

28242 S. Salo Rd., Mulino, OR 97042

tel. (503) 710-1515

Thursday, January 20, 2011

Federal Aviation Administration  
ARC-1, Asst. Administrator for Regions and Center Operations  
800 Independence Avenue SW  
Washington, DC 20591

Dear Sir,

This letter is an **appeal requesting reconsideration** of the response to FOIA request 2011-1765, as provided by Clay Foushee, AAE-1, and received on 1/18/11.

In his response, Mr. Foushee advised that FOIA Exemption-6 was applied to justify the withholding of seven pages (constituting three AHIS printout records) and the hundreds of redactions on the 60-pages that were provided. In Mr. Foushee's FOIA response letter (attached, 1p), he twice cited 5 U.S.C. 522, though the intent was clearly 5 U.S.C. 552, wherein the specific language of Exemption-6 allows the withholding of...

*"...personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy"*

The list of FOIA Exemptions, as provided in 5 U.S.C. 552(b), is immediately followed by this explanatory note:

*"Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made."*

The records I requested (see attached 12/9/10 letter, and attached 2-pg attachment) and the records produced in Mr. Foushee's response to FOIA 2011-1765, have minimal personal information for which Exemption-6 can be properly applied. Simply, once the **Name/Phone/Address** data-fields are redacted, and spot-redactions are made to conceal identifying names (and ONLY the names) from the **What-do-you-want-to-talk-about** data-field, there remains no "person" to whom any other data can be attached. Furthermore, when a manager's name is cited in detailing the report, he/she is cited not as a "private" person but as an Agency official doing Agency work. Text describing the spoken words of, or actions taken by, this manager are official rather than personal, and thus do not meet the threshold requirement of applying "...to a particular individual." Thus, his/her name should not be redacted, as this would be a mis-application of FOIA Exemption-6.

One more thing to consider is that a caller's identity arguably cannot be properly concealed, in that the content provided to a Hotline generally never contains information that "applies to the individual (caller)". Most Hotline calls are complaints alleging failures or misconducts by management or coworkers, and, frankly, has any Hotline caller ever provided any information about their own failure or misconduct? Not likely.

One more detail to consider is the voluntary nature of Hotline reporting. All callers are freely allowed to report anonymously, and if the printouts in FOIA 2011-1765 are representative, typically half of the calls are anonymous. So, what is the rationale for redacting the name of the caller, when freely provided? Consider, too, the Public interest in knowing that a program like FAA's Administrator's Hotline is not being abused by "anonymous" callers undermining the efficiency of Federal Service with unsubstantiated charges for which they will never be held accountable. A program like this, when too heavily cloaked, can drain enormous energies and funds while destroying both Agency missions and workplace morale. This is fundamentally why President Obama is so correct in his advocacy of Open and Transparent Government.

Having said that, and frankly not caring in the least who the actual individuals are in any of the AHIS printouts provided by Mr. Foushee, perhaps we can meet halfway, as follows:

1. As was the pattern in the records already provided, please fully disclose all data except for the two personally-sensitive printout areas, at **Name/Phone/Address**, and at **"What do you want to talk about?"**
2. for the **Name/Phone/Address** data-fields, please freely redact all three items. Clearly, I have no right to an address or telephone and, provided more care is taken to segregate real data elsewhere on the printout, I will gladly not know the name of the caller.
3. for the **"What do you want to talk about?"** data, redact ONLY firstnames and surnames, while retaining all other words, so as to allow fair disclosure of the non-personal details in the fullest possible story context. The caller is reporting a concern, so the reader should be able to recognize all non-personal details of that concern. If necessary, and while reviewing the final redaction copy to ensure it is complete, add arrows and letters (as in **A** for person-A, **B** for person-B, etc.) or some other detail, clarifying key redactions to ensure the reader can comprehend the general story as presented by the caller. This technique should rarely be needed and would be very quickly and easily done.
4. lastly, for the other records I requested in my original FOIA, the response memos, fully release the names/signatures/initials/sign-for's of the Director or other Agency official who should be considered accountable for the content of the response memo. Likewise, do not redact the name or workphone of other persons officially mentioned in the memo.

