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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

JEFFREY N. LEWIS, Plaintiff v. FEDERAL AVIATION ADMINISTRATION et al, Defendant	**Civil Action # 3:13-cv-00992-HZ** **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Jeffrey N. Lewis, *pro se*, submits this final response to **Defendant FAA's Motion for Summary Judgment** Dkt. 27.

Introduction

Plaintiff Jeffrey N. Lewis filed this Civil Action in June 2013, alleging a lengthy history of failures by Defendant FAA. Dkt. 1. Plaintiff charged that Defendant FAA has been violating 5 USC § 552, and presented three claims:

1. that Defendant FAA excessively and improperly applied FOIA exemptions;

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2. that Defendant FAA repeatedly failed to comply with FOIA Appeal response timelines; and
3. that Defendant FAA repeatedly failed to comply with FOIA Request response timelines.

To clearly articulate the background of this Civil Action, '**Plaintiff's Memorandum Presenting Details of his Complaint**' was filed on August 8, 2013. Dkt. 7. After a lengthy delay, Defendant FAA produced a Discovery response with 2,114 pages of FAA records. Although this Discovery response appears to be impressively large, it is important to understand that it contained almost no new records.[1] Minor Discovery productions followed, revealing some previous redactions, and also providing copies of FAA records that previously had been fully withheld. The vast majority of the FAA records produced in Discovery for this Civil Action were insignificant. Defendant FAA continues to conceal most of the key records; however, two key records were produced on August 8, 2014, just ahead of the deadline for dispositive motions:

- 7-pages revealing three Administrator Hotline complaints, from Fall 2006, at the Concord, CA air traffic control facility where Plaintiff had worked.[2] These complaints were filed against a coworker at Concord with a long history of inappropriate workplace behavior. These reports should have been produced by Defendant FAA more than three years earlier, in 2011, but have been repeatedly concealed from a long series of FOIA requests.

[1] The Civil Action charged FAA with numerous non-compliances on each of fourteen different FOIA Requests. More than 90% of this stack of records was just a collection of the regular FOIA correspondence: the initial FOIA Request, the FOIA Response, the FOIA Appeal, the FOIA Remand(s), the Appeal Response, the Remand Response(s), and on and on. the 210-pages that were new are listed in **Declaration of Jeffrey N. Lewis** (8/11/2014), at paragraph 17.
[2] These are identified as pages FAA-0744-A1 thru A7.

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- a 6/14/2011 2-page email from Mark McClure to Tony Ferrante (AOV-1), providing a timely and detailed summary of the interviews he had conducted the day before, at Camarillo's FAA tower.[3] ***[see Exhibit-1]***

In the course of Defendant FAA's responses, numerous statements have been made that concede many of the FAA failures, as charged by Plaintiff in his initial Complaint.[4]

Background

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.

[3] These are identified as FAA-2153 thru FAA-2154. The most interesting aspect of this 2-page email is that it contained data that was removed, and not included in the final official investigative report (8/2/2011, signed by Dianne Bebble). .

[4] In particular, Defendant FAA has conceded that there have been 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 revealed that in their handling of Plaintiff's FOIA requests, it is their pattern and practice to delay for multiple years.

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And publicity has already played an important part in

the struggle against the Money Trust...."

Three years later, Mr. Brandeis was appointed as a U.S. Supreme Court Justice.

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'. 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 was 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 manipulated outcome of Plaintiff's Appeal to the Merit Systems Protection Board.

A few years after he began his focused FOIA requests, Plaintiff created a website, **Aviation Impact Reform [aiReform.com]**.[5] 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. Plaintiff has applied his career-acquired insight and aviation

[5] It is important to emphasize that Plaintiff's aiReform.com website is purely a Public Service project. It seeks no income or profit, but instead produces information to aid citizens in understanding the mission, duties and performance of Defendant FAA.

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expertise, and has developed his skills at gathering online reference content, 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, website 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.

The records disputed within this Civil Action were all sought by Plaintiff under 5 USC § 552. Defendant FAA continues to dispute many of these records. For all of these disputed records, Plaintiff's primary objective was either a narrow personal gain (ideally, to help compel a full and fair corrective action of his improper firing by FAA officials), or two broad Public benefits (specifically, to openly disclose FAA's FOIA records via a website, so as to aid Public understanding of FAA's performance, and so as to protect other FAA employees from experiencing similar FAA management abuses in the future). Plaintiff has worked diligently seeking releasable FAA records to show how badly Plaintiff's Due Process rights were blocked by FAA officials after they arbitrarily fired him then obstructed adjudication of his MSPB Appeal. Defendant FAA has been equally diligent in their coordinated efforts to block the release of agency records, and Defendant FAA continues to be non-compliant with 5 USC § 552.

