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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

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JEFFREY N. LEWIS,

Plaintiff

v.

FEDERAL AVIATION
ADMINISTRATION et al,

Defendant

Civil Action # 3:13-cv-00992-HZ

PLAINTIFF'S MOTION

FOR EXTENSION

OF RESPONSE DEADLINE

Certificate of Compliance with LR 7-1

Pursuant to Local Rule 7-1, Plaintiff has conferred with Defendant FAA Counsel, Kevin Danielson, who expressed that he does not object to this extension of time.

Background

Plaintiff Jeffrey Lewis, a pro se litigant, filed this civil action nearly fifteen months ago. The civil action sought the support of the Court to compel compliance by Defendant Federal Aviation Administration ("FAA") in their handling of numerous Freedom of Information Act ("FOIA") responses. Plaintiff, in his initial complaint and in subsequent filings, has provided numerous details showing a long series of FAA failures to meet important records production deadlines, as well as FAA failures to produce minimally redacted records that ensure maximum release of disclosable agency information. Defendant FAA's responses have generally entailed lengthy time delays while eventually producing daunting thousands of pages of undisputed

records.¹ In subsequent minor Discovery productions, Defendant FAA has released copies of a few dozen records with some redactions now revealed, and some fully withheld FAA records now fully disclosed. In the course of Defendant FAA's responses, statements have been made that concede many of the FAA failures that Plaintiff had presented in his initial Complaint.²

Nearly fifty years ago, our Congress passed the initial FOIA Laws after extensive deliberations on the necessity of transparency. Long before that, in December 1913, a 57-year-old lawyer named Louis Dembitz Brandeis penned an article in *Harper's* that included this phrase:

"Sunlight is said to be the best of disinfectants."

The larger quote went further and is quite applicable to our present culture, as well as to this particular civil action:

"...Publicity is justly commended as a remedy for social and industrial diseases.

Sunlight is said to be the best of disinfectants;

electric light the most efficient policeman.

And publicity has already played an important part in the struggle against the Money Trust...."

Three years later, Mr. Brandeis was appointed to the U.S. Supreme Court.

Plaintiff is a 55-year-old citizen who spent 22-years as a civil servant air traffic controller, employed by Defendant FAA. During his air traffic control career, Plaintiff repeatedly spoke up about issues of internal fraud and concealed safety hazards; that is to say, Plaintiff was a 'Whistleblower'. Plaintiff had spoken up about two particularly serious incidents, both of which were covered up by Defendant FAA: a 1989 TV set in the Troutdale, OR tower cab that caused a

¹ The initial Discovery Response, provided to Plaintiff on December 19, 2013 (six months after the filing), measured 2,114 pages. Plaintiff's complaint and subsequent '[Plaintiff's Memo, Presenting Details of his Complaint \(CR-7\)](#)', specified hundreds of FAA records that were disputed.

² In particular, Defendant FAA has conceded that there have many failures to comply with the FOIA response and FOIA Appeal response timelines. Requirements to produce a response within a twenty- or thirty-day deadline have been repeatedly failed; instead, Defendant FAA has delayed for multiple years on the most egregious failures.

near-midair collision, and a 1999 actual collision between a helicopter and a Cessna, at the Reid-Hillview airport in San Jose, CA. It is not insignificant, too, that in the few month before Plaintiff was locked out from his last FAA workplace, fifty people died in an accident at Lexington, KY, that would not have happened if the controller had simply looked out the window during the minute after he issued a takeoff clearance.³ Defendant FAA eventually fired Plaintiff in November 2008, then withheld FAA records to compel a 'forced voluntary retirement' at earliest eligibility, when Plaintiff turned age fifty in 2009. Plaintiff subsequently engaged in a series of FOIA requests and found that, while Defendant FAA was seemingly indifferent to preservation of employee Due Process rights, they felt some pressure to comply (or at least try to comply) with the FOIA laws. Over the course of a few years, and through careful cataloging of FOIA records he had received from Defendant FAA, Plaintiff submitted more precisely targeted FOIA requests. Plaintiff was eventually able to slowly accumulate FAA records showing disparate and damaging treatment by key FAA officials. The ultimate result of this disparate treatment was Plaintiff's eventual firing without Due Process, and then the FAA-manipulated outcome of Plaintiff's Appeal to the Merit Systems Protection Board.