TO FULLY AND FAIRLY RESOLVE THIS FOIA APPEAL, I ask that the entire file for FOIA 2011-1765 be obtained, that all records be re-processed in accordance with the above guidelines, and that the new FOIA package be promptly delivered to my home address, in accordance with FOIA law.

I look forward to your prompt closure of this Appeal. Thank you.

Sincerely,



Jeff Lewis

*"The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails."*

- President Barack Obama, 1/21/2009



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

JAN 13 2011

Mr. Jeff Lewis  
28242 S. Salo Road  
Mulino, OR 97042

RCVD 1-18-11

**RE: Freedom of information Act (FOIA Request 2011-1765)**

Dear Mr. Lewis:

This letter responds to your December 10, 2010, request under FOIA, 5 U.S.C. 522. You requested copies of all Administrator's Hotline complaints filed between August 1, 2006 and March 1, 2007 at all FAA ATCT facilities in the state of California. Additionally, you requested minimally redacted copies of Administrator's Hotline responses to these complaints.

A search of the Administrator's Hotline Information System was conducted on December 21, 2010. We have located 23 records, and we are releasing 60 pages that are responsive to your request.

We are withholding three of the 23 records which are comprised of seven pages from disclosure under Exemption 6 of the FOIA. Additionally, we have redacted names, addresses and certain information under Exemption 6 of the FOIA. Exemption 6 of the FOIA protects information that pertains to an individual when the disclosure of such information "would constitute a clearly invasion of personal privacy" (5 U.S.C.522 (b)(c)).

You may request reconsideration of this determination by writing to Paula Lewis, Assistant Administrator of Regional and Center Operations, ARC-1, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591. Your request must be made in writing 30 days before the date of receipt of this letter and must include all information and arguments relied upon. Your letter must state this is an appeal from the above-described denial/partial denial of a request made under the FOIA. The envelope containing the appeal must be marked "FOIA."

Processing this request by this office cost less than \$10.00; therefore, no fees will be assessed.

Sincerely,

  
Clay Foushee  
Director, Office of Audit and Evaluation

Enclosures

28242 S. Salo Rd., Mulino, OR 97042

tel. (503) 710-1515

Thursday, December 9, 2010

Joann Noonan  
FAA HQ, FOIA Office  
800 Independence Avenue, SW  
Washington, DC 20591

Dear Ms. Noonan,

**Please accept this as a request for copies under the Freedom of Information Act (FOIA).**

I am researching the FAA Administrator's Hotline. Toward this end, I am attaching the first page of an AHIS printout<sup>1</sup> for a Hotline complaint filed anonymously on 2/7/07. Please note the data-fields indicated on this complaint: Region (AWP), State (CA). For the record, although the subject is unnamed, the complaint was related to me and incidents that eventually resulted in the production of an Accountability Board Report of Investigation.<sup>2</sup>

To fulfill this FOIA request, I request that you provide copies of all pages of all AHIS printouts for Hotline complaints filed between 8/1/06 and 3/1/07 at all FAA ATCT facilities in the state of California. I also request minimally-redacted copies of all action office Hotline response letters created in response to all these complaints.

I understand that FOIA Exemption-6 exists to reasonably protect personal privacy. However, I do not care to know the identities of the subjects of any of these complaints. So, please feel free to fully protect this information with simple names-only redactions. If you feel you also need to redact the facility-name, I will accept that, too...provided it is only the facility name/location.

Please advise if I need to agree to a fee in excess of \$25. Also, call if you have any questions. I thank you for your assistance.

Sincerely,



Jeff Lewis

<sup>1</sup> This copy obtained July 2007 via FOIA.

<sup>2</sup> As shown in the attached ROI portion, this Hotline complaint was submitted anonymously on 2/7/07, but refers to a conversation held in the CCR tower cab on 1/21/07. In this conversation, I stupidly quoted a Randy Newman lyric with the n-word, during a discussion about the oppression and hazing common to ATC training. This was the only conduct issue in my 22-year career. I was removed on 11/6/08.

