

Exhibit 5:

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 Remand Response by Defendant FAA for FOIA #2010-8248. It includes a 1-page cover letter, and 7-pages of attachments, as follows:

- *a copy of the 2-page cover letter for Defendant FAA's 10/14/11 Remand Response;*
- *a copy of the 1-page invoice, charging Plaintiff \$47.30;*
- *4-pages of agency records, selected from the Remand Response. These pages demonstrate excessive redaction and poor copy quality.*

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 the remand of FOIA request 2010-8248WP, as signed by AWP Regional Administrator William Withycombe, with Kubik and Withycombe responsible. I received Agency's FOIA response letter, with the attached and partially-redacted 600+ pages, on 10/19/2011.

This is a very straight-forward Appeal. FOIA Exemption #6 was excessively applied to overly redact the copies provided in the response package. For this appeal, I request the entire file be reviewed and all copies be again provided, without redactions.

I have been working with FAA FOIA officials in the past two years, seeking to obtain Agency records for research. In the process, we have corresponded on and resolved numerous FOIA Appeals. Repeatedly, AWP has excessively redacted, and repeatedly I have obtained less redacted copies via long-delayed Appeals. The standard for application of FOIA Exemption #6 has clearly evolved to accept that it is NOT appropriate to redact geographic information such as facilities, nor is it appropriate to redact the names of FAA management officials doing their FAA duties.

There is clearly no Personal Privacy Information contained in facility names, manager names/titles, docket numbers records sources, hearing locations and case numbers. The attached four sample pages, with numerous redactions illustrate the excessive and improper redactions done by AWP HRMD. Additionally, as the Congressional intent behind FOIA was (and remains) to guarantee that the average citizen can view the effective (or ineffective) performance of Federal agencies, there is a clear Public Interest in disclosing all information in these redacted records. That Public Interest far outweighs the insubstantial "potential" for personal privacy invasion.

Thank you for accepting this Appeal. I look forward to your full response in accordance FOIA Appeal timelines.

Sincerely,



Jeff Lewis

Attached:

FOIA Response letter, and Invoice, 10/14/2011 (3p)
Sample redacted pages (4p)



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

Western-Pacific Region
Office of the Regional Administrator

P.O. Box 92007
Los Angeles, CA 90009-2007

OCT 14 2011

RCVD 10-19-11

10/17/30
(online 10/12/11)

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

Freedom of Information Act (FOIA) Request No. 2010-008248WP-R

Dear Mr. Lewis:

This letter responds to the remand of your September 8, 2010, Freedom of Information Act (FOIA) request for copies of litigation items extracted from terminal reports dated 7/27/07, 10/9/07, 4/22/08, and 9/11/08. In your September 8, 2010, letter, you requested that each entire document be provided, "with minimal (names only) redactions."

A search was conducted in the Human Resource Management Office (HRMO). The following are the findings to your request. We have referred to the items as you numbered them in your September 8, 2010, letter:

1. (Item #1) – Enclosed is a redacted copy of the arbitrator's final decision.
2. (Item #2) – Enclosed are redacted copies of the agency's brief and the arbitrator's final decision.
3. (Item #3) – Enclosed is a redacted copy of the arbitrator's final decision. There is no written agency brief.
4. (Item #4) – Enclosed are the Initial Appeal File, the narrative response, removal proposal letter, and the signed removal decision letter.
5. (Item #5) – Enclosed are redacted copies of the arbitrator's final decision and the agency's brief. There is no settlement document.
6. (Item #7) – Enclosed is a redacted copy of the settlement and the agency's letter to the employee.
7. (Item #9) – Enclosed is a redacted copy of the settlement. There is no agency brief or arbitrator's decision.
8. (Item #10) – Enclosed are redacted copies of the agency's brief and arbitrator's final decision. There is no settlement document.
9. (Item #11) – Enclosed is a redacted copy of the arbitrator's final decision.
10. (Item #12) – Enclosed is a redacted copy of the arbitrator's final decision.
11. (Item #13) – Enclosed is a redacted copy of the arbitrator's final decision. There is no settlement document.
12. (Item #14) – Enclosed is a redacted copy of the arbitrator's final decision. There is no settlement document.