In the years since, Plaintiff created a website, **Aviation Impact Reform** [**aiReform.com**]. The purpose of this website is to empower U.S. citizens who are concerned about aviation safety, as well as those who are concerned about systemic failures that commonly undermine the efficiency and trustworthiness of aging Federal agencies, such as the FAA.

³ In the months following this tragic accident, Plaintiff spoke with numerous coworkers, telling them of his experiences where distraction by a television caused a near-midair at his first facility, in Troutdale, OR. Plaintiff shared with these numerous FAA employees his concern that the controller, working alone in the Lexington tower cab, quite possibly was distracted from his safety duties, using a laptop computer and/or watching a DVD movie, a practice known to exist in numerous air traffic control facilities nationwide. Subsequently in 2011, there was extensive media coverage of a hot mic incident at the center in Cleveland, OH, where an air traffic controller's shoe accidentally activated a foot switch and transmitted many minutes of a movie soundtrack, blocking his frequency.

Plaintiff has applied his career-acquired insight and aviation expertise, and has developed his skills at gathering online reference content,⁴ to provide news articles that inform the Public.

A particular emphasis for Plaintiff's non-commercial website has been placed on aviation accidents, and on errors by air traffic controllers. In recent months, tracking software shows that Plaintiff has averaged between 8,000 and 9,000 monthly website visits. Plaintiff's service to the U.S. Public, by putting extensive effort into this ongoing website project, has evidently struck a chord with many citizens who are either curious about FAA and air traffic control, or are concerned about the need for FAA transparency and accountability.

One area of particular concern to Plaintiff is the safety reporting program known as 'ATSAP'. Defendant FAA initiated this program at about the same time that Plaintiff was forced into a premature retirement. This program has effectively created a black hole for aviation safety information. In one particular stark example, Defendant FAA continues to refuse to release even a sanitized version of an ATSAP report that would confirm a controller error that caused a near-collision between two small planes at the Camarillo, CA airport on July 25, 2010. If the court will allow this short time extension, Plaintiff will produce document to further explain this 'black hole effect'.

In the interest of maximized aviation safety, and within the spirit articulated both by Supreme Court Justice Brandeis and members of the U.S. Congress, there is an indisputable need for FAA to quit hiding the facts and put these responsive FOIA documents out into the sunlight. Today, perhaps more than ever in the history of our nation, we need full transparency.

⁴ The details of aviation incidents are more effectively shared with non-aviation citizens when carefully compiled by someone who has inside knowledge of aviation and air traffic control. Plaintiff has evolved a reporting process that uses satellite views, aviation charts, weather reports, pilot safety reports, news articles and many other resources.

Motion

Plaintiff Jeffrey Lewis moves this court for a one week extension of time for the filing of Plaintiff's response to Defendant FAA's Motion for Summary Judgment.

1. For unanticipated personal reasons, Plaintiff has been physically unable to work on completing his response in the past week.
2. Plaintiff anticipates producing a concise response that will propose narrowing scope of this civil action to fewer than five disputed FOIA records.
3. Plaintiff anticipates production of a concise response that will clearly articulate the disputed records, and thus facilitate an efficient resolution of this matter.
4. Plaintiff notes there is a need for at least an in camera review of key disputed records.
5. This request is made in good faith and not for purposes of delay.

Conclusion

Plaintiff Jeffrey Lewis requests that the deadline to file his reply to Defendant FAA's Motion for Summary Judgment be extended to September 10, 2014.

Respectfully submitted on this 2nd day of September 2014.



Jeffrey N. Lewis
Plaintiff, *pro se*