

From: duke.taylor@faa.gov
To: Jeff Lewis <reformfaanow@gmail.com>
Date: Mon, Sep 26, 2011 at 1:23 PM
SUBJ: Fee Estimates for FOIA NEXGEN searches.

Hello, Mr. Lewis,

Attached is a letter you should receive within a few days regarding the fees estimates regarding four (4) FOIA appeals wherein you requested NEXGEN email searches.

Thanks,

Duke Taylor
ARC Director of Administration

 **JLewis Cost Estimate 2011-09-26.pdf**
312K [View](#) [Download](#)

3:11-CV-01458-AC
Plaintiff's 12/14/12
Exhibit: 1a



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

Assistant Administrator for Regions
and Center Operations
800 Independence Ave., SW.
Washington, DC 20591

SEP 26 2011

RCVD 10/1/11

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

RE: Freedom of Information Act Appeal 2010-003323, 2010-004091, 2010-005255,
2011-000866

Dear Mr. Lewis:

This letter is in response to the several Freedom of Information Act (FOIA) appeals
referenced above.

Each of the above referenced FOIA appeals were submitted in connection with an initial
request where you asked for e-mails to or from specific employees containing certain key
terms and covering a particular period of time. Below is a brief description of each of the
initial requests:

- (1) FOIA Control Number 2010-003323: All e-mail (including attachments) sent by or
received by Daniel Castellon during the period July 1, 2007 thru March 1, 2009,
containing the terms "Jeff," "Jeffrey," or "Lewis" in either the subject line or text.
- (2) FOIA Control Number 2010-004091: All e-mail (including attachments) sent by or
received by Monique France during the period July 1, 2006 thru March 1, 2009,
containing the terms "Jeff," "Jeffrey," or "Lewis" in either the subject line or text.
- (3) FOIA Control Number 2010-005255: All e-mail including attachments sent by or
received by Cindy Lopez-Hickson for the period February 1, 2007 thru July 1, 2007,
containing the terms "Jeff," "Lewis," "Ralph," "CCR," or "Concord" in either the
subject line or text.¹
- (4) FOIA Control Number 2011-000866: All e-mail (including attachments) sent by or
received by Andy Richards, Jason Ralph, Mark Deplasco, Monique France, Ros
Marable, and Dan Castellon for the period June 1, 2008 thru June 30, 2008 and
September 20, 2008 thru October 20, 2008.

In connection with each of these initial requests, you submitted a FOIA appeal challenging
the adequacy of the search for responsive records. In each case, you asked that the

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| <p>3:11-CV-01458-AC Plaintiff's 12/14/12 Exhibit: <u>1b</u></p> |
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¹ Please be advised the NEXTGEN Office has confirmed that e-mail records are not available prior to May
2008. As such, it is not possible for the NEXGEN Office to conduct a search in connection with (3) above.
Further, cost estimates from the NEXGEN Office related to (1) and (2) are based on a start date of May 2008.

NEXGEN office conduct a search of the LOTUS e-mail account of each employee identified in the four subject initial FOIA requests.

The costs associated with conducting the type of search for records you have requested are significant. As such, the Department of Transportation (DOT) FOIA Regulations provides that the cost associated with conducting an electronic search for records be borne by the requestor. With regard to each of the requests referenced above, we provided the NEXGEN Office with the parameters of your search, and asked that they provide us with a separate cost estimate for each request.² Below is their cost estimate for each of the requests in question:

2010-003323: \$900 (this amount represents 18 hours of search activities at \$50/hour)

2010-004091: \$900 (this amount represents 18 hours of search activities at \$50/hour)

2010-005255: Request covers time period prior to May 2008; NEXGEN search not possible.

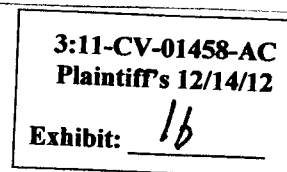
2011-000866: \$1200 (this amount represents 24 hours of search activities at \$50/hour)

Please be advised that since these amounts are estimates, some variance in the actual cost should be expected. If you wish to pursue a NEXGEN search in connection with any or all of the above requests, it will be necessary for you to confirm in writing within 10 days from the receipt of this letter that you agree to assume responsibility for these fees. If you do not agree to these estimated fees or if you fail to respond to this letter, we will proceed with the processing of your appeals without the benefit of a NEXGEN search.