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Argument & Authority

1. **Plaintiff disputes Defendant's position on every material fact in this case.** Summary Judgment in favor of Defendant would only be appropriate where no material facts are disputed. Therefore, Defendant's Motion for Summary Judgment should be denied.
2. **Defendant FAA's FOIA failures are evident not just by admissions in FAA pleadings, but also by numerous examples.** Many of these factual examples have been concisely presented in recent pleadings and attached exhibits, including **Plaintiff's Motion for Summary Judgment** (8/11/2014) and **Declaration of Jeffrey N. Lewis** (8/11/2014). A very few new records have been produced in the last fifteen-months, during the Discovery process. However, many other records (and inappropriate redactions) have been identified and still need to be produced by Defendant FAA.

3. **One Example of FAA Disingenuousness on FOIA Responses:**
    a) One example stands out casting doubt upon just how trustworthy Defendant FAA is on FOIA matters. The example is a 12/3/2007 email from Barry Davis to Teri Bristol.
    b) ***[Exhibit-2]*** shows five different copies, all received at different times via various FOIA responses (including the latest copies, as part of Civil Action Discovery). The first copy was received on 7/22/2010, via FOIA No. 2010-5442. The second copy was received on 10/1/2011, via FOIA No. 2011-6665. The third copy was received on 2/16/2013, via FOIA No. 2012-6826 remand. The fourth copy was received on 12/19/2013, via initial Discovery. The fifth copy was received on 4/15/2014, via supplemental Discovery.
    c) The two most recent copies were produced in the context of a FOIA civil action, but they were far more redacted than other copies. The least-redacted copy was obtained

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in October 2011. Furthermore, the pattern of redactions appears to be random and arbitrary at best. Some copies redact the facility identifiers (VNY, BUR, etc.) while others show the facility identifiers but redact lines of information. This series shows just how arbitrary FAA can be in their decisions about what to redact.

d) Lastly, please take a close look at what FAA chose to conceal from Plaintiff in this series of FOIA response records, and ponder it in the context of Plaintiff's history as a safety Whistleblower. There was a clear and repeated effort to conceal this critical piece of information from Plaintiff. In this example, Barry Davis (a Senior Advisor) was using an email to prepare Teri Bristol (Director of WSA Terminal Operations, thus the FAA official in charge of operations at all western control towers) for an important meeting scheduled with union leader Hamid Ghaffari. A key detail concealed by FAA Counsel is the fact that Plaintiff's District Manager, Andy Richards, had intended to reassign Plaintiff to a different duty location, in Santa Rosa, CA. The 12/3/2007 date of Mr. Davis' email indicates that nearly ten months ***after*** FAA officials had locked out Plaintiff and told him to stay home until further advised, and five months ***before*** FAA officials began drafting a letter proposing to fire Plaintiff, the intention was to reassign Plaintiff to a new duty location.[6] Notably, too, this record was fully withheld from Plaintiff during the Discovery phase of his MSPB Appeal in early 2009. It was provided to FAA's Regional Counsel, as indicated by it's inclusion in FOIA No. 2012-6826. But, during the MSPB Discovery, it was aggressively concealed b FAA counsel (Naomi Tsuda and Don Bobertz), who were careful to not share it with Plaintiff.

[6] Plaintiff had been locked out and remained mostly in a fully-paid status for nearly fifteen months, before FAA officials began drafting their letter proposing to fire Plaintiff.

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4. **FOIA No. 2012-2082:** Within this FOIA Civil Action, the one record that stands out as most passionately disputed would likely be the ATSAP Report for the 7/25/2010 Error at Camarillo. This key record is identified as FAA-1673-A thru FAA-17-674-A, within Defendant FAA's Vaughn Index. Dkt. 28-1, pg. 32 Defendant FAA has produced most of the records that were sought under the original FOIA Request, but they have not produced the ATSAP report. And yet, the ATSAP is indisputably the most important record. Why? Because ATSAP contains the answer to a critical question that Plaintiff and others have been investigating since August 2010:

...was there a controller error at Camarillo on 7/25/2010, as reported by controller Mike Marcotte when he was interviewed a full 11-months later?

