

Order

87 F.T.C.

IN THE MATTER OF
ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

Docket 8908. Order, Mar. 2, 1976

Denial of respondents' motion to reopen the record and proceedings to afford them opportunity to conduct discovery upon and defend against non-record secret facts, information and/or evidence.

ORDER DENYING MOTION TO REOPEN RECORD AND
PROCEEDINGS

Respondents have moved that we reopen the record and proceedings in the above-styled matter to afford Britannica the opportunity "to conduct discovery upon and defend against the non-record secret facts, information and/or evidence that are being considered by this Commission in reaching its decision" in this appeal.

The motion arises out of a Freedom of Information Act request filed by respondents. In midst of the adjudicative proceedings, respondents filed with the Secretary of the Commission a Freedom of Information Act request for the Analytical Program Guide for the Direct Selling Industry and other related documents. The Secretary released part of the materials requested, and the respondents appealed to the Commission the Secretary's denial of further access to the documents. The Commission reviewed the matter, as it was required to do under the applicable provisions of the Commission's Rules of Practice¹ which were promulgated pursuant to the Freedom of Information Act.² The Commission also filed, pursuant to the order of the U.S. District Court (N.D. Ill.), a "Revised Index and Justification for Withholding Documents." The Revised Index characterizes some of the documents as "pre-decisional communications," a term utilized by the Supreme Court to describe non-evidentiary documents which were exempt because they were "deliberations comprising part of a process by which governmental decisions and policies are formulated." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 158 (1975). Citing the Commission's Freedom of Information Act review and its use of the descriptions "pre-decisional communications" in the Revised Index, the respondents contend that the Commission has utilized the documents in the decision-making process in this adjudicative matter.

This motion is plainly without merit. The Commission has based its determinations and order in this matter solely upon the record compiled in Dkt. No. 8908. Accordingly,

¹ Section 4.11(a)(2).

² 5 U.S.C. §552(c)(6)(A)(ii).

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It is ordered, That respondents' motion to reopen the record and proceedings in the above-styled matter be, and it hereby is, denied.

Order

87 F.T.C.

IN THE MATTER OF
ENCYCLOPAEDIA BRITANNICA, INC., ET AL.

Docket 8908. Order, Mar. 2, 1976

Denial of respondents' motion to postpone decision.

ORDER DENYING MOTION TO POSTPONE ISSUANCE OF FINAL
DECISION AND ORDER

Respondents have moved to postpone the decision in the appeal of the above-styled matter. The motion arises out of a Freedom of Information Act request for a copy of the Analytical Program Guide for the Direct Selling Industry and other related documents. The Commission denied in part respondents' request and respondents have sought judicial review of the Commission's determination in the Federal courts. The reason set forth for respondents' motion to postpone is to afford respondents "an adequate opportunity to examine and comment upon, or take other appropriate steps with respect to, hitherto undisclosed matter which may have been considered by the Commission or the Administrative Law Judge in the course of this proceeding."

As the Commission has pointed out in denying respondents' Motion to Reopen the Record and Proceedings, the decision and order in this matter* have been based solely upon the record evidence in Dkt. 8908. Thus there is no "undisclosed matter" utilized in the Commission's determinations in this matter. Accordingly,

It is ordered, That respondents' Motion to Postpone Decision be, and it hereby is, denied.

* Reported in this Volume.