Sincerely,



Douglas C. Taylor, Ph.D.
Director of Administration



² We asked the NEXGEN Office to provide an estimate based on a search of their monthly backup tapes. It is also possible for the NEXGEN Office to search tapes by the week or by the day, but the cost to conduct these types of searches is significantly more expensive than the monthly tape option. However, if you are interested in pursuing a search of the weekly or daily backup tapes for any or all of your requests referenced herein, we will ask the NEXGEN Office to prepare these estimates.

from: Jeff Lewis <reformfaanow@gmail.com>
to: duke.taylor@faa.gov
date: Mon, Sep 26, 2011 at 4:34 PM
subject: Re: Fee Estimates for FOIA NEXGEN searches.

Thanks for the email, Duke. I'm going to have to think about this one, given the high costs. It appears you are indicating they would do a series of monthly archive checks, each search costing roughly \$80. This is a bit steep but not too inconsistent with the costs of prior archival searches. It seems it would make more sense for me to review my records, including the 5,000+ pages I have received since the oldest of these two Appeals was filed, and be a bit more surgical with specific-date Appeal requests. Please advise if there is anything incorrect in my comprehension of your fee estimate.

Regarding #1 (F10-3323)... upon review of my files, I see that I suggested in the Appeal letter that, on the assumption Mr. Castrellon has been hiding or destroying Agency records, an archival search for a key date such as 10/9/08 might be helpful. I may still be interested in doing this one-archive search for Mr. Castrellon's emails. Please note that, at the time, Mr. Castrellon was managing the AWP-16 office, and many of his emails were sent not to his individual address but to a generic office inbox. Please also note that, a key reason for the Castrellon FOIA and Appeal was to obtain AWP Terminal Reports I continue to wait for production of these same Terminal Reports under F11-4047, which allegedly are being delayed in your office. As such, if you can produce the delayed F11-4047 records, I may be able to justify withdrawing the F10-3323 Appeal.

Regarding #2 (F10-4091)... it has become evident over time, with the slow accumulation of Agency records, that Ms. France was quite familiar with the Agency improprieties of my case. It also appears that, knowing this, she conscientiously destroyed emails and other records, so as to reduce the likelihood of a successful forensic reconstruction. Perhaps you should take a close look at another FOIA request (F11-6252) seeking the OSC/Dribinsky letter, and the subsequent FAA memo directing officials to retain records (and cease premature destructions)? F11-6252 was denied via Exemption-5, and the Appeal was also denied...so, at least you can find this key record in the Appeal file.

Regarding #3 (F10-5255)... your new letter is puzzling. I filed an appeal 14-months ago, and the appeal focused on a large number of very precise redactions, speciously justified under FOIA Exemption #5. Fourteen months is a lot of time to look at 42-pages and un-redact the lines that should never have been concealed in the first place. Now, although I still have not been provided with any of these records (or an Appeal response, which would have been timely more than a year ago, per Agency's FOIA Order), you are suggesting a NEXGEN archival search that is evidently not even possible. This is confusing, because I find nowhere in my 14-month-old Appeal letter a request that you do an archival records search of the AWP EAP Manager. May I suggest: how about, use page 9 of the attached (a color PDF copy of this FOIA Appeal package), which I submitted with the original Appeal fourteen-months ago, and provide all copies, with no redactions?

Lastly, regarding #4 (F11-0866)... confusion again. I looked in my files, and find no reference to NEXGEN, archives or archival, or HQ or HQ/IT in my 1/28/11 Appeal letter. As it happens, I have since received many more records indicating Deplasco and Richards are sufficiently produced. As for the others, they all have a documented history suggesting they knowingly destroy or conceal records, thus likely destroyed the emails ASAP or otherwise ensured they would not become archived. So, please accept this letter as a withdrawal of my F11-0866 Appeal.

So, to close, please take a close look at new FOIA F11-4047 (the Terminal Reports) and at two Appeals (F10-5255, and F10-5442) to see which if any can be promptly produced. If you have questions or I can do anything to accelerate delivery, please email or phone(971-295-7669).

Thanks. Jeff Lewis

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| 3:11-CV-01458-AC Plaintiff's 12/14/12 Exhibit: <u>1c</u> |
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From: duke.taylor@faa.gov
To: Jeff Lewis <reformfaanow@gmail.com>
Date: Tue, Oct 4, 2011 at 5:27 AM
SUBJ: Re: Fee Estimates for FOIA NEXGEN searches.

Hello, Mr. Lewis,

Let me respond to your general and specific concerns.

The fee estimate:

The cost of conducting a NEXGEN search for data covering a one year period will be higher than those for a search of a three month period. However, there are costs associated with the search and retrieval of data that will apply regardless of whether your request is for one year or one month of data. As such, please be advised that it is foreseeable that a NEXGEN search for one month's worth of data would cost substantially more than the \$80 you have estimated.

