

Exhibit 24:

The following 8 pages are submitted as an Exhibit for 'Plaintiff's Memo, Presenting Details of his Complaint'.

Description of Exhibit Contents:

This is Plaintiff's Appeal (dated November 8, 2011) to the Response by Defendant FAA for FOIA #2011-7535. It includes a 3-page cover letter, and 5-pages of attachments, as follows:

- *a copy of the original FOIA Request, as submitted on 7/7/11;*
- *a copy of the 2-page cover letter for Defendant FAA's FOIA Response, dated 10/31/11;*
- *a 1-page index, compiled by Plaintiff, listing all records produced in the FOIA Response;*
- *a 1-page example showing excessive redaction by Defendant FAA (a large black box).*

28242 S. Salo Rd., Mulino, OR 97042

tel. (971) 295-7669

Tuesday, November 8, 2011

Federal Aviation Administration
AFN-1, Asst. Administrator for Finance and Management
800 Independence Avenue SW
Washington, DC 20591

Dear Sir or Madam,

Please accept this letter as an **appeal requesting reconsideration** of the partial denial response to FOIA request 2011-7535ES, as signed by Pearlis Johnson for Regional Administrator Douglas Murphy, with Mr. Murphy and Ms. Sharon Abhalter responsible. I received Agency's FOIA response letter, with the attached and partially-redacted 59-pages, on 11/3/2011.

For this Appeal, I ask that you please comply with the 20-day FOIA timeline, as specified in the FAA FOIA Order, and promptly release all copies without redactions. I also ask that you provide all other records as requested in my original 7/7/2011 FOIA Request Letter, including:

1. copies of all emails, memos and other correspondence used to communicate details of the incident to District Management, Service Area, Region, and FAA Headquarters officials.
2. copies of all Reports of Investigation (ROI's) or other investigative reports produced by FAA or DoT officials, to establish facts about the Knoxville sleeping controller incident.
3. copies of all disciplinary action memos/letters issued to all personnel (including management) involved in the Knoxville sleeping controller incident.
4. copies of all FOIA response letters sent out by the Agency, responding to FOIA requests seeking any information related to this Knoxville sleeping controller incident. Please note, on this FOIA element, I am not asking for the responsive records attached to these FOIA response letters; rather, I seek only the response letters. After reviewing these, I may follow up with a FOIA request for some of those attachments.

In accordance with the FOIA Appeal process, my justification for your fully disclosing these Agency records is detailed in the paragraphs below.

Mr. Murphy's letter cites Stern v. FBI to support redactions under FOIA Exemption 6. This cite is in error, as a careful reading of Stern v. FBI reveals it overturned part of a District Court decision forcing disclosure of two low-level FBI employee identities, citing FOIA Exemption 7. These are two different FOIA exemptions, 6 vs. 7. The distinction between these two FOIA Exemptions is substantial, in that FOIA Exemption 6 leans toward release and imposes a higher Agency burden to justify the withholding of personal information. Here is part of the Stern v. FBI court decision, at paragraph 28, as cited by Mr. Murphy:

"Unlike exemption 6, which permits nondisclosure only when a document portends a 'clearly unwarranted invasion of personal privacy,' exemption 7(C) does not require a balance tilted emphatically in favor of disclosure." *Bast*, 665 F.2d at 1254. We find that, while the question is close, disclosure of the names of the two lower-level employees would constitute an unwarranted invasion of their privacy within the meaning of Exemption 7(C)." See Stern v. FBI 737 F.2d 84 (D.C. Cir. 1984).

FOIA Exemption 6 is applies to personal information, while FOIA Exemption 7 is applicable to records related to civil or criminal matters. As noted in Mr. Murphy's letter, this case involves possible violations of FAA rules and regulations. As such, my FOIA request does NOT involve a civil or criminal matter. Thus, the identities of personnel involved clearly can NOT be withheld through application of FOIA Exemption 7. As for the application of FOIA Exemption 6, the balancing test is failed. The courts have stated that, to properly apply FOIA Exemption 6, one "must decide whether disclosure would harm [privacy] interests more than it would benefit the public." *Ripskis v. HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984). This very delicate balance "must be struck in each particular case, weighing the specific privacy invasion against the value of disclosing a given document." *Bast v. Department of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981).

Mr. Murphy's cite, Stern v. FBI, also includes the following, at paragraph 33:

"For example, the public may have an interest in knowing that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner. These other public interests do not enter into the determination of the case now before us, because they would not be satiated in any way by the release of the names of the censured employees." See Stern v. FBI 737 F.2d 84 (D.C. Cir. 1984).

The FAA TYS Sleeping Controller case is in stark contrast to the Stern v. FBI case. In Stern v. FBI, minimally relevant disciplinary actions were eventually taken against two low-level federal employees found to have been generally and inadvertently negligent during an investigative process. In contrast, in the TYS Sleeping Controller case, we have a high-profile failure of the National Airspace System, and we have two FAA TYS controllers knowingly involved, and notably they made no reports in the apparent hope that nothing would ever come to light. Most importantly, we have a Public whose interest in a

safe and efficient National Airspace System demands disclosure. Clearly, there exists plenty of Public interest to be satiated.

Mr. Murphy's letter correctly defined the complexities underlying FOIA disclosures and redactions. Here are his words, in paragraph 5:

In such cases, the analysis turns on the nature of the document and its relationship to the "core purpose" of the FOIA, which is to shed light on an agency's mission and the performance of its statutory duties. Information which does not directly reveal the operations of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve.

Ten years after the aviation terrorist attacks in New York and Washington, we have an incident where there is such casual indifference by the TYS Tower controller, the TYS TRACON controller, and at least one Atlanta Center controller, that the Public is left with absolutely no assurance of aviation security. The Public, as users and funders of the NAS, has a clear interest in knowing that FAA has comprehensively investigated, has released all releasable details, and has held all employees accountable with the timely imposition of adequate disciplinary measures. This has not yet happened. With your full granting of this Appeal, it can begin to happen.

Thank you for your help, and please advise if you have any questions.

Sincerely,



Jeff Lewis

Attached:

Lewis FOIA Request letter, 7/7/2011

FOIA Response letter, Murphy to Lewis, 10/31/2011 (2p)

Index of F11-7535, as produced by FOIA requestor (1p)

Sample redacted page, pg.3 of the package received 11/3/2011 (black box)

28242 S. Salo Rd., Mulino, OR 97042

email: lsjef@yahoo.com

Thursday, July 7, 2011

FAA HQ, FOIA Office
800 Independence Avenue, SW
Washington, DC 20591 ...via email....

Dear Sir or Madam:

Please accept this as a request for copies under the Freedom of Information Act (FOIA).

News stories from earlier this year indicate that a controller slept through his shift at the TRACON in Knoxville, TN. Other news stories suggest this controller was fired, but this has not been confirmed, nor is it clear what other disciplinary actions were taken.

For this FOIA request, please provide the following:

1. copies of all emails, memos and other correspondence used to communicate details of the incident to District Management, Service Area, Region, and FAA Headquarters officials.
2. copies of all Reports of Investigation (ROI's) or other investigative reports produced by FAA or DoT officials, to establish facts about the Knoxville sleeping controller incident.
3. copies of all disciplinary action memos/letters issued to all personnel (including management) involved in the Knoxville sleeping controller incident.
4. copies of all FOIA response letters sent out by the Agency, responding to FOIA requests seeking any information related to this Knoxville sleeping controller incident. Please note, on this FOIA element, I am not asking for the responsive records attached to these FOIA response letters; rather, I seek only the response letters. After reviewing these, I may follow up with a FOIA request for some of those attachments.

Please comply with the FOIA timelines as specified in the FAA FOIA Order. Please provide all copies with minimum redactions; for FOIA Exemption 6, please do not redact dates or the names of personnel acting in an official capacity, as this information is all fully disclosable without invading personal privacy. I hereby agree to pay \$25, if necessary per the fee structure in FAA's FOIA Order. Please email (lsjef@yahoo.com) if I need to agree to a larger fee or if you have questions.

Thanks for your assistance.

Sincerely,



Jeff Lewis



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

1701 Columbia Avenue
College Park, GA 30337

RCVD CERT 11-3-11
(6/p)

OCT 31 2011

Certified Mail – Return Receipt

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

RE: Freedom of Information Act (FOIA) Request Number. 2011-007535(ES)

Dear Mr. Lewis:

This letter is in response to your FOIA request dated July 7, 2011 made under the provisions of Title 5 United States Code, Section 552 to the FAA.

You requested various records regarding a controller who was reported to have slept while on duty at the Knoxville Terminal Radar Approach Control earlier this year.

A search was conducted at the appropriate air traffic control facilities within the Eastern Service Area. We located 59 pages of responsive records. However, we are withholding 9 pages of personal correspondence in their entirety, the agency's notice for proposed removal, as well as, portions of the enclosed records, such as names, pursuant to FOIA Exemption 6.

This exemption protects information that pertains to an individual "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," 5 U.S.C. 552(b)(6). Before withholding this information, the public benefit in disclosure was balanced against the individual right to privacy.

In such cases, the analysis turns on the nature of the document and its relationship to the "core purpose" of the FOIA, which is to shed light on an agency's mission and the performance of its statutory duties. Information which does not directly reveal the operations of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve.

In this case, since the redacted information involves possible violations of FAA rules and regulations, the individuals referenced have a significant privacy interest in not having their identities disclosed. The courts have consistently held that it is wholly appropriate to withhold information related to the investigation of mid and low-level employees under FOIA Exemption 6. See Stern v FBI, 737 F.2d 84 (D.C. Cir. 1984).

There are no fees associated with this request, because the cost of processing was less than \$10.

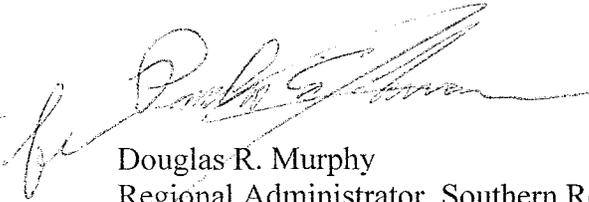
The undersigned and Sharon B. Abhalter, Acting Director, ATO Eastern Service Center, are responsible for this partial denial determination. You may request reconsideration of this determination by writing to:

Assistant Administrator for Finance and Management, AFN-1
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

Your request for reconsideration must be made in writing within 30 calendar days from the date of receipt of this letter and must include all information and arguments relied upon. Your letter must state that it is an appeal from the above-described determination regarding a request made under the Freedom of Information Act. Please inscribe "FOIA Appeal" on the envelope containing the appeal.

Your request has been assigned FOIA Control No. 2011-007535(ES). Please refer to this control number in all subsequent correspondence. If you have any questions regarding this request, you may contact Patricia Facey, Administrative Services Group, ATO Eastern Service Center at (404) 305-5526.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas R. Murphy", is written over a horizontal line. The signature is fluid and cursive.

Douglas R. Murphy
Regional Administrator, Southern Region

Enclosures

pg.	Date	Time	Document	Details, etc.
1-2	10/31/11		ASO Administrator Murphy to Lewis	FOIA Response Letter (2p, cover letter)... Murphy and Abhalter responsible for partial denial. Signed by Pearliss Johnson (Deputy). Notes 9-pgs redacted, and spot redactions, FOIA Ex.6. Invites appeal to AFN-1.
3-4	?		?	Acknowledgement Copy (3p)... fully redacted w/large black boxes.
5-6	2/22/11		Employee Interview (name redacted)	(2p)... content shows no NATCA rep, and suggests ATM. States first learned of no reponse issue at about 3PM. Nobody called during or shortly after the midshift (typical action would be to notify ATM). Signed 2/23/11.
7-8	2/23/11		Employee Interview (name redacted)	(2p)... Local Controller, with Haynes attending as NATCA rep. This was the first mid-shift with PR. Asked Amy (WX) to check in on non-reponsive TRACON controller. Did not report to management; wanted to first talk to NATCA.
9-10	2/23/11		Employee Interview (name redacted)	(2p)... Weather Observer. Says she found controller lying on floor, on cushions, with small blanket. Twice, at around 0100 and 0125.
11	2/23/11		Employee Interview (name redacted)	(1p)... Appears to be a FLM or manager (no NATCA). Talked to "David around 2PM and heard about it. At around 4:15PM got a call from (redacted) who had listened to tapes and was upset about content and voice quality.
12	2/23/11		Employee Interview (name redacted)	(1p)... [Jim Galo] the controller PR relieved on Friday night. PR appeared normal and fit to work. Only one equipment issue: Radar West foot pedal out of service. No NATCA rep listed.
13-14	2/23/11		Employee Interview (name redacted)	(2p)... Appears to be the swing FLM. Says came in at 2PM and spoke to Fred who was upset that ZTL had a problem on the mid but knew nothing. Spoke to Contract Wx; Amy would return that night. Later spoke to Amy. Rcvd call from Jerry (NATCA) on Sunday...
15	2/23/11		Employee Interview (name redacted)	(1p)... the controller who relieved PR around 6AM. Normal position relief briefing. Nothing abnormal observed. No NATCA rep listed.
16-22	3/9/11 and 3/10/11		Employee Interview (name redacted)	(7p)... [John Poindexter, PR] the sleeping TRACON controller. Arrived around 10PM. Relieved Jim Galo. Not clear on the 11:42 ID-scan at the front door. Knew Paul was not TRACON-certified. Lists no NATCA rep, but one mentioned at ROI p.5. Signed 3/16/11.
23-30	7/1/08		HROI Table of Penalties	(8p)... FAA disciplinary guidelines. Includes eight of the twelve pages, listing offenses and appropriate range of penalties.
31-33	4/14/11		?	(3p)... fully redacted w/large black boxes.
34-35	?		?	(2p)... fully redacted w/large black boxes.
36	?		Memorandum	(1p)... fully redacted w/large black boxes. Cover memo for next 16-pages?
37	2/20/11	1010	Email, Gersh to Ketrell	(1p)... attached copy of statement from the weather observer (Amy).
38	2/20/11	1010	..attached	(1p)... statement from the weather observer (Amy). Very clear, detailing three visits to TRACON. Unable to get in on first visit, Paul then gave her the door combination. In two subsequent visits, she found the controller asleep on the floor.
39	2/21/11	1545	Email, Gersh to Ketrell	(1p)... attached two files, one a chronological color-coded transcript, the other the separated transcripts for Tower and TRACON. Also, asked if he and Mark need to give Public Affairs a heads-up.
40-44	2/21/11	1545	..attached	(5p)... color-coded combined transcript.
46-48	2/21/11	1545	..attached	(3p)... TRACON-only transcript. PR relieved JL at 0337 (10:37PM), and was relieved by DX at 1042 (5:42AM). First failure at around 0522.
49-52	2/21/11	1545	..attached	(3p)... Tower-only transcript. Atis "Oscar" indicated by flights from 12:36AM through at least 4:57AM.
53-54	6/10/11		Letter to Ed Marcum	(2p)... Certified letter, response to FOIA F11-5050ES. Marcum is a Business Writer for the Knoxville News Sentinel. He was given a tape but all hard copies were withheld citing FOIA Exemption #6.
55-61	3/18/11		Memorandum	(6p)... Vincent to McCartney. ROI prepared by Willie Wright and Michael Dean, QCG.



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

ACKNOWLEDGEMENT COPY

