

28242 S. Salo Rd., Mulino, OR 97042

tel. (971) 295-7669

Friday, March 29, 2013

Mr. Duke Taylor
AFN-140, Manager of FAA FOIA Program
800 Independence Avenue SW
Washington, DC 20591

Dear Mr. Taylor,

I received your 3/22/13 letter. It appears that, through inadvertance, I failed to attach the 6-page **List of Agency Records Needing Full Disclosure**, when I submitted an Appeal for FOIA request 2012-6826WP. Please accept the copy attached here. I will also advance a copy online, to aid your staff in making progress to close this FOIA file.

Also, please be advised, all copies are viewable online at aiREFORM.com. And, as always, please contact me by email or phone if you have a question or need assistance locating a specific FAA record.

I remain hopeful that, with your diligence to assure that these records are produced without any further delay, our agency can finally achieve a full and fair closure on the Lewis-FAA case. We need to restore FAA credibility and guarantee the Public trust. You, in your role as manager of the FAA FOIA program, are a key official. Please let me know what I can do, to help you more easily do your job.

Sincerely,



Jeff Lewis

ATTACHED:

A list of Agency Records needing Full Disclosure (6p)

The following is a partial list of the hundreds of pages of records that FAA officials continue to improperly conceal, and which will be revealed in a full and proper response to this FOIA Appeal. This list focuses primarily on two areas: those documents still redacted from the response to F12-6826, and those key dates in the Lewis-FAA case history for which critical FAA records are known to exist, shown by FAA records to have been provided to AWP Counsel, yet have NOT yet been produced in the F12-6826 response.

2/2/07	A 3-page <u>AB Intake Form</u> was produced by Vicki Hendrickson, when she interviewed Jason Ralph to compile 'facts' about the initial AB charges. Pg.1 and pg.3 were produced during MSPB Discovery, at pages EI-112 and EI-114, but pg.2 of the <u>AB Intake Form</u> is missing. The content of the missing pg.2 substantially contradicts key charges against Lewis, and goes to the lack of credibility of Jason Ralph, the primary allegation source. [None of these pages were produced by AWP Counsel in any F12-6826 response. AWP Counsel needs to produce these copies, so as to confirm their receipt or non-receipt of the pg.2 missing from the MSPB Discovery package.]
2/16/07	The 'Violence in the Workplace' teleconference convened by Jason Ralph at around 10:30AM was attended by many FAA officials, from both AWP and WSA-ATO. EAP Manager Cindy Lopez-Hickson produced detailed notes from this teleconference, which show clear evidence of numerous slanders by Jason Ralph. Copies were disseminated, but never produced within the F12-6826 response. [AWP Counsel needs to produce these (and related) copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
2/16/07	Emails between Scott Bing, Teri Bristol, Barry Davis, Gloria Ibarra, Tiffani Johnson. Included an email ' <u>SUBJ: Roll-Up</u> '. [Numerous redactions by AWP-7, concealing details of other cases that were both releasable and of value to Lewis, in revealing disparate treatment in his retaliatory removal; as rcvd 2-16-13]
2/20/07	The sole documentation used to justify the Lewis firing was ROI AWP-20070078, as prepared by the agents at AWP-700 (James Austin, under managers Richard Giles and Ed Jones). This ROI involved sworn interviews conducted 3/21/07 through 3/23/07, and the final printed report was signed off on 3/28/07. Another official report covers the same details, was also produced by AWP-700, but was fully concealed from all Lewis case records, most likely because it thoroughly contradicts key unsubstantiated slanders within the ROI. This report, known as the 'Detailed Incident Report' (DIR) should have been provided to AWP Counsel as it was very relevant to their work. [AWP Counsel needs to produce their copy of the DIR, and all related copies and correspondence, so as to confirm which critical records were received or not received, while they were representing Agency officials at MSPB.]
3/13/07	Emails between James Austin, Dick Fossier, Cindy Lopez-Hickson, Jason Ralph. Coordination for production of a letter to Lewis, formalizing the lockout and scheduling the ROI. [Roughly 12-15 words redacted by AWP-7, as rcvd 2-16-13]
3/22/07	Extensive series of emails between Teri Bristol, David Caldwell, Tony DiBernardo, Ham Ghaffari, Dennis Sullivan. Coordination of ROI interview