In each case, we have redacted the names of the employees against whom the personnel actions were taken; we have also redacted the names of the witnesses. Because your September 8, 2010, request did not include the names of individuals, we consider that the

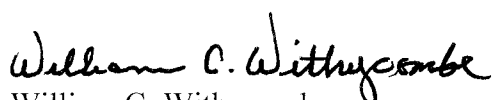
release of records with those names redacted to be full releases under the FOIA. (We have not redacted the names of other individuals involved in the proceedings, e.g., arbitrators, employee representatives and agency representatives.)

However, we have also redacted the initial employment dates of the employees against whom the personnel actions were taken. In addition, we have redacted references in the records by which the facilities can be identified, e.g., facility names and related geographic references. Those redactions were made to protect the privacy interests of the employees against whom the personnel actions were taken. It is necessary to redact that minimum information because the initial employment dates and facility identifications, combined with the information that is being released, would identify the employees against whom the personnel actions were taken. The redactions are protected from release under Exemption 6 of the FOIA, as defined in 5 U.S.C. § 552(b)(6). Exemption 6 may be used to withhold records found in "...personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Because there are fees associated with this request, an invoice is enclosed.

The undersigned and Tim F. Kubik, Director, Human Resource Management Office, are responsible for this partial denial. You may request reconsideration of this determination by writing to the Assistant Administrator for Regions and Center Operations (ARC-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Your request for reconsideration must be made in writing within 30 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 denial of a request made under the FOIA and include your assigned FOIA control number. The envelope containing the appeal should be marked "FOIA."

Sincerely,


William C. Withycombe
Regional Administrator

Enclosures



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

Western-Pacific Region
Office of the Regional Administrator

P.O. Box 92007
Los Angeles, CA 90009-2007

INVOICE

Date: October 14, 2011
Requester: Jeffrey Lewis
FOIA Number: 2010-008248WP-R
Pay.gov Web Payment ID Number: 380104

CHARGES	AMOUNT DUE
Duplication (573 pages x .10 per page) (First 100 are free) (473 pages x .10) =	\$47.30
TOTAL DUE	\$47.30

Payment must be made within 30 days from the date of receipt of this invoice. Payment may be made by check or electronically through Pay.gov.

To Pay by Check: Please make your check, in the above amount, payable to **DOT/FAA**. Please include the above FOIA number on your check and mail to:

Dolores Corpus
Regional FOIA Coordinator, AWP-31
Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

To Pay thru Pay.gov: Please use the link from our FOIA web page (www.faa.gov/foia) to access the proper pay.gov account. This pay.gov account is a secure website where you can pay by e-check or credit card. When you access the Pay.gov website, you will be asked to provide the following information:

FOIA Web Payment ID:	<u>380104</u>
FOIA Request Number:	<u>2010-008248WP-R</u>
Name of FOIA Requester:	<u>Jeffrey Lewis</u>
Amount Due:	<u>\$47.30</u>

[REDACTED] v. DEPARTMENT OF TRANSPORTATION
MSPB DOCKET NUMBER [REDACTED]

TABLE OF CONTENTS

<u>Location</u>	<u>Date</u>	<u>Document Description</u>	<u>Source</u>
1	05/25/07	Narrative Response	[REDACTED]
2	05/25/07	Statement Re: CBA	[REDACTED]
3	05/25/07	Statement Re: EEO Complaint	[REDACTED]
4	04/11/07	Notification of Personnel Action (SF-50)/Removal	[REDACTED]
4a	04/03/07	Decision Letter for [REDACTED] [REDACTED] to NATCA Rep.	[REDACTED]
4b	04/02/07	Letter of Removal with Certificate of Mailing	[REDACTED]
4c	02/13/07	Response to Proposal with Exhibits 1 - 12	[REDACTED]
4d	01/29/07	Response to request for add'l time to prepare response regarding pro- posed (sic) removal of [REDACTED] [REDACTED]	[REDACTED]
4e	Various	Authorization for representative for response to proposal	[REDACTED]
4f	01/17/07	Proposal Letter	[REDACTED]
4g	2007/2006/ 2005	Payroll Schedule Calendars and Time and Attendance Codes	[REDACTED]
4h	11/27/06	Requirement to submit additional documentation w/cert of mailing and copy of unclaimed envelope; USPS Track & Confirm	[REDACTED]

