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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION**

**JEFFREY NATHAN LEWIS,**

**Plaintiff,**

**v.**

**FEDERAL AVIATION  
ADMINISTRATION**

**Defendant.**

**Civil Case No. 3:11-CV-1458-AC**

**PLAINTIFF'S  
DOCUMENTS  
RESPONSIVE TO JUDGE  
ACOSTA'S REQUEST**

Jeffrey Nathan Lewis ("Plaintiff"), a pro se individual, submits this memorandum responsive to a request made during courtroom discussions held on Tuesday, December 11, 2012.

The following is a summary of the five FOIA requests at issue in Civil Case Number 3:11-CV-01458-AC, Lewis v. FAA. To aid in locating relevant records, each FOIA Request number is followed by a concise description, a short FOIA chronology, and summary notes. Also included are references to case Exhibits, which already exist within CR-29 (Agency's Memorandum in Support; filed 5/31/12), CR-30 (Agency's Declaration of Jeb Kreischer; filed 5/31/12), and CR-36 (Plaintiff's Memorandum Opposing Summary Judgment; filed 7/2/12).

Additional NEW Exhibits are attached, including:

<b>Exh.1a:</b>	9/26/11	1:23PM email, Duke Taylor to Plaintiff
<b>Exh. 1b:</b>	9/26/11	Letter from Duke Taylor to Plaintiff (the attachment) (2pg)
<b>Exh.1c:</b>	9/26/11	4:34PM email, Plaintiff to Duke Taylor
<b>Exh.2a:</b>	10/4/11	5:27AM email, Duke Taylor to Plaintiff
<b>Exh.2b:</b>	10/4/11	9:07AM email, Plaintiff to Duke Taylor
<b>Exh.3:</b>	1/21/09	President Obama's FOIA Memo

**FOIA 2010-3323:**

...this FOIA requested copies of emails to/from Dan Castellon (Acting Manager at the Labor Relations office; he was centrally involved in denying Plaintiff's grievances and producing the letter dismissing Plaintiff).

**3/2/2010:** Plaintiff filed initial FOIA request, as noted at Agency's CR-29, pg.4. [NOTE: a copy of the request (1p) is viewable at Agency's CR-30, Exh.2, pg.1.]

**4/28/2010:** Agency's response produced five emails, as noted at Agency's CR-29, pg.4. [NOTE: a copy of the response letter is viewable at Agency's CR-30, Exh.2, pg.3.]

**6/1/2010:** Plaintiff filed FOIA Appeal, as noted at Agency's CR-29, pg.4. [NOTE: a copy of the Appeal (3p letter plus 18p of exhibits is viewable at Agency's CR-30, Exh.2, pg.4-24.)

**9/26/2011:** Fifteen months passed. Then, Duke Taylor (FAA Director of Administration, in charge of all FAA FOIA) sent an email to Plaintiff with an advance copy of his 9/26/11 letter. [NOTE: Agency did not include these relevant documents in their extensive filing; they are provided here by Plaintiff.] ① [Exh.1a, 1b]

**10/4/2011:** Email exchange between Plaintiff and Duke Taylor. [NOTE: Agency did not include these relevant documents; they are provided here by Plaintiff.] ② [Exh.2a, 2b]

*Note that Agency estimated \$900 for this search. This amount was exorbitant; similar Agency searches had been conducted on other FOIA requests, indicating an appropriate fee was in the \$50-\$100 range. This point was noted at paragraphs 23-25 of Plaintiff's CR-36.*

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**FOIA 2010-4091:**

...this FOIA requested copies of emails to/from Monique France (Executive Staff Advisor, in charge of all tower staffing for western third of the U.S.; she was a key accountable official for the decision to dismiss Plaintiff in November 2008).

**3/29/2010:** Plaintiff filed initial FOIA request, as noted at Agency's CR-29, pg.4. [NOTE: a copy of the request (1p) and related exhibits (14p) is viewable at Agency's CR-30, Exh.3, pg.1-15.]

**6/7/2010:** Agency 'No Records' response, as noted at Agency's CR-29, pg.4. [NOTE: a copy of the response letter is viewable at Agency's CR-30, Exh.3, pg.16.]

**7/9/2010:** Plaintiff filed FOIA Appeal, as noted at Agency's CR-29, pg.4. [NOTE: a copy of the Appeal (1p) and page one of the related exhibits is viewable at Agency's CR-30, Exh.3, pg.17-18; Agency did NOT include page two of the related exhibits, the Obama 1/21/09 FOIA memo, which Plaintiff has attached here.] ③ [Exh.3]

**9/26/2011:** Duke Taylor (FAA Director of Administration, in charge of all FAA FOIA) sent an email to Plaintiff with an advance copy of his 9/26/11 letter. [NOTE: Agency did not include these relevant documents in their extensive filing; they are provided here by Plaintiff.] ① [Exh.1a, 1b]

**10/4/2011:** Email exchange between Plaintiff and Duke Taylor. [NOTE: Agency did not include these relevant documents; they are provided here by Plaintiff.] ② [Exh.2a, 2b]

*Note that Agency estimated \$900 for this search. This amount was exorbitant; similar Agency searches had been conducted on other FOIA requests, indicating an appropriate fee was in the \$50-\$100 range. This point was noted at paragraphs 23-25 of Plaintiff's CR-36.*

**FOIA 2010-5324: -- PLAINTIFF OFFERS TO WITHDRAW --**

...this FOIA requested copies of disciplinary letters issued to controllers at four specified towers in the Bay Area, including Concord (where Plaintiff had worked).

5/22/2010: Plaintiff filed initial FOIA request, as noted at Agency's CR-29, pg.5. [NOTE: a copy of the request (1p) without the exhibit (1p) is viewable at Agency's CR-30, Exh.4, pg.1.]

8/16/2010: Agency's FOIA Response included a letter (2p), an invoice for \$225.50, and one responsive document (2p). Plaintiff promptly paid the \$225.50, as noted at Agency's CR-29, pg.5. [NOTE: a copy of the letter (2p) is viewable at Agency's CR-30, Exh.4, pg.2-3.]

9/15/2010: Plaintiff filed FOIA Appeal, as noted at Agency's CR-29, pg.5. [NOTE: a copy of the Appeal letter is viewable at Agency's CR-30, Exh.4, pg.4.]

9/19/2011: A full year later (and out of the blue), Duke Taylor remanded the Appeal back to Tim Kubik's office in Los Angeles. [NOTE: a copy is viewable at Agency's CR-30, Exh.4, pg.5.]

10/28/2011: Tim Kubik generated an exorbitant fee estimate for the remanded Appeal, and mailed it to Plaintiff. [NOTE: a copy is viewable at Agency's CR-30, Exh.4, pg.8.]

*Through other channels, Plaintiff has obtained sufficient records to replace those sought via this FOIA request. Therefore, Plaintiff offers to withdraw this portion of the FOIA Civil Complaint.*

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**FOIA 2010-5390: --PLAINTIFF OFFERS TO WITHDRAW--**

...this FOIA requested copies of emails to/from Tim Kubik (Human Resources Management Director at FAA's Western Pacific Region, in Los Angeles; he was centrally involved in the wrongful dismissal of Plaintiff).

5/29/2010: Plaintiff filed initial FOIA request, as noted at Agency's CR-29, pg.5. [NOTE: a copy of the request (1p) with the exhibit (1p) is viewable at Agency's CR-30, Exh.5, pg.1-2.]

6/28/2010: Tim Kubik issued a letter to declaring an exorbitant \$3,300 FOIA fee estimate. [NOTE: a copy of the Kubik letter is viewable at Agency's CR-30, Exh.5, pg.3.]

7/21/2010: Plaintiff was shocked by the exorbitant fee estimate and sent an email requesting an explanation. Tim Kubik issued a second letter explaining the \$3,300 FOIA fee estimate. [NOTE: a copy of the Kubik letter is viewable at Agency's CR-30, Exh.5, pg.4-5.]