	process, etc. Three CCR employees had already been interviewed on 3/21 (Ralph, Hardy, Crabtree); four more were interviewed on this day (Hougey, Marks, Moyer, Swanson); Lewis was the last interviewee, done from 9AM until 1PM on 3/23. [AWP-7 withheld some records; as rcvd 2-16-13]
3/28/07	The ROI was finished on this date, but a serious error was discovered years later. The error mis-stated that Lewis said it was 'OK' to use the n-word in the workplace (Lewis said exactly the opposite). The error was later corrected by Claudio Manno at FAA HQ, who assured Lewis that all ROI recipients were notified of the correction. Neither the ROI nor the correction were produced by AWP Counsel in their various responses to F12-6826. [AWP Counsel needs to produce all copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
6/13/07	An extensive series of internal FAA emails was initiated by Dick Fossier. He expressed concerns about FAA failing to follow process related to Lewis' lockout and the notification/direction to get a medical evaluation done. Dr. Goodman never answered Dick Fossier's questions. The email series expanded to include many other FAA officials. [None of these pages were produced by AWP Counsel in any F12-6826 response. AWP Counsel needs to produce these copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
7/6/07	Dr. Stephen Goodman, the AWP Regional Flight Surgeon, sent an email to Dick Fossier, inviting a clear violation of medical records confidentiality. This email was concealed in all but one of the FOIA responses received since mid-2007. Extensive medical records WERE provided during MSPB Discovery, but not this (and related) emails. [AWP Counsel needs to produce these copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
9/5/07	Dennis Sullivan issued the letter admonishing Lewis on 7/27/07, and Dick Fossier confirmed the fact Lewis was admonished in a widely distributed 9/5/07 email. The evolution of the 7/27/07 Admonishment Letter is thoroughly documented in emails from 7/14/07 onward. These records were extensively shared in August 2007, in emails related to the transfer of District Manager duties from Dennis Sullivan to Andy Richards. Yet, virtually none of these records were produced by AWP Counsel, either at MSPB Discovery or more recently, responsive to F12-6826. [AWP Counsel produced only one copy in the F12-6826 response, but due to the widespread dissemination in September 2007, they should have produced perhaps a half dozen copies. AWP Counsel needs to produce all copies, so as to confirm which employees failed to produce, during assembly of the MSPB Discovery package.]
12/3/07	Emails between Teri Bristol, Barry Davis, Monique France. Included an email 'SUBJ: Discussion with Ham'. [AWP-7 made numerous redactions, concealing proposed discipline, and details of other cases that were both releasable and of value to Lewis, in revealing disparate treatment in his retaliatory removal; as rcvd 2-16-13]
January 2008	Dr. Stephen Goodman fully restored the Lewis ATC Medical Clearance on 1/10/08, and formally notified ATO so they would know Lewis was again eligible to be returned to work. A series of emails between medical and ATO