SOURCE:
PIO-0824801-A Item #4
RCW 10-19-11

ISSUES

The parties disputed in the following statement of the issue on the merits of the termination of

[REDACTED]

Whether the reversal of [REDACTED] was the best course as to promote the efficiency of the service. Four what should the remedy be? (Transcript, Part 1, page 4)

The Agency also raised a jurisdictional issue which the parties agreed could be stated as follows:

Does the Arbitrator have the authority to settle a decision on the merits case, inasmuch as it is a jurisdictional defense in that the Union filed the grievance under a contract that was no longer in effect. (Transcript, Part 1, pages 1-2, 12)

With regard to the jurisdictional issue, Counsel for both parties agreed to present evidence on the morning of April 13, after which they agreed to provide evidence on the merits of the grievance case on April 14 and 15, 2008. The parties proceeded in that manner, and initially filed preliminary briefs with regard to the threshold issue on June 30, 2008.

Item

The parties later argued the merits of the appeal of the termination matter in opening statements. The Agency filed a written brief, while the Union did not file a brief on the merits, and the matter was considered and heard by the undersigned on December 12, 2008. Both days of the hearing were covered by a reporter and transcribed. All of the aforementioned written documents, including exhibits provided by any parties, are incorporated herein by reference.

SOURCE: F10-82800P-A
ITEM #11
RCOD 10-19-11

ITEM #11,
p. 1

WRITTEN CONTRACT LANGUAGE

A. Article 10 - Article 10 - Disciplinary/Adverse Actions

Section 5. Disciplinary and adverse actions shall not be taken against an employee except for just cause and only for the good of the service. Any action taken by the Agency shall be supported by a written finding of the evidence.

PHILIP TAMOUSH

Arbitrator-Factfinder

(Final Dispute Resolution Service.com)

Post Office Box 1128

Torrance, California 90505-6359

(800) 747-9245 (Voice) (800) 903-4266 (Fax)

Web Site: www.finaldisputeresolution.com E-mail: philip@tamoush.com

(Principal Office and Mailing Address)

San Francisco/East Bay
249 W. Jackson St., #130
Hayward, CA 94544-1811

April 25, 2008

Glen Rotella
Labor Relations Specialist
Federal Aviation Administration
15000 Aviation Blvd., AWP-16
Hawthorne, CA 90261

Kevin Sills, Staff Representative
National Air Traffic Controllers Association
1325 Massachusetts Ave. NW
Washington, DC 20065

RE: ARBITRATION: Transmittal of Award and Billing for Services: FAA/NATCA [REDACTED]
[REDACTED] Grievant) - Case Number (NC) WP-07-045 [REDACTED]

Dear Counsel:

Transmitted herewith are my Award and Invoice in the above matter. Thank you very much. It was a pleasure working with you.

Sincerely,



Philip Tamoush

Enclosures (Award and Invoice)

SAMPLE
F-10-8218W-R
ITEM #12
RCVD 10-19-11

ARBITRATION OPINION AND AWARD

In the Matter of the Arbitration

between

FEDERAL AVIATION ADMINISTRATION

and

NATIONAL AIR TRAFFIC CONTROLLERS
ASSOCIATION, AFL-CIO
Case No. NC-08-739336-██████████

ISSUE:

Discipline: Inappropriate
Statements; Failure to Follow
Directions ████████████████████

Impartial Arbitrator

Philip Tamoush
P.O. Box 1128
Torrance, California 90505-0128
(Principal Office & Mailing Address)
(800) 747-9245

249 W. Jackson Street - Suite #130
Hayward, California 94544-1811

Hearing Held
August 14, 2008
██████████

Record Closed
November 3, 2008

Award Issued
December 13, 2008

Appearances

For the Agency: Dan Castellon
Labor Relations Specialist
15000 Aviation Blvd
Lawndale, CA 90261

For the Union: Brian P. Sherry
John Paiva
NATCA Representatives
1325 Massachusetts Ave. NW
Washington DC 20005

SOURCE: FO-8245000-R, ITEM#13
RCVD 10-19-11