

Jeffrey N. Lewis  
28242 S. Salo Road  
Mulino, OR 97042  
tel. (971) 295-7669

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
Portland Division**

JEFFREY N. LEWIS, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
FEDERAL AVIATION ) **Civil Action # 3:13-cv-00992-HZ**  
ADMINISTRATION et al, )  
 )  
Defendant )  
 )  
 ) **DECLARATION OF**  
 ) **JEFFREY N. LEWIS**  
 )

I, Jeffrey N. Lewis, declare and state the following under penalty of perjury pursuant to 28 U.S.C. 1746:

**Background**

1. I served as an air traffic controller, employed by the Federal Aviation Administration (“FAA”), from December 1986 until May 2009.
2. During my career, I repeatedly spoke up about safety failures, timecard fraud issues, and other workplace problems that were not being corrected by management. I was a Whistleblower and endured retaliation for my ethics during all but the first couple year of my FAA career.
3. The final retaliatory action was to fire me on November 6, 2008. I had been locked out from my workplace in Concord, CA on February 16, 2007, and remained mostly in a paid status to stay home and wait, and wonder what FAA was doing and why. This mostly-

paid status continued for 21-months before the firing was executed. Furthermore, the firing was not even formally proposed until July 2008, a full seventeen months after I had been inexplicably locked out by Defendant FAA.

4. My basic right to have Due Process and protect my good reputation depended on my ability to collect records from FAA. Beginning in July 2007, five months after the lockout began, I started what became a series of Freedom of Information Act (“FOIA”) requests, seeking FAA records related to my very unusual work situation.
5. During this same time, I became familiar with FOIA’s history, legislation, statute, FAA’s FOIA regulations, and the FAA document implementing the FOIA codes: FAA Order 1270.1. This knowledge was accrued over the course of the many years I spent carefully collecting records via FOIA. Much of my energy went to dissecting Defendant FAA's actions and creating effective workarounds to compel production in accordance with 5 USC 552.
6. My records show that I filed three FOIA requests in Fiscal Year 2007, five FOIA requests in FY 2008, eight FOIA requests in FY 2009, thirty-eight FOIA requests in FY 2010, seventy-three FOIA requests in FY 2011, and twenty-seven FOIA requests in FY 2012. I have indexed and cataloged all FOIA responses, which total well over 10,000 pages.
7. The vast majority of my FOIA requests sought emails, and the attachments sent within those emails. In nearly all cases, Defendant FAA would delay responses and would excessively redact, often citing FOIA Exemptions that were not even applicable to the specific record.
8. Despite these resistances by some in FAA, I persisted and eventually began to receive FAA records important to my case. In the Summer of 2009, I received the first in a long

series of FOIA Response records indicating numerous malfeasances by FAA officials, in carrying out my retaliatory removal. In the process, I was also coming to realize that the FOIA Laws were potentially my best tool for achieving real Due Process and correcting FAA's improper action against me.

9. Eventually, I uncovered records showing that, in early May 2008, the plan was to suspend me then reassign me to another workplace, but this plan was abruptly upgraded to a removal proposal, immediately after I filed a grievance seeking to restore \$40,000 in lost pay.<sup>1</sup>
10. I filed my first lawsuit against the FAA, **3:11-cv-01458-AC**, on December 5, 2011, seeking redress for Defendant FAA's numerous 5 USC 552 violations.
11. In September 2012, I started a website, aiREFORM.com. The goal of this website is to create real transparency for FAA matters, so as to inform the general public about FAA performances and failures, and also to nudge FAA to reform internal practices that are inefficient, unsafe, or otherwise unacceptable by the standards of a reasonable person. I have posted thousands of pages of FOIA response records at aiREFORM.com. I have also done substantial online research of incidents, such as controller errors and fatal accidents. My work potential, and my ability to inform the Public, is diminished when FAA arbitrarily impedes my right to FAA records under 5 USC 552. This has happened repeatedly, and strikes against the intent of Congress when they passed the FOIA Laws.

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<sup>1</sup> The grievance also sought production of some records and to simply put me back to work. Bear in mind, at this time, I had no idea why I had been locked out for fifteen months, mostly paid, nor was I aware that any disciplinary actions were being considered. In fact, in late April, I had received a letter from my District Manager, Andy Richards, advising that a 'return to work plan' would be discussed soon.