Regarding #1 (F10-3323):

I will follow up with you concerning this appeal after you have received the agency response to FOIA Control Number 2011-004047. At that time, you can decide how you wish to proceed with this FOIA Appeal. However, please note that the scope of your initial request as well as your appeal is significantly broader in scope than simply the AWP Terminal Reports.

Regarding #2 (F10-4091):

It appears your reference to FOIA Control Number 2011-006252 may be an indirect allegation that agency records were improperly disposed. As we have advised you in previous correspondence, the scope of the Freedom of Information Act is limited to **existing agency records**. Any issue not related to **existing agency records** is clearly outside the purview of the Freedom of Information Act, and cannot be addressed by my office.

It is unclear what action you wish for my office to take in connection with this FOIA Appeal. Please advise if you want my office to continue with the processing of this FOIA Appeal, or if you wish for us to consider this appeal withdrawn.

Regarding #3 (F10-5255):

Please confirm you are narrowing the scope of your appeal to only page nine of your FOIA Appeal, in which you provide a list of e-mails where information was partially withheld.

Regarding #4 (F11-0866):

In accordance with your request below, FOIA Appeal 2011-000866 has been withdrawn and this issue is now considered closed.

Regarding Appeals (F10-5255, and F10-5442):

Please be advised that FOIA Appeal 2010-005442 is has been completed and that you should receive the FAA's Final Agency Determination shortly. With regard to FOIA Appeal 2010-005255, please see my comments above and advise accordingly.

Thanks,
Duke Taylor
ARC Director of Administration

3:11-CV-01458-AC
Plaintiff's 12/14/12
Exhibit: 2a

From: Jeff Lewis <reformfaanow@gmail.com>
To: duke.taylor@faa.gov
Date: Tue, Oct 4, 2011 at 9:07 AM
Subject: Re: Fee Estimates for FOIA NEXGEN searches.

Good Morning, Duke:

Thanks for your response. I (too) would like to wrap all this up. Having received the F10-5442 Appeal response (all those Ex.5 redactions were again fully disclosed, and the Appeal was 13-months overdue, per FAA's Order), it is looking much closer to "done".

Having carefully considered your response, as well as the fee estimate letter received via USPS on 10/1/11, I would like to request the following:

1. for F10-3323 (please see attached), although I accept your proposal to delay an HQ/IT search of the 10/9/08 archives, I nonetheless think it may be worth pursuing now, with no further delay. The search parameters are clearly presented at paragraph one of my 3/2/10 FOIA request letter; the Appeal search "suggestion" to use the 10/9/08 archives is clearly declared at the top of page three of my 6/1/10 Appeal letter. So, let me know how much delay I can anticipate for F11-4047 and, if extensive, let's discuss pressing forward on the Appeal F10-3323 HQ/IT search...
2. regarding F10-4091, please know, Duke, I do understand that your office lacks authority to compel AWP-HR or WSA-ATO officials to comply with the FOIA laws. I offer points such as a suggestion to look at the F11-6252 Appeal file for the OSC/Dribinsky letter to aid your staff in more fully understanding how these field offices are undermining the intent of the FOIA laws. Maybe your staff already know, or maybe they do not. In any event, an important process - FOIA - is being undermined and I remain eternally hopeful that by sharing these suggestions we may all reap the benefits of a more effective FOIA process.
3. regarding 10-5255... I filed a very informative Appeal nearly fifteen months ago. My filing included clear evidence of the improper misapplication of FOIA Exemption #5 in the partial redactions that were received on 6/25/2010. A timely Appeal response would have included a review of the redacted content on page-9 of my Appeal package, and the Appeal response would have been received fourteen-months ago. So, I am NOT narrowing my scope but suggesting, if you would have your staff promptly review the unredacted copies they should have received in July 2011 and provide all of them (as listed on page-9 of my Appeal package), I likely will immediately withdraw the remainder of this FOIA Appeal. In other words, how about we do the easy parts as quickly as possible, so the more challenging parts can be dropped?

Thanks again...and please email if you questions or there is anything else I need to do to see an expeditious closure of these three FOIA Appeals.

Jeff

3:11-CV-01458-AC
Plaintiff's 12/14/12

Exhibit: 26

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 21, 2009

January 21, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike. The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.

The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the *Federal Register*. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the *Federal Register*.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the *Federal Register*.

BARACK OBAMA

3:11-CV-01458-AC
Plaintiff's 12/14/12
Exhibit: 3