... and ...

...was this error aggressively concealed at the local, hub, regional and even national level, as evidenced by the investigative work of controller Don Hiebert?

5. Plaintiff understands that FAA began collecting reports for the 'ATSAP' program in July 2009. This new program thus diverted reporting away from the NASA ASRS program that had been operational since 1978. Both ASRS and ATSAP offer essentially identical immunities to personnel who file reports. The only substantial change was that under ATSAP, FAA was now in control of the safety report data, and FAA elected to withhold sanitized reports from the Public. Thus, ATSAP was effectively FAA creating a 'black hole' for aviation safety reports.

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6. The final four pages of ***[Exhibit-3]*** is a copy of a Declaration submitted by FAA manager Lisbeth Mack.[7] At the time that this Declaration was created, on April 11, 2012, Ms. Mack was the top FAA official in charge of the ATSAP program. Within her April 11, 2012 Declaration, Ms. Mack states:

a) at paragraph 5, that she is *"...aware that an ATSAP report was filed by a controller regarding a July 25, 2010 incident at Camarillo ATCT...."*

b) at paragraph 6, her belief that *"...the surrounding facts and alleged witnesses of this alleged July 25, 2010 incident appear to be best described in the Air Traffic Oversight Office's August 2, 2011 Report of Investigation produced in response to Mr. Hiebert's Administrator's Hotline complaint..."*

c) at paragraph 12, that *"...Pursuant to standard practice, my understanding is that the contractor de-identified the subject ATSAP report regarding a July 25, 2010 report."*

d) and, at paragraph 13 that *"... Here, the ERC accepted the report about the July 25, 2010 event and no further action was recommended or taken."*

7. To summarize, the 4/11/2012 Declaration by Lisbeth Mack confirms that an ATSAP report was filed regarding the 7/25/2010 Camarillo incident, that it was then processed and de-identified by the contractor, and that it was then accepted by the Western ERC, who decided to take no further actions and make no recommendations.

8. The date that Ms. Mack signed her Declaration, on April 11, 2012, was more than 15-months before FAA announced a proposed new rule that ATSAP reports would become exempt from FOIA disclosure. This proposed new rule was formally initiated by FAA by filing an NPRM (Notice of Proposed Rulemaking) in the **Federal Register** on July 19, 2013. The designated

[7] Ms. Mack's declared official title was Group Manager, Safety Programs, Office of Safety, at FAA's Air Traffic Organization (ATO), based at FAA Headquarters in Washington, DC. At paragraph 2 of her Declaration, Ms. Mack notes she has served in high-level ATSAP management roles since April 2009.

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contact person for this proposed rule change was listed as: 'Lisbeth Mack—Group Manager, ATO Safety Programs, Federal Aviation Administration, 490 L'Enfant Plaza, Suite 7200, Washington DC 20024 or via email at lisbeth.mack@faa.gov or phone at 202-385-4757'.

9. Responses to the NPRM were due one month later, on August 19, 2013. Plaintiff submitted a detailed comment, which included a copy of Ms. Mack's 4/11/2012 Declaration. ***[see Exhibit-3]*** Another citizen submitted an 'anonymous' comment, also expressing strong opposition to the FAA's proposed new rule. ***[see Exhibit-4]***
10. So in summary, it was three years ***AFTER*** the 7/25/2010 Camarillo ATSAP report was filed when FAA made a formal proposal to implement a new rule, and the intent of this new rule was to protect ATSAP records from FOIA disclosure. The new rule did not go into effect until May 15, 2014. Clearly, Defendant FAA's formal proposal in July 2013 would not have been necessary if there was not a to impose a 'new rule'. Therefore, prior to May 2014, there was ***NO RULE*** denying the right of a U.S. citizen from obtaining copies of the 7/25/2010 Camarillo ATSAP report, in accordance with 5 USC § 552.
11. An additional problem exists with Defendant FAA's position, as described at paragraph 6 of the 4/11/2012 Declaration by Lisbeth Mack, where she says it is her belief that *"...the surrounding facts and alleged witnesses of this alleged July 25, 2010 incident appear to be best described in the Air Traffic Oversight Office's August 2, 2011 Report of Investigation..."* ***[see Exhibit-3]*** The AOV Report she cites reaches no meaningful conclusion at all, but the concealed ATSAP Report contains a real and timely incident description. As the top manager for FAA's ATSAP program, Ms. Mack was clearly aware that the true 'best' description would be in the ATSAP report filed by one of the controllers involved. This ASTAP report had to contain data of sufficient detail to define the incident, or the report would have been

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rejected. Astonishingly, within her sworn Declaration, Ms. Mack looks past this evidence as if it does not exist. As if she feels the ATSAP report has already been filed away and is no longer retrievable from FAA's ATSAP 'black hole' for safety data.

