database connected to the City’s Columbus Rail Yard Relocation Study Update.”

Notice of your request was published in the Federal Register on September 11, 2024 (89 Fed. Reg. 176, 73,742). One objection to your request was received. The Association of American Railroads (AAR), on behalf of its freight railroad members, filed an objection on September 25, 2024 (AAR Objection) objecting to “the release of waybill data pursuant to the current request.”

AAR argues that based on your request, “there is no particular and legitimate need for this information, especially revenue-related information, to be released.” AAR contends that, under the Board’s standards, you did not “not justify why [you] need[] confidential data, like unmasked revenue data,” as well as costs and other confidential information, for your stated purposes. In addition, AAR argues that “the possible pursuit of litigation does not justify such a release” because the request “amounts to pre-litigation discovery.” AAR notes that the Board’s regulations under 49 C.F.R. § 1244.9(b)(4) permit for consultants (among others) to request waybill data in connection with pending proceedings.

Having considered your request, and the objection from AAR, I am granting your request in part and denying it in part. Your request identifies what appears to be two distinct uses for the requested CCWS and each will be addressed separately. First, your letter explains that you would use the CCWS so that the “City may understand the rail traffic in its jurisdiction” as part of the Columbus Rail Yard Relocation Study Update and related database, and have limited your request to 2022 data originating, terminating, or passing through Columbus, Muscogee County, Georgia. The masked dataset provides volume related information for which you have demonstrated a sufficient need and the CCWS is the only source where this information could be provided. Although AAR objected to the waybill release here, it

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did not provide a detailed argument with respect to the masked data as it primarily objected to the grant of unmasked data. See AAR Objection at 2 (stating that the request “does not provide a particular or legitimate need for the unmasked revenues, costs, and other confidential information,” and arguing that, if granted, the Board “should not release any revenue information, including unmasked contract revenues”); see also Request for Waybill Data (Southern California Association of Governments), WB 20-48 (STB served Jan. 1, 2021 (granting release of masked data for comprehensive rail study). Accordingly, the objection does not warrant a complete denial of your request. You have indicated that your analysis requires data concerning rail traffic in the City; however, because the CCWS does not have a city-specific breakdown, you will be granted access to the masked 2022 CCWS for traffic that originated, terminated, or passed through the state of Georgia.

However, there is not enough information for me to grant your broad request for unmasked revenues. The CCWS contains data that is highly confidential to both rail shippers and railroads. Unmasked revenue data are among the most commercially sensitive information that railroads possess. The Board has, under appropriate circumstances, granted access to unmasked CCWS to an “Other User” when the purpose of the data request is adequately defined, and the request makes clear why the data requested are necessary and how the data will be used in the analysis. The Board’s regulations require both a complete and detailed explanation of the purpose for which the data are requested and a detailed justification for why the specific data requested are needed. See 49 C.F.R. § 1244.9(e)(1)(i-iii). Here, you have not sufficiently explained why the unmasked revenue data is necessary for the Columbus Rail Yard Relocation Study Update for which you are being granted CCWS access, particularly where you seek to understand the flow of rail traffic in your area and the masked CCWS contains information regarding volumes and other information. See AAR Objection at 2 (arguing that “the City does not justify why it needs confidential data, like unmasked revenue data, for [its] efforts”). Therefore, your request for unmasked data is denied.

Your second stated use of the CCWS—to determine whether the City should pursue formal proceedings before the Surface Transportation Board related to the City’s reversionary interests in certain railyard parcels—does not provide a sufficient justification for release of the CCWS data requested. You have not sufficiently explained how the CCWS would be used for this purpose. Additionally, as noted by AAR, the Board’s regulations permit transportation practitioners, consulting firms, and law firms to make requests for confidential waybill data for certain purposes in specific proceedings (subject to multiple requirements), but your request is not made in connection with a pending proceeding or arbitration matter. See 49 C.F.R. § 1244.9(b)(4). Nor is it related to an announced Board initiative. See Request for Waybill Data (Thompson Hine LLP), WB 17-44 (STB served Mar. 23, 2018) (granting limited access to masked waybill data in connection with announced Board regulatory initiatives). Accordingly, your request to use the data for the purpose of determining whether the City should pursue its reversionary interest through a proceeding with the Board is denied. The data may only be used for the Columbus Rail Yard Relocation Study Update and related database.

Pursuant to 49 C.F.R. § 1244.9(d)(4)(iii), you may appeal this determination within 10 days of the date of this letter. Under the Board’s regulations, “[a]ppeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” 49 C.F.R. § 1011.6(b). Replies must be filed within 10 days after the due date for appeals. The filing of an appeal will automatically stay the effect of this decision. If no appeal is filed, a separate approval consistent with this decision (with the required undertakings) will be issued on or after October 29, 2024.

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Sincerely,

**KRISTEN
MONACO**

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Kristen Monaco, PhD
Director
Office of Economics