



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

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

Patrick Massie

(b)(6)

RE: Freedom of Information Act (“FOIA”) Appeal 2019-010242

Dear Mr. Massie:

This letter is in response to your administrative appeal (the “Appeal”) of the March 10, 2020 partial denial by the Regional Administrator-Southwest Region and Regional Counsel, of a request for agency records submitted on August 28, 2019 under FOIA Control No. 2019-010242SW<sup>1</sup>. Your appeal, dated April 8, 2020, challenges the determination to withhold start/stop times and Personal Identity Verification (PIV) card/badge numbers.

Upon review, I am granting your appeal in part, and releasing portions of the records described below. These records are an enclosure to this letter.

### **INFORMATION REQUESTED**

In your initial FOIA request dated August 28, 2019, you requested:

- “1...any record that provides the official start and stop times (for work and lunch breaks) for timekeeping purposes from August 2018 to the present for the following FAA AJW and AHR personnel located in the Southwest Regional Office: Jeff Tague, John L. Smith, Wayne Bonta, Azeem Yasin, Grant Hightower, Tina Demers, Mohaymin Alhamody, Mark Stack, Uriel Arteaga, Connie Patterson, Christopher Mays and Kenneth Morelos.
- 2...any record from August 2018 to the present that provides the time swipes for the same personnel listed in Item 1.”

### **INITIAL DETERMINATION**

The Regional Administrator’s Office, Southwest Region, Fort Worth, Texas, conducted a search and identified 336 pages of records as responsive to your request. In a March 10, 2020 letter, Rob Lowe, Regional Administrator, Southwest Region, released to you 336 pages with portions redacted pursuant to FOIA Exemption 6 (5 U.S.C. § 552(b)(6)).

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<sup>1</sup> Your request was assigned to the Regional Administrator’s Office–Southwest Region and the Air Traffic Organization–Central Service Area. You are only appealing the RO-Southwest Region’s response.

### ISSUES RAISED ON APPEAL

You emailed an appeal on April 8, 2020, claiming the FAA improperly withheld portions of records under Exemption 6. You assert the following:

“As someone that represents federal employees in labor relation matters, I hold many meetings with the public where we discuss issues and labor matters regarding the FAA. In these meetings, private United States citizens have expressed an interest in receiving the time and attendance (T&A) and PIV records of FAA management officials. There is a strong interest of the public to know whether or not these federal employees are actually reporting for work on time and being paid for the time actually worked. Also, the public has a strong interest in knowing whether or not federal employees in the FAA are falsifying their T&A records...

I believe this is an incorrect application of Exemption 6. In the past, the time records of building entry and departure were released to me when the records were manually written by each employee entering the building after hours. In my opinion, these PIV records are no different, with the exception of being electronically stored. FOIA Exemption 6 relates to personnel and medical files such as performance ratings, social security numbers, birth dates, and medical records with diagnosis/prescriptions, not PIV records that simply show the time an employee walked in the Southwest Regional Office (RO)...

I don't believe any of the information redacted on the PIV records were personal private information that should have been excluded, but at this time, I am willing to take the information without the PIV badge numbers even though I believe the badge numbers are on the back of the badge that the public can view, when FAA employees present their PIV badge for conducting federal business.”

### ANALYSIS

The Privacy Act provides individuals access to government records about *themselves*. In this case, the requested records are not maintained or retrieved by your name or other identifier unique to you and so the request was processed under the FOIA as a third-party requester. In this case, the PIV card/badge identification numbers were properly denied to you under FOIA Exemption 6 (5 U.S.C. § 552(b)(6)). Consequently, I am continuing to withhold the individuals' PIV card/badge numbers under Exemption 6, but I am releasing the start and stop times for each employee.

### Exemption 6

Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. It covers “personnel and medical files and similar files.” 5 U.S.C. § 552(b)(6). This requires balancing the individual's right to privacy against the public's right to disclosure. *Department of Air Force v. Rose*, 425 U.S. 352, 372 (1976).

The redactions consist of employee PIV card/badge numbers that were withheld, because they allow access to Public Key Infrastructure (PKI) certificates and encryption information; digital signature codes and verification data; Personal Information Number (PIN)/identification (ID) and verification media password; or ID record number and expiration date. This list is not all inclusive and includes Federal employees' privacy interests. Although you assert, "the public has a strong interest in knowing whether or not federal employees in the FAA are falsifying their T&A records," employee PIV card/badge numbers do not reveal the employee's time and attendance.

Exemption 6 requires balancing the individual's right to privacy against the public's right to disclosure. *Department of Air Force v. Rose*, 425 U.S. 352, 372 (1976). The personal privacy interests of the identified former and current FAA employees outweigh non-existent public interest in release of employee PIV card/badge numbers. Therefore, I am continuing to withhold this information under FOIA Exemption 6.

### CONCLUSION

I am granting your appeal in part and releasing the records in part. I am the official responsible for this decision, which is the final administrative action on your appeal. The FAA Office of Chief Counsel and John E. Allread on behalf of the Office of General Counsel of the Department of Transportation have concurred with my decision. Under 5 U.S.C. § 552(a)(4)(B), you may seek judicial review of this decision in the U.S. District Court in the district where you reside or where you have your principal place of business, the district where the records are kept, or the District of Columbia.

Sincerely,

**MARK S  
HOUSE**

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Mark House  
Assistant Administrator for  
Finance and Management



U.S. Department  
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Assistant Administrator for Finance  
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Jon Bial  
Assistant General Counsel  
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7140 SW Macadam Avenue  
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Re: Freedom of Information Act (FOIA) Appeal 2020-007328

Dear Mr. Bial:

This letter is in response to your July 31, 2020 administrative appeal (the “Appeal”) of the Federal Aviation Administration’s (FAA’s) initial determination to deny your request for a fee waiver and your August 7, 2020 Appeal of the denial of expedited processing by the Program Manager, FAA Freedom of Information Act (FOIA) Program Management Division (AFN-400). For the reasons stated below, I uphold the initial denial of expedited processing. However, your fee waiver denial appeal is moot because the FAA did not assess fees for processing this FOIA request. The Air Traffic Organization did produce a response to Ms. Powell on May 3, 2021 in response to the original FOIA request.

#### **INFORMATION REQUESTED**

On July 21, 2020, your client, Ms. Meerah Powell, an Oregon Public Broadcasting (OPB) reporter, submitted a FOIA request to the FAA Air Traffic Organization Western Service Area (ATO-WSA) for “documents related to the [FAA’s] temporary flight restrictions [TFR] around a region of Portland, Oregon, from July 16, 2020, to Aug. 16, 2020. (NOTAM number: FDC 0/1203).” The Air Traffic Organization produced a response to OPB on May 3, 2021 in response to the original FOIA request.

Ms. Powell “specifically request[ed] any documentation or email correspondence relating to the request, rationale and approval of these temporary flight restrictions.” She also requested expedited processing and a fee waiver as a representative of the news media.

On July 21, 2020, staff of the FAA’s ATO-WSA Resource Management Group informed Ms. Powell, via email, that the FAA ATO Headquarters (ATO-HQ) would handle her request. FAA ATO-HQ handles the FAA’s TFR for Portland, Oregon.

#### **INITIAL DETERMINATION**

On July 23, 2020, the Manager of the FAA’s FOIA Program Management Division denied Ms. Powell’s fee waiver request on the basis that she did not meet the requirements of U.S.

Department of Transportation (DOT) regulation<sup>1</sup>. The Program Manager determined that disclosure of the requested information would not contribute to the understanding of the public at large. However, Ms. Powell was given media requester status which exempts her from search and review fees. Consequently, she would only be charged duplication costs for copies in excess of the first 100 pages. Because the records were requested in electronic form, no duplication fees would be assessed.

The FOIA Program Manager also denied Ms. Powell's request for expedited processing. Ms. Powell did not provide information to support a finding that delay could reasonably be expected to pose an imminent threat to life and safety of any individual or that there is time urgency to inform the public of actual or alleged Federal Government activity beyond the public's right generally to know about Government activity.

### ISSUES RAISED ON APPEAL

#### A. Expedited Processing

In your appeal dated August 7, 2020, you argued that the requester, Meerah Powell, met the requirements of 49 CFR § 7.31, because she is a reporter for OPB. You further stated that Ms. Powell has covered Oregon news since January 2019.

Additionally, you argue that the "FAA does not describe what constitutes "urgency" under 49 CFR 7.31(c) or FAA Order 1270.1A, ¶ 14(d)." However, you argue that Ms. Powell has satisfied the three-factor test for urgency: (1) that the "request concerned a matter of current exigency to the American public;" (2) that "the consequences of delaying a response would compromise a significant recognized interest;" and (3) that "the request concerns federal government activities." See *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001). Key portions of your analysis are reiterated below.

#### Factor 1:

"[T]he TFR is part of an unfolding story: the restriction is in effect and part of a larger narrative surrounding federal activities in Portland.<sup>16</sup> Such federal government activity has caused residents to demand justification and raised concerns nationally about federal overreach. This is a currently unfolding story of substantial interest not only to the media, but to the larger public as well. While the TFR is not a surveillance effort by law enforcement, the TFR allows law enforcement to operate in the dark by prohibiting the press from using drones to cover federal law enforcement and protester interactions. Some of the interactions have been violent, and many are not only newsworthy, but also the subject of various temporary restraining orders and lawsuits against the federal government. Accordingly, this prohibition of the use of drones by the press is an immediate concern, weighing in favor of a finding of expediency."

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<sup>1</sup> In the determination letter, the FOIA Program Manager cited to 49 C.F.R. § 7.44(f) as the regulatory provision that sets forth the fee waiver standard. However, that citation is incorrect. The correct citation is 49 C.F.R. § 7.43(c).

Factor 2:

“The FAA’s action is an emergency action with a short timeline. If the request is not expedited, information may not be disclosed for twenty days at the earliest,<sup>18</sup> at which time the TFR would no longer be in effect. Any public response or legal challenge would be deferred until after the TFR’s end date, making it too late for the public to take responsive precautions or obtain certain relief. Expedited processing will require a response within ten days, which would fall before the TFR end date of August 16, 2020. Reporting on the disclosed information before August 16 is crucial. It will affect protesters’ and residents’ behavior as they react to any national security concerns disclosed and gain visibility of the scope of the protests. Each day that passes deprives the public of the now week-a-half-week [sic] window to respond to the information disclosed...

It took almost one month for the federal government to communicate a plan to phase out the federal officer presence in Portland, which only resulted due to intense public pressure and involvement from state officials. Public outrage at the unexplained federal presence in the city resulted in backlash and anger. The longer the FAA delays in disclosing the requested records, the more exacerbated the bias against federal forces may become.”

Additionally, you argue that:

“[a]n important liberty concern is at stake, the freedom of the press. The TFR prohibits citizens and news media representatives from an important form of information-gathering: drone and helicopter flights. Both are standard practice in journalism, particularly in breaking news coverage. Prohibiting such practice in Portland, the center of the nation’s top news story, is not a casual matter for the public. This drastic action calls for urgency in disclosure.

Further, because the COVID-19 pandemic prohibits the public from accessing information in-person, there is greater public dependency on the government and news outlets to provide information. Disclosure of the requested records is a basic but imperative way to provide bare-minimum information to a hard-hit public.”

Factor 3:

“The request satisfies factor three because it seeks records pertaining to a restriction made by the FAA, a federal government body.”

Finally, you assert that “the TFR meets the definition of a breaking news story. It is an integral part of the federal activity in Portland, about which there is a public demand for information. The story surrounding the TFR will lose value if delayed because the TFR will expire on August 16, 2020, creating a short window during which disclosure will be meaningful.”

## B. Fee Waiver

The third factor (49 CFR 7.43(c)(3)) in the six-factor fee exemption test requires disclosure to "contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons." Here, the focus is whether disclosure will reach a sufficiently large number of people. You state, "Ms. Powell's statement of national and regional reach should be sufficient to meet the burden of "public at large."

## ANALYSIS

### A. Expedited Processing

FOIA requests are given expedited treatment whenever a compelling need<sup>2</sup> is demonstrated. DOT determines that a compelling need involves: i) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or ii) a request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity. 49 C.F.R. § 7.31(c). A FOIA requester seeking a fee waiver under 49 C.F.R. § 7.31(c)(1)(ii) must establish a particular *urgency* to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. 49 C.F.R. § 7.31(c)(3) (emphasis added).

As you noted, in evaluating whether there is an urgency to inform, courts consider the three factors cited above. *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001) (quoting H.R.Rep. No. 104-795, at 26 (1996), 1996 U.S.C.C.A.N. 3448, 3469). "The public's right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard." *Id.* (quoting H.R.Rep. No. 104-795, at 26 (1996), 1996 U.S.C.C.A.N. 3448, 3469).

I considered your arguments and find that you do not meet the requirements for expedited processing. While I recognize Ms. Powell, through OPB, is a person primarily engaged in the dissemination of information, I do not find that her request meets the urgency requirement. It does not show how delaying a response would compromise a significant recognized interest. You argue that "the TFR meets the definition of a breaking news story." However, your analysis conflates substantial interest in the currently unfolding story of the Portland protests with substantial public interest in the TFR. You have not demonstrated the requisite significant public interest in the TFR.

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<sup>2</sup> The D.C. Circuit noted "[t]he specified categories for compelling need are intended to be narrowly applied." *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C.Cir.2001) (quoting H.R.Rep. No. 104-795, at 26 (1996), 1996 U.S.C.C.A.N. 3448, 3469). Citing legislative history, the court noted, "Congress' rationale for a narrow application [was] clear:" "Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment." *Id.*

In determining whether consequences of delaying a response would compromise a significant recognized interest, the court in *Al-Fayed* considered whether “significant adverse consequence” would result if the request for expedited processing of documents were denied, and they therefore received the documents later rather than sooner. *Id.* at 311. In this instance, release of the requested information would not in and of itself authorize the press to use “drones to cover federal law enforcement and protester interactions.” Likewise, processing the request in the normal course would not preclude freedom of the press. Accordingly, I am affirming the initial determination denying your expedited processing request.

#### B. Fee Waiver

As stated above, no fees were assessed for processing OPB’s FOIA request. Consequently, this portion of your appeal is moot.

#### CONCLUSION

For the reasons stated above, I am upholding the initial determination denying you expedited processing. 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 Allread, Senior Attorney in the DOT, 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,

**MARK S  
HOUSE**

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Mark House  
Assistant Administrator for  
Finance and Management





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

Assistant Administrator for  
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800 Independence Avenue, SW  
Washington, DC 20591

Eric Friedman

(b)(6)

Re: Freedom of Information Act (FOIA) Appeal 2021-002627

Dear Mr. Friedman:

This letter is in response to the administrative appeal (the “Appeal”) of the April 28, 2021, partial denial by the Office of Aerospace Medicine (“AAM”) of a request for agency records under FOIA Control No. 2021-002627. Your Appeal, dated May 13, 2021, challenges the FOIA determination to withhold the list of medications referred to as the “AAM MedList.”

For the reasons stated below, I find that portions of the record<sup>1</sup> were properly withheld under Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). However, I find that other portions of the record are factual in nature, and appropriate for release. Therefore, I am upholding in part, and reversing in part, AAM’s April 28, 2021, response.

As an initial matter, you state that Brett Arlo Wyrick, Deputy Federal Air Surgeon, AAM, “mischaracterizes his denial as a “partial denial. In fact, but it is in fact a full denial of your request.” The initial request sought a copy of the latest version of the list of medications and associated opinions and recommendations. In its April 28, 2021, AAM provided a web address to publicly available medications, and subsequently denied the request for the AAM MedList pursuant to Exemption 5 of the FOIA. Since AAM supplied access to the publicly available list and not the MedList, the denial was, therefore, characterized as a partial denial.

#### **INFORMATION REQUESTED**

On March 26, 2021, you submitted a FOIA request for “copy of the latest version of the list of medications and associated policies maintained by the Federal Aviation Administration's Office of Aerospace Medicine (AAM).” More specifically, you sought “the AAM medlist.”

#### **INITIAL DETERMINATION**

The AAM responded on April 28, 2021, with a web address to locate the latest policies associated with the publicly available medication list. However, the AAM MedList was withheld under Exemption 5 of the FOIA pursuant to the deliberative process privilege.

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<sup>1</sup> The record is the MedList which is a Database containing over 1,200 medications.

## ISSUES RAISED ON APPEAL

In a letter dated May 13, 2021, you challenged the FAA's initial response in that the FAA improperly withheld the list under Exemption 5. You first allege "the "medlist" is not a memorandum or letter. Rather, a policy document on which medical certification decisions are made." Moreover, you contend that "the "medlist" is not pre-decisional" and "the information is not deliberative" because it "contains factual information that the AAM uses as standards to determine aeromedical certification eligibility." You argue "that the release of the "medlist" would allow the public to understand the basis for medical certification decisions, something that is specifically required by the Pilot's Bill of Rights, section 4(b)." Furthermore, you assert that by concluding the release of the MedList can lead to misuse by individuals, assumes "negative intent on the part of pilots...have no bearing on the information's releasability under the FOIA."

## ANALYSIS

The list of medications sought in your FOIA request, commonly referred to as the "AAM MedList," is a database of medications with associated AAM opinions and recommendations to aid in the final determination of whether an individual is eligible for an aeromedical certification. The document is part of the decision-making process of AAM. Therefore, I am continuing to withhold portions of the MedList under Exemption 5 of the FOIA as discussed below.

### Exemption 5

Exemption 5 of the FOIA protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption 5 has been construed to exempt those documents normally privileged in the civil discovery context. One such privilege is the deliberative process privilege, the general purpose of which "is to prevent injury to the quality of agency decisions." *Nat'l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

For a document to fall within the deliberate process privilege, it must be both pre-decisional and deliberative. *Hopkins v. U.S. Dep't of Housing & Urban Dev.*, 929 F.2d 81, 84 (2d Cir. 1991). "Pre-decisional" has been recognized to mean that the document was "prepared in order to assist an agency decisionmaker in arriving at his decision." *Renegotiation Bd. v. Grumman Aircraft Eng'g Corp.*, 421 U.S. 168, 184 (1975). "Deliberative" has been recognized to mean that it is "related to the process by which policies are formulated." *Jordan v. U.S. Dep't of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978) (en banc) (overruled on other grounds). The privilege, therefore, applies to documents that comprise "part of a process by which governmental decisions and policies are formulated." *Sears, Roebuck & Co.*, 421 U.S. at 150 (internal citation omitted).

Documents are "pre-decisional" if they were generated before the agency's final decision on the matter, and they are "deliberative" if they were prepared to help the agency formulate its position. *See Sears*, 421 U. S., at 150-152, 95 S. Ct. 1504, 44 L. Ed. 2d 29; *Grumman*, 421 U. S., at 184-186, 190, 95 S. Ct. 1491, 44 L. Ed. 2d 57.

To decide whether a document communicates the agency's settled position, courts must consider whether the agency treats the document as its final view on the matter. When it does so, the deliberative process by which governmental decisions and policies are formulated will have

concluded, and the document will have real operative effect. In other words, once cited as the agency's final view, the document reflects the "consummation" of the agency's decisionmaking process and not a merely tentative position. By contrast, a document that leaves agency decisionmakers free to change their minds does not reflect the agency's final decision. *See United States Fish and Wildlife Service v. Sierra Club, Inc.*, 141 S. Ct. 777, 777; 209 L. Ed. 2d 78, \*78; 2021 U.S. LEXIS 1279, \*1 (2021).

In this case, the government decision being made is the issuance or denial of a medical certification to an airman, based on an analysis of his or her medical history that includes, but is not limited to, any current prescription medications or therapeutics, and the interactions of those drugs that may preclude certification. The MedList is a document unique to the FAA, created and maintained internal to the agency, and updated on a continuous basis as the agency becomes aware of new medications. Additionally, the MedList is but one factor taken into consideration by AAM when issuing or denying a medical certification. A denial is not necessarily a permanent action, as the medical condition of the airman can change over time, such that at a later point, the certification can be granted.

The FOIA mandates that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." 5 U.S.C. § 552(b). The fact that a document contains factual information does not preclude the withholding of the document under the FOIA. *See, e.g., Horowitz v. Peach Corps.*, 428 F.3d 271, 277 (D.C. Cir. 2005) (protecting document where decisionmaker's "thought processes are woven into the document to such an extent" that any attempt at segregating out information would reveal agency deliberations). Even when requested material is found to be factual, the courts have held it exempt where they were convinced that disclosure "would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." *Quarles v. Dep't of Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990).

In this case, the MedList is not the final agency decision, but one of several tools, used by agency decisionmakers with respect to medical certifications. However, the document does contain factual information along with the opinions and recommendations of the decisionmakers. I have determined that the medication names, number of medications, medication class, diagnosis, pharmacology information, aeromedical resources, review identifiers, and blurbs are factual in nature and appropriate for release. Accordingly, I am releasing that factual information.

Furthermore, I considered whether asserting the privilege of withholding the qualifier, observation, aeromedical recommendations, and safety opinion fields was necessary to prevent reasonably foreseeable harm to future similar deliberations. I concluded that it is reasonably foreseeable that releasing the withheld information would discourage the open and frank sharing of opinions and recommendations between agency employees that are helpful in formulating policy decisions. Lastly, I concluded, a release of said withheld information would also create confusion in those cases where those opinions and recommendations are not adopted, and that this confusion could foreseeably create a safety risk. For example, airmen unfamiliar with the document and its purpose could read the medical opinions and incorrectly determine that certain medications do not create a safety concern if taken while flying. For the reasons stated, I find

that the qualifier, observation, aeromedical recommendations, and safety opinion fields should continue to be withheld.

### **CONCLUSION**

In summary, I am upholding in part, and reversing in part, the initial decision to withhold the document relative to your initial FOIA request under FOIA Control Number 2021-002627. 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 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,

**MARK S  
HOUSE**

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Mark House  
Assistant Administrator for  
Finance and Management



Ms. Aracelys Santiago

(b)(6)

Subject: Freedom of Information Act (FOIA) Appeal 2020-006406

Dear Ms. Santiago:

This letter is in response to your administrative appeal (the “Appeal”) of the May 14, 2020 partial denial determination by Claudio Manno, Associate Administrator for Security and Hazardous Materials Safety (ASH), of a request for agency records submitted by you, of your initial request of May 6, 2020 under FOIA Control No. 2020-006406. Your Appeal, dated March 16, 2021, challenges the FOIA determination to withhold Reports of Investigation (“ROI”).

For the reasons stated below, I find that the information withheld from you was properly withheld under Exemption 6. I likewise find that information could have been withheld under Exemption 7(C). I am therefore denying your appeal of the May 14, 2020 response from Claudio Manno, Associate Administrator, (ASH-1).

#### **INFORMATION REQUESTED**

On May 6, 2020, you requested a copy of Managerial Inquiry MI201902001, FAA Hotline Complaint Number A20181211006, Case Number AXI20190554, Case Number AXI20190555, and Case Number AXI20190556.

#### **INITIAL DETERMINATION**

Your request was assigned to the FAA Offices of Flight Standards Service (AFS), Audit and Evaluation (AAE), and ASH.

AFS conducted a search for records related to Managerial Inquiry MI201902001 and FAA Hotline Complaint Number A20181211006, that produced 29 pages of records responsive to your request. In a letter dated March 4, 2021, Gianna DeMoor, Acting Division Manager, Safety Risk Management<sup>1</sup>, informed you that all 29 pages were being released to you in their entirety, without redaction.

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<sup>1</sup> Office of Aviation Safety, Flight Standards Service Directorate, Foundational Business Division

AAE also conducted a search for records related to FAA Hotline Complaint Number A20181211006, which produced four pages of records responsive to your request. In a letter dated March 11, 2021, H. Clayton Foushee, Director, AAE, informed you that all four pages were released being released to you in their entirety, without redaction.

A search conducted by ASH for records related to Case Number AXI20190554, Case Number AXI20190555, and Case Number AXI20190556, returned 149 pages of records responsive to your request. In a letter dated May 14, 2020, Claudio Manno, Associate Administrator, ASH, informed you that 94 pages were withheld pursuant to FOIA Exemptions 6 and/or 7(C).

### **ISSUES RAISED ON APPEAL**

In an email dated March 16, 2021, you challenged the FAA's initial response, that the FAA improperly withheld records under Exemptions 6 and/or 7(C), by stating "I would like to appeal all FOIA decisions received from all offices..." Your appeal challenges the applicability of Exemption 6 and Exemption 7(C).<sup>2</sup>

### **ANALYSIS**

All documents related to Managerial Inquiry MI201902001 and FAA Hotline Complaint Number A20181211006 were released to you, in their entirety, unredacted, by AFS and AAE. The remaining requested records (Case Number AXI20190554, Case Number AXI20190555, and Case Number AXI20190556) were processed and produced by ASH. The pages of the ROIs related to Case Number AXI20190554, Case Number AXI20190555, and Case Number AXI20190556, previously released to you, were your own statements, as you were not the subject of the investigations. The remaining pages in the ROIs related to third parties and their private information. Therefore, I am continuing to withhold these portions of the ROIs under FOIA Exemptions 6 and 7(C), as explained below.

#### Exemption 6

Under Exemption 6, the Agency withheld 94 pages in their entirety from the ROIs associated to a third party. The ROIs relate to an FAA investigation of a third party's alleged misconduct; contains witness names and statements; subject statements; other personally identifying information; and other investigatory information.

Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. It covers "personnel and medical files and similar files." 5 U.S.C. § 552(b)(6). This includes 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 is whether disclosure of 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 Air Force v. Rose*, 425 U.S. 352, 372 (1976). Whether a qualifying public interest exists turns on the nature of the document and its ability to shed light on an agency's

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<sup>2</sup> Though it is unclear whether you are challenging the adequacy of the search, the documents you requested were identified and produced to you, except for those withheld by ASH. You have not identified any documents you believe were not located, nor any locations you believe the agency should have searched, but did not.

performance of its duties. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press, 489 U.S. 749, 773-75 (1989).

Several courts have found that individuals have a personal privacy interest in this type of information, and there is no public interest in the disclosure of information of a personal nature that sheds no light on agency activities. See Perf. Coal Co. v. U.S. Dep't of Labor, 2012 WL 746411, at \*8 (D.D.C. Mar. 7, 2012) (finding that employees have a cognizable privacy interest in their work issued cell phone number); ACLU v. DOJ, 655 F.3d 1, 11 (D.C. Cir. 2014); Consumers Checkbook Ctr. for the Study of Servs. v. HHS, 553 F.3d 1046, 1051 (D.C. Cir. 2009) (“[I]nformation about private citizens . . . that reveals little or nothing about an agency’s own conduct does not serve a relevant public interest under FOIA.”).

I find that the subject of the investigation and the witnesses have a significant privacy interest in not having their names disclosed in connection to an internal FAA investigation into alleged misconduct. See, e.g., Associated Press v. DOJ, 549 F.3d 62, 65 (2d Cir. 2008) (Personal information, including a citizen’s name, address, and criminal history, has implicated a FOIA cognizable privacy interest); Neely v. FBI, 208 F.3d 461, 464-65 (4th Cir. 2000) (indicating that individuals “mentioned or interviewed in the course of [an] investigation have well-recognized and substantial privacy interests”). Additionally, I find that the subject of an internal investigation has a significant privacy interest in not having information relating to that investigation released. Courts have held that internal investigations of mid and low-level employees are appropriately protected under Exemption 6. See Stern v. FBI, 737 F.2d 84 (D.C. Cir. 1984) (finding that employees have a privacy interest in their association with investigations).

Having found a significant privacy interest, I must balance that privacy interest against the public interest in disclosure. The requester has the burden of proof to demonstrate a qualifying public interest in disclosure and not merely an interest of the individual requester. Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 172 (2004). You have not identified a public interest for the information release.

The court in Cotton v. Adams found it “difficult to imagine how the public could discern a great deal about the Smithsonian's discharge of its duties through an evaluation of Inspector General reports pertaining only to two particular employees.” 798 F. Supp. 22, 27 (D.D.C. 1992). Similarly, releasing the ROIs in this case would shed minimal light on the FAA’s discharge of its duties through the investigative materials pertaining to employees. On balance, these individuals’ substantial privacy interest in their information, far outweighs the lack of any public interest in release. Therefore, I am continuing to withhold the remaining portions of the ROI under Exemption 6.

#### Exemption 7(C)

In addition, 54 of 92 pages of one of the three ROIs withheld from you, is also properly withheld under Exemption 7(C). FOIA Exemption 7(C) employs a balancing test nearly identical to the Exemption 6 balancing test, but the protection 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). The “law” to be enforced 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). Files compiled for internal investigatory or adjudicatory proceedings have been found to fall under Exemption 7(C). See Sakamoto v. U.S. Envtl. Prot. Agency, 443 F. Supp. 2d 1182, 1194 (N.D. Cal. 2006) (discussing files compiled by the EPA as part of the internal investigation under Title VII of the Civil Rights Act). Accordingly, I find that documents compiled for, and included in internal security investigation ROIs related to Case Number AXI20190554 have been compiled for law enforcement purposes.

Additionally, Exemption 7(C) allows for withholding of information if disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). This is a lower burden than the “clearly unwarranted invasion of personal privacy” burden under Exemption 6. Accordingly, the same analysis as to the withholdings of the information discussed above for Exemption 6 also supports withholding under Exemption 7(C).

### CONCLUSION

For the foregoing reasons, your appeal under FOIA Control Number 2020-006406 is fully denied. I am the person 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, and Senior Attorney John Allread, in the Department of Transportation’s Office of General Counsel. You are entitled to seek judicial review of this decision under the provisions of 5 U.S.C. § 552(a)(4)(B) 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,

MARK S  
HOUSE

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Date: 2022.10.20  
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Mark House  
Assistant Administrator for  
Finance and Management





Mr. Rodney Miller

(b)(6)

***Re: Freedom of Information Act (FOIA) Appeal 2020-008113***

Dear Mr. Miller:

This letter is in response to your administrative appeal (the “Appeal”) of the partial denial of your request for agency records, Freedom of Information Act (FOIA) Request Number 2020-008113. Your Appeal, dated October 18, 2020, challenges the FOIA determination to partially withhold copies of Reports of Investigation (“ROI”) AX120200387 and AXI20200415.

For the reasons stated below, I find that all information withheld from you was properly withheld under Exemption 6. Further, I find that said information alternatively could have been withheld under Exemption 7(C). Therefore, I am upholding the September 10, 2020 response from Claudio Manno, Associate Administrator for Security and Hazardous Materials Safety (ASH-1).

#### **INFORMATION REQUESTED AND INITIAL DETERMINATION**

On June 18, 2020, you submitted a FOIA request seeking copies of (1) ROI AX120200387 and (2) ROI AXI20200415.

ASH conducted a search that returned 154 pages of records responsive to your request. In a letter dated September 10, 2020, ASH-1 released twelve pages<sup>1</sup> to you, in their entirety without redaction, and withheld 142 pages, in their entirety, pursuant to FOIA Exemptions 6 and/or 7(C).

#### **ISSUES RAISED ON APPEAL**

In a letter dated October 18, 2020, you challenged the FAA’s initial response which withheld portions of the ROI under Exemption 6 and Exemption 7(C), stating “the reasons given for the denial in the FOIA response letter are not correct.” Your Appeal disputes the Exemption 6 rationale that disclosure of the withheld documents “would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552 (b)(6)). Your Appeal also contends that there is a significant public interest in the requested information’s release because it “will shed light on the agency’s performance, operations and activities.”

<sup>1</sup> These 12 pages comprise (b)(6)

## ANALYSIS

The 12 pages previously released to you comprised (b)(6)

(b)(6) The remaining portions of the ROIs relate to (b)(6)

(b)(6) Therefore, I will continue to withhold these portions of the ROI under FOIA Exemptions 6 and 7(C), as explained below.

### I. Exemption 6

FOIA Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. To be covered under Exemption 6, information must first fall within the category of “personnel and medical files and similar files.” 5 U.S.C. § 552(b)(6). This category is broadly construed 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 this 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). Making this determination requires balancing the individual’s privacy interest against the public’s interest in disclosure of the information sought under the FOIA. *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976).

Under Exemption 6, the Agency withheld 142 pages of the ROIs you requested, in their entirety. Each ROI relates to an FAA investigation of a third party’s alleged misconduct and contains witness names and statements, subject statements, other personally identifying information, and other investigatory information. I find that the subjects of the investigations and the witnesses have a significant privacy interest in not having their names disclosed in connection to internal FAA investigations into alleged misconduct. *See, e.g., Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008) (Personal information, including a citizen’s name, address, and criminal history, has implicated a FOIA cognizable privacy interest); *Neely v. FBI*, 208 F.3d 461, 464-65 (4th Cir. 2000) (indicating that individuals “mentioned or interviewed in the course of [an] investigation have well-recognized and substantial privacy interests”).

Additionally, I find that the subjects of both internal investigations have a significant privacy interest in not having information relating to those investigations released. Courts have held that internal investigations of mid- and low-level employees can be protected under Exemption 6. *See Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984) (finding that employees have a privacy interest in their association with investigations).

Having found a significant privacy interest, I must balance the same against the public interest in disclosure. The requester has the burden of proof to demonstrate a qualifying public interest in disclosure and not merely an interest of the individual requester. *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). Per the Supreme Court’s decision in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), we must narrowly assess what qualifies as the public interest by considering the relationship of the requested record to the “core purpose” of the FOIA, i.e., shedding light on an agency’s performance of its duties. *Id.* at 773. In *Reporters Committee*, the Supreme 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.”<sup>2</sup> *Id.* at 775. *See also Cotton v. Adams*, 798 F. Supp. 22, 27 (D.D.C. 1992) (finding it “difficult to imagine how the public could discern a great deal about the Smithsonian’s discharge of its duties through an evaluation of Inspector General reports pertaining only to two particular employees”). Similarly, releasing the remainder of the requested ROIs in this case would shed minimal light on the FAA’s discharge of its duties through the investigations of two particular employees. Therefore, I will continue to withhold the remaining portions of the ROIs under Exemption 6.

## II. Exemption 7(C)

FOIA Exemption 7(C) employs a balancing test nearly identical to the Exemption 6 balancing test, but the protection 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). The “law” to be enforced 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). Files compiled for internal investigatory or adjudicatory proceedings have been found to fall under Exemption 7(C). *See Sakamoto v. U.S. Envtl. Prot. Agency*, 443 F. Supp. 2d 1182, 1194 (N.D. Cal. 2006) (discussing files compiled by the EPA as part of internal investigation under Title VII of Civil Rights Act).

Personnel investigations of government employees may satisfy the law enforcement threshold if they focus on “specific and potentially unlawful activity [of a civil or criminal nature] by particular employees.” *Stern v. FBI*, 737 F.2d 84, 89 (D.C. Cir. 1984). *See, e.g., Perlman v. DOJ*, 312 F.3d 100, 105 (2d Cir. 2002) (finding investigation into allegations of preferential treatment and undue access in INS Investor Visa Program met law enforcement threshold because inquiry focused on whether employee committed acts that could subject that employee to criminal or civil penalties), cert. granted, vacated, and remanded on other grounds, 541 U.S. 970 (2004), *aff’d*, 380 F.3d 110 (2d Cir. 2004); *Nat’l Whistleblower Ctr. v. HHS*, 849 F. Supp. 2d 13, 27-28 (D.D.C. 2012) (explaining that records were compiled for law enforcement purposes because they “were compiled to investigate allegations that specific individuals at FDA had engaged in specific acts that could constitute violations of criminal and civil laws” and were not merely “personnel files maintained in the ordinary course of monitoring employees’ performance”).

Accordingly, I find that the documents compiled for and included in internal security investigation file numbers AX120200387 and AXI20200415 were compiled for law enforcement purposes and may be withheld under Exemption 7(C).

Additionally, Exemption 7(C) allows for the withholding of information if disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). This is a lower burden than the “clearly unwarranted invasion of personal privacy” burden under Exemption 6. Accordingly, the same analysis as to the withholdings of the information discussed above for Exemption 6 also supports withholding under Exemption 7(C).

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<sup>2</sup> The Supreme Court reaffirmed this analysis in *United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994).

**CONCLUSION**

For the foregoing reasons, your appeal is denied. I am the person 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, and Senior Attorney John Allread, in the Department of Transportation's Office of General Counsel. You are entitled to seek judicial review of this decision under the provisions of 5 U.S.C. § 552(a)(4)(B) 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,

**MARK S  
HOUSE**

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MARK S HOUSE  
Date: 2022.08.04  
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Mark House  
Assistant Administrator for  
Finance and Management



Owen Bruce

(b)(6)

Subject: Freedom of Information Act (FOIA) Appeal 2022-00259

Dear Mr. Bruce:

This letter is in response to your administrative appeal (the “Appeal”) of the December 3, 2021 denial by the Associate Administrator for Security and Hazardous Materials Safety (ASH), of a request for agency records submitted on September 29, 2021 under FOIA Control No. 2022-00259. Your Appeal, dated December 7, 2021, challenges the FOIA determination to withhold portions of a Report of Investigation (“ROI”).

For the reasons stated below, I find that the majority of the withheld information was properly withheld under Exemption 6. I find that a minimal amount of information within the redacted 32 pages is appropriate for release, and is therefore being released to you with this determination. I am therefore upholding in part, and reversing in part, the December 3, 2021 response from Claudio Manno, Associate Administrator for Security and Hazardous Materials Safety.<sup>1</sup>

#### **INFORMATION REQUESTED**

You requested a “copy of AB/OM 202100183, any communication between the Accountability Board and AAE management as well as any communication between ASH and AAE related to (b)(6) Your request was multi-assigned to: ASH, the Office of Accountability and Evaluation (AAE) and the Office of Human Resource Management (AHR).

#### **INITIAL DETERMINATION:**

The Office of the Associate Administrator for Security and Hazardous Materials Safety conducted a search that produced 70 pages of responsive records. In a letter dated December 3, 2021, ASH-1 informed you that portions of the 32 pages were released in part with redactions

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<sup>1</sup> In addition, during the review of the appeal file, it was discovered that one two-page email document between ASH and AAE responsive to your request was inadvertently not disclosed to you in your initial response. Accordingly, that two-page document is being released to you with redaction to a witness’s name and a government cell number under FOIA Exemption 6.

pursuant to FOIA Exemptions 6, and the remaining 38 pages were withheld in their entirety under FOIA Exemption 6.<sup>2</sup>

**ISSUES RAISED ON APPEAL:**

In an email<sup>3</sup> sent December 7, 2021, you challenged the ASH's initial response and stated that ASH improperly withheld documents under Exemptions 6 and 7(C):

“I filed a complaint with the Accountability Board (AB) back in July 2021. That makes me the complainant... Now the ASH FOIA response is suggesting that I believe the subject of my complaint would have his privacy invaded if the results of the investigation are released.”<sup>4</sup>

**ANALYSIS**

The redactions throughout the 32 pages of email communications partially released to you consist of identifying information of third parties. The remaining withheld pages consist of investigatory documents pertaining to a third party, which also includes the names and identifying information of witnesses and other third parties. Therefore, except for minimal information within the redacted 32 pages that I have determined is appropriate for release, I am continuing to withhold the remaining information under FOIA Exemptions 6.

I. Exemption 6

(b)(6)

Courts have routinely found that individuals have a substantial privacy interest in their identities connected to investigations. *See, e.g., Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008) (finding that personal information, including a citizen's name, address, and criminal history, has implicated a FOIA cognizable privacy interest); *Neely v. FBI*, 208 F.3d 461, 464-65 (4th Cir.

<sup>2</sup> In addition, AAE responded on November 18, 2021 by releasing in their entirety four pages of records they located in response to your request. AHR responded with an undated letter informing you that they located and released to you 8 pages in their entirety.

<sup>3</sup> In that same email appealing the ASH response, you commented on the partial response you received from AHR stating there was no explanation for the partial response. AHR released to you 8 pages of responsive records in their entirety, and withheld no information. The AHR response letter stating a partial response was in error; it should have stated that it was a full release determination.

<sup>4</sup> You also allege that AHR and AAE did not provide you with investigative results; however, as the program office that maintains the information, ASH's search located the report of investigation containing this information and made the determination on its releasability.

2000) (finding that individuals “mentioned or interviewed in the course of [an] investigation have well-recognized and substantial privacy interests”).

Once an agency determines a privacy interest exists, its next step is to determine whether a public interest exists. The analysis turns on the nature of the document and its ability to shed light on an agency’s performance of its duties. *U.S. Dep’t of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773-75 (1989). The court in *Cotton v. Adams*, found it “difficult to imagine how the public could discern a great deal about the Smithsonian’s discharge of its duties through an evaluation of Inspector General reports pertaining only to two particular employees.” 798 F. Supp. 22, 27 (D.D.C. 1992).

Under Exemption 6, the Agency redacted portions of 32 pages and withheld 38 pages associated to third parties, in their entirety. The responsive records were contained in an ROI documenting an FAA investigation of a third party’s alleged misconduct. The redacted and withheld information contains witness names and statements, subject statements, other personally identifiable information, and other investigatory information.

I find that the subject of the investigation and the witnesses have a significant privacy interest in not having their names disclosed in connection to an internal FAA investigation into alleged misconduct. Additionally, I find that the subject of the internal investigation has a significant privacy interest in not having information relating to that investigation released.

Having found a significant privacy interest, I must balance that privacy interest against the public interest in disclosure. I find that releasing the responsive records in their entirety in this case would shed minimal light on the FAA’s discharge of its duties through the internal investigation of (b)(6). Therefore, I am continuing to withhold the remaining portions of the ROI under Exemption 6.

FOIA mandates that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b). I considered whether information could be segregated and released from the withheld portions of the ROI. I have determined that release of any portion of the document would allow those with some familiarity with the circumstances or (b)(6) (b)(6) to identify the subject and/or witnesses. Therefore, I find that the withheld pages must continue to be withheld in their entirety.

Finally, the FOIA Improvement Act of 2016 requires agencies to consider whether foreseeable harm would result from disclosing information. If no foreseeable harm would result from disclosure, then the agency must release the information. Here, I find significant harm would result to the individuals whose information has been withheld.

## **CONCLUSION**

For the foregoing reasons, your appeal is granted in part and denied in part. I am the person responsible for this decision, which constitutes the final administrative action on your appeal, and has been concurred on by the FAA Office of Chief Counsel, and Senior Attorney John E. Allread,

in the Department of Transportation's Office of General Counsel. You are entitled to seek judicial review of this decision under the provisions of 5 U.S.C. § 552(a)(4)(B) 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,

**MARK S  
HOUSE**

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MARK S HOUSE  
Date: 2022.07.27  
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Mark House  
Assistant Administrator for  
Finance and Management





U.S. Department  
of Transportation

**Federal Aviation  
Administration**

Office of The Assistant Administrator  
for Finance and Management

800 Independence Ave., S.W.  
Washington, DC 20591

September 8, 2022

Wesley Redding

(b)(6)

Subject: Freedom of Information Act (FOIA) Appeal 2022-01131

Dear Mr. Redding:

This letter is in response to your administrative appeal (the "Appeal") of the December 30, 2021 denial by the Manager, Freedom of Information Act Program Management Division (AFN-400) of a request for agency records in your initial request of October 25, 2021 under FOIA Control No. 2022-01131. Your appeal, dated January 7, 2022, challenges the FOIA Program Management Division's response in which information was withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

For the reasons stated below, I find that the information withheld from you was properly withheld under Exemption 6. I am, therefore, upholding the December 30, 2021 response from Dedra Goodman, Manager, FOIA Program Management Division.

**INFORMATION REQUESTED**

In your request dated October 25, 2021, you requested a copy of the "to find out when the (b)(6) submitted an [sic] FOIA request with the Federal Aviation Administration." On October 29, 2021, via email to Ms. Judy Shipp, you clarified that you "want to know when or if the (b)(6) requested an [sic] FOIA and when."

**INITIAL DETERMINATION:**

The FOIA Program Management Division conducted a search that located four pages of responsive documents. The December 30, 2021 response informed you that portions<sup>1</sup> were being withheld pursuant to FOIA Exemption 6.

**ISSUES RAISED ON APPEAL:**

In your appeal that was initially submitted as an email on January 7, 2022 to the FAA's electronic FOIA Appeals mailbox and later updated in a January 23, 2022 email, you stated the following:

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<sup>1</sup> Pages 1 and 2 redacted in part and Pages 3 and 4 withheld in their entirety.

**“Exemption 6 “Should NOT” be invoked to withhold from a “Requester (me)” information pertaining to (b)(6) Any and ALL information that is NOT “Personal Medical or Similar Files” should NOT be withheld from being disclosed...**

I bet the “ONLY” information in the 2 page document titled (b)(6) **that pertains to the “Invasion of Privacy” would be the “ONLY” information that pertains to (b)(6) and or the (b)(6) ALL other information “DOES NOT” warrant an “Invasion of Privacy” that is outlining or describing (b)(6),** which has damaging information...

**Additionally, neither corporations nor business associations possess protectible privacy interests. While corporations have no privacy, personal financial information is protected, including information about small businesses when the individual and corporation are identical. Such an individual’s expectation of privacy is, however, diminished with regard to matters in which he or she is acting in a business capacity.**

**Note: (b)(6) is the Owner/ Operator of the (b)(6) (b)(6) and at ALL times was acting in a business capacity.”**

## ANALYSIS

The record requested is maintained in a System of Records covered by the Privacy Act, DOT/ALL-17, “Freedom of Information and Privacy Act Case Files.”<sup>2</sup>

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A “System of Records” is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act (PA) requires each agency to publish in the Federal Register a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system and the categories of individuals covered by the system, routine uses, etc.

In this case, the categories of individuals covered by the system, are individuals who submit FOIA and/or PA requests and administrative appeals to the DOT and its operating administrations, to include the FAA.

The PA provides individuals with a means to access government records about *themselves*. In this case, the requested records were not maintained or retrieved by your name or other identifier unique to you and so the request was processed under the FOIA.

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<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2019-02-15/pdf/2019-02356.pdf>

This SOR describes sixteen Routine Uses. Per the Privacy Act, 5 U.S.C. § 552a(b)(3):

“No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains unless the disclosure would be – (3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section.”

The only routine use applicable to your request is Routine Use 3, which states the following:

“To members of the public to facilitate understanding of DOT FOIA processes. Such release will be limited to “FOIA logs” and may include the request number, date of receipt, name of individual or organization making the request, a description of the information sought, response date, and the type of response.”

The FOIA Program Management Division conducted a search by the requester’s name of (b)(6) (b)(6) as you identified in your request. No initial search was conducted, nor required by (b)(6) even though you contend the (b)(6) is fully releasable to you. It is not, as Routine Use 3 only permits certain information (see above) contained in the request to be released without the permission of the subject (b)(6) being the subject) of the record. However, the FOIA Program Management Division did conduct a search, in response to this appeal, using (b)(6). The one request submitted by (b)(6) was not located using that search term. Therefore, that two-page record was properly denied to you pursuant to FOIA Exemption 6, 5 U.S.C. § 552(b)(6).

#### Exemption 6

Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. It covers “personnel and medical files and similar files.” 5 U.S.C. § 552(b)(6). This includes 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 is 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 Air Force v. Rose, 425 U.S. 352, 372 (1976).

Under Exemption 6, the Agency withheld portions of two pages (page 1 and 2) and two pages (page 3 and 4) in their entirety of the responsive records.

The portions withheld on page 1 and 2 contains clearly personal information such as a personal cell phone number and the home address of a FOIA requester. The District Court for the District of Columbia has held that Exemption 6 does not justify a “blanket withholding” of the names and organizational affiliations of FOIA requesters. See Agee v. CIA, 1 Gov’t Disclosure Serv. (P-H)

¶ 80,213 at 80,532 (D.D.C. Jul. 23, 1980) (holding that "FOIA requesters . . . have no general expectation that their names will be kept private."). However, requesters do have an expectation that their personal information will not be released.

The two pages withheld in their entirety contain clarifying information as part of an initial FOIA request<sup>3</sup> submitted by (b)(6) for "Any information that you have since 2012 of all resolved complaints against (b)(6)

I find that the two pages withheld in their entirety contain information related to those complaints filed against (b)(6) the identities of witnesses; other third parties; and information provided by the subject of the complaints to the FAA. Further, I find these parties have significant privacy interests in not having their names and other personal information disclosed in connection to a FAA investigation regardless of whether they are a small business owner or not. *See, e.g., Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008) (Personal information, including a citizen's name, address, and criminal history, has implicated a FOIA cognizable privacy interest); *Neely v. FBI*, 208 F.3d 461, 464-65 (4th Cir. 2000) (indicating that individuals "mentioned or interviewed in the course of [an] investigation have well-recognized and substantial privacy interests").

Having found a significant privacy interest, I must balance that privacy interest against the public interest in disclosure. The requester has the burden of proof to demonstrate a qualifying public interest in disclosure and not merely an interest of the individual requester. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). You have not identified that public interest. I find no compelling public interest in releasing personal information about a FOIA requester.

In *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 773-75 (1989), the Supreme Court narrowed the scope of a "qualifying public interest." The analysis turns on the nature of the document and its ability to shed light on an agency's performance of its duties. The court in *Cotton v. Adams*, 798 F. Supp. 22, 27 (D.D.C. 1992), found it "difficult to imagine how the public could discern a great deal about the Smithsonian's discharge of its duties through an evaluation of Inspector General reports pertaining only to two particular employees." Similarly, releasing personal information that pertains to FAA investigations and those witnesses that provided information would not shed any light on the FAA's discharge of its duties regardless of how a document is *titled*. Further, it could negatively taint those persons associated with the investigation through the release of personal information and information provided to the FAA in the course of an investigation. Therefore, I am continuing to withhold the portions of pages 1 and 2, and the entirety of pages 3 and 4 under Exemption 6.

## CONCLUSION

For the foregoing reasons, your appeal is denied. I am the official responsible for this decision, which constitutes the final administrative action on your appeal, and has been concurred on by the FAA Office of Chief Counsel and by John E. Allread on behalf of the Office of General Counsel of the Department of Transportation. You are advised that under 5 U.S.C. §

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<sup>3</sup> FOIA Request 2021-001945

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,

**MARK S  
HOUSE**

Digitally signed by MARK  
S HOUSE  
Date: 2022.09.08  
11:48:37 -04'00'

Mark House

Assistant Administrator for  
Finance and Management



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

Assistant Administrator for Finance and Management

800 Independence Avenue, SW  
Washington, DC 20591

Eliot Brown  
Wall Street Journal  
201 California Street  
San Francisco, CA 94111

RE: Freedom of Information Act Appeal 2022-02412

Dear Mr. Brown:

This letter is in response to your administrative appeal (the "Appeal"), of the February 24, 2022, partial denial by the Director, Policy and Innovation Division (AIR-600), Aircraft Certification Service (AIR), of your request for agency records. The Director, AIR-600, partially withheld portions of records responsive to your request under FOIA Control Number 2022-02412. Your March 15, 2022 Appeal, challenges the portion of the February 24, 2022 response in which information was withheld pursuant to Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4).

For the reasons stated below, I am granting your appeal. Enclosed is a newly, redacted Issue Paper, releasing those portions previously redacted and challenged by you on appeal. I have determined these limited portions of redacted information are appropriate for release. However, I find the majority of the information was withheld correctly, and should continue to be withheld under Exemption 4 of the FOIA.

**INFORMATION REQUESTED:**

In your initial FOIA request dated October 18, 2021<sup>1</sup>, you requested copies of the following:

“the most recent G-1 certification issue paper sent to Archer Aviation, Inc. including...the FAA manager signature certifying completion of the IP...any correspondence with Archer and FAA (sic) from September 1, 2021 to present regarding Archer’s announcement of its G-1 certification.”

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<sup>1</sup> You later expanded your request on December 23, 2021, by requesting “any correspondence with Archer and the FAA from September 1, 2021 to present regarding Archer’s announcement of its G-1 certification.” You did not appeal the no records response to this portion of your request.

### **INITIAL DETERMINATION:**

The Center for Emerging Concepts and Innovation Branch (CECI), AIR-600, conducted a search which located the most recent issue paper, and withheld portions pursuant to Exemption 4 and Exemption 6 of the FOIA. Exemption 4 of the FOIA protects “commercial ... information obtained from a person [that is] privileged or confidential.” 5 U.S.C. § 552(b)(4). Exemption 6 protects from release information that pertains to an individual “the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6).

### **ISSUE RAISED ON APPEAL**

In a March 15, 2022 email, you challenged certain withholdings made according to Exemption 4. Specifically, you stated:

“...I appeal the use of Exemption 4 for the "stage" of the G-1 used at the top of page 1, as well as the text after "Applicant position" on page 7. Given that FAA agrees that many of the basic elements of a G-1 issue paper are public (as evidenced by the un-redacted portions of the FOIA), there is no apparent reason to withhold from the public the specific stage of the application process.”

You did not challenge the Exemption 6 withholdings, nor did you challenge the adequacy of the Agency’s search.

### **ANALYSIS**

FOIA Exemption 4 exempts from disclosure “trade secrets and commercial or financial information obtained from a person” that is “privileged or confidential.” 5 U.S.C. § 552(b)(4). Where withheld records do not contain trade secrets, an agency must establish that the records are “(1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential.” *Pub. Citizen Health Research Grp. V. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983).

Executive Order 12600 and Department of Transportation (DOT) Regulations 49 CFR § 7.29 require the FAA to consult with the entity that submitted information to the agency before publicly releasing information that may contain proprietary information. In response to your Appeal, the FAA consulted with the submitter for additional information on the basis for withholding the items you referenced. The submitter, Archer Aviation, Inc., did not object to release of the information you identified in your administrative appeal, specifically the “stage” of the G-1 at the top of page 1 and the text after “Applicant position” on page 7. Therefore, I have determined Exemption 4 does not apply to the information you specifically identified in your Appeal. These items are, therefore being released to you.

### **CONCLUSION**

In summary, I am granting your appeal in full and releasing the above-described portions to you. 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. 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,

**MARK S  
HOUSE**

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Date: 2022.12.09 12:12:32  
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Mark House

Assistant Administrator for  
Finance and Management

Enclosure





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

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

Dana A. Smith

(b)(6)

Subject: Freedom of Information Act (FOIA) Appeal 2020-007624

Dear Mr. Smith:

This letter is in response to your administrative appeal (the "Appeal") of the December 10, 2020 denial by the Director, Office of Audit and Evaluation (AAE) of a request for agency records in your initial request of August 11, 2020 under FOIA Control No. 2020-007624. Your appeal, dated December 29, 2020<sup>1</sup>, challenges the AAE response in which information was withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

For the reasons stated below, I find that the majority of the information withheld from you was properly withheld under Exemption 6. However, I have determined that limited portions of the redacted information are appropriate for release. The responsive records are enclosed with updated redactions. I am therefore upholding in part, and reversing in part, the December 10, 2020 response from H. Clayton Foushee, Director, AAE.

### **INFORMATION REQUESTED**

In your request dated August 11, 2020, you requested a copy of the "(1) the phone number that the complaint was called in from (2) the email address the complaint was submitted from (3) the name of the individual that made the allegation."

### **INITIAL DETERMINATION:**

AAE conducted a search, which located one, four-page record responsive to your request. In its initial response dated December 10, 2020, AAE informed you that information within those four pages were being redacted pursuant to FOIA Exemption 6 as "identifying information, including names of private individuals other than yourself named in the hotline submission." AAE determined these individuals have a significant privacy interest in their identities associated to the responsive hotline complaint records, and that no overriding public interest existed.

### **ISSUES RAISED ON APPEAL:**

In your Appeal, you disagreed with AAE's application of FOIA Exemption 6 to the Hotline complainant's identifying information. You explained that the Hotline complainant had the option to remain anonymous rather than submit their information to the FAA, but chose to submit their

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<sup>1</sup> Your hardcopy appeal was received by the Appeals Office on February 11, 2021.

information. In addition, you appear to argue that if the contact information is government contact information, or if the complainant also submitted their information to Florida state government agencies, their information should be made publicly available through Florida state law. You also argue that there is an overriding public interest in the disclosure of this information. Additionally, you explain the effects which you believe this complaint could have on the aviation department of the Anastasia Mosquito Control District of St. Johns County (AMCD), and that you would like to ensure that the complainant is not an AMCD employee. You state that “[k]nowing the [AMCD] aviation program is operating in a safe, sabotage free environment . . . is clearly established [in accordance with] the Supreme Court’s decision ‘shedding light on the performance of its statutory duties.’”

## ANALYSIS

### Exemption 6

Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. The exemption covers “personnel and medical files and similar files.” 5 U.S.C. § 552(b)(6), which includes 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 is whether disclosure of the information would “constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). This process requires balancing the individual’s right to privacy against the public’s right to disclosure. *Dep’t of Air Force v. Rose*, 425 U.S. 352, 372 (1976).

With respect to determining whether a privacy interest exists, courts have found that individuals who submit complaints to federal agencies have a substantial interest in their identities. *See, e.g., Wisdom v. U.S. Tr. Program*, 232 F. Supp. 3d 97, 123 (D.D.C. 2017) (finding a privacy interest in “the names of individuals who complained to the agency”); *Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008) (Personal information, including a citizen’s name, address, and criminal history, has implicated a FOIA cognizable privacy interest); *Neely v. FBI*, 208 F.3d 461, 464-65 (4th Cir. 2000) (indicating that individuals “mentioned or interviewed in the course of [an] investigation have well-recognized and substantial privacy interests”). Courts have explained that “disclosure of the complainant’s identities could subject the individuals involved to unnecessary public attention, harassment, or embarrassment and could stymie the government’s efforts to obtain candid information.” *Edelman v. SEC*, 302 F. Supp. 3d 421, 427 (D.D.C. 2018).

Under Exemption 6, the Agency withheld portions of four pages of the Safety Hotline Complaint (the “Complaint”) S200200702002 that were associated with a third party. The Complaint relates to an FAA investigation of alleged misconduct and contains the complainant’s name and other personally-identifiable information. I find that the complainant has a significant privacy interest in not having his/her name or personal details about their statement disclosed in connection to a FAA investigation into alleged misconduct. However, I have determined that limited redacted information is appropriate for segregation and release because it would not identify the complainant.

You assert in your appeal that because the complainant provided his/her name and contact information to the FAA in completing the FAA Hotline Reporting Form,<sup>2</sup> rather than remaining

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<sup>2</sup> <https://hotline.faa.gov/>

anonymous, that the complainant has no expectation of privacy in this information. However, the complainant's willingness to provide his/her information to the FAA to facilitate its investigation does not amount to a waiver of the complainant's privacy interests in keeping that information from being publicly disclosed through FOIA.<sup>3</sup>

Having found a significant privacy interest, I must balance that privacy interest against the public interest in disclosure. The requester has the burden of proof to demonstrate a qualifying public interest in disclosure, and not merely an interest of the individual requester. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). In *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, the Supreme Court held that the analysis of whether there is a "qualifying public interest" in a document's release turns on the nature of the document and its ability to shed light on an agency's performance of its duties. 489 U.S. 749, 773-75 (1989). Releasing the name and other identifying information of a Hotline complainant, in this case would not shed any light on the FAA's discharge of its duties related to the investigation of the Hotline Complaint. After an assessment, I found the name and other identifying information of the complainant is not in the public interest and was correctly withheld. Therefore, I am continuing to withhold these portions under Exemption 6.

## CONCLUSION

For the foregoing reasons, your appeal is denied in part with respect to information that identifies the Hotline complainant and granted in part with respect to information that does not identify this individual. I am the person responsible for this decision, which constitutes the final administrative action on your appeal, and has been concurred on by the FAA Office of Chief Counsel, and Senior Attorney John E. Allread, in the Department of Transportation's Office of General Counsel. You are entitled to seek judicial review of this decision under the provisions of 5 U.S.C. § 552(a)(4)(B) 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,

**MARK S  
HOUSE**

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Date: 2022.04.20  
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Mark House  
Assistant Administrator for  
Finance and Management

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<sup>3</sup> You also allege that the complainant also submitted a complaint to a Florida agency and therefore, his/her identifying information would be available through the "Florida Sunshine Law." While it is not clear from the complaint what, if any, information the complainant has submitted to a Florida State agency, that inquiry is irrelevant here. Florida state disclosure laws are not applicable to Federal agencies such as the FAA. The manner in which the state of Florida would handle this same request for information subject to the state's Sunshine Law has no bearing on the FAA's response to your FOIA request.



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

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

Robert Rubens

(b)(6)

Subject: Freedom of Information Act (FOIA) Appeal 2021-000074

Dear Mr. Rubens:

This letter is in response to your administrative appeal (the “Appeal”) of the December 30, 2020 denial by the Director, Office of Audit and Evaluation (AAE) of a request for agency records in your initial request of October 5, 2020 under FOIA Control No. 2021-000074. Your Appeal, dated January 13, 2021, challenges the AAE response in which information was withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

For the reasons stated below, I find that the information withheld from you was properly withheld under Exemption 6. I am therefore upholding the December 30, 2020 response from H. Clayton Foushee, Director, AAE.

### **INFORMATION REQUESTED**

In your request<sup>1</sup> dated October 5, 2020, you requested a copy of the “completed investigation of case S20200625016, submitted by the San Antonio Flight Standards District Office with regard to ACS Avionics LLC in Georgetown, Texas.”

### **INITIAL DETERMINATION:**

AAE conducted a search which located eight pages of responsive records. AAE informed you that portions were being withheld pursuant to FOIA Exemption 6.

### **ISSUES RAISED ON APPEAL:**

In an email submitted January 13, 2021 to AAE, and then forwarded to the FAA’s electronic FOIA Appeals mailbox ([FOIA-Appeals@faa.gov](mailto:FOIA-Appeals@faa.gov)) you stated the following:

“This denial does not meet the threshold requirement of Exemption 6 and does not constitute an invasion of personal privacy. No protectible [sic] privacy interest exists and as such, the information must be released.”

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<sup>1</sup> The initial request was dated October 2, 2020 and clarification was confirmed by email dated October 5, 2020.

## ANALYSIS

### Exemption 6

Exemption 6 protects individuals against clearly unwarranted invasions of personal privacy. It covers “personnel and medical files and similar files.” 5 U.S.C. § 552(b)(6). This includes 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 is 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 Air Force v. Rose, 425 U.S. 352, 372 (1976).

Under Exemption 6, the Agency withheld portions of the Safety Hotline Complaint S20200625016 that were associated with the subject(s) of the complaint and witnesses who participated in the investigation. The Investigative Results Report (IRR) related to an FAA investigation of your complaint involving the maintenance performed on aircraft N1543G, S/N 421B0639, Cessna 421B by ACS Avionics, LLC (certificate number WHCR539X), a certificated 14 CFR Part 145 repair station, between September 2017 and October 2019. Your complaint also concerned a test flight performed during August 2018.

The IRR contained the names of the persons either the subject of your two part complaint and/or who provided information to the FAA. I find that the subjects and witnesses of the complaint have significant privacy interests in not having their names disclosed in connection to a FAA investigation. *See, e.g., Associated Press v. DOJ*, 549 F.3d 62, 65 (2d Cir. 2008) (Personal information, including a citizen’s name, address, and criminal history, has implicated a FOIA cognizable privacy interest); *Neely v. FBI*, 208 F.3d 461, 464-65 (4th Cir. 2000) (indicating that individuals “mentioned or interviewed in the course of [an] investigation have well-recognized and substantial privacy interests”).

Having found a significant privacy interest, I must balance that privacy interest against the public interest in disclosure. The requester has the burden of proof to demonstrate a qualifying public interest in disclosure and not merely an interest of the individual requester. Nat’l Archives & Records Admin. v. Favish, 541 U.S. 157, 172 (2004).

In U.S. Dep’t of Justice v. Reporters Comm. For Freedom of the Press, 489 U.S. 749, 773-75 (1989), the Supreme Court narrowed the scope of a “qualifying public interest.” The analysis turns on the nature of the document and its ability to shed light on an agency’s performance of its duties. The court in Cotton v. Adams, 798 F. Supp. 22, 27 (D.D.C. 1992), found it “difficult to imagine how the public could discern a great deal about the Smithsonian’s discharge of its duties through an evaluation of Inspector General reports pertaining only to two particular employees.” Similarly, releasing the names of an individual subject to a FAA investigation and those witnesses that provided information to the FAA would not shed any light on the FAA’s discharge of its duties. Further, it could negatively taint those persons associated with the investigation through the release of their names. Therefore, I am continuing to withhold the portions of the IRR under Exemption 6.

**CONCLUSION**

For the foregoing reasons, your appeal is denied. I am the official responsible for this decision, which constitutes the final administrative action on your appeal, and has been concurred on by the FAA Office of Chief Counsel and by John E. Allread on behalf of the Office of General Counsel of the Department of Transportation. You are advised that under 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,

**MARK S  
HOUSE**

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Mark House

Assistant Administrator for  
Finance and Management



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

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

Mr. Edward Howker  
Channel 4 News UK  
200 Grays Inn Road  
London, UK WC1X 8XZ

RE: Freedom of Information Act (“FOIA”) Request No. 2021-004111 & Appeal No. 2022-00052

Dear Mr. Howker:

This letter is in response to your August 8, 2021 administrative appeal (the “Appeal”) of the FAA’s initial response to your request for agency records under FOIA No. 2021-004111, dated June 16, 2021.

For the reasons discussed below, I am granting your appeal and remanding it to the Federal Aviation Administration’s (FAA) Air Traffic Organization (ATO) for review.

#### **INFORMATION REQUESTED**

On May 13, 2021, you submitted a FOIA request for a copy of all flight data for aircraft “N908JE from January 25, 2001 through October 10, 2019; N423TT from May 5, 2007 through August 1, 2013; N212JE from August 1, 2013 through October 10, 2019; N120JE from September 22, 2017 through October 10, 2019 and N514LM from March 31, 2017 through September 22, 2017.”

#### **INITIAL DETERMINATION**

Your request was assigned to the ATO for processing and response. By letter dated June 16, 2021, Chris Tomlin for Virginia Boyle, Vice President, ATO System Operations Services, responded to your May 13, 2021 FOIA request. He informed you that the responsive records were withheld in their entirety, as the records originated from an investigative file which is exempt from disclosure pursuant to Title 5, United States Code, §552, subsection (b)(7)(A) (“Exemption 7(A)”). Exemption 7(A) authorizes the withholding of “records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information...could reasonably be expected to interfere with enforcement proceedings.”

#### **ISSUES RAISED ON APPEAL**

On August 8, 2021, you submitted an administrative appeal that stated the following:

**“3.1 The responsive records do not originate from an investigative file. The Administration does not conduct criminal investigations and the information I seek does**

not originate from an investigative file. The information I have requested originates from the Administration's Traffic Flow Management System (TFMS) and the Administration has no need to examine any investigative file to satisfy this request because the information has already been collected in its repository.

**3.2 The records or information sought were not compiled for law enforcement purposes by the FAA.** I have not sought to obtain records or information under the FOIA from a law enforcement Agency in the United States. The information I have requested has not been compiled for law enforcement purposes by the Administration. It has been compiled for the benefit of maintaining the United States' National Aerospace System and for a range of subsidiary consumer uses...

**3.3 The information cannot reasonably be expected to interfere with an enforcement proceeding.**... Since the request does not seek information about any personally identifiable information, it is hard to see how it might impinge on, for example, an Agency's ability to control or shape investigations, or enable targets of investigations to elude detection or to suppress or fabricate evidence, or would prematurely reveal evidence... The existence of a flight does not reveal who travelled on it. The disclosure of the information has no impact on the future gathering of similar information...

**4.1 Transparency enables the safe operation of the free market in aircraft.**... TFMS data can help establish essential details about the flight history of an aircraft which can help inform prospective buyers and service staff about the nature of the goods, even informing understanding of their airworthiness (particularly important in ageing aircraft)...

**4.2 Unlike in cases of government sensitivity, the FAA has already disclosed some of the data.**... The Administration fairly restricts publicly available information about military and sensitive government aircraft via the System Operations Security from the moment it is informed about the need for a restriction. This data is different. The restriction placed on the information requested here however occurs many years after at least some of it has already been disclosed publicly via internet flight tracking vendors."

## ANALYSIS

### Exemption 7(A)

FOIA Exemption 7(A) permits agencies to withhold "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). To justify the withholding of records under Exemption 7(A), an agency must "demonstrate that 'disclosure (1) could reasonably be expected to interfere with (2) enforcement proceedings that are (3) pending or reasonably anticipated.'"<sup>1</sup>

<sup>1</sup> *Citizens for Responsibility & Ethics in Wash. v. DOJ*, 746 F.3d 1082, 1096 (D.C. Cir. 2014) ("CREW"), quoting *Mapother v. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).



With respect to your assertions in the Appeal, specifically for items 1, 2, 3, 4 & 5, both criminal law enforcement agencies and “mixed-function” agencies with both law enforcement and administrative functions can satisfy FOIA Exemption 7’s threshold requirement. However, “mixed” function agencies must show that the records at issue involved the enforcement of a statute or regulation within its authority and that records were compiled for adjudicative or enforcement purposes. See Pratt v. Webster, 673 F.2d 408, 416 (D.C. Cir. 1982).

Agencies must also demonstrate that the disclosure of this information “could reasonably be expected to interfere with enforcement proceedings.” 5 U.S.C. § 552(b)(7)(A). This determination requires a two-step analysis of: (1) whether a law enforcement proceeding is pending or prospective; and (2) whether release of the information about it could reasonably be expected to cause some articulable harm. See, e.g., Mapother v. Dep’t of Justice, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

At the time the FAA made its initial response, the responsive records had been provided to the Federal Bureau of Investigation (FBI) and were part of an ongoing investigation into Jeffrey Epstein and associates. For this reason, prior to making a final release determination, the FAA consulted with the FBI pursuant to 49 C.F.R. § 7.28. Through consultation, the FBI confirmed the investigation was ongoing and requested the records be withheld in full under Exemption 7(A). Thus, when the FAA made its initial release determination, the records had been compiled for law enforcement purposes and were being used by the FBI for an ongoing criminal investigation. However, the FAA has recently learned that, due to a change in circumstances, the FBI has determined that there is no longer a need to withhold the records in full under Exemption 7(A). For this reason, I have determined that initial justification that the records be withheld in full under Exemption 7(A) is no longer applicable.

### CONCLUSION

For the reasons detailed above, I grant your appeal and remand your request to ATO for processing. ATO will review the records and make a release determination in accordance with the FOIA. The remand number is 2023-00001-R.

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. You are advised that under 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,

**MARK S  
HOUSE**

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Mark House  
Assistant Administrator for  
Finance and Management

**From:** [Karnay, Laurie \(FAA\)](#)  
**To:** [Keith Siilats](#)  
**Subject:** FAA FOIA Request/Appeal 2017-007259  
**Date:** Thursday, June 16, 2022 4:43:00 PM  
**Attachments:** AIR Responsive Documents Redacted.pdf

Dear Mr. Siilats:

Thank you for your patience in awaiting response on this appeal filed on August 31, 2018. In reviewing your appeal of the AIR response and related records, it was discovered that another office should have been assigned the request but inadvertently was not. As a result of that discovery, that office (Flight Standards Service) is currently conducting a search for responsive records and will issue a separate response with any records it might locate and appeals language as applicable. In light of that discovery, your appeal is premature because Flight Standard's response is pending.

Nevertheless, while the FAA's policy is to wait to process administrative appeals until all offices have issued initial responses, in the interim, we have reviewed the denial in light of your appeal, the FOIA, and applicable case law, and have determined to provide you the records responsive to AIR's portion of the request with exemption 4 redactions removed. However, the personal cell/mobile phone numbers will continue to be withheld under Exemption 6. Please see the attachment with AIR records and confirm receipt of this email and that you can open the attachment.

If you intend to challenge the remaining exemption 6 redactions to the AIR records produced to you today, you can do so. You will have 90 days after receiving Flight Standard's response to file an appeal on any records received in response to this request.

Thank you again for your patience.

Sincerely,

Laurie L. Karnay  
Freedom of Information Act (FOIA) Appeals  
FOIA Program Management Division (AFN-400)  
Federal Aviation Administration  
Washington, DC 20591  
(202) 734-2297 direct

## **Clark, Angela E (FAA)**

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**From:** Cary Winter <cary.winter@eclipse.aero>  
**Sent:** Thursday, October 02, 2014 3:41 PM  
**To:** Paskiewicz, Frank (FAA)  
**Subject:** N233MT  
**Attachments:** Confirmation 2.pdf; Confirmation of unairworthy.pdf; Doc - Sep 19, 2014, 5-25 PM.pdf; N233MT WO 13549 10-30-13 (1).pdf; New Batteries 2.pdf; Replacement Batteries.pdf; Screen Shot 2014-10-02 at 1.31.50 PM.png; Summery.pdf

Frank,

As a follow up to our earlier conversation, I have attached some documents confirming that N233MT was, and appears to continue to be, operated in an unairworthy condition. Please consider these documents as Eclipse Proprietary.

If you follow the trail, the aircraft was determined to be unairworthy (one discrepancy being batteries) on 10/30/13. Nearly a year later, the customer tried to claim warranty (separate business issue). As a result, the customer confirmed the unairworthy status.

When we forced the issue, he produced a set of batteries that were previously determined to be unairworthy from another customers aircraft. He also claims to be flying US Senators in this aircraft. A careful review of the attached logbook entry does not reflect that an Air Carrier inspection program was used.

Frank, we are forwarding these to you in the spirit of aviation safety. So that we can maintain effective working relationships with our customers, please keep any mention of our involvement between us.

In the attached emails you see the name Victor (N58VL). Please exclude him from any activities involving this. He was only included due to the the fact that the batteries that were removed from his aircraft under warranty later showed up as "serviceable". He had no knowledge of what the maintenance provider was doing with his removed unserviceable batteries.

FYI – this aircraft is not FIKI approved, does not have a coupled autopilot, and has displays and GPS units which are no longer supported and cannot be repaired. The batteries must be capacity checked each 6 months as prescribed in Chapter 4 of the AMM. This requirement was driven by a certification ELOS.

Let me know if I can be of any further assistance,

Cary

Eclipse Aerospace Proprietary Information All information and data contained herein are the property of Eclipse Aerospace Incorporated and are not to be duplicated or disclosed to others for any purpose without the consent of Eclipse Aerospace Incorporated , Albuquerque, NM. If you are not the intended recipient, please delete this email immediately.

This email may contain commodities, technology or software exported from the United States in accordance with the Export Administration Regulations. These commodities, technology or software are intended for use only in the End User's country. An export license from the U.S. Department of Commerce may be required before these products can be re-exported, transferred, transshipped on a non-continuous voyage, or otherwise disposed of in any other country, either in their original form or after being incorporated into an end item. Diversion of this end-item or its use contrary to any applicable U.S. government license or to U.S. law is prohibited.

**Subject:** Re: warranty on batteries

**Date:** Monday, September 15, 2014 at 4:57:45 PM Central Daylight Time

**From:** Keith Sillats (sent by (b)(6))

**To:** Cary Winter

**CC:** Customer Service, Matthew Geuder, Pamela Sanchez, Dennis Whiteturkey

I faxed you a request in January which you "cannot locate" ...

On Monday, September 15, 2014, Cary Winter <cary.winter@eclipse.aero> wrote:  
Keith,

I have attached a copy of the standard Terms & Conditions for your review. This is the ONLY warranty language there is. You will note that the only stated warranty is 90 Days, subject to certain conditions. You will also note that the language essentially states that in cases where additional warranty provisions may be available, EAI will attempt to obtain the maximum warranty benefit possible on your behalf.

In the case of the batteries, EAI's contractual arrangements will allow warranty consideration for up to 24 months. There is no direct warranty with the battery manufacturer. The battery manufacturer (like all EAI suppliers) require WRITTEN NOTICE OF CLAIM within the warranty period. Similarly, EAI requires written notice of claim within the warranty period to initiate any warranty consideration.

In your case, the only documentation we have been able locate relative to your batteries is a logbook entry dated 10/30/13 noting that the battery failed capacity check, and noting that the aircraft is unairworthy. Further, you confirmed that the battery in question remained installed in the aircraft and that the aircraft continued to be operated in what was determined by your maintenance provider to be unairworthy condition.

Sending a unairworthy logbook does not constitute written request for warranty. Again, if you have any proof that written notice was sent, please present it and we will reconsider warranty.

Finally, your response states that you are a new owner. I would like to suggest that making comments to our staff and to the Eclipse community about our "shitty" batteries will not aid in building a mutually rewarding relationship.

Cary Winter  
SVP Manufacturing, Engineering & Technical Operations  
26 East Palatine Road  
Wheeling, IL 60090  
847.325.1177 (O)  
847.325.1178 (F)  
(b)(6) (M)

**From:** Keith Sillats <keith@sillats.com>

**Date:** Friday, September 12, 2014 at 12:52 PM

**To:** Cary Winter <cary.winter@eclipse.aero>

**Cc:** Customer Service <customer.service@eclipse.aero>, Matthew Geuder <matthew.geuder@eclipse.aero>, Pamela Sanchez <pamela.sanchez@eclipse.aero>, Dennis Whiteturkey <dennis.whiteturkey@eclipse.aero>

**Subject:** Re: warranty on batteries

**Subject:** Re: warranty on batteries

**Date:** Thursday, September 11, 2014 at 12:30:43 PM Central Daylight Time

**From:** Customer Service (sent by <tina.ewen@eclipse.aero>)

**To:** Keith Siilats

**CC:** Matthew Geuder, Pamela Sanchez, Dennis Whiteturkey, Cary Winter

Good Afternoon Keith,

Please see the attached Part request paper work for the purchase of a new battery P/N 90-00134-001 Just complete the first and last pages along with signatures and return to me for processing. I will then contact you for method of payment.

Feel free to contact me if there is anything else that I can assist you with.

Sincerely,  
Tina Ewen

On Thu, Sep 11, 2014 at 12:19 PM, Keith Siilats <keith@siilats.com> wrote:  
ok please provide a CCA

On Thu, Sep 11, 2014 at 1:14 PM, Matthew Geuder <matthew.geuder@eclipse.aero> wrote:  
Good Morning Keith,

Thank you for this confirmation.

Per the T&C's of the original sale of this battery in the ABQSC Shop, EAI must be notified of a Warranty Claim during the Warranty Period. I cannot locate a claim that was submitted during the warranty period. I ran this up the chain to Cary Winter in a effort to see if there is anything we can do to assist further on this matter. Cary's review is consistent with that I have provided.

Customer Service is copied on this email, and if you intend on replacing the failed battery, they will assist you further in providing a CCA for completion to Sell you a battery.

Please let us know if this is your intent and we will provide the necessary paperwork.

Thanks Matt

**Matthew Geuder**

Director, Material Services | ECLIPSE Aerospace, Inc.

Office: 505.724.1084 | Cell: (b)(6) | Fax: 505.241.8873

[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)

On Thu, Sep 11, 2014 at 9:25 AM, Keith Siilats <keith@siilats.com> wrote:  
Confirm.

On Mon, Sep 8, 2014 at 6:25 PM, Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)> wrote:  
Keith,

Can you please confirm that the battery in question, (90-00134-001 S/N 120690040) has been installed in the A/C since the Cap Check was done in October 2013?

Thanks Matt

**Matthew Geuder**

Director, Material Services | ECLIPSE Aerospace, Inc.

Office: [505.724.1084](tel:505.724.1084) | Cell: (b)(6) Fax: [505.241.8873](tel:505.241.8873)

[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)

On Mon, Sep 8, 2014 at 2:54 PM, Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)> wrote:

Here is the contents of the signoff that was faxed. You have not also updated the maintenance tracking on it...

On Mon, Sep 8, 2014 at 3:52 PM, Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)> wrote:

So if the battery failed in October 2013 it was under warranty, no?

On Mon, Sep 8, 2014 at 3:35 PM, Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)> wrote:

Keith,

The battery carries a 2 year warranty from the time of installation. It was installed May 2012. Your Warranty expired, May 2014. The first communication that I have about this failing is last week, well outside of the warranty period. I am trying to help you in locating a fax that was sent to EAI, but not to Customer Service or Warranty. The logbook entry you provided shows that the battery failed in OCT 2013, but the Fax you stated was sent to EAI in January, and the latest followup in now in September 2014.

I asked earlier in this email chain if you had a copy of the Fax and Confirmation, you provided the confirmation only. Again, Can you provide the fax that shows that it was for this battery? I am trying to help you out if I can, but if EAI Warranty is not notified of a failure until after the warranty has expired, the Warranty will be denied.

Matt

**Matthew Geuder**

Director, Material Services | ECLIPSE Aerospace, Inc.

Office: [505.724.1084](tel:505.724.1084) | Cell: (b)(6) Fax: [505.241.8873](tel:505.241.8873)

[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)

MAKE: Eclipse Aviation  
Cor  
MODEL: Ea500  
S/N: 000093  
REG. NO: N233MT  
WORK ORDER:  
2818-08-2014



**Ventura Aircraft Services**

8100 Republic Airport  
Farmingdale, NY 11735  
Phone: 631-756-5500

DATE: 9/17/2014  
A/C TSN:  
Landings:  
TACH:

**Airframe Entries**

(1) Replaced left and right MLG tires P/N 028-630-0. magna flux thru bolts, & eddy current wheels replaced o rings and cleaned and lubed wheel bearings.... (3) serviced oxygen to 1800 psi with aviators breathing oxygen... (4) Installed serviceable main batteries P/N F0073-3005 Lt S (b)(6) by check. Lt 57 min, Rt 59 min.... (5) elt not due... (6) R/R standby pitot tube P/N:

DATE: 9/17/2014

SIGN

Greg

Work Order: 2818-08-2014

Printed by EBis 3 (datcomedia.com)

Aircraft Maintenance Record

Airspeed Aviation LLC  
Hayward Executive Airport Building 23  
20511 Skywest Drive Hayward, CA 94541 (510) 265-1927

**Aircraft Registration N233MT S/N 000093 Year Mfg: 12/2007**

**Date: 10/30/2013**

**Airframe**

**Total Time/Hours: 726.7 Cycles: 739**

**Maintenance Performed:**

W.O.# 13740HWD

1. I.A.W. EA500 AMM 05-20-10-081-801 Performed 300-Hour/24-Month Recurring Airframe Inspection.
2. I.A.W. EA500 AMM 31-30-10-051-801 Diagnostic Storage Unit Maint Practices Performed DSI - Download For Maintenance And EADFC Reads
3. I.A.W. EA500 AMM 53-10-11-001-801 Removed 211 CI Nose Access Panel To Facilitate Maintenance
4. I.A.W. EA500 AMM 24-32-24-071-801 Performed 6 Month Battery Capacity Check - Left Position (System) P/N: 90-00134-001 S/N: 120690014 Battery Capacity Check Good. Battery Removed And Reinstalled I.A.W. EA500 AMM Ch 24-32-24-001-801 And AMM 24-32-24-041-801 See Discrepancies Below
5. I.A.W. EA500 AMM 24-32-24-071-801 Performed 6 Month Battery Capacity Check - Right Position (Start) P/N: 90-00134-001 S/N: 120690040 Battery Capacity Check Good. Battery Removed And Reinstalled I.A.W. EA500 AMM Ch 24-32-24-001-801 And AMM 24-32-24-041-801 See Discrepancies Below
6. Ref EA500 POH/AFM P/N: 06-122204 Sec 8 - Performed 30 Day Equipment Check Of Cockpit Cabin Fire Extinguisher Systems For Equipment Due To Hours
7. Ref EA500 POH/AFM P/N: 06-122204 Sec 8 - Performed 60 Day Artex MF-106 II I Self Test. See Discrepancies Below
8. I.A.W. EA500 AMM 12-10-04-061-B-801 Serviced Left Main, Right Main, And Nose Tires With Dry Nitrogen
9. I.A.W. EA500 AMM 12-10-06-061-801 Serviced Main Landing Gear Struts And Nose Landing Gear Strut With Nitrogen.
10. I.A.W. EA500 AMM 53-10-11-041-801 Reinstalled 211 CI Nose Access Panel Post Maintenance
11. I.A.W. EA500 AMM 27-00-01-071-801-B Performed Control Cable Tension Check Adjustment - Adjusted Aileron, Elevator, Rudder, and All Secondary Control Cables
12. I.A.W. EA500 SB 500-27-004, Rev B Dated: 08 September 2008 Para 3.B. Performed Aileron Joint Friction Check and Lubrication Inspection On Left and Right Aileron Systems. Friction Test Good. Less Than 2 lbs. Friction On Both Left and Right Sides. Also Performed Lubrication of Bearings and Pins. Left and Right Systems. No Discrepancies Noted. See Discrepancies Below

**Service Bulletin Compliance:**

W.O.# 13749HWD

1. EA500 SB 500-27-004, Rev B Dated: 8 September 2008 - Aileron Joint Assembly Inspection and Replacement. Next Inspection Due: 11/11/2017

**Airworthiness Directive Compliance:**

W.O.# 13849HWD

1. Airworthiness Directives Checked and Reviewed Thru Biweekly 2013-21 - AD2013-16-04 Dated Sep 20, 2013 Has Been Reviewed And Does Apply. Owner Operator Has Within 6 Calendar Months After Sep 20, 2013 (effective date after this date AD) To Comply.

**Engines**

Engine No.1 - Left Position

PW610F-A S/N: PCE1A0195 Hrs: 726.7 Cycles: 739

W.O.# 13829HWD

1. I.A.W. PWC MM Task 05-20-00-210-801 Performed Engine Control System Fault Interrogation - EADFC Shows No HDD Faults. Cycle Count As Stated Below

Engine No.2 - Right Position

PW610F-A S/N: PCE1A0200 Hrs: 726.7 Cycles: 739

W.O.# 13849HWD

1. I.A.W. PWC MM Task 05-20-00-210-801 Performed Engine Control System Fault Interrogation - EADFC Shows No HDD Faults. Cycle Count As Stated Below

**Parts Removed/Replaced/Installed**

Manufacture	P.N. On	S.N. On	P.N. On	S.N. On	Status	Hours/Cycle/DOH

"I Certify The Maintenance And/Or Alteration(s) Described Above Were Accomplished In Accordance With The Requirements Of 14 CFR 43, And With Respect To Only The Work Performed Is Airworthy And Approved For Return To Service."

"I Certify That This Aircraft Has Been Inspected In Accordance With The Requirements Of The Manufacturer's 14 CFR 91.409(f)(3) Inspection Program, And Was Determined To Be In An Airworthy Condition"

"I Certify That This Aircraft Has Been Inspected In Accordance With (b)(6) 91.409(f)(3) Inspection Or Operator, His G Pascali III AP/A 2672978"

Airspeed Aviation LLC - 20511 Skywest Drive, Hayward CA 94541 - Bldg 23 Phone: (510) 265-1927 - airspeedaviation@aair.net

**List Of Discrepancies And Unairworthy Items**

W.O.# 13849HWD

1. EA500 AMM 24-32-24-071-801 6 Month Battery Capacity Check Start Battery - Failed Capacity Checks
2. EA500 AMM 52-00-00-071-A-701-006 Lower Door Cable Adj/Test - Out Of Rig and Both Upper Clevis S Bent
3. SB500-53-005 Nose Panel And Radome Sealing - Improper Sealant Used
4. TSR 53-051512-01 Dated 5/16/2012 Not Complied With
5. EA500 AMM 25-12-01-041-411-011 Install Pull Cable - Multiple Foot Pull Release Cables Broke



**Subject:** Re: INV14-01625 & PROOF OF PAYMENT - KEITH SIILATS  
**Date:** Monday, September 29, 2014 at 11:36:08 AM Central Daylight Time  
**From:** Keith Siilats (sent by (b)(6))  
**To:** Cary Winter  
**CC:** Ken Ross, Tina Ewen, Matthew Geuder, Mason.Holland@eclipse.aero

Hi the fedex tracking for the probe is 7713 1101 4839  
The logbook entry is attached.

On Mon, Sep 29, 2014 at 11:55 AM, Cary Winter <cary.winter@eclipse.aero> wrote:  
Mr. Siilats,

Please provide a logbook entry indicating that the batteries have been replaced, and that the pitot tube has been replaced, along with copies of the serviceable tags for those items and we will consider reinstating support for your aircraft. You will also need to address why the aircraft was operated in an unairworthy condition for nearly a year.

Your comments regarding the battery warranty are incorrect and unfounded, and have now reached the point of being insulting. The facts are that you DID NOT follow the procedures contained within the Terms & Conditions YOU signed. YOU have been given MULTIPLE opportunities to provide some evidence that you submitted a written warranty claim. YOU have yet to provide ANY such document.

Those customers that file a written claim for warranty as specified in the Terms & Conditions have had no issues with receiving proper warranty coverage.

In regards to your core return, the Terms & Conditions, again which YOU signed, CLEARLY states you have 15 days to return the core to avoid charges. You did not return the core within that time period. When we receive your core, we will provide a PORTION of the core hold based on the number of days the core is late. Again, this is clearly contained within the Terms & Conditions YOU signed.

We will consider accepting the return of the batteries. Restocking charges as delineated in the Terms & Conditions, along with return freight fees will be deducted PROVIDED you provide written proof that you have installed serviceable batteries in the aircraft and that the aircraft is in airworthy condition.

In regards to your maintenance tracking, there are a number of gaps in the records that need to be addressed to update your status. Andy Neild sent an email to your mechanic last week requesting the necessary documents.

Tina – please provide Mr. Siilats a RMA for the batteries and a Core Return Form for the probe (if he does not have one).

Mr. Siilats - I would suggest that any future issues could be avoided by simply maintaining your aircraft in airworthy condition and following the Terms & Conditions that you agree to with each transaction.

Regards,

Cary Winter  
SVP Manufacturing, Engineering & Technical Operations

**From:** Keith Siilats <keith@siilats.com>  
**Date:** Monday, September 29, 2014 at 10:12 AM  
**To:** Cary Winter <cary.winter@eclipse.aero>

**Cc:** Ken Ross <[ken.ross@eclipse.aero](mailto:ken.ross@eclipse.aero)>, Tina Ewen <[tina.ewen@eclipse.aero](mailto:tina.ewen@eclipse.aero)>, Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)>, Mason Holland <[mason.holland@eclipse.aero](mailto:mason.holland@eclipse.aero)>  
**Subject:** Re: FW: INVD14-01625 & PROOF OF PAYMENT - KEITH SIILATS

Hi Cary,

I did not end up reblocking the batteries, there was another set of new batteries that I bought from another eclipse owner. I wanted to buy yours but you did not give me a written warranty. If you want to charge me restocking please do so.

I also sent you back the broken 3rd pitot probe today. I requested an RMI number, like you said I have to on the batteries, but I did not receive one. Please accept the core without the RMI and don't charge me for it.

Obviously the threat of not supporting my plane overrules anything. If there is anything else I owe you or you want to charge me for, please send me an invoice and I will happily pay. Next time just make it clear - we do not honor your warranty on the battery and if you complain we will not support your plane. This would have been a lot easier, as again the threat of not having a supported plane overrules everything. Also, please develop a written warranty document that describes how to claim the 24 month warranty so there is no confusion.

Also, please send me the updated maintenance log. I have not gotten a correct one ever since the 24 month was done. I know there is some tension between the Gold centers and others, but you should still update the maintenance log from the 24 month done at Airspeed so I can track whats due.

I have always had amazing service from Eclipse, both from ABQ where I did the liners and software updates and from Bocca where I changed fuel probes and updated oxygen masks, my maintenance bills have been over \$50k in the past 2 years I have owned the plane. Please do not let this small confusion with the batteries ruin our relationship.

On Mon, Sep 29, 2014 at 10:37 AM, Cary Winter <[cary.winter@eclipse.aero](mailto:cary.winter@eclipse.aero)> wrote:  
Mr. Siilats,

In regards to your request, please be advised that I speak on behalf of Eclipse Management. I have briefed Mr. Ross, President of EAI on your situation and we are in agreement that we can no longer support your aircraft until the aircraft is brought into (and maintained) in an airworthy condition.

Mr. Holland does not involve himself in these matters, nor will he condone, enable, or turn a blind eye, to any illegal or unethical conduct.

While you continue to try find someone within EAI that will enable your conduct, you have yet to address the fact that by your own written admission, you have purposefully operated the aircraft in a known unairworthy condition for nearly a year.

In the event that it was overlooked, I have attached a copy of our previous communication.

Cary Winter  
SVP Manufacturing, Engineering & Technical Operations

*Mr. Siilats,*

*In my previous correspondence, I thought that we had resolved the issues surrounding your batteries. At that time you made claims that you had requested warranty, to which you have failed to provide any*

*proof of claim despite our requests.*

*Later you ordered replacement batteries, waited a week, attempted to cancel the order, then misrepresented that "I never received the batteries". The attached FedEx manifest clearly states that they were delivered to you, and you intentionally refused delivery. Subsequently, you stated your intention to "reblock the batteries", a process that is not FAA approved. Additionally, there are no FAA approved replacement parts available for "reblocking".*

*You continue by suggesting an arrangement in which you attempt to extort a unwarranted refund in exchange for the following: "I also will not post the reblocking instructions on the internet, is that fair?" Eclipse Aerospace is a professional business that operates in strict compliance with all applicable regulations and moral and ethical standards. The "reblocking instructions" you mention are not FAA approved and we will have no part of illegal activities, nor will we be extorted.*

*To summarize the current situation:*

- *As confirmed by you in an email, you have operated the aircraft with a battery and other conditions determined by a licensed mechanic to be unairworthy since 10/30/13. You were provided a logbook entry clearly indicating the unairworthy condition by Airspeed Aviation.*
- *In comments made to EAI employees, you infer that you have also been operating with a unairworthy pitot/static probe for some time.*
- *You represented that you made warranty claims for which you have no proof.*
- *You misrepresented that you "never received the batteries" that you ordered in an attempt to obtain a unwarranted refund. Evidence shows that you did receive the batteries but refused delivery.*
- *You have implied that you no longer need the new FAA approved batteries, as you have "reblocked" your batteries. As there is no FAA approved procedure for this or FAA approved parts, this is problematic.*

*In summery, your misrepresentations, manipulations, disregard for the proper maintenance for your aircraft, as well as demonstrated willingness to violate FAA regulations stands in stark contradiction to the ethical standards of EAI.*

***In light of this conduct, EAI will no longer be able to offer and parts or technical support for your aircraft.***

*If you wish to take a more positive approach to your business dealings with EAI, and bring your aircraft into airworthy condition (and maintain it in an airworthy condition) operating in full compliance with all FAA rules, we will reconsider restoring support for your aircraft. I have added EAI's Regulations and Ethics Officer and EAI President to this email chain.*

*Regards,*

*Cary Winter  
SVP Manufacturing, Engineering & Technical Operations*

***From:*** Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)>  
***Date:*** Thursday, September 25, 2014 at 1:49 PM  
***To:*** Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)>  
***Cc:*** Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)>, Cary Winter <[cary.winter@eclipse.aero](mailto:cary.winter@eclipse.aero)>  
***Subject:*** Re: EAI RECEIVED YOUR BATTERIES

*I don't want to fight with you, I also will not post the reblocking instructions on the internet, is that fair?*

On Thu, Sep 25, 2014 at 2:49 PM, Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)> wrote:  
I never received the batteries, I wanted to cancel the order.

On Thu, Sep 25, 2014 at 1:54 PM, Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)> wrote:  
Keith,

Per the Terms and Conditions of Sale, As communicated before, EAI is not accepting the return of these batteries.

Please review the attached "T&Cs" that you signed when placing the order for these batteries.

Section VI. Returns states you must obtain a return material authorization from EAI prior to shipping or returning the Goods. This authorization was not granted or obtained. Further in this section, it is stated if a return does not meet all of the foregoing criteria then EAI will either return the Goods or core to you, freight collect, or will dispose of the Goods or core at Your instruction.

I would also ask that you look at Section I. TERMS OF SALE F). Your indication that you intend to make your batteries airworthy another way can impact the warranty to the Aircraft, goods, and Services.

Please provide your instruction to have these batteries returned, or disposed of.

Thanks Matt

**Matthew Geuder**

Director, Material Services | ECLIPSE Aerospace, Inc.

Office: 505.724.1084 | Cell: (b)(6) | Fax: 505.241.8873

[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)

On Tue, Sep 23, 2014 at 4:00 PM, Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)> wrote:  
Hi I sent back your original batteries as i figured out another way to make mine airworthy. I actually never received them, i told fedex to return to sender.

On Tue, Sep 23, 2014 at 5:14 PM, Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)> wrote:

Dear Keith,

EAI received your batteries from INVD14-001626 & 1630 today. If this was in error please let us know and we can ship them back to you. Because of earlier communication for warranty claim we are aware that your batteries are no longer flight worthy. EAI will not be accepting these batteries as a return and there will not be a refund. If you like we can hold them here for you until the time comes that you do need them. But if you choose to have them shipped back to you just provide a fedex account number to cover the freight cost and we will be happy to send them back to you. Thank you and have a nice evening.

----- Forwarded message -----

From: **Keith Sillats** <[keith@sillats.com](mailto:keith@sillats.com)>  
Date: Fri, Sep 26, 2014 at 5:27 PM  
Subject: Re: INVD14-01625 & PROOF OF PAYMENT - KEITH SILLATS  
To: Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)>

Can I schedule a call with mason to resolve this?

On Friday, September 26, 2014, Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)> wrote:

Dear Keith,

I have been instructed by management that we no longer have a business relationship with you and will not issue an RA# for this part to be returned. However concerning this P/N100564-18 you have exceeded the 15 day core return policy and you core hold has been processed. If you would still like to install this new P/N100564-18 and return the core please let us know and we will see about returning a portion of you payment.

Sincerely,  
Tina Ewen

On Thu, Sep 25, 2014 at 2:55 PM, Keith Sillats <[keith@sillats.com](mailto:keith@sillats.com)> wrote:

Hi I would like to receive an RMA and return this part. Please provide me the exact instructions how to do it.

On Thu, Sep 11, 2014 at 4:43 PM, Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)> wrote:

Dear Keith,

Attached is the pos slip and sales invoice for your most recent part order. Please sign anywhere on the pos slip, and either fax (847-850-7602) or email ([customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)) the pos slip to me. The tracking number is: 5743 6038 7661. The tracking numbers can also be found on the invoice. Thank you.

Sincerely,  
Tina Ewen

**Customer Service, Part Sales | Eclipse Aerospace, Inc.**

Toll Free: [888-206-1800](tel:888-206-1800)

Office: 847.850.7562 | Fax: 847.850.7602

[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)

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Keith Siilats [keith@siilats.com](mailto:keith@siilats.com) [www.bytelogics.com](http://www.bytelogics.com) Fax: 646-352-4705 Phone: +1 (646) 881-4378

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Keith Siilats [keith@siilats.com](mailto:keith@siilats.com) [www.bytelogics.com](http://www.bytelogics.com) Fax: 646-352-4705 Phone: +1 (646) 881-4378

**Subject:** N58VL, sn 130 Main Ship Batteries  
**Date:** Tuesday, September 30, 2014 at 4:14:26 PM Central Daylight Time  
**From:** Andy Neild  
**To:** Victor Girgenti, Greg Tarascio (greg.tarascio@ventura.aero)  
**CC:** Cary Winter

Victor / Ventura,

Good afternoon. It has recently come to EAI's attention that N233MT, sn 93 has had two ship batteries (P/N: 90-00134-001, sn 122860003 & 122860004) installed by Ventura Aircraft Services. Per their logbook entry that was provided to us by the owner, these batteries were "Serviceable" at the time of install (9/17/2014). This situation is very problematic for Victor as the owner and Ventura Aircraft Services as the maintenance center since these 2 batteries were previously deemed unserviceable by Ventura during a 6 month battery capacity check on N58VL, sn 130 back in March 2014. Victor requested new warranty replacement batteries which EAI provided to Ventura & were then installed by Ventura. Victor was also advised via email to recycle the unserviceable batteries locally.

As you may know, there is no FAA approved procedure to service, reblock, or bring these batteries back into a serviceable condition once they have been deemed unserviceable. Thus, in order to install these batteries as "serviceable" on N233MT in Sept. 2014, they would have had to have been "serviceable" back in March 2014 when removed from N58VL. EAI does not take lightly to any false warranty claims in order to "stock" parts for the purpose of resale to other aircraft, to the point that any current or future warranty coverage, service, & technical support could be suspended indefinitely.

This email is being sent as a courtesy to the good manufacturer / owner relationship that EAI and Victor have had over the past 1 1/2 years and the support that EAI has given Ventura during that time to support Victor's aircraft, however, the situation described above has led us to rethink these relationships. Please advise at your earliest convenience on an explanation and plan to resolve this issue so that we can all move on to continued service and support.

Thanks,

Andy Neild  
General Manager - Chicago  
Eclipse Aerospace, Inc.  
26 East Palatine Rd. Hangar 4  
Wheeling, IL. 60090  
877-538-6268 Toll Free  
847-325-1185 Office  
(b)(6) Mobile  
847-520-1294 Fax  
[andy.neild@eclipse.aero](mailto:andy.neild@eclipse.aero)

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**Keith Siilats**

Frequent Poster

129 Posts

Thanked 7 times



09-25-2014, 11:17 AM

5 #8 ▲

I apparently don't need an armed security officer. Its a different type of waiver called domestic waiver for the senators

↩ REPLY

↩ REPLY WITH QUOTE



👍 THANKS

**Subject:** Re: EAI RECEIVED YOUR BATTERIES  
**Date:** Thursday, September 25, 2014 at 8:13:02 PM Central Daylight Time  
**From:** Keith Siilats (sent by (b)(6))  
**To:** Cary Winter  
**CC:** Matthew Geuder, Customer Service, Ed Lundeen, Ken Ross

Can you issue rmi for the batteries?

On Thursday, September 25, 2014, Cary Winter <cary.winter@eclipse.aero> wrote:  
Mr. Siilats,

In my previous correspondence, I thought that we had resolved the issues surrounding your batteries. At that time you made claims that you had requested warranty, to which you have failed to provide any proof of claim despite our requests.

Later you ordered replacement batteries, waited a week, attempted to cancel the order, then misrepresented that "I never received the batteries". The attached FedEx manifest clearly states that they were delivered to you, and you intentionally refused delivery. Subsequently, you stated your intention to "reblock the batteries", a process that is not FAA approved. Additionally, there are no FAA approved replacement parts available for "reblocking".

You continue by suggesting an arrangement in which you attempt to extort a unwarranted refund in exchange for the following: "I also will not post the reblocking instructions on the internet, is that fair?" Eclipse Aerospace is a professional business that operates in strict compliance with all applicable regulations and moral and ethical standards. The "reblocking instructions" you mention are not FAA approved and we will have no part of illegal activities, nor will we be extorted.

To summarize the current situation:

- As confirmed by you in an email, you have operated the aircraft with a battery and other conditions determined by a licensed mechanic to be unairworthy since 10/30/13. You were provided a logbook entry clearly indicating the unairworthy condition by Airspeed Aviation.
- In comments made to EAI employees, you infer that you have also been operating with a unairworthy pitot/static probe for some time.
- You represented that you made warranty claims for which you have no proof.
- You misrepresented that you "never received the batteries" that you ordered in an attempt to obtain a unwarranted refund. Evidence shows that you did receive the batteries but refused delivery.
- You have implied that you no longer need the new FAA approved batteries, as you have "reblocked" your batteries. As there is no FAA approved procedure for this or FAA approved parts, this is problematic.

In summery, your misrepresentations, manipulations, disregard for the proper maintenance for your aircraft, as well as demonstrated willingness to violate FAA regulations stands in stark contradiction to the ethical standards of EAI.

**In light of this conduct, EAI will no longer be able to offer and parts or technical support for your aircraft.**

If you wish to take a more positive approach to your business dealings with EAI, and bring your aircraft into airworthy condition (and maintain it in an airworthy condition) operating in full compliance with all FAA rules, we will reconsider restoring support for your aircraft. I have added EAI's Regulations and Ethics Officer and EAI President to this email chain.

Regards,

Cary Winter  
SVP Manufacturing, Engineering & Technical Operations

**From:** Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)>  
**Date:** Thursday, September 25, 2014 at 1:49 PM  
**To:** Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)>  
**Cc:** Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)>, Cary Winter <[carywinter@eclipse.aero](mailto:carywinter@eclipse.aero)>  
**Subject:** Re: EAI RECEIVED YOUR BATTERIES

I don't want to fight with you, I also will not post the reblocking instructions on the internet, is that fair?

On Thu, Sep 25, 2014 at 2:49 PM, Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)> wrote:  
I never received the batteries, I wanted to cancel the order.

On Thu, Sep 25, 2014 at 1:54 PM, Matthew Geuder <[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)> wrote:  
Keith,

Per the Terms and Conditions of Sale, As communicated before, EAI is not accepting the return of these batteries.

Please review the attached "T&Cs" that you signed when placing the order for these batteries.

Section VI. Returns states you must obtain a return material authorization from EAI prior to shipping or returning the Goods. This authorization was no granted or obtained. Further in this section, it is stated if a return does not meet all of the foregoing criteria then EAI will either return the Goods or core to you, freight collect, or will dispose of the Goods or core at Your instruction.

I would also ask that you look at Section I. TERMS OF SALE F). Your indication that you intend to make your batteries airworthy another way can impact the warranty to the Aircraft, goods, and Services.

Please provide your instruction to have these batteries returned, or disposed of.

Thanks Matt

**Matthew Geuder**

Director, Material Services | ECLIPSE Aerospace, Inc.

Office: 505.724.1084 | Cell: (b)(6) Fax: 505.241.8873

[matthew.geuder@eclipse.aero](mailto:matthew.geuder@eclipse.aero)

On Tue, Sep 23, 2014 at 4:00 PM, Keith Siilats <[keith@siilats.com](mailto:keith@siilats.com)> wrote:  
Hi I sent back your original batteries as i figured out another way to make mine airworthy. I actually never received them, i told fedex to return to sender.

On Tue, Sep 23, 2014 at 5:14 PM, Customer Service <[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)> wrote:

Dear Keith,

EAI received your batteries from INVD14-001626 & 1630 today. If this was in error please let us know and we can ship them back to you. Because of earlier communication for warranty claim we are aware that your batteries are no longer flight worthy. EAI will not be excepting these batteries as a return and there will not be a refund. If you like we can hold them here for you until the time comes that you do need them. But if you choose to have them shipped back to you just provide a fedex account number to cover the freight cost and we will be happy to send them back to you. Thank you and have a nice evening.

*Sincerely,*

*Tina Ewen*

**Customer Service, Part Sales | Eclipse Aerospace, Inc.**

*Toll Free: 888-206-1890*

*Office: 847.850.7562 | Fax: 847.850.7602*

*[customer.service@eclipse.aero](mailto:customer.service@eclipse.aero)*

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Keith Siilats [keith@siilats.com](mailto:keith@siilats.com) [www.bytelogics.com](http://www.bytelogics.com) Fax: [646-352-4705](tel:646-352-4705) Phone: [+1 \(646\) 881-4378](tel:+1(646)881-4378)

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Keith Siilats [keith@siilats.com](mailto:keith@siilats.com) [www.bytelogics.com](http://www.bytelogics.com) Fax: [646-352-4705](tel:646-352-4705) Phone: [+1 \(646\) 881-4378](tel:+1(646)881-4378)

**From:** [9-FOIA-Appeals \(FAA\)](#)  
**To:** [pcraven@avlaw.us](mailto:pcraven@avlaw.us); [9-FOIA-Appeals \(FAA\)](#)  
**Cc:** [Joseph Lamonaca](#)  
**Subject:** RE: FOIA Appeal from Denial of FOIA Request 2022-05459  
**Date:** Thursday, July 7, 2022 8:31:00 AM

Ms. Craven:

The Office of Audit and Evaluation has confirmed that the investigation is now closed so I am remanding the request back to them to process the records and make a release directly to you. If you have any questions, please do not hesitate to contact me.

Sincerely,

Laurie L. Karnay  
Freedom of Information Act (FOIA) Appeals  
FOIA Program Management Division (AFN-400)  
Federal Aviation Administration  
Washington, DC 20591  
(202) 734-2297 direct

**From:** [pcraven@avlaw.us](mailto:pcraven@avlaw.us) <[pcraven@avlaw.us](mailto:pcraven@avlaw.us)>  
**Sent:** Wednesday, June 29, 2022 1:37 PM  
**To:** [9-FOIA-Appeals \(FAA\)](#) <[FOIA-Appeals@faa.gov](mailto:FOIA-Appeals@faa.gov)>  
**Cc:** [Joseph Lamonaca](mailto:jlamonaca@avlaw.us) <[jlamonaca@avlaw.us](mailto:jlamonaca@avlaw.us)>  
**Subject:** FOIA Appeal from Denial of FOIA Request 2022-05459

Dera Sir or Madam,

Please see the attached Appeal from Denial of FOIA Request 2022-05459.

Thank you,

Peggy Craven, Senior Paralegal for  
JOSEPH MICHAEL LAMONACA  
755 N. Monroe Street  
Media, PA 19063  
610-558-3376 office  
888-881-1175 fax

**From:** [9-FOIA-Appeals \(FAA\)](#)  
**To:** [Dave C; 9-FOIA-Appeals \(FAA\)](#)  
**Cc:** [Karnay, Laurie \(FAA\)](#)  
**Subject:** RE: Appeal ASN 2022-WTE-243-OE FAA FOIA Request 2022-07610  
**Date:** Wednesday, September 14, 2022 2:42:00 PM

Mr. Condon;

After carefully reviewing this appeal, we have determined to remand it back to the Air Traffic Organization FOIA Office for additional processing. The remand tracking number is 2022-00007-R. Once again, the ATO FOIA POC is Ms. Elena Richardson [elena.richardson@faa.gov](mailto:elena.richardson@faa.gov)

Thank you.

Laurie L. Karnay  
Freedom of Information Act (FOIA) Appeals  
FOIA Program Management Division (AFN-400)  
Federal Aviation Administration  
Washington, DC 20591  
(202) 734-2297 direct

**From:** Dave C <davecondon@mindspring.com>  
**Sent:** Tuesday, August 16, 2022 2:22 PM  
**To:** 9-FOIA-Appeals (FAA) <FOIA-Appeals@faa.gov>  
**Subject:** Appeal ASN 2022-WTE-243-OE

This is an appeal from the above-described partial denial of a request made under the FOIA, request 2022-07610

On May 26, 2022, I sent in a FOIA request specifying certain documents that I did not receive under

request 2022-07610.

1. I requested copies of the Circularization Notices sent out between March 24, 2022 thru April 30, 2022 related to

ASN 2022-WTE-243-OE. I did not receive any but instead received three notices

dated December 9, 2020related

to a different aeronautical study, 2019-WTE-8774-OE. Would you please send the correct ones particularly of

Clifton Forge, VA. I have seen the names appear as Manager plus the local pilots and I know each other.

2. I specifically requested the current 2022 FAA DOD Military Operations Report, ASN: 2022-WTE-243-OE,

System OEAAA . I never receive any of the pages.

3. I never received any mitigation, letter or Mitigation Report between Apex Clean Energy and the Dept. of

the Navy. Please send that to me. If not, please advise why. I did request that from DOD FOIA but no response

as of June 22, 2022.

A Determination was made on August 5, 2022 and I ask that a quick search be made to verify the information as

related to that Determination to be received no later than August 25, 2022. If there are any questions, please either email me or call at 540-613-9478. Thank you.

Dave Condon



**From:** [jazz shaw](#)  
**To:** [9-FOIA-Appeals \(FAA\)](#)  
**Subject:** Re: Appeal to no records response re: FOIA request # 2022-07118 Shaw (N677F)  
**Date:** Tuesday, August 23, 2022 9:34:14 PM

Thank you for your response. Please consider this appeal withdrawn given your agency's constrictions. We are currently working with members of Congress to fix the FOIA system and the FAA's restrictions are one of the poster children of the need to do this. In the modern era of digital records, the idea that you would not retain records beyond 45 days is further proof that the FAA, along with so many government agencies, has no interest in providing transparency to the media or the public. Hopefully, the next round of transparency efforts in Congress will end this wall of secrecy and blatant efforts by the federal government to block access to government records from the public.

Regards,

Jazz Shaw

On Tue, Aug 23, 2022 at 4:32 PM 9-FOIA-Appeals (FAA) <[FOIA-Appeals@faa.gov](mailto:FOIA-Appeals@faa.gov)> wrote:

Mr. Shaw:

My apologies for the Ms. in earlier email.

I have confirmed with the ATO/WSA FOIA Office that the reason for the no records response is that the requested records were not maintained beyond their 45 day retention period. The incident you described in your request occurred on August 11, 2021 and your request was submitted to us on or about May 6, 2022. Please be advised that per FAA Order JO 1030.3B, an aircraft diverted to another airport is not considered a "significant or noteworthy event" that warrants additional monitoring by the FAA. If your request was received within the 45 day period after August 11, 2021, we could have notified the record custodian(s) to retain those records.

If you wish to proceed with a formal response to this appeal or withdraw it based on the above information. Please advise me by close of business Friday, August 26, 2022. Thank you for your patience in this matter.

Sincerely,

Laurie L. Karnay

Freedom of Information Act (FOIA) Appeals  
FOIA Program Management Division (AFN-400)  
Federal Aviation Administration  
Washington, DC 20591  
(202) 734-2297 direct

**From:** jazz shaw (b)(6)  
**Sent:** Monday, August 22, 2022 5:34 PM  
**To:** 9-FOIA-Appeals (FAA) <[FOIA-Appeals@faa.gov](mailto:FOIA-Appeals@faa.gov)>  
**Cc:** Gregor, Ian (FAA) <[Ian.Gregor@faa.gov](mailto:Ian.Gregor@faa.gov)>  
**Subject:** Re: Appeal to no records response re: FOIA request # 2022-07118 Shaw (N677F)

Ms. Karnay,

Thank you for your response and the tracking number. If I can supply any other information that might be helpful, please let me know.

Jazz

(Him/his)

On Mon, Aug 22, 2022 at 4:39 PM 9-FOIA-Appeals (FAA) <[FOIA-Appcals@faa.gov](mailto:FOIA-Appcals@faa.gov)> wrote:

Ms. Shaw:

My apologies for this oversight. I have your appeal and am contacting the program office that provided you with the no records response. The Appeal Tracking Number is 2022-00041.

Sincerely,

Laurie L. Karnay  
Freedom of Information Act (FOIA) Appeals  
FOIA Program Management Division (AFN-400)  
Federal Aviation Administration  
Washington, DC 20591  
(202) 734-2297 direct

**From:** jazz shaw (b)(6)  
**Sent:** Wednesday, August 10, 2022 6:39 PM  
**To:** 9-FOIA-Appeals (FAA) <[FOIA-Appeals@faa.gov](mailto:FOIA-Appeals@faa.gov)>  
**Cc:** Gregor, Ian (FAA) <[Ian.Gregor@faa.gov](mailto:Ian.Gregor@faa.gov)>  
**Subject:** Re: Appeal to no records response re: FOIA request # 2022-07118 Shaw (N677F)

Hello.

After contacting Ian Gregor at the FAA press office, I was advised to attempt contacting you again about your lack of response to my appeal to my FOIA request #2022-07188. I have still not received acknowledgment of my appeal to the denial I received. Any update you could provide would be most appreciated.

Best regards,

Jazz Shaw

On Fri, Jul 8, 2022 at 10:38 AM jazz shaw (b)(6) wrote:

Greetings,

I was hoping to check in and see if this appeal had been accepted or if anything else was needed for it. If you have an ETA on when it might be considered, that would be great. Thanks again.

Best regards,

Jazz Shaw

On Thu, Jun 9, 2022 at 2:14 PM jazz shaw (b)(6) wrote:

As per your instructions, I am filing an appeal to the no records response I received from Michele Merkle and Clark Desing, Director, ATO, WSC regarding my FOIA request #2022-07188. The request sought any records related to the flight of a National Science Foundation aircraft, registration number N677F, on August 11, 2021, from Denver, Colorado to Vernal Regional Airport in Uintah County, Utah, later diverted to land at the Rocky Mountain Metropolitan Airport.

Your response indicated that no records responsive to my request were located. I am appealing the adequacy of the search. The flight in question was tracked by FlightAware. (Track image attached.) It was photographed leaving the airport in Denver. Flight data related to this specific flight appeared in a television documentary that aired earlier this year. It is demonstrable that the flight clearly took place. The idea that the Federal Aviation Administration would have no record of such a flight by a government aircraft seems improbable at best.

I would request that a review of the search be undertaken and any records relating to this flight be provided to me at your earliest convenience. Many thanks in advance for your consideration of this request.

Best regards,

Jazz Shaw

519 Oak Hill Ave.

Endicott, New York, 13760

607-341-8484

--

Jazz Shaw

Editor/writer for Salem Media,

The Debrief

(b)(6)

--

Jazz Shaw

Editor/writer for Salem Media,

The Debrief

(b)(6)

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Jazz Shaw

Editor/writer for Salem Media,

The Debrief

(b)(6)

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Jazz Shaw  
Editor/writer for Salem Media,

The Debrief

(b)(6)

--

Jazz Shaw  
Editor/writer for Salem Media,  
The Debrief

(b)(6)

**From:** [Martin, Angella \(FAA\)](#)  
**To:** [john@greenewald.com](mailto:john@greenewald.com)  
**Subject:** FOIA (Appeal) 2022-06548  
**Date:** Monday, September 26, 2022 1:30:50 PM  
**Attachments:** image001.png  
FOIA 2022-06548 Greenewald Appeal.pdf  
182907 04202022 I 7035633221.wav  
Records for FOIA 2022-06548 (Greenewald) released in response to appeal.pdf  
184306 04202022 I 7035633221.wav  
184106 04202022 O 917032680567.wav  
183433 04202022 O 915403516129.wav

Mr. Greenewald,

Good afternoon. Attached, please find the response letter and responsive data to FOIA appeal 2022-06548.

Thank you.

Angella F. Martin-Osorio  
System Operations Services  
Ph: 202.267.0563









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

System Operations Services  
800 Independence Avenue, SW.  
Washington, DC 20591

9/26/2022

Mr. John Greenewald  
The Black Vault, Inc.  
27305 W. Live Oak Rd.  
Suite 1203  
Castaic, CA 91384

Dear Mr. Greenewald:

On August 4, you appealed the adequacy of the record search for System Operations Services' July 28 response to your Freedom of Information Act (FOIA) request, 2022-06548, dated April 22. Your request was remanded to the Air Traffic Organization for additional action and this is our follow-up response.

Additional records were located, which are enclosed. However, portions of these records are being redacted under FOIA Exemption 6, which protects individuals against clearly unwarranted invasions of personal privacy. Under this exemption, we have redacted all cell phone numbers and the names and email addresses of military personnel. With regard to the information in question, it is clearly established that there is typically no public interest in this information, but there is at least some privacy interest in keeping confidential these personal details. Smith v. Dep't of Labor, 798 F. Supp. 2d 274, 283-85 (D.D.C. 2011). We have considered the extent to which disclosure of the above information would serve the public interest, but have determined that absent a justification to the contrary, any such interest is de minimis when weighed against the personal privacy interests at issue. Additionally, disclosure of the information at issue would shed no light on the FAA's performance of its statutory duties. As such, withholding is clearly appropriate under FOIA Exemption 6. The information withheld under this FOIA Exemption is clearly marked and is readily identifiable.

There are no fees associated with the processing of this request.

The undersigned is responsible for this partial denial. You may request reconsideration of this determination by writing the Assistant Administrator for Finance and Management (AFN-400), Federal Aviation Administration, 800 Independence Avenue, SW, Washington DC, 20591 or through electronic mail at: FOIA-Appeals@faa.gov. Your request for reconsideration must be made in writing within 90 days from the date 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 should be marked "FOIA Appeal."

You also have the right to seek dispute resolution services from the FAA FOIA Public Liaison via phone (202-267-7799) or email (7-AWA-ARC-FOIA@faa.gov) noting FOIA Public Liaison in the Subject or the Office of Government Information Services (<https://ogis.archives.gov>) via phone (202-741-5770 / toll-free--1-877-684-6448; fax--202-741-5769); or email ([ogis@nara.gov](mailto:ogis@nara.gov)).

Sincerely,

DocuSigned by:



28C9E716004C48C...

Alyce Hood-Fleming

Vice President (A), System Operations Services  
Air Traffic Organization

Enclosure



**DATE:** 26 April 2022

**FOR:** Tim Arel, Acting Chief Operating Officer, AJO-0  
Virginia Boyle, Vice President, System Operations Services, AJR-0

**BY:** Gary W. Miller, Director, System Operations Security, AJR-2

**SUBJECT:** ACTION: Re-Validated AAR on Airspace Security Coordination on 20 April U.S. Capitol Evacuation Triggered by Golden Knights Flight and Way Forward

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#### ISSUE EXECSUM:

The United States Capitol Police (USCP) evacuated the U.S. Capitol complex at approximately 1830L on Wednesday, 20 April, in response to reports of a suspicious aircraft, which was determined by the National Capital Region Coordination Center (NCRCC) to be an authorized Department of Defense (DOD) flight carrying out a Golden Knights parachuting show at Nationals Park. USCP and Congressional Members have made statements indicating the FAA failed to properly coordinate with interagency partners regarding this flight resulting in an unwarranted evacuation.

The Air Traffic Organization (ATO) re-validated its After-Action Review (AAR) of this incident using a dedicated team to directly review 23-25 April all available relevant information, specifically focusing on actions taken by the FAA and interagency partners at the NCRCC. The ATO review team's efforts emphasized reexamining primary sources - e.g., re-interviewing the agency's Air Traffic Security Coordinator (ATSC) on duty at the NCRCC during the 20 April incident, and listening to and analyzing audio recordings of the telephone conversations carried out by the NCRCC ATSC and USCP personnel on duty at the time. The re-validated AAR produced seven critical findings:

- 1) The FAA's NCRCC ATSC Team did not provide advance notification of the subject Golden Knights flight to interagency counterparts, including the USCP, at the NCRCC as is typically carried out multiple days before the actual event in accordance with common, accepted practice.
- 2) The FAA NCRCC ATSC Team did not provide a pre-event notification to the rest of the NCRCC the day of the Golden Knights flight (i.e., 20 April), as is sometimes, but not routinely, carried out.
- 3) The NCRCC, including its FAA, USCP, DOD, and USSS watch-standers, did confirm at approximately 1829L on 20 April the only flight they were observing was a solo flight by the Golden Knights, which was authorized and remaining clear of P-56A.
- 4) The NCRCC USCP Watch Officer advised the USCP CP Watch Commander at the U.S. Capitol at approximately 1829L he was only observing a solo flight by the Golden Knights, which was authorized and remaining clear of P-56A. The USCP Watch Commander advised the NCRCC USCP Watch Officer at 1830.02L the USCP was evacuating the U.S. Capitol complex.
- 5) The ATO review team, which conducted the re-validated AAR, scrutinized the Transportation Security Administration's (TSA) audio recordings of the telephone

conversations between the NCRCC USCP Watch Officer and the USCP CP, including its Watch Commander, at approximately 1829L. These conversations indicated persistent questions about the correlation between: a) the reports from Law Enforcement Officers (LEO) on the ground to the USCP CP of a Cessna with a red strip flying over U.S. Capitol complex buildings; and b) information from the NCRCC that only the sole flight being tracked in the area was a solo U.S. Army De Havilland Canada DHC-6 supporting the Golden Knights parachuting show at Nationals Park – a flight that was authorized and avoiding P-56A.

- 6) The NCRCC ATSC was unaware the U.S. Capitol complex had been evacuated by the USCP until approximately 1837L after being prompted by the Director of System Operations Security, AJR-2, and asking the NCRCC USCP Watch Officer for confirmation that an evacuation had, in fact, been carried out.

These above critical findings of the re-validated AAR reflect the details of what transpired laid out by the attached timeline.

#### **BACKGROUND:**

Multiple agencies share the responsibility for protecting the Nation's capital from airborne threats. Operational coordination among these agencies on airspace security measures is principally carried out through the NCRCC embedded in the Transportation Security Administration's (TSA) Freedom Center located in Herndon, Virginia. The Freedom Center is also referred to as the Transportation Security Operations Center (TSOC).

The NCRCC comprises an interagency team charged with coordinating airspace security for, as the name implies, the Nation's capital, particularly for more sensitive locations such as the White House and U.S. Capitol complex, which the USCP evacuated on 20 April. This team includes FAA, DOD, USCP, USSS, as well as the United States Park Police (USPP). DOD sponsored the Golden Knights parachuting show at the Nationals Park stadium on 20 April, which inadvertently triggered this incident.

The NCRCC carries out extensive, multi-layered procedures to vet flights in the Washington, DC Special Flight Rules Area and Flight Restricted Zone (DC SFRA/FRZ), which overlies the capital and its surrounding area. NCRCC procedures include advance and near real-time coordination among the participating partners.

In the case of Golden Knights parachuting shows and other, comparable special event flights in the DC FRZ, the FAA's NCRCC ATSC team normally notifies its interagency NCRCC counterparts, including USCP and USSS, of the operations in this sensitive airspace multiple days before the actual event. The NCRCC ATSC Team did not carry out this advance coordination for the Golden Knights flight on 20 April as is accepted common, accepted practice. The NCRCC ATSC Team sometimes (but not routinely) also provides pre-event notification to interagency NCRCC counterparts the day of the actual event. The NCRCC ATSC Team did not provide this "day of" notification for this Golden Knights flight.

If agencies responsible for law enforcement and security in the capital, including, USCP LEOs on the ground at the U.S. Capitol, observe an unknown, potentially suspicious aircraft, long-standing, interagency procedures call for them to coordinate with the NCRCC to determine whether a bona

vide threat exists and to coordinate appropriate interagency response action. On 20 April, the USCP CP at the U.S. Capitol, which had received reports from LEOs observing an unknown aircraft and parachutists in the vicinity of the U.S. Capitol complex, did contact the NCRCC at approximately 1827L through the USCP Watch Officer, who is a member of that interagency team.

The NCRCC, including its FAA, USSS, and USCP members, confirmed at approximately 1827-1829L they were only aware of a single flight in the area: an authorized U.S. Army flight carrying out a Golden Knights parachuting show, which was remaining clear of P-56A. This information was shared among the NCRCC's interagency members, including with the USCP and the USSS representatives. The NCRCC USCP Watch Officer communicated this validation to the USCP CP at the U.S. Capitol at approximately 1829L. However, during this telephone conversation between the USCP CP and the NCRCC USCP Watch Officer, there were persistent questions about the correlation between: a) reports from Law Enforcement Officers (LEO) on the ground to the USCP CP of a Cessna with a red strip flying over U.S. Capitol complex buildings; and b) information from the NCRCC that only a solo flight (GKA264) by the Golden Knights was flying in the area, and that it was avoiding P-56A and was authorized.

The USCP CP Watch Commander at the U.S. Capitol advised the NCRCC USCP Watch Officer at 1830.02L the USCP had ordered the evacuation of the U.S. Capitol complex.

#### **RECOMMENDATIONS / WAY FORWARD:**

Based on the findings of this initial AAR, the following corrective actions are recommended:

- 1) ATO's System Operation Security directorate (AJR-2) quickly implement procedures reinforcing advance coordination by the NCRCC ATSC Team of special event flights in the DC FRZ with the USCP, USSS, and other interagency partners participating in the NCRCC.
- 2) AJR-2 cooperate with the USCP, USSS, DOD, and other key airspace security stakeholders to determine if common, interagency lessons learned from this incident can be established and used to improve coordination.

#### **ATTACHMENTS:**

- A. Re-validated timeline of incident
- B. Chart depicting track of GKA264



---

**DATE** 26 April 2022

**INCIDENT:** U.S. Capitol Complex Evacuation on 20 April Triggered by Golden Knights Flight

**SUBJECT:** **Attachment A (Timeline)** to *Re-Validated AAR on Airspace Security Coordination on 20 April U.S. Capitol Evacuation Triggered by Golden Knights Flight and Way Forward*

- NOTES:**
- The timeline below was constructed by an ATO team, which, working 23-25 April, re-validated and built on the ATO's After-Action Report (AAR) on the 20 April subject incident. This previous AAR was produced on 22 April at 1630Z.
  - The ATO review team re-visited all information available on the incident related specifically focusing on airspace security actions taken by the FAA and interagency partners at the NCRCC. The ATO review team's efforts emphasized reexamining primary sources - e.g., re-interviewing the agency's Air Traffic Security Coordinator (ATSC) on duty at the NCRCC during the incident, and listening to and analyzing audio recordings of the telephone conversations conducted by National Capital Region Coordination Center (NCRCC) ATSC and NCRCC United States Capitol Police (USCP) personnel on duty during the incident.
  - As needed to provide critical context (e.g., deviations from codified procedures or common practice), supplemental notes are provided below.
  - The identification of the multiple USCP personnel involved in this incident may be confusing since the names of the participating positions are not well differentiated. The timeline uses precise naming conventions below for these positions: USCP Command Post (CP) at the U.S. Capitol; USCP CP Watch Officer versus Watch Commander; and NCRCC USCP Watch Officer. Also note the ATSC position is exclusively an FAA ATO position.
  - Some of the time stamps below are approximated due to the review team's necessary reliance on the recollection of FAA personnel who directly participated in this incident, and the nature of audio recordings shared by the Transportation Security Operations Center (TSOC), which are uncertified for use in investigations and presented inaccurate time stamps. Time stamps from FAA recordings -e.g., from the Potomac Terminal Radar Approach Control (PCT) - cannot be corroborated or correlated to any other time stamp originating outside the FAA. Caveats regarding individual timeline entry time stamps are provided as appropriate.
  - Any description of actions taken by non-FAA personnel have only been validated through interviews with FAA personnel, who directly participated in this incident. The ATO review team does not have the jurisdiction to further verify or corroborate the actions or communications of any non-FAA personnel identified as a participants in this incident such as the NCRCC USCP Watch Officer.
-

Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
<b>24 March (26 days before the Golden Knights flight on 20 April)</b>		
1556L 1956Z	<ul style="list-style-type: none"> <li>The Team Manager (TM) of the FAA's National Capital Region Coordination Center (NCRCC) Air Traffic Security Coordinator (ATSC) Team received a courtesy copy of an application by the U.S Army to the FAA's local Flight Standards District Office (FSDO) for a Certificate of Waiver or Authorization (COA) authorizing a Golden Knights parachute show at Nationals Park on 20 April.</li> <li>The U.S. Army also copied the Potomac Terminal Radar Approach Control facility (PCT) to initiate cooperation on needed airspace and Air Traffic Control (ATC) arrangements.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li><i>The COA application to the local FSDO and coordination with PCT are unrelated to airspace security coordination with the NCRCC</i></li> <li><i>The NCRCC ATSC Team uses this courtesy copy for situational awareness and as a reminder to carry out any needed airspace security coordination</i></li> </ol>	<p><u>Confirmed</u> by copy of e-mail from PCT to the FAA NCRCC ATSC TM with package for the Golden Knights flight (GKA264)</p> <p>(PCT Airspace &amp; Procedures Specialist and FAA NCRCC ATSC TM)</p>
<b>19 April (one day before Golden Knights flight)</b>		
0844L 1244Z	<p>The FAA NCRCC ATSC TM asked the Support Specialist at PCT to confirm the status of any ATC coordination with the U.S. Army on the subject Golden Knights special event flight.</p> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li><i>Airspace and ATC arrangements are typically finalized and shared by PCT with the NCRCC ATSC Team 3-4 days in advance of the actual execution of the special event flight</i></li> <li><i>Regarding the advance notification issue: It is common, accepted practice (but not codified in written procedures) that the NCRCC ATSC Team normally provide advance notification to the interagency counterparts within the NCRCC when this</i></li> </ol>	<p><u>Confirmed</u> e-mail from PCT to the NCRCC TM on 19 April at 0844 -- Subj: "US Army Golden Knights Paratroop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)"</p>

Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
	<p><i>final package from PCT is shared. <u>The NCRCC ATSC Team did not provide this advance notification in the case of the 20 April Golden Knights flight.</u></i></p>	
0846L 1246Z	<ul style="list-style-type: none"> <li>The PCT Support Specialist advised the NCRCC ATSC TM the facility had received additional information about the Golden Knights event and would be transmitting the finalized airspace and ATC plans to the NCRCC ATSC Team.</li> </ul>	<p><u>Confirmed</u> e-mail from PCT to the NCRCC TM on 19 April at 0844 -- Subj: "US Army Golden Knights Paratroop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)"</p>
0856L 1256Z	<ul style="list-style-type: none"> <li>NCRCC ATSC TM emailed the NCRCC ATSCs about the Golden Knights operation and established a placeholder for the upcoming special event flight in the NCRCC Status Board within SkyWatch, an automation system used by the FAA's ATSC teams, but inaccessible by interagency partners.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li>As indicated previously, the NCRCC ATSC Team deviated from common accepted practice at this point, and did not provide advance notification to the other NCRCC interagency participants</li> </ol>	<p><u>Confirmed</u> e-mail from PCT to the NCRCC TