

Exhibit 17:

The following 3 pages are submitted as an Exhibit for 'Plaintiff's Memo, Presenting Details of his Complaint'.

Description of Exhibit Contents:

This is Defendant FAA's Appeal Response for FOIA #2011-4047, as signed by Victoria Wassmer and received on September 20, 2012. All redactions were sustained. This FOIA Appeal Response failed to address the critical Appeal elements submitted by Plaintiff in his revised Appeal, dated August 9, 2012.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Assistant Administrator for Finance and
Management
800 Independence Ave., SW.
Washington, DC 20591

SEP 14 2012

RCVD 9-20-12 (3P)

Mr. Jeffrey Lewis
28242 S. Salo Road
Mulino, OR 97042

RE: Freedom of Information Act Appeal 2011-004047A

Dear Mr. Lewis:

This letter is in response to your correspondence dated June 4, 2012, submitted as a Freedom of Information Act (FOIA) administrative appeal to the Federal Aviation Administration (FAA). This administrative appeal was submitted subsequent to your initial FOIA request dated March 8, 2011, which was assigned FOIA Control Number 2011-004047. This appeal has been assigned FOIA Control Number 2011-004047A.

In your initial FOIA request, you asked for the following records from October 1, 2007 through June 1, 2009: (1) e-mails from Tymeka Walton, Nina Dillard, or any other employee, showing distribution of the AWP Terminal Report; (2) Conduct and Discipline pages with entries related to "Concord," "CCR," or "Lewis;" and (3) Watch Item pages with entries related to "Concord," "CCR," or "Lewis." In addition, from December 1, 2008 through June 1, 2009, you asked for Litigation pages with entries related to "Concord," "CCR," or "Lewis." In a letter dated May 22, 2012, Mr. William Withycombe, Regional Administrator, FAA Western-Pacific Region, provided fourteen Conduct and Discipline Reports, five Watch Item Reports and six Litigation Reports which contained one or more of the key words referenced in your initial request. In addition, you were provided with seven e-mails showing distribution of the AWP Terminal Report.

In your FOIA appeal, you raise three arguments: (i) after comparing the Conduct and Discipline sections of the Terminal Reports for October 9, 2007 and March 25, 2008, you believe their content is so different as to demonstrate that a number of Conduct and Discipline sections from Terminal Reports that would have been produced during the intervening months have been improperly withheld; (ii) a number of e-mails showing distribution of the Terminal Reports were not provided; and (iii) after reviewing the Conduct and Discipline sections of the Terminal Reports you received in connection with your initial request, you are challenging the veracity of some of these records, and are asking for true and correct copies.

The purpose of the FOIA administrative appeals process is to provide a requestor with opportunity to raise arguments challenging an agency's initial determination, where the requestor believes the agency has acted incorrectly or erroneously. Under the FOIA, agencies are required to conduct a search that is "reasonably calculated to uncover all relevant documents." Weisberg v. U.S. Dep't of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983). With regard to (ii), distribution of the Terminal Reports by AWP was typically performed by Tymeka Walton or Nina Dillard, but was also on rare occasions distributed by Aletha Hicks-Moffatt. Within the U.S. Department of Transportation (DOT), it is well established that a "reasonable search" for e-mails sent by a specific employee(s) will involve the employee(s) accessing his/her e-mail account and searching the Inbox, Outbox, Archives, and Folders for responsive records. In this case, the record supports that Ms. Walton,

Ms. Dillard and Ms. Hicks-Moffatt searched their Lotus Notes e-mail accounts and office files for records responsive to your request. As a result of their respective searches, they were able to locate distribution e-mails related to seven Terminal Reports, and these records were provided to you in response to your initial FOIA request.

As a separate but related issue, in your FOIA Appeal, you state that you received other Terminal Report distribution e-mails involving Ms. Walton and Ms. Dillard via other FOIA requests. It is clearly reasonable and certainly plausible that in connection with other FOIA requests you have submitted for e-mail sent by or to other FAA officials that some of the responsive records you received might happen to be e-mail sent by Ms. Walton and Ms. Dillard. In any event, the fact that you may have received other Terminal Report distribution e-mails involving Ms. Walton and Ms. Dillard via FOIA requests for the e-mail of other employees but that were not produced in connection with this FOIA request, does not, in any way, demonstrate or prove that the search for responsive records by Ms. Walton or Ms. Dillard (or Ms. Hicks-Moffat) was inadequate. Rather, given the fact that the FAA has produced these e-mails which were in fact created several years ago is a demonstration of good faith as well as a commitment by the FAA to provide all responsive records which the agency is reasonably able to locate in response to a FOIA request. However, an agency is not required to conduct an exhaustive search of all locations where records could possibly exist in order to find records which "conceivably could contain relevant information." Lee v. U.S. Attorney, 289 F. App'x 377, 387-81 (11th Cir. 2008). In addition, it is not reasonable to expect even the most exhaustive search to uncover all responsive records. See Ethyl Corp. v. EPA, 25 F.3d 1241, 1246 (4th Cir. 1994). In this case, the search for records responsive to your FOIA request was clearly adequate.