12. Lastly, the repeated assertion by Defendant FAA that release of sanitized ATSAP reports would chill voluntarily participation is clearly absurd. The much older and much more successful predecessor reporting system, NASA's ASRS, has been incredibly successful yet has always added sanitized reports to its enormous and extremely valuable online database.

13. <u>The Concealed Midair Collision of 5/9/1999</u>

a) Plaintiff's concern about FAA officials concealing errors has a history that goes back to 1999. As it happens, Mr. Hiebert and Mr. Lewis were coworkers for two years, in the late 1990's.

b) In late 1997, Plaintiff was working in Broomfield, CO when he was contacted by a controller in San Jose, CA who wanted to trade duty locations. Plaintiff was very interested in the swap proposal as his family remained in the vicinity of Portland, OR, and airline commutes from the Bay Area were far more affordable than from the Denver area.[8] The swap was arranged and in February 1998 Plaintiff began working at the Reid-Hillview Airport, a busy general aviation field in the eastern part of San Jose.

[8] Plaintiff had been forced to accept a relocation to the Denver area in February 1996, or lose his FAA job. This was in apparent retaliation for Plaintiff's speaking up in 1989, when a coworker watching the NCAA basketball tournament on a TV in the tower cab resulted in a near-midair collision. The TV set was actually installed into a cabinet in the tower cab, with an internal power and antenna feed. Just two years into his FAA career, Plaintiff had also spoken up about widespread substantial timecard fraud practices, where controllers would routinely earn pay while being absent for two-hours of their workshift.

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c) One of Plaintiff's new coworkers was Don Hiebert. Mr. Hiebert served as an on-the-job-training (OJT) instructor for Plaintiff. After Plaintiff became fully certified, he and Mr. Hiebert worked together as controllers, and also took on many additional duties related to aviation education, facility safety, and other matters. In the course of their two years working together, Mr. Heibert and Mr. Lewis both also experienced the concealment of an actual midair collision by FAA managers.

d) The midair collision occurred on May 9, 1999, when two aircraft collided less than a mile from the airport. The collision happened on a Sunday morning, minutes before 10:00AM. The facility Supervisor, Roberto Aranda, was working a helicopter doing closed pattern work to a grass area at the base of the tower, popularly known as the 'haypatch'. The helicopter had been cleared for takeoff and was told about a Cessna preparing to depart on the runway adjacent to the haypatch. The helicopter could not see anything approaching from behind and below. When Mr. Aranda cleared the Cessna to take off, he made no traffic call; thus, the Cessna pilot was not aware that he needed to see and avoid the helicopter ahead and above. The Cessna took off and climbed out. This aircraft was typical of most Cessna models, in that it had a high wing on top of the fuselage, a design that prevents pilots from seeing if they have traffic directly above. The Cessna continued to climb, unaware that they were about to collide with a helicopter. At the last second, the flight instructor sitting in the Cessna spotted the helicopter and forced the controls downward to minimize the impact. A collision did occur, and it was strong enough to bend back the last 1- or 2-inches of the propeller tips when they struck a metal skid at the bottom of the

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helicopter. At least one of the pilots immediately reported the collision on frequency. Both pilots were able to return and both made uneventful landings at the airport.

e) When serious safety incidents such as midair collisions happen, there are strict requirements for documentation and reporting to other entities. In this case, NTSB should have been notified, so that they could conduct an independent investigation. No NTSB notification was made. The only notifications made were to the facility manager, Paul Pagel, and to the local Flight Standards District Office (FSDO). Mr. Pagel came to the facility on a Sunday afternoon, to discuss the details with Mr. Aranda. Hours later, FSDO telephoned the tower to report they had found damage on both aircraft. In the hours after the collision, the Daily Facility Operations log kept by Mr. Aranda included no entries reflecting what had been reported to the tower.

