

Exhibit 9:

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 February 14, 2011) to the Response by Defendant FAA for FOIA #2011-2164. It includes a 2-page cover letter, and 6-pages of attachments, as follows:

- *a copy of the 2-page Response by Defendant FAA's Human Resources Management Division, as received on 2/7/11;*
- *a copy of the 2-page Response by Defendant FAA's Security Division, as received on 2/1/11;*
- *a copy of Plaintiff's 2-page FOIA Request letter, as submitted on 12/29/10.*

28242 S. Salo Rd., Mulino, OR 97042

tel. (503) 710-1515

Monday, February 14, 2011

Federal Aviation Administration
ARC-1, Asst. Administrator for Regions and Center Operations
800 Independence Avenue SW
Washington, DC 20591

Dear Sir,

This letter is an **appeal requesting reconsideration** of the response to FOIA request 2011-2164WP. Please note, this FOIA response was provided in two separate letters: one from AWP-HR ① (received 2/7/11), and the other from AWP-Security ② (received 2/1/11). I am appealing both response letters, as they both failed to produce the Agency's records in accordance with FOIA law. Both response letters improperly cite FOIA Exemption-6 as justification for their clearly excessive redactions.

The AWP-Security letter declared the withholding of all ROI's...but, I did not ask for entire ROI's; as you will see in my attached FOIA request ③, I asked for specific pages from each ROI produced for the four listed Accountability Board cases.¹ The specific pages I asked for are clearly releasable under FOIA.

As for the AWP-HR letter, it lists all four of the items I presented in my original FOIA request, but makes numerous statements that are non-responsive or proven false by Agency records. For example, consider Item #2, the Ontario removal. Mr. Withycombe declares that "...no final decision letter was issued to the respondent at the Ontario ATCT..." This is true to the limited extent that the letter was not issued...**but, it is non-responsive**. My FOIA request did not specify a copy of the letter as "issued", and I thus should have been provided a copy of the letter, as indicated by the following facts extracted from numerous AWP Terminal Reports:

1. the same controller allegedly committed new offenses, which were reported to the Accountability Board on 3/14/08;
2. the AB internal inquiry was completed on 3/19/08;
3. AWP-16 sent a removal proposal to the ATM on 4/22/08;
4. AWP-16's draft decision letter was being reviewed by Legal on 6/3/08.
5. the controller dodged the second removal by retiring on 6/17/08

As another example, consider Item #4. In this case, Mr. Withycombe falsely declares that "...no final decision letter was issued in this case...". Agency records show a 10-day suspension letter was issued, and that the recipient of this disciplinary action was the ATM at Tucson TRACON.

¹ It was understood that there may not have been four ROI's produced for these four cases; it was expected that, via FOIA, segregable/disclosable data would be provided from the ROI's that were produced for these four cases.

Records also show, this Manager signed to acknowledge receipt on 6/26/08. Why a suspension? Apparently, while this manager was being interviewed by an EEO Counselor, he made charges against his secretary, claiming unwarranted hugging and excessive touching. The EEO Counselor was compelled to report the charges to AB on 4/10/08, which listed two allegations:

“management failure to report” and “sexual misconduct”. After additional investigation, AB rejected the manager’s charges in early June when they concluded: *“No substantiation of allegations.”* Weeks later, the manager signed the letter acknowledging his 10-day suspension for *“inappropriate conduct”* and *“interference with an official investigation”*.

Regarding the application of FOIA Exemption-6, Mr. Withycombe is repeatedly citing the perceived fear that disclosure would *“...constitute a clearly unwarranted invasion of personal privacy.”* In truth, these mis-applications of FOIA Exemption-6 are not to protect personal privacy, but to protect Agency officials from accountability. Every record I sought with this FOIA request was fully disclosable, with minimal (even zero) redacting. Disclosure of these records is clearly warranted by the need for accountable and effective performance.

Lastly, regarding the repetitious citation of Title 5, Section 293.311(a) in the AWP-HR response letter...an online review of this code reveals, this code does NOT declare the disclosure prohibition as cited in the response letter.

To resolve this FOIA Appeal, I ask that you obtain all responsive copies from AWP and forward them on to me ASAP, in fully legible and minimally redacted form. I also ask that you issue clear guidance to AWP that their ongoing pattern of FOIA delays and obstructions is not acceptable, and must be immediately corrected.

By the way, if you need to see the Agency documentation that proves facts I have declared in this letter, please advise and I will promptly identify all relevant records (mostly FOIA) being held by AWP. I trust they will send them to you without the excessive and improper redactions.

Thank you, and please call if you have any questions.

Sincerely,



Jeff Lewis

“We must work together – cooperatively – in order to succeed. Because you know, when all is said and done, our employees are looking for leadership. They’re looking for trust. They want to know that the ship is headed in the right direction. They want to know that their manager has insight into what’s going on, that their manager understands the mission, and that their manager stands ready to help get the job done.”

– FAA Administrator Marion Blakey,
addressing FAAMA, October 25, 2004



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

RCV 2-7-11

FEB 01 2011

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

Freedom of Information Act (FOIA) Request No. 2011-002164WP

Dear Mr. Lewis:

This letter responds to your December 29, 2010, Freedom of Information Act (FOIA) concerning key records stored in disciplinary case files and copies of Report of Investigations (ROIs) produced related to four cases.

Your request has also been forwarded to our Joint Security and Hazardous Materials West. They will provide a separate response to Items 1, 2, and 3 regarding the ROIs.