With regard to (i) and (iii), you are essentially challenging the veracity of the Terminal Reports you received in response to your initial FOIA request, to the extent that you believe some of the dates assigned to several of the Terminal Reports are inaccurate.¹ As a result, you are alleging that the actual Terminal Reports corresponding to the dates in question have not been provided and should be produced.

With regard to the search conducted for the Terminal Reports, please be advised the AWP Human Resource Office searched their office files (hard copy as well as electronic) and provided you with all responsive records that were located. In this case, the search for records responsive to this aspect of your request was more than adequate.

In connection with your claim that not all responsive Terminal Report records were provided, my staff discussed this issue with staff in the AWP Human Resource Office involved in the processing of this FOIA request. Based on that discussion, we understand that due to an administrative error, pages from seven separate "Watch Items" sections from Terminal Reports during the period October 2007 to March 2008 were inadvertently omitted from their initial response. In a letter dated July 31, 2012, the AWP Human Resource Office provided these missing pages to you as a follow-up to their May 22, 2012 response to your initial request. As such, this aspect of your administrative appeal is moot and no additional action is required.

In addition, please understand that while the Terminal Reports were prepared regularly, they were not routinely prepared on a bi-monthly basis. Therefore, your contention that simply because

¹ Specifically, you allege that incorrect report dates are reflected on the Terminal Reports you received in connection with your initial request for the period October 9, 2007 through March 25, 2008 and the Terminal Reports dated May 5, 2008, May 20, 2008, July 1, 2008, August 18, 2008, September 30, 2008, October 14, 2008, November 25, 2008 and December 9, 2008.

multiple Terminal Reports are not being produced in a given month is evidence that many Terminal Reports are being intentionally concealed is without merit. In addition, these records are considered "short-term temporary files" prepared for the purpose of communicating internal activity, workload and work progress to Air Traffic Organization (ATO) management in the FAA Western Service Area. As such, the required retention related to these records (as well as any e-mails distributing the Terminal Reports) is governed by FAA Order 1350.15C, Records Organization, Transfer, and Destruction Standards, Chapter 3-1(a), which provides that such records will be destroyed when two years old or when no longer needed, whichever is sooner. Therefore, your claim that failure to produce a particular Terminal Report (or Terminal Report distribution e-mail) is also evidence of the AWP Human Resource Office's failure to adhere to required records retention standards is also without merit.

Finally, with regard to your claims concerning the accuracy and veracity of the records in question, you are alleging that your review of the records you received has revealed certain discrepancies, and that this is evidence that you have been provided Terminal Reports for incorrect time periods. As a remedy, you are asking that the correct Terminal Reports be produced. As noted above, an exhaustive search for the Terminal Reports you requested has been conducted, and you have been provided with the records that the FAA reasonably believes are responsive to your request. If there are errors or discrepancies in these records, it is not the duty of the FAA to reconcile these errors to your satisfaction. In this case, the AWP Human Resource Office has provided you with all records responsive to your request, without regard to errors that might be contained therein. In addition, as noted above, the search conducted for the Terminal Reports was more than adequate, and the FAA has met its obligations under the FOIA.

In summary, I am sustaining the initial FAA determination relative to your initial FOIA request under FOIA Control Number 2011-004047A. I am the FAA official responsible for this decision which constitutes the final administrative action on your appeal, and has been concurred in by the FAA Office of Chief Counsel and has the categorical concurrence of the Department of Transportation Office of General Counsel. You are advised that under the provisions of 5 U.S.C. §552(a)(4)(B), you are entitled to seek judicial review of this decision in the U.S. District Court in the district where you reside, the district where you have your principal place of business, the district in which the records are kept, or the District of Columbia.

Sincerely yours,



Victoria B. Wassmer
Assistant Administrator for
Finance and Management