f) On the day of this collision, Mr. Heibert was working a mid-day shift that nominally began at 10:00AM, and Plaintiff was working a closing shift that nominally began at 2:00PM. Both Mr. Hiebert and Mr. Lewis were in charge of the tower operation during most of the afternoon and evening. As such, they both had clear responsibilities to be aware of the progress on the investigation and documentation for the midair collision. They both could see that the facility manager (Mr. Pagel) and supervisor (Mr. Aranda) were sweeping the details of this near-disastrous controller error under the rug.

g) In the weeks that followed, both Mr. Hiebert and Mr. Lewis asked questions and expressed concerns to management, trying to ensure the incident would be fully and properly investigated. They were finding a strong resistance by FAA management to look closely at what had happened. Both Mr. Hiebert and Mr. Lewis feared possible

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retaliation if they pressed too hard. No further information emerged and the story was all but forgotten by July, but then a newspaper article appeared in January 2000. Ed Pope at the San Jose Mercury News broke the story on January 24, 2000, and it noted a report was created but FAA would not identify the author of the report. ***[see Exhibit-5]***

h) Today, an analysis of the online NTSB aviation accident database shows that NTSB investigations are routinely made for midair collisions, including those that occurred around 1999. Yet, there is no NTSB database record for the 5/9/1999 Reid-Hillview midair collision. FAA managers knowingly failed to notify NTSB.

14. **FOIA No. 2012-7031:**

a) Probably the second most disputed record within this FOIA Civil Action is the **Report of Investigation** (ROI) for the union official at the SeaTac TRACON, accused of marking a swastika on a Read & Initial binder, and making hostile 'Hitler' references toward an FAA manager. These incidents produced an Accountability Board (AB) case.

b) Plaintiff's FOIA Request sought records that were of critical value to establish the extent of disparate treatment against Plaintiff, in the handling of his Accountability Board case. Both Accountability Board cases happened in early 2007.

c) The ROI for Plaintiff's AB case created in late March 2007, and Plaintiff eventually received a copy. This roughly 90-page ROI was used 20-months later as the sole document justifying Plaintiff's firing. Both ROI's and both AB cases - for Plaintiff, and for the subject of the disputed FOIA No. 2012-7031 ROI -- appear to be quite similar. Both ROI's were formally requested by Teri Bristol in early 2007; both

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Accountability Board cases charged hostile or inappropriate workplace behavior. Reviewing the contents of his own ROI, Plaintiff can plainly see that much of the disputed ROI for FOIA No. 2012-7031 is in fact easily releasable, with the application of only a few spot redactions. As an outline, the Disputed ROI will include the following releasable content: Dkt. 28-1, pg. 30-31

- an Investigative Review Record.[9]
- the correspondence by an FAA Security official, forwarding the completed ROI for review by selected FAA officials.[10]
- a Form 1600-32.[11]
- Citations.[12]
- Summary of Findings.[13]
- 'Facts' pages.[14]
- Index of Exhibits.[15]

d) As for the actual Exhibits within the ROI, each should be minimally redacted and released. For example, there may be a photograph or other copy showing the swastika graffiti on the Read & Initial binder. There should be a copy of the internal management investigation that preceded solicitation of a formal Security

[9] This will identify FAA officials who, in an official work capacity, borrowed an ROI copy for review. This page contains no personal information.
[10] This likely is just a Memo with an FAA letterhead. This page contains no personal information.
[11] This record lays out the allegations and also identifies the investigating official. The name of the subject being investigated needs to be redacted in the top left corner, and within the main text body, but all other contents is fully releasable as it relates to facts forming the basis for initiating an investigation and employees functioning in a non-personal and official duty capacity.
[12] boilerplate reference to FAA conduct standards, etc. Fully releasable, with no personal content.
[13] Fully releasable after Subject name and witness names are spot-redacted. All other names, identifying employees functioning in a non-personal and official duty capacity, are full releasable.
[14] Fully releasable after Subject name and witness names are spot-redacted. All other names, identifying employees functioning in a non-personal and official duty capacity, are full releasable.
[15] Fully releasable after Subject name and witness names are spot-redacted. All other names, identifying employees functioning in a non-personal and official duty capacity, are full releasable.