FAA ADMINISTRATOR'S HOTLINE INFORMATION SYSTEM

Call Date: 02/07/2007 Region: AWP Control Number: 200702070001

Name: Telephone: Address: City: State: Zip: Rte.Symbol: Facility: ATCT City: CONCORD State: CA

PLEASE DO NOT REDACT THESE

OK TO REDACT

Are you an FAA employee? YES
Is your position covered by a bargaining unit? YES
Is this matter currently being considered under any other kind of dispute or settlement procedure? NO
Have you discussed this with your supervisor or any other FAA manager? YES

Action Office: AWP-1 Info Copy: ATO-1
AO Date: 02/07/2007 Info Copy: ACR-1
Due Date: 02/28/2007 Info Copy:
Response Date: 03/01/2007 Info Copy:
Subject: 7000 Info Copy:

PLEASE REDACT NAMES - ONLY

What do you want to talk about?

Caller reported that an unnamed Caucasian ATCS constantly makes racial comments concerning African-Americans. Caller said that recently the unnamed employee came into the control room and said aloud: "Are you holding a nigger down".

Operator ID = KS0

\*\* CALLER WISHES TO REMAIN ANONYMOUS \*\*

PRIVACY ACT INFORMATION

The information contained in this form is protected by Public Law 93-579 (Privacy Act of 1974). The information is part of the Privacy Act system of records, DOT/FAA 845, Correspondence Control and Information System, and is subject to the published routine uses of that system. Misuse and/or unauthorized disclosure of this information is punishable by internal disciplinary actions, and/or criminal penalties with a possible fine up to \$5000

While at work in the Concord tower did you make a statement similar to "us niggers can't get any leave"? No

"THE INCIDENT"  
↓

While at work in the Concord tower did you make a statement similar to "they're trying to hold us niggers down"? No. As for similarity, the reference is to a lyric I quoted (and explained) from a Randy Newman song called "Rednecks". The song is about oppression and ignorant rednecks, given no respect by urban northerners, but finding solace in the feeling they are "keeping the niggers down". The comment was made during a Sunday morning discussion with John and James; it followed James' comments likening ATC training to the "hazing" that goes on in fraternities. I said, roughly: "*yeah, it's like the lyric in Randy Newman's song, keeping the niggers down...the CPC's have a chance to assert their pecking order, so the step on the trainees*".

Did anyone tell you that type of speech was inappropriate and tell you to stop making that type of statement? No. For the record, the night before the 1/21/2007 incident, James had set up his PC on the LC console with a DVD called "Boondocks". I watched with him for an hour or so (Andrew was there, too, but less interested in the DVD) and heard the n-

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U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
SECURITY AND HAZARDOUS MATERIALS DIVISION

word used dozens of times in a couple animated episodes. I never would have felt a reference to Randy Newman's lyric would be acceptable had I not shared this DVD with James and Andrew.

While at work in the Concord tower did you make a statement similar to "how are all you niggers doing?" No. This is unbelievable, how made-up these allegations are.

After having a disagreement with Ken Moyer over how he should address you when coordinating with you did you request sick leave and have it denied? Yes, and I was denied. Patricia told me roughly, "*just because you don't feel well doesn't mean you can have sick leave. We can't keep letting you go every time you get upset.*"

After having been denied sick leave did you tell someone from Travis Approach that you had a migraine headache? Yes. Travis called to coordinate an arrival. I could not focus on the letters I was trying to right on a strip. I mentioned the migraine so Travis would slow down and give me time to double-check my strip-marking was correct.

After being denied sick leave while working ground control did you tell a pilot you had a migraine headache and that you were unable to see or take leave? I told the pilot I had a migraine and I had difficulty seeing. I had previously twice told Patricia I could not focus and might need to tell the next pilot I have a migraine and was losing my vision; she twice ignored me. The pilot call happened first, then the Travis coordination, at which point Patricia unplugged and told me to leave on sick leave.

Do you get migraine headaches very often? No, but I started getting them when I arrived at Concord and I started having them 2 or 3 times a week. I have had them for many years.

SOURCE: Rol AWP-20070078, p 63-64

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