A search was conducted in the Human Resource Management Office (HRMO). The following are the results of the search:

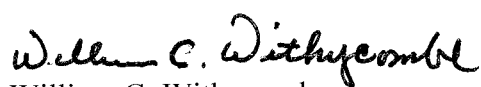
1. No Douglas Factor checklist, settlement records, or other agreements were found for the anonymous air traffic manager at Northern California TRACON (NCT). The Notification of Personnel Actions (SF-50s) relating to this employee are being withheld in accordance with Exemption 6, personal privacy of the individual. Title 5, Section 293.311(a) prohibits disclosure of the *Nature of Action* on an SF-50 of a present or former Federal employee.
2. No final decision letter was issued to the respondent at the Ontario Airport Traffic Control Tower (ATCT). The Notification of Personnel Actions (SF-50s) relating to this employee are being withheld in accordance with Exemption 6, personal privacy of the individual. Title 5, Section 293.311(a) prohibits disclosure of the *Nature of Action* on an SF-50 of a present or former Federal employee.
3. No proposal or decision letter was issued for the respondent at the San Francisco ATCT. The Notification of Personnel Actions (SF-50s) relating to this employee are being withheld in accordance with Exemption 6, personal privacy of the individual. Title 5, Section 293.311(a) prohibits disclosure of the *Nature of Action* on an SF-50 of a present or former Federal employee.
4. No final decision letter was issued in this case at the Tucson TRACON. The Notification of Personnel Actions (SF-50s) relating to this employee are being withheld in accordance with Exemption 6, personal privacy of the individual. Title 5, Section 293.311(a) prohibits disclosure of the *Nature of Action* on an SF-50 of a present or former Federal employee.

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."

There are no fees associated with the request.

The undersigned and Tim Kubik, Director, Human Resource Management Office, are responsible for this records 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



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

JAN 19 2011

RCVD 2-1-11
CEAT
(Mae post)

Certified-Return Receipt

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

Dear Mr. Lewis:

Re: Freedom of Information Act (FOIA) Request No. 2011-002164WP

This letter is in response to your Freedom of Information Act request dated December 29, 2010. You requested key records stored in disciplinary case files and copies of Report of Investigations (ROIs) related to four cases.

The Federal Aviation Administration, Joint Security and Hazardous Materials Office, West, cannot retrieve ROIs related to the four Accountability Board cases you requested. Reports of Investigation are not releasable under Exemption 6 of the FOIA, U.S.C. 552(b) (6). Exemption 6 of the FOIA protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clear unwarranted invasion of personal privacy." ROI's are subject to the Privacy Act and may not be released to a third party without the written consent of the individual concerned.

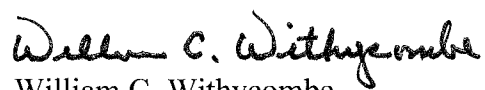
There are no fees associated with this response.

Edward Jones, Deputy Director, Joint Security and Hazardous Materials Office, West, and the undersigned are responsible for this denial determination. You may request reconsideration of this determination by writing to the Assistant Administrator for Regions and Center Operations, ARC-1, 800 Independence Avenue, SW, Washington, DC 20591.

②

Your request must be made in writing within 30 days from 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. The envelope containing the appeal must be marked "FOIA."

Sincerely,

A handwritten signature in cursive script that reads "William C. Withycombe".

William C. Withycombe
Regional Administrator

28242 S. Salo Rd., Mulino, OR 97042

tel. (503) 710-1515

Wednesday December 29, 2010

Ms. Dolores Corpus
FOIA, Regional Coordinator
P.O. Box 92007
Los Angeles, CA 90009-2007

F11: 2/16/07

Dear Ms. Corpus,

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

This FOIA seeks minimally redacted copies of key records stored in disciplinary case files. I ask for the following records, which should be obtainable from the HR POC at AWP-16, or from security files at AWP-700:

1. for the anonymous Air Traffic Manager at NCT, for whom a 4/9/07 removal Decision Letter precipitated MSPB Appeal SF-0752-07-0540-I-1: please provide a copy of the Douglas Factors checklist, a copy of any settlement or other agreement that may have followed the Appeal filing, and a copy of the SF-50 proving what final action was taken.
2. for the removal action at ONT ATCT proposed in AB Case 2008-0138, as initially reported to the Accountability Board on or about 3/14/08: please provide a copy of the final decision letter, as well as a copy of the SF-50 proving the action was in fact taken.
3. for the incident and internal inquiry at SFO ATCT related to AB Case 2008-0174, as initially reported to the Accountability Board on or about 4/10/08: please provide a copy of the final disciplinary action letter, as was (or should have been) provided to the Accountability Board IAW FAA Order 1110.125A para. 15(e).
4. for the suspension action at Tucson TRACON related to AB Case 2008-0160, as initially reported to the Accountability Board on or about 5/2/08: please provide a copy of the final decision letter, as well as a copy of the SF-50 proving the action was in fact taken.

Additionally, please provide copies of the following for each ROI produced related to the above four cases:

1. a signed copy of FAA Form 1600-32, showing allegations, distribution, etc.
2. a copy of the entire "Summary of Findings" section of the ROI.
3. and, a copy of the entire "Index of Exhibits" for the ROI.

③

For all records produced in these searches, please provide the entire page, with minimal redactions. Neither Exemption-2 nor Exemption-5 are valid for these records. Exemption-6 can be properly applied by simply redacting names-only, while retaining all dates, facilities, and other non-PII data.

Thanks for your help, and please call if you have questions or if I need to agree to a fee in excess of the \$50 I agree to pay with this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Lewis". The signature is stylized and somewhat cursive, with a long horizontal stroke at the end.

Jeff Lewis