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investigation. There may be copies of memos from management to the Subject of the ROI, advising that he was to be investigated, and for what reasons. All of these (and other FAA records) are releasable, and need to be disclosed.

e) The key differences between the SeaTac TRACON case and Plaintiff's AB case center on the fact that the SeaTac TRACON case charged a NATCA (union) representative and produced hard evidence (a binder with graffiti) as well as multiple witnesses, while Plaintiff's AB case had no hard evidence and involved no multiple witnesses.[16], except for the one minor comment Plaintiff has always admitted to.

f) Another set of releasable records that Defendant FAA continues to fail to provide in response to FOIA No. 2012-7031 are the letters proposing and implementing disciplinary action. These records include excessive redactions at pages FAA-1552 through FAA-1560. Inexplicably, FAA has repeatedly declared that portions are 'non-responsive'. Dkt. 28-1, pg. 30 This is clearly an error by Defendant FAA. A quick review of the original FOIA Request shows the documents were requested, and no reference was made to limited portions of these documents.

g) For all of these disputed records, responsive to FOIA No. 2012-7031, the Public has a clear interest in seeing evidence that shows FAA has been disparate in the disciplining of air traffic controllers. For decades, FAA has reported to the Public that the controller workforce is fairly and justly managed, thus not distracted from the conduct of their important safety duties. If any reasonable and responsible citizen became aware that this was false, that there are in fact examples of FAA acting arbitrarily to create a hostile work environment for the controller workforce, there

[16] The only 'multiple witness' element of the charges against Plaintiff was the claim he had quoted a song-lyric, non-disparagingly using the 'n-word'; Plaintiff was one of the witnesses, as he always openly admitted to this one, minor improper statement.

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would be a high probability that newly informed citizens would be disturbed by what they learned, and demand reform at FAA.

h) In this case, and particularly for the records FAA continues to conceal under FOIA No. 2012-7031, the Public interest in seeing released copies of ROI records clearly far outweighs the minimal privacy interest of the controller and union official involved. Frankly, the 'cat was out of the bag' on that union official in early 2007,[17] when FAA initiated the ROI in plain, as immediately witnessed by the dozens of his SeaTac TRACON coworkers. These things do not happen in a vacuum. And, frankly, everyone knows that FAA ROI contents are often entirely lacking in merit, often nothing more than a punitive administrative witch-hunt.

Conclusion

In the interest of maximized aviation safety, and within the spirit articulated by Supreme Court Justice Brandeis and by members of the U.S. Congress,[18] there is an indisputable need for FAA to quit hiding the facts and put these responsive FOIA documents out into the sunlight. The Public has a right to see these records, as well as a responsibility to consider their significance and demand better performance by their Federal Aviation Administration. Today, perhaps more than ever in the history of our nation, we need full transparency, not just by FAA, but by all agencies.

Submitted with this **Plaintiff's Response to Defendant FAA's Motion for Summary Judgment**, please find the **Affidavit of Don Heibert**. This affidavit provides sworn testimony in

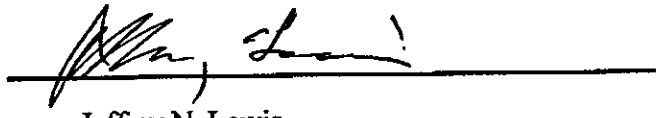
[17] Furthermore, the subject of the SeaTac TRACON ROI has since retired from FAA.

[18] Not insignificantly, this same spirit of full transparency has been clearly and publicly articulated by President Barack Obama (via his January 21, 2009 Executive Memo, Dkt. 7, Ex. 2), by U.S. Attorney General Eric Holder (via his March 19, 2009 Memorandum, Dkt. 7, Ex. 3), and by DoT Chief FOIA Officer Rosalind Knapp (via her November 2, 2009 Memorandum, with subject line "FOIA & Creating a New Era of Open Government" Dkt. 7, Ex. 4).

support of the urgent need for this Court to compel FAA to produce documents they continue to improperly concealing.

Plaintiff disputes Defendant's position on every material fact in this case. Summary Judgment in favor of Defendant would only be appropriate where no material facts are disputed. Therefore, Defendant's Motion for Summary Judgment should be denied.

Respectfully submitted on this 10th day of September 2014.



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 Response to Defendant FAA's Motion for Summary Judgment**[1] was hand-delivered this day to the U.S. District Court in Portland, OR, and also delivered 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

9-18-2014
(date)

Jeffrey N. Lewis

[1] The total page-count is (45): 18-page motion, 26-pages of Exhibits, and this Certificate of Service.