	followed in the next few weeks. Some copies were produced in early 2009, in MSPB Discovery, while many other copies were concealed then. In the F12-6826 response, ALL copies were concealed but not declared. [AWP Counsel needs to produce these copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
April 2008	The infamous 'slimeball' email was sent by Dick Fossier to Ros Marable on 4/5/08. Based on the discipline proposed by Andy Richards, as presented in this email, Ros Marable proceeded to draft a letter to suspend Lewis for 14-days. Of course, Ros Marable was also unaware that Lewis had already been admonished via the 7/27/07 letter sent by Dennis Sullivan. This 'slimeball email' and many other FAA records in this time period were fully concealed from MSPB Discovery, and again from the F12-6826 responses. [AWP Counsel needs to produce these copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
4/17/08	Emails between Ros Marable and Andy Richards. Included was Marable's copy of the draft 14-day suspension proposal letter. [AWP-7 redacted 8-words, attempting to conceal this suspension draft; as rcvd 2-16-13]
4/28/08	Emails between Ros Marable and Andy Richards. Included a re-send of Marable's draft of the 14-day suspension proposal letter. [AWP-7 redacted 8-words; as rcvd 2-16-13]
5/20/08	The true record of FAA emails shows that, although Lewis was locked out on 2/16/07, it was fifteen-months later before the first draft letter proposing his removal was sent by Ros Marable to Andy Richards, attached to a 5/20/08 email. In their F12-6826 response, AWP Counsel has misrepresented this fact by excluding the 5/20/08 email and 'attaching' the removal letter draft to an earlier email, sent on 5/15/08. It is not yet clear: did Ros Marable initiate this misrepresentation, or was it initiated AFTER the correct records were received by AWP Counsel? [AWP Counsel needs to produce the 5/20/08 email (and similar concealed copies), so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
Oct-07 thru Jun-08	For eight straight months, AWP-16 produced biweekly <u>Terminal Reports</u> which included the slanderous statement that a 'Justin Lewis' at Concord was 'AWOL' pending medical revocation. Given the small size of Concord, this damaging misinformation guided WSA-Terminal officials to believe Lewis was AWOL (when he never was in his entire FAA career). Thus, when Ros Marable sent Monique France and Barry Davis a 6/24/08 email with a draft of the letter proposing Lewis' removal, it did not seem unreasonable to Monique France to reply with a 6/30/08 email, concurring with the removal proposal. None of the many records related to the extensive slander or the coordination with Monique France and Barry Davis is included in the F12-6826 response. [AWP Counsel needs to produce all copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
May-08 thru Jul-08	Extensive series of emails showing the evolution of the removal proposal letter. All were concealed from MSPB Discovery, and many continue to be missing from the F12-6826 response, as produced by AWP Counsel. [AWP Counsel needs to produce all copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package. This includes the AWP-7 emails related to the final legal approval (as to form and content)]

	of the final draft of the proposal letter.]
August 2008	The threat of being fired forced Lewis to spend the bulk of this month drafting his rebuttal. In the process, he also initiated numerous FOIA requests, and other requests for information via emails and letters. As one example, Andy Richards emailed Lewis that he did not have a copy of the 9/5/07 email declaring Lewis had been admonished; but, Andy DID HAVE the email, as it was produced in a 2,526-page FOIA response in early 2011. [AWP Counsel needs to produce all copies, so as to confirm their receipt or non-receipt during assembly of the MSPB Discovery package.]
10/6/08	Under normal process, a removal letter is not drafted until the deciding official has clearly articulated his/her reasons via a Douglas Factors checklist. In the Lewis case, Ros Marable was ordered by Dan Castellon to go ahead and draft the removal proposal letter, even though she had received no Douglas Factors. She asked for them repeatedly, in April through June 2008, but Andy Richards never produced them. The Douglas Factors were eventually produced by Mark DePlasco (who had no direct knowledge of the Lewis case) and emailed to Ros Marable on 10/6/08. He had to immediately rewrite the last Douglas Factor, where his first draft improperly declared that the removal was necessary because "...Mr. Lewis was asked to consider a medical retirement but he refused." None of these records were included in the AWP Counsel responses to F12-6826. [AWP Counsel needs to produce all copies, so as to confirm which critical records were received or not received, during assembly of the MSPB Discovery package.]
10/30/08	As soon as the removal decision letter was mailed (using three different delivery methods), Jason Ralph issued an email warning various facilities to be on the watch for a retaliation by Lewis, noting the possibility of strange visitors in the parking lot. Jason Ralph followed this with another email, including a small copy and a large copy of Lewis' FAA badge photo. Copies of these were concealed during MSPB Discovery. [AWP Counsel needs to produce all copies, so as to confirm which copies records were received or not received at AWP-7, during assembly of the MSPB Discovery package.]
12/4/08	[see pg.354 of the F12-6826 response portion dated 10/12/12] Unsigned letter from Andy Richards to Lewis, with a 20-digit Certified Mail Number. Context shows that this letter was drafted by Ros Marable. [AWP Counsel needs to produce copies so as to confirm their receipt or non-receipt of this document from AWP-16, during assembly of the MSPB Discovery package.]
12/20/08	Emails between Don Bobert, Naomi Tsuda. [AWP-7 made numerous redactions, as rcvd 2-16-13]
1/9/09	Emails between Don Bobertz, Mark DePlasco, Patricia Hardy, Darryl Knox, Ros Marable, Bill Marks, Gwen Marshall, Jason Ralph, Andy Richards, James Swanson, Naomi Tsuda. Tsuda informs the others that a hearing date has been set and she needs to hear back with availability confirmations. Tsuda exchanges emails with Marshall regarding Gwen's role at the hearing. Tsuda then forwards the string to Bobertz. [Roughly 12-15 words redacted by AWP-7, as rcvd 2-16-13]
1/12/09	Emails between Dr. Stephen Goodman, Dr. Steven Schwendeman, Naomi Tsuda. Included releasable content related to availability for depositions. [Roughly two lines of redactions by AWP-7, as rcvd 2-16-13]

