

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD  
OFFICE OF REGIONAL OPERATIONS

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<b>JEFFREY LEWIS,</b> Appellant,	*	
	*	<b>Docket Number:</b>
	*	
	*	
vs.	*	
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<b>DEPARTMENT OF TRANSPORTATION,</b>  Agency.	*	
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**RESPONSE TO FIRST REQUEST FOR PRODUCTION**

The Agency, through counsel, hereby files the following Responses to Appellant's discovery requests served on December 30, 2008.

1. Printed and unredacted copies of all emails, memos, letters and other correspondence between and among Jason Ralph, Patricia Hardy, Barry Davis, Dick Fossier, Gwen Marshall, Andrew Robinson, Dr. Goodman, Dr. Griswold, and Frank Ferrera, related to Appellant, from 1/1/2007 through 8/30/2007.

**Response** – Copies of responsive documents obtained from Human Resources are being copied and will be sent out the week of February 2, 2009. Through inadvertence, responsive documents were not requested from other listed individuals. Requests have been made and responsive documents not already produced in the

Agency file are anticipated on being sent out by the end of the week of February 9, 2009.

2. Printed and unredacted copies of all emails, memos, letters and other correspondence between and among Jason Ralph, Andy Richards, Barry Davis, Roslyn Marable, Tim Kubik, and Mark Deplasco, related to Appellant, from 8/1/2007 through 10/31/2008..

**Response** – See response to Request 1.

3. A printed copy of all emails and other correspondence referring the Accountability Board cases for Formal Security Investigation, in accordance with Order 1110.125A, para. 15(f).

**Response** – The document(s) has been requested from Security, and any responsive document is anticipated on being provided the week of February 2, 2009.

4. Printed copies of all emails and other correspondence, between the Accountable Official and the Accountability Board, regarding disposition of Accountability Board cases 20070097 and 20070098, as per Order 1110.125A, para. 15(f).

**Response** – Responsive records are being copied and are anticipated on being provided the week of February 2, 2009.

5. Printed information to fulfill FOIA 2008-000108WS, mailed to Carlette Young on 9/24/2007, related to the Violence in the Workplace (ViWP) teleconference conducted on 2/15/2007.

**Response** – Objection. FOIA requests and releases are governed under different provisions than in this matter. If Appellant is dissatisfied with agency releases under

FOIA, his remedy is pursuant to the FOIA, and not through discovery in this separate MSPB case.

6. A printed copy of the entire contents of the CPDSS medical records used by Drs. Goodman, Griswold, Roberts, Schwendeman, DeVoll, and Chesanow and other FAA Flight Surgeons to manage notes and records related to Appellant's FAA medical file.

**Response** – Objection, beyond the scope of discovery in that this request is not reasonably calculated to lead to the discovery of admissible evidence in this case.

7. A written statement, signed by Dr. Goodman, explaining the 6/7/2007 slanderous memo in Appellant's medical file.

**Response** – Objection, beyond the scope of discovery in that this request is not reasonably calculated to lead to the discovery of admissible evidence in this case. In addition, the agency is not required to create a statement in responding to a request for production of documents.

8. Printed copies of all "Investigative Record Review" forms from all copies of ROI AWP-20070078, as well as copies of all requests to produce photocopies.

**Response** - Objection, beyond the scope of discovery in that this request is not reasonably calculated to lead to the discovery of admissible evidence in this case.

9. Printed copies of any and all documentation indicating the ROI was actually substantiated, by whom, and by what methods.

**Response** - Objection, vague, unintelligible, argumentative.

10. "Re: Agency File: at Tab 4e, written statement from Agency Counsel confirming Exhibits #20 and #22 have been removed from the ROI. . . ."

**Response** - Agency counsel is not required to provide statements to create documents in response to a document production request.

11. Printed copies of all attachments to the 9/15/2008 letter signed by Edward Jones.

**Response** – These documents have not yet been received, but they are anticipated to be produced the week of February 2, 2009.

12. A written statement, signed by Naomi Tsuda, explaining the absence of the 2/16/2007 letter from Jason Ralph to Appellant, etc.

**Response** – See response to request No. 10; in addition, objection, attorney-client privilege.

13. Printed copies of all documents responsive to the FOI requests, as should have been generated by WSA and ANM.

**Response** - Objection. FOIA requests and releases are governed under different provisions than in this matter. If Appellant is dissatisfied with agency releases under FOIA, his remedy is pursuant to the FOIA, and not through discovery in this separate MSPB case.

14. Printed copies of the corrected Agency File, to include the reserve side of the sheet with the 6/28/07 email from Appellant to Fossier.

**Response** - This document is being copied and will be produced the week of February 2, 2009.

15. Printed copies of all documents, without redactions, responsive to FOIA 2007-007648WP.

**Response** – Objection. FOIA requests and releases are governed under different provisions than in this matter. If Appellant is dissatisfied with agency releases under FOIA, his remedy is pursuant to the FOIA, and not through discovery in this separate MSPB case.

17-21 ✓ **28.** Printed copies of other documents not provided in Agency File. . .

*see  
2/13/09  
suppl. based*  
**Responses** - Objection, beyond the scope of discovery, not reasonably calculated to lead to the discovery of admissible evidence in that these requests seek documents that are not relevant to the subject MSPB case.

22 ✓ **23** Copy of missing attachment. . .

**Response** - Objection. Appellant is apparently seeking to amend the ROI through the improper use of requests for production of documents. If Appellant desires to supplement the record, counsel should seek leave to do so, or engage in discussions with agency counsel to stipulate to supplement the record.

23 Through 27, Written statements, signed by Dr. Goodman and others . .

**Responses** - Objection. Agency is not required to create signed statements in order to create documents responsive to a request for production of documents. In addition, these requests are beyond the scope of permissible discovery in that they seek information that is not reasonably calculated to lead to the discovery of admissible evidence. Indeed, they seek creation of evidence as dictated by Appellant.

**28.** Please insert the statement. . . .

**Response** - Objection, see response to 22, above.

**29.** A written statement, signed by Andy Richards, detailing what was meant by “...we are working this issue internally and expect resolution in the near future”, and

detailing what specific “administrative action” was contemplated for Appellant at the time these emails were sent.

**Response – Objection.** See response to request 23 through 27.

Respectfully submitted,



*FOR* NAOMI TSUDA  
Regional Counsel  
Agency Representative

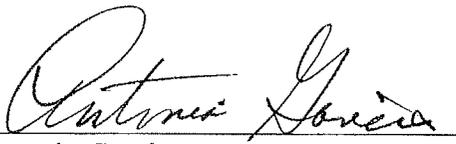
Dated: January 30, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I placed in the United States mail, postage prepaid, the Response to First Set of Interrogatories addressed to:

Ariel Solomon, Esq.  
Tully Rinckey P.L.L.C.  
441 New Karner Road  
Albany, NY 12205

Dated: January 30, 2009

A handwritten signature in cursive script, appearing to read "Antonia Garcia", is written over a horizontal line.

Antonia Garcia  
Paralegal Specialist  
Office of the Regional Counsel  
Federal Aviation Administration  
Lawndale, California