12. This lawsuit, 3:13-cv-00992-HZ [CR 1], was filed on June 14, 2013, and is my second lawsuit against FAA. It was also filed seeking to resolve Defendant FAA's numerous 5 USC 552 violations.
13. Shortly after filing 3:13-cv-00992-HZ [CR 1], on August 8, 2013, I filed 'Plaintiff's Memorandum, Presenting Details of his Complaint' [CR 7]. It includes a 58-page memo and 34 Exhibits. I believe that this document provides an accurate, thorough, and relatively concise analysis of the details for 3:13-cv-00992-HZ [CR 1].
14. In response to my filings, Defendant FAA did very little during the first months. In fact, the first responsive document provided by Defendant FAA was received on November 15, 2013, and was a copy of 'Defendant's Answer' [CR 13]. At this time, Defendant FAA had not yet produced the initial FOIA Response for a Request made 22-months earlier, and yet. Within the document, Defendant FAA did admit that "...FAA has not always timely responded..." to my FOIA Appeals (per Claim II) and my FOIA Requests (per Claim III). However, Defendant FAA denied charges that they continue to excessively and improperly redact disclosable records content (Claim I).
15. On November 21, 2013, I received a delayed FOIA Response to FOIA 2012-2082. The 2-page cover letter and 29-pages of attachments was undated and signed by Clay Foushee, AAE-1, head of FAA's Audit & Evaluation office in Washington, DC. Defendant FAA took 23-months to respond to this FOIA Request.
16. On December 19, 2013, I received Defendant FAA's package of Discovery records. It included 2,114 pages. While the page count was exceptionally high, there were only a few new records, roughly 10 percent of the large collection. The vast majority of these 2,114 pages were simply copies of the FOIA Requests, FOIA Responses, FOIA

Remands, FOIA Appeals, and FOIA Appeal Responses. For all but one page of these Discovery records, the excessive redactions were continued. FAA was quite aware that I already had these records.

17. There were 210-pages of new records, as follows:

- for FOIA 2011-7535: 17-pages of new records
- for FOIA 2011-8134: 2-pages of new records
- for FOIA 2012-2082: 80-pages of new records, and 1-page less redacted
- for FOIA 2012-6573: 2-pages of new records
- and, for FOIA 2012-6826: 109-pages of new records

18. Defendant FAA produced additional Discovery records on April 15, 2014, when I met and conferred with their Counsel. Ten pages of records were provided, though none of these were new records.

19. Defendant FAA produced additional Discovery records on August 8, 2014, when I received an email from their Counsel. Seventy pages of records were provided, and some were new records. One particular group of records, from FOIA 2011-2662, included 9-pages of Administrator Hotline reports and response letters for incidents in the Fall of 2006. These records should have been released, as their current production shows they were in fact releasable. They should have been produced in early 2011, yet were withheld for three and a half additional years.

20. Extensive efforts to negotiate for the release of withheld records have failed. Despite the limited number of documents released in April and in August, there are still hundreds of pages that remain excessively and improperly redacted. There are also roughly a few dozen pages of documents that Defendant FAA stubbornly refuses to produce.

### Claim I

21. Defendant FAA has excessively and improperly redacted disclosable content from numerous FAA records, in violation of 5 USC 552. Defendant FAA has proven their practice as well as their indifference to reform and FOIA compliance. Therefore, it is advisable that the Court act firmly and order production of these records.

### Claim II

22. FAA clearly admitted in 'Defendant's Answer' [CR 13] that they have "*...not always timely responded during the appeal process...*" Therefore, this claim is not disputed by Defendant FAA.

### Claim III

23. FAA clearly admitted in 'Defendant's Answer' [CR 13] that they have "*...not always timely responded to Plaintiff's FOIA Requests within 20 days...*" Therefore, this claim is not disputed by Defendant FAA.

### Conclusion

24. All of these records need to be produced without further delay.

25. At a minimum, records such as the ATSAP filing(s) sought under FOIA 2012-2082 and the ROI sought under FOIA 2012-7031, need to be reviewed in camera. Ideally, the Court will define which portions are segregable to help facilitate an appropriate and maximum disclosure in accordance with FOIA Laws.

26. Additionally, at a minimum, Defendant FAA needs to produce Vaughn Indices for each of the many documents they continue to fully withhold.
27. Alternatively, perhaps we can make substantial progress if it can be negotiated that Defendant's Counsel will meet and allow me to go sequentially through the unredacted copies in his possession to see (but not copy, and not even take notes) the redacted content. During this quick review, we can rapidly list all pages that warrant further negotiation, while possibly removing numerous pages from the list of disputed records.
28. I believe it might be quite helpful for both parties to discuss this matter with the Judge, and to include telephonically in this discussion participation by the actual FAA attorney handling this civil action at FAA Headquarters. In the last eight months of Discovery proceedings, it has frequently appeared that, while the assigned Defense Counsel is earnest and diligent in his efforts, he is not finding the appropriate and necessary level of cooperation from his client at FAA Headquarters.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11<sup>th</sup> day of August 2014.



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Jeffrey N. Lewis  
Plaintiff, *pro se*

## CERTIFICATE OF SERVICE


I certify that, for Civil case number 3:13-cv-00992-HZ, a true copy of **Plaintiff's Motion for Summary Judgment**, and a copy of **Declaration of Jeffrey N. Lewis**, including the Exhibits,<sup>1</sup> was hand-delivered this day to the U.S. District Court in Portland, OR, and to the following:

Counsel representing FAA:

Mr. Kevin Danielson  
Assistant U.S. Attorney, District of Oregon  
1000 SW Third Ave., Suite 600  
Portland, OR 97204-2902

8-11-2014

\_\_\_\_\_  
(date)



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Jeffrey N. Lewis

<sup>1</sup> The total page-count is 53: 3-pg MSJ, 7-pg Declaration, & 43-pages of Exhibits.