Jan-09	An extensive series of emails, faxes and other records showing AWP Counsel's communications with others. One topic was the excessively delayed FOIA Appeal records, which Melanie Yohe (at ARC-40, managing FOIA at FAA HQ) was requesting from AWP Counsel. Naomi Tsuda eventually submitted a written memo, with numerous false details, to smooth over the problem. The records remained concealed, and Lewis obtained some of them in later FOIA requests ... three years later, in 2012. [AWP Counsel needs to produce all copies, so as to reveal concealments and/or misrepresentations by AWP Counsel, which had a material and adverse impact, preventing a fair outcome of the Lewis MSPB Appeal.]
Jan-09 To Feb-09	An extensive series of emails, faxes and other records showing AWP Counsel's communications with others. One area of intense conversation was the collection of records for MSPB Discovery. [AWP Counsel needs to produce all copies, so as to confirm which critical records were received or not received, during assembly of the MSPB Discovery package.]
Jan-09 To Mar-09	A series of emails, faxes and other records showing AWP Counsel's communications with others. Included were intensive email communications to coordinate attendance at and preparation for Depositions and the MSPB Hearing, scheduled for 3/4/09. Records are missing in the responses to F12-6826, as produced by the AWP Counsel. [AWP Counsel needs to produce all copies, so as to confirm which critical records were received or not received, during assembly of the MSPB Discovery package.]
2/3/09 to 2/8/09	Emails between Don Bobertz, Jason Ralph, Naomi Tsuda, Linda Williams. Tsuda exchanges emails with Ralph to clarify his availability. Tsuda then continues with a series of emails, trying to establish a deposition time for Ralph. Tsuda's last email notes Lewis will not be attending the depositions, and she says she will take the issue up with the judge (NOTE: it is not clear what the 'issue' is). [Roughly two lines redacted by AWP-7, as rcvd 2-16-13]
2/15/09 to 2/16/09	Emails between Don Bobertz, Naomi Tsuda. [Roughly eight lines of redactions by AWP-7, as rcvd 2-16-13]
2/24/09	Emails between Don Bobertz, Monique France, Aletha Hicks-Moffatt, Shawna Richard, Glenn Rotella, Naomi Tsuda. Rotella had informed Tsuda that a ULP settlement he had negotiated a year earlier had been breached by Agency. Tsuda replies with an email that specifies areas needing to be cleaned up or confirmed already repaired. Tsuda then informs France of the likelihood Lewis needs to be awarded a large amount of Admin Leave due to the imposed LWOP. France emails back, then Tsuda emails Rotella. [Two redactions by AWP-7, as rcvd 2-16-13]
2/24/09	Emails between James Austin, Don Bobertz, Mark DePlasco, Monique France, Susan Haggerty, Patricia Hardy, Don Kirby, Andy Richards, Glenn Rotella, Naomi Tsuda. Tsuda notifies the group of her belief she has a good and acceptable settlement offer. She also slanders Lewis by describing her efforts to secure metal detectors and armed US Marshals (despite the fact Lewis had no violent or criminal history). Andy Richards offers a quick 'thank you'. Tsuda replies to Andy, discussing the 'staleness' problem of FAA's case. [Two large redactions by AWP-7, as rcvd 2-16-13]
3/24/09	Emails between Don Bobertz, Monique France, Aletha Hicks-Moffatt, Naomi Tsuda. Lewis was making inquiries, to establish what records were hidden from AWP-7, and what records were provided to AWP-7 but then concealed by counsel from MSPB. Tsuda was offering non-legal advice to FAA officials, that they had no obligation to respond to any of Lewis' questions, and it was OK to just ignore him. [AWP-7 redacted most of the