*Note that similar Agency searches had been conducted on other FOIA requests, indicating an appropriate fee was in the \$50-\$100 range. Plaintiff made this point at paragraphs 23-25 of Plaintiff's CR-36.*

*Plaintiff had withdrawn this FOIA request via a 7/29/10 email, but included it within this Civil Action after seeing Tim Kubik repeat the improper Pay-to-Play tactic fifteen months later.<sup>1</sup> However, Plaintiff now offers to withdraw this portion of the FOIA Civil Complaint.*

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<sup>1</sup> See Tim Kubik's 10/28/11 FOIA estimate at Agency's CR-30, Exh.4, pg.8.

**FOIA 2011-6114:**

...this FOIA requested copies of emails to/from Dick Fossier (Labor Relations Specialist at FAA's Western Pacific Region, in Los Angeles; he was the only LR specialist to be actively involved in Plaintiff's case throughout the 21-months from the 2/16/07 lockout to the 11/6/08 firing), as archived on the close of business 6/7/08.

**5/15/2011:** Plaintiff filed initial FOIA request, as noted at Agency's CR-29, pg.6. [NOTE: a copy of the request (1p) with the exhibit (1p) is viewable at Agency's CR-30, Exh.6, pg.1-2.]

**10/12/2011:** Five months later (and out of the blue) Tim Kubik sent Plaintiff a letter with an exorbitant \$800 fee estimate, as noted at Agency's CR-29, pg.6. [NOTE: a copy of the fee estimate letter (1p) is viewable at Agency's CR-30, Exh.6, pg.3.]

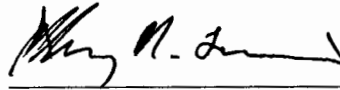
**11/1/2011:** HR Specialist Deidra Stephens sent an email to Tim Kubik's secretary, Maria Serna. She provided a copy of the fee schedule for producing archived email FOIA responses. Please note that the first paragraphs on the attachment declare that 2-hours of processing is a fair estimate for calculating fees. This would correspond with a \$100 FOIA fee estimate, yet Mr. Kubik had declared an \$800 estimate two weeks earlier. [NOTE: a copy of the email (1p) and the fee estimation attachment (2p) is viewable at Agency's CR-30, Exh.6, pg.4-6.]

*This FOIA request was never closed. In fact, Agency has entered into a pattern of indefinite delay, and simply fails to respond to Plaintiff's numerous emails asking for an update. The record shows that Tim Kubik has used the improper Pay-to-Play tactic to obstruct FOIA for three different FOIA requests (FOIA 2010-5324, FOIA 2010-5390, and FOIA 2011-6114). This practice needs to end.*

**Plaintiff's Proposed Remedy:**

As a remedy, Plaintiff offers to withdraw FOIA 2010-5324 and FOIA 2010-5390 from the Civil Complaint, and makes a request of the Court. Specifically, Plaintiff requests the Court to direct Agency to immediately produce the records responsive to FOIA 2011-6114, with Plaintiff to pay the appropriate amount (in the vicinity of \$100), consistent with the fee schedule and previous billings for similar FOIA responses

These notes and three NEW Exhibits are respectfully submitted this 14<sup>th</sup> day of December 2012.



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Jeffrey Nathan Lewis,  
Plaintiff, *pro se*



## CERTIFICATE OF SERVICE

I certify that, for Civil case number 3:11-CV-1458-AC, a true copy of **Plaintiff's Documents Responsive to Judge Acosta's Request**, including the Exhibits,<sup>1</sup> was hand-delivered this day to the U.S. District Court in Portland, OR, and to the following:

Counsel representing FAA:

Mr. Kevin Danielson  
Assistant U.S. Attorney, District of Oregon  
1000 SW Third Ave., Suite 600  
Portland, OR 97204-2902

12-14-2012  
(date)

  
Jeffrey N. Lewis

<sup>1</sup> The total page-count is 15: 8-pages for the pleading, plus 7-pages of Exhibits.