

Other Supporting Documents

3:11-cv-01458-AC Lewis v. Federal Aviation Administration et al

*RCVD
6-2-12*

CONSENT

U.S. District Court

District of Oregon

Notice of Electronic Filing

The following transaction was entered by Danielson, Kevin on 5/31/2012 at 3:57 PM PDT and filed on 5/31/2012

Case Name: Lewis v. Federal Aviation Administration et al

Case Number: 3:11-cv-01458-AC

Filer: Federal Aviation Administration

Document Number: 30

Docket Text:

Declaration of Jeb Kreisler . Filed by Federal Aviation Administration. (Related document(s): Motion for Summary Judgment[28].) (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8) (Danielson, Kevin)

3:11-cv-01458-AC Notice has been electronically mailed to:

Kevin C. Danielson kevin.c.danielson@usdoj.gov, deanne.hoffer@usdoj.gov, Richard.Saltsman@faa.gov

3:11-cv-01458-AC Notice will not be electronically mailed to:

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

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-0] [8aeb7a1cd0ca0c5b0d3d3458ce0b437a5dcdbb2f191f8387f0ef9823712cfd7534d10cb2f01adcb6346001b07a57c49e63798532c1344338227651509149a62e]]

Document description:Exhibit 1

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-1] [af4f4e1aa994e99a818ae21ae34e018540e4c0ec0c8613455d6971bab9557ffabe4d1fc4de6055577f5aad8fa8c154fd27b03f041877dd0aab7b22cb08168155]]

Document description:Exhibit 2

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-2] [232f2833d018c8c791843bdf901c2fb6ca4cdff2dba5ed1189c69ed623ff9beb914f770f87519014a0fcf8337fec233be4ac262aadeff63b49b7b3523fc2993c]]

Document description:Exhibit 3

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-3] [7aa97c22d34e902750c0dd23a282435d82d932ac39af7add3ad2a0307f09ee8a2ad98b7efd564df9902a0cacfb929ffcbcd228d5705319bd5ec1d6ee1d37]]

Document description:Exhibit 4

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-4] [1b16b098d1ae1831534ce76e9b8b1955a8ca1a998a64affacfc557a4e640ada22f45ef0ed83330967b2e4e9bcced84ea24302657d5b01d07c684b05e44f0e6d4]]

Document description:Exhibit 5

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-5] [8711690d921b3b3e3ece985854d02cfdc33c6f6aa4a2aeab221cb0c863ae956971c7f855e822c83c6a7716f195a9d0814ca8634ee4885ede05aca6083 b4b802f]]

Document description:Exhibit 6

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-6] [0883073908e3871ab4430c35d7acf3148a7e5b68cd088360277dd2474641136b13428d562af33004e4e7fd38e5dc284c0c1d3e93984f506df79188a1d149a793]]

Document description:Exhibit 7

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-7] [8bebaa69a6caabf6397d37604bdb087cc8b68d2c01da48843dd87ccd2a63f044c49e6628ecd68edf36f4735c2704d0b03be765a033e78033535aa4a50c4a71d1]]

Document description:Exhibit 8

Original filename:Not Available

Electronic document Stamp:

[STAMP ordStamp_ID=875559790 [Date=5/31/2012] [FileNumber=4012889-8] [3002bac28878d8623214739b69201b4900e931fbd6eaa257d671483f8df80217b3773ee9bad6b08de770775a07e4ee1dcdafd0480fd35a639ae898dbe220ac2cf]]

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Attorneys for Defendant Federal Aviation Administration

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

JEFFREY NATHAN LEWIS,

Case No.:3:11-CV-01458-AC

Plaintiff,

v.

DECLARATION OF JEB KREISCHER

**FEDERAL AVIATION
ADMINISTRATION,**

Defendant.

I, Jeb Kreischer, declare and state as follows:

1. I am employed by the Federal Aviation Administration (FAA) as a Freedom of Information Act (FOIA) Management Analyst and I have been so employed for the past 2 years and 5 months.
2. The FAA is a component of the Department of Transportation.

3. As part of my duties with the FAA, I am responsible for the development of FOIA policies, providing FAA FOIA policy and procedural guidance, providing training to all FOIA coordinators and other agency personnel, assisting FAA program offices in preparing their FOIA responses, and evaluating and responding to certain types of FOIA appeals. I, along with another FOIA Management Analyst, conduct the day-to-day operations of the FOIA program at the FAA.
4. The FAA administers FOIA through its regulations, specifically 49 CFR, Part 7. As a general matter, FOIA requests filed with the FAA receive an internal tracking number and are referred to one or more offices for response directly to the requestor. After the FAA responds to the initial request, the requestor has the right to dispute the FAA's determination through an administrative appeal. A requestor may appeal the FAA's decision to withhold documents pursuant to an exemption, to deny a fee waiver, and to deny expedited processing. In addition, a requestor may challenge the adequacy of the FAA's search for responsive records as well as a determination that no responsive records were located. Finally, a requestor may submit an administrative appeal if the FAA does not answer an initial request in accordance with the timeframes prescribed by law. An administrative appeal must be filed within 30 days of the date of receipt of the original denial.
5. The decision concerning an administrative appeal is considered a final agency decision for the purposes of review. Once the requestor is informed in writing of the appeal decision, he or she may seek review in the United States District Court.

6. From FY 2007 to the present time, Jeffrey Lewis has filed 192 initial Freedom of Information Act (FOIA) requests and 59 administrative appeals with the FAA.
7. I am familiar with the FOIA appeals listed below because they were all received and assigned by my office.
8. FOIA Control Number 2011-004258: The initial request dated March 17, 2011 asked for four specific e-mails identified on a printout showing the results of a NEXTGEN e-mail archival search. In the initial response from the Western-Pacific (AWP) Human Resource Office dated April 25, 2011, Mr. Lewis was informed there were no records responsive to his request. In a separate response from the AWP Regional Counsel's Office dated April 29, 2011, three of the subject e-mails were located, but were withheld in full under FOIA Exemption 5 as deliberative and predecisional. Mr. Lewis appealed this determination in a letter dated May 15, 2011. During the course of gathering background material related to this appeal, the fourth e-mail in question was located. In the appeal response dated November 3, 2011, two of the e-mails were released in full, and two were withheld in part under FOIA Exemption 5 as deliberative and predecisional as well as under attorney-client privilege (one sentence was withheld from one e-mail, and one e-mail was withheld almost in full). Exhibit 1 is attached and contains true and accurate copies of documents related to FOIA Control Number 2011-004258.

9. FOIA Control Number 2010-003323: The initial request dated March 2, 2010 asked for all e-mail sent by or received by Daniel Castellon during the period May 1, 2008 thru March 1, 2009, containing the terms "Jeff," Jeffrey," or "Lewis" in either the subject line or text. In the initial response from the AWP Human Resource Office dated April 28, 2010, Mr. Lewis was provided with all responsive records which were located. He appealed the adequacy of search in this case, and asked the Headquarters IT Messaging Team (AJF-AA3) to conduct an electronic e-mail search. In this case, AJF-AA3 provided an estimate of \$900 (18 hours of search activities at \$50/hour) to search e-mail backup tapes. Since Mr. Lewis did not agree to pay these fees, the FAA continued with the processing of his administrative appeal without the benefit of this additional search. In the appeal response dated November 9, 2011, Mr. Lewis was informed that it had been determined the initial search for records had been adequate. Exhibit 2 is attached and contains true and accurate copies of documents related to FOIA Control Number 2010-003323.

10. FOIA Control Number 2010-004091: The initial request dated March 29, 2010 asked for all e-mail sent by or received by Monique France during the period May 1, 2008 thru March 1, 2009, containing the terms "Jeff," Jeffrey," or "Lewis" in either the subject line or text. In the initial response from the Northwest Mountain Region/Western Service Area dated June 7, 2010, Mr. Lewis was informed no records responsive to his request were located. He appealed the adequacy of

search in this case, and asked that AJF-AA3 conduct an electronic e-mail search. In this case, AJF-AA3 provided an estimate of \$900 (18 hours of search activities at \$50/hour) to search e-mail backup tapes. Since Mr. Lewis did not agree to pay these fees, the FAA continued with the processing of his administrative appeal without the benefit of this additional search. In the appeal response dated November 3, 2011, Mr. Lewis was informed that it had been determined the initial search for records had been adequate. Exhibit 3 is attached and contains true and accurate copies of documents related to FOIA Control Number 2010-004091.

11. FOIA Control Number 2010-005324: The initial request dated May 22, 2010 asked for letters related to all formal disciplinary actions against Air Traffic Controllers at four specific towers between June 1, 2006 and September 1, 2009. In the initial response from the Northwest Mountain Region/Western Service Area dated August 16, 2010, Mr. Lewis was provided with one letter which was released in part with certain information withheld under FOIA Exemption 6 (personal privacy) and was charged \$225.50, which represented approximately 3.5 hours of search. In his administrative appeal, Mr. Lewis alleged that an adequate search for records was not conducted, and ARC-40 remanded this request to AWP to conduct an additional search. AWP determined that an additional \$550 (11 hours of search at \$50/hour) would be necessary to fulfill this request. This request is closed since Mr. Lewis failed to agree to pay the necessary fees. Exhibit

4 is attached and contains true and accurate copies of documents related to FOIA Control Number 2010-005324.

12. FOIA Control Number 2010-005390: The initial request dated May 29, 2010 asked for all e-mail sent or received by Tim Kubik from July 1, 2007 thru November 30, 2008 with text or subject lines mentioning “Jeff,” “Lewis,” “Ralph,” “CCR,” or “Concord.” In this case, the Regional Message Administrative Team Lead (AWP-40), using information from AJF-AA3, provided an estimate of \$3300 (66 hours of search activities at \$50/hour) to search e-mail backup tapes. Mr. Lewis did not agree to pay these fees, and actually withdrew this request. Exhibit 5 is attached and contains true and accurate copies of documents related to FOIA Control Number 2010-005390.

13. FOIA Control Number 2011-006114: The initial request dated May 15, 2011 asked for an electronic search by AFJ-AA3 for all e-mail within Dick Fossier’s archives as of the close of business June 7, 2008 related to “Lewis,” “Concord,” or “CCR.” In this case, AFJ-AA3 provided an estimate of \$800 (16 hours of search activities at \$50/hour) to search e-mail backup tapes. This request is closed since Mr. Lewis failed to agree to pay the necessary fees. Exhibit 6 is attached and contains true and accurate copies of documents related to FOIA Control Number 2011-006114.

14. FOIA Control Number 2011-009148: The initial request dated September 1, 2011 asked for a specific e-mail identified on a printout showing the results of a

NEXTGEN e-mail archival search. In the initial response from the AWP Human Resource Office dated November 1, 2011, Mr. Lewis was provided with this record, although certain parts were withheld under FOIA Exemption 5 as deliberative and predecisional. In addition, certain personal information pertaining to another employee was withheld under FOIA Exemption 6, but Mr. Lewis is not challenging this withholding. Mr. Lewis appealed this determination in a letter dated November 28, 2011. In the appeal response dated January 26, 2012, part of the material withheld under FOIA Exemption 5 was released and part continued to be withheld under FOIA Exemption 5 as deliberative and predecisional. Exhibit 7 is attached and contains true and accurate copies of documents related to FOIA Control Number 2011-009148.

15. Exhibit 8 is a *Vaughn* index prepared by the FAA in this case.

16. I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on this 31st day of May 2012.



Jeb Kreischer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DECLARATION OF JEB KREISCHER** was placed within a first class postage prepaid envelope, and deposited in the United States Mail within the offices of the United States Attorney according to established office practice at Portland, Oregon, on May 31, 2012 addressed to:

Jeffrey Nathan Lewis
28242 S. Salo Road
Mulino, Oregon 97042

Plaintiff, *Pro Se*

/s/ Deryl G. Looney
DERYL G. LOONEY
Paralegal Specialist

CERTIFICATE OF SERVICE