	emails from this series, as rcvd 2-16-13]
4/15/09	Emails between Dick Fossier, Monique France, Aletha Hicks-Moffatt, Gwen Marshall, Andy Richards, Naomi Tsuda. Tsuda informs that Lewis has filed a PFR, and is claiming Tsuda withheld information. That, he is trying to set aside the so-called settlement and "have his day in court." [Roughly four lines of redactions by AWP-7, as rcvd 2-16-13. Also, document quality was incredibly poor; roughly 4pt text, grainy and very light gray, in spots unreadable]
4/29/09	Emails between Don Bobertz, Naomi Tsuda. [Extensively redacted by AWP-7, as rcvd 2-16-13]
Apr-09 thru Jul-09	Due to the extensive concealment of key exculpatory records by AWP Counsel, both Lewis and MSPB were obstructed from completing a diligent review of factual case details, as was needed to produce a fair decision. Lewis visited the MSPB offices in April 2009 and discovered evidence of how extensive this concealment was. He then filed a Petition for Review (PFR). AWP Counsel then expended considerable effort in opposition to the PFR. Many known emails and/or other records were NOT provided in the F12-6826 response. For example, there are no emails detailing how AWP Counsel came to make the false statement in the 5/4/09 'Reply to the PFR', in which Don Bobertz acknowledges that agency had considered lesser penalties but that "...Appellant's subsequent acts rendered this moot, as the final decision was made to terminate him." ¹ Nor does the AWP Counsel response to F12-6826 include Naomi Tsuda's 5/26/09 email to Lewis (cc'd to Andy Richards and Don Bobertz) and other emails that indisputably belonged in the Lewis Case File. [AWP Counsel needs to produce all copies, including all emails such as those to/from Lewis, so as to fully reveal 'how government served or failed to serve the Public', in the handling of this MSPB PFR.]

Copies of selected records/evidence are viewable at the website aiREFORM.com, (see 'A Case Study' on the menu bar). See especially:

1. "The Key Records Improperly Concealed by FAA officials...."
2. "The Lewis FAA Whistleblower Retaliation Case"
3. "A Who's Who List"

See also the collection of documents related to this FOIA request, on the "[aiR-FOIA](#)" page; FOIA records are found here, sequenced by FOIA number.

¹ The difficulty of this assertion, for FAA and AWP Counsel, is that Lewis was locked out on 2/16/07 and never invited to return to work. Thus, Lewis' only 'subsequent act' was his very candid and truthful testimony for the ROI on 3/23/07, which preceded by months the written admonishment that was issued, and preceded by more than a year the letter proposing his removal. The only other 'subsequent act' by Lewis was his filing of a grievance on 5/1/08, which the full record shows immediately precipitated the letter proposing to fire him. The bottom line: AWP Counsel continues to conceal records emphatically showing that Lewis was retaliated against for exercising his grievance right. This is clearly a Prohibited Personnel Practice which AWP Counsel continues to try to hide by not producing responsive records.