Exhibit 6:

The following 4 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 #2010-8248, a 4-page letter signed by Victoria Wassmer, as received on May 16, 2013. Plaintiff's Appeal was fully denied.

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

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

MAY 10 2013

RCVD 5-17-13
5-16-13

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

RE: Freedom of Information Act Appeal 2010-008248A

Dear Mr. Lewis:

This letter responds to your November 8, 2011, administrative appeal under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. In your initial request dated September 8, 2010, you provided Terminal Reports from Western-Pacific Region that contained information on litigation.

From those reports you asked for: (1) an arbitrator's decision (3-day suspension with a 3/14/07 date) which Ms. Hicks-Moffatt was waiting on 8/17/07; (2) a copy of the Agency's brief submitted in the arbitration and a copy of the arbitrator's final decision concerning a 5-day suspension showing "Klein" and a 1/24/07 continuation; (3) a copy of the Agency's brief submitted in the arbitration and a copy of the arbitrator's final decision concerning a 10 day suspension showing "Kagel" and Agency prevailing via Gray; (4) copies from the IAF submitted to the Merit System Protection Board (MSPB), including the entire "Narrative Response," the removal proposal letter, and the signed removal decision letter for the MSPB case (removal dated 5/7/2007); (5) a copy of the Agency's brief submitted in the arbitration, a copy of the arbitrator's final decision, and a copy of any signed settlement agreements for the case (removal, showing "Klein" and being worked by Marshall); (6) a copy of the agency letter to the employee defining the charges and initiating or proposing the suspension, as well as a copy of the final signed settlement for the case (5-day suspension, as settled on 8/20/2007); (7) a copy of the Agency's brief submitted in the arbitration, as well as a copy of the arbitrator's final decision, and any settlements that may have been agreed to in the case (5-day suspension, showing "Klein" and delayed to a December 2008 date); (8) a copy of the Agency's brief submitted in the arbitration, as well as a copy of the arbitrator's final decision, and any settlement agreements that may have been agreed to in the case (14-day suspension being worked by Castrellon); (9) a copy of the arbitrator's final decision in the case (removal being worked by Fossier with decision pending 4/22/08); (10) a copy of the arbitrator's final decision in the case (30-day suspension being worked by Rotella and marked "Agency Prevailed"); (11) a copy of the arbitrator's final decision, and any settlements that may have been agreed to in the case (10-day suspension showing "Tamoush" and being worked by Castrellon); and (12) a copy of the arbitrator's final decision, and nay settlements that may have been agreed to in the case (30-day suspension showing "Tamoush" and being worked by Castrellon).

You asked for the entire documents with minimal redactions. You specifically said that names only could be withheld.

In an initial response dated October 14, 2011, the Western-Pacific Regional Administrator provided you with responsive records. However, he determined to redact the names of employees against whom the personnel actions were taken and names of witnesses. He said that as to those individuals the records were considered a full release since your request did not include names of individuals. The Regional Administrator also determined to redact the initial employment dates of the employees against whom the personnel actions were taken, facility location, facility manager's name, facility name and address, docket numbers, and other identifying information under Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6). He said that release of this information would constitute a clearly unwarranted invasion of personal privacy.

In your appeal, you assert that the records were excessively redacted. You say that there is no personnel privacy information contained in facility names, manager names/titles, hearing locations, or docket numbers. You provided an attachment showing a sample of what was provided in the initial response. You say there is a clear public interest in disclosing that information. You assert that you have obtained less redacted material on previous FOIA appeals.

We have reviewed the partial denial in light of your appeal letter, the FOIA, and applicable case law and conclude that the Regional Administrator properly withheld the name of the employees, names of witnesses, facility location, manager name, and other identifying information in the other records under Exemption 6. In addition, the withheld information is also exempt from disclosure under Exemption 7(c).

Exemption 6 – Personal Privacy Information Regarding Conduct/Discipline

Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. In order to be covered under Exemption 6, information must first meet a threshold requirement: it must fall within the category of "personnel and medical files and similar files." 5 U.S.C. § 552(b)(6). This is read broadly and includes all information that "applies to a particular individual." U.S. Dep't of State v. Washington Post Co., 456 U.S. 595, 602 (1982). Once that threshold is met, the focus turns to whether disclosure of the information would "constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). This requires balancing the individual's right to privacy against the public's right to disclosure. Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976).

We have reviewed the personnel actions and the redacted pages consisting of the identity of the employee, witnesses, manager, the facility, and other identifying information. Based on the nature of the records of possible violations of rules and regulations, we find that these individuals have a significant privacy interest in not having their identities disclosed. The courts have held that internal investigations of mid and low-level employees can be protected under Exemption 6 of the FOIA. See Stern v. FBI, 737 F.2d 84 (D.C. Cir. 1984) (finding that employees have a privacy interest in their association with investigations); Neely v. FBI, 208 F.3d 461, 464 (4th Cir. 2000) (indicating that individuals mentioned or interviewed in the course of an investigation have a "well-recognized and substantial privacy interest[]....").

Having found a viable privacy interest in non-disclosure of the withheld information about the individuals, we were required to balance that privacy interest against the public interest in disclosure, if it was a qualifying public interest. The burden of proof is on the requester of the information to identify a qualifying public interest in disclosure of the information, not an interest of the individual requester. See Carter v. U.S. Dep't of Commerce, 830 F.2d 388, 390 n.8 & 391 n.13 (D.C. Cir. 1987).

Prior to the Supreme Court's decision in United States Dep't of Justice v. Reporters Committee for the Freedom of the Press, 489 U.S. 749 (1989), the courts recognized a variety of public interest factors entitled to heavy weight. However, the Supreme Court in Reporters Committee narrowed the scope of the public interest to be considered under the FOIA's privacy exemptions. The analysis now 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 performance of its duties. Id. at 773. The Court held that information that 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." Id. at 775. The Supreme Court reaffirmed this analysis in United States Dep't of Defense v. Fed. Labor Relations Auth., 510 U.S. 487 (1994).

You have not asserted a qualifying public interest in releasing this information. In this case you were provided with redacted personnel action records. You have identified no specific nexus between knowing the identities of the individuals named in the records and the asserted public interest served by their disclosure. See Nat'l Archives and Records Admin. v. Favish, 541 U.S. 157, 172-73 (2004). These individuals' interest in personal privacy therefore outweighs any public interest in the disclosure of their identities.

In this case, simply redacting names cannot completely de-identify the employees involved. Alirez v. NLRB, 676 F.2d 423, 428 (10th Cir. 1982) ("Even sanitized, these documents would enable [the requester] and others who had specific knowledge of these incidents, to identify readily the informant and persons discussed in each document."); see also Rose, 425 U.S. at 380 ("what constitutes identifying information regarding a subject cadet must be weighed not only from the viewpoint of the public, but also from the vantage point of those who would have been familiar, as fellow cadets or Academy staff, with other aspects of his career at the Academy."). Therefore, we are continuing to redact the records and withhold the records under Exemption 6 of the FOIA.

Exemption 7(C) – Personal Privacy Information in Law Enforcement Records

FOIA Exemption 7(C) employs a balancing test nearly identical to the Exemption 6 balancing test, but the protection of the exemption is limited to records compiled for law enforcement purposes where the disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)7)(C); see, e.g., Stern, 737 F.2d at 91-92. The "law" to be enforced within the meaning of the term "law enforcement purposes" includes both civil and criminal statutes, as well as those statutes authorizing administrative (i.e., regulatory) proceedings. Kay v. FCC, 867 F. Supp. 11, 17-18 (D.D.C. 1994). Once a privacy interest has been identified, it must be weighed against the public

interest in revealing the information. The requester must identify a public interest and demonstrate that the public interest in disclosure is great enough to overcome legitimate privacy interests. See Senate of P.R. v. U.S. Dep't of Justice, 823 F.2d 574, 588 (D.C. Cir. 1987). This is a lower burden than the "clearly unwarranted invasion of personal privacy" burden under Exemption 6. Exemption 7(C) has been regularly applied to withhold references to persons who are not targets of investigations and who were merely mentioned in law enforcement files. See, e.g., Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2000) (withholding the names of third parties mentioned or interviewed in the course of an investigation). Accordingly, these cases and the above-cited cases supporting withholding under Exemption 6 support withholding under Exemption 7(C).

I am the 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, as well as by John E. Allread, an attorney in 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 where the records are kept, or the District of Columbia.

Sincerely,

Victoria B. Wassmer
Assistant Administrator for
Finance and Management