



U.S. Department  
of Transportation

Federal Aviation  
Administration

Western-Pacific Region  
Office of the Regional Administrator

P. O. Box 92007  
Los Angeles, CA 90009-2007

126VD 10-15-12  
(598A)

**OCT 12 2012**

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

Dear Mr. Lewis:

Re: Freedom of Information Act Request – No. 2012-006826WP

This is the final response to your letter dated July 23, requesting “complete copies of all records held by FAA in [the MSPB] case file, and all other records used or considered by AWP-7 in the handling of [your] MSPB case ... including all emails sent by or received by Naomi Tsuda, Don Bobertz, and others in the AWP-7 offices.”

Your request was forwarded to the Western Pacific Region, Office of Regional Counsel (“AWP-7”).

In an interim response dated September 20, 2012, AWP-7 provided you with copies of all documents in groups 1 and 3 below.

1. Agency File Submitted to MSPB.
2. MSBP Pre-Hearing Submission by your attorney Ms. Solomon.
3. MSBP Filings.
4. MSBP Discovery Documents.
5. Emails from Don Bobertz and Naomi Tsuda regarding your case.

You have indicated that you do not want copies of group 2 documents. Thus, the outstanding documents you seek are groups 4 and 5 documents. The September 20, 2012, interim response from AWP-7 stated that you should receive a response regarding groups 4 and 5 documents by October 12, 2012.

Enclosed are groups 4 and 5 documents responsive to your request. Portions of some of the documents have been redacted. Additionally, some documents in both groups 4 and 5 are being withheld entirely. The redactions and withholdings are based on Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)) and/or Exemption 6 (5 U.S.C. § 552(b)(6)).

Exemption 5 protects disclosure of recommendations, opinions, and analyses which occur as part of an agency’s deliberative process. Some of the documents are emails between agency personnel analyzing your case, and expressing recommendations and/or opinions. Some of the documents are draft personnel actions. Disclosure of such documents containing recommendations, opinions, preliminary decisions, and analyses would discourage open, frank

discussions between agency personnel, and would create confusion by disclosure of reasons and rationales that were not actually the grounds for the agency's actions. See, Russell v. Department of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982).

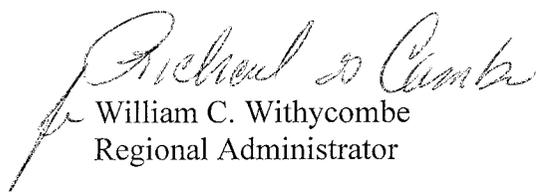
Another recognized privilege under Exemption 5 is the attorney-client privilege. Some of the withheld emails contain legal advice regarding your case, from agency attorneys. The attorney-client privilege protects such "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." Mead Data Central, Inc. v. Dep't of the Air Force, 566 F.2d 242, 252 (D.C. Cir. 1977).

Finally, Exemption 6 permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6)). Some of the documents withheld from disclosure contain information regarding other employee personnel actions. Such information is both beyond the scope of your FOIA request, and would be a clearly unwarranted invasion of the employees' privacy.

There are a total of 408 pages of group 4 documents, and 204 pages of group 5 documents, for a total of 612 pages currently being provided. As the cost is \$0.10 per page, the total cost is \$61.20. AWP-7 previously provided you with 662 pages of groups 1 and 3 documents, for which, after deducting the first 100 pages which were free, AWP-7 indicated the total cost was \$56.20. Thus, the total cost for providing copies of documents to you for this FOIA request is  $\$61.20 + \$56.20 = \$117.40$ . This is within the \$150 that you indicated you were willing to pay for this FOIA request. An invoice containing the amount due and payment instructions is enclosed.

The undersigned and Naomi Tsuda, Regional Counsel, are responsible for this partial denial. you may request reconsideration of this determination by writing to the Assistant Administrator for Finance and Management (AFN-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington DC, 20591. Your request must be made in writing within 30 days from the date of receipt of this letter and must include all information and arguments relied upon. Your letter must also state that it is an appeal from the above-described denial of a request made under the FOIA. The envelope containing the appeal should be marked "FOIA."

Sincerely,



William C. Withycombe  
Regional Administrator

Enclosures

Federal Aviation Administration  
Western Pacific Region  
P.O. Box 92007  
Los Angeles, CA 90009-2007

FOIA Number: 2012-006826WP (WP007)  
Pay.Gov Web Payment ID: 401853

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Date	Item Category	Item Description	Other	Charges Incurred	Charges Deducted	Charges Applied	Payment Amounts
10/12/2012	Duplication	Photocopies		\$66.20	\$10.00	\$56.20	\$0.00
10/12/2012	Duplication	Photocopies		\$61.20	\$0.00	\$61.20	\$0.00
						<b>\$117.40</b>	<b>\$0.00</b>

A balance equal to or less than \$10.00 is not collected.

**Amount Due: \$117.40**

**To pay by check:** Please clip the payment coupon below and mail it, along with your check payable to DOT/FAA, to the Address indicated

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<b>Web Payment ID Number</b>	<b>401853</b>
<b>FOIA Request Number:</b>	<b>2012-006826</b>
<b>Name of FOIA Requester:</b>	<b>Jeff Lewis</b>
<b>Amount Due:</b>	<b>\$117.40</b>

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Balance due upon receipt.  
Balance Due: \$117.40  
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Please write the FOIA Number in the memo field on your check.  
FOIA Number: 2012-006826WP (WP007)

**Remit to:** Federal Aviation Administration  
Western Pacific Region  
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Los Angeles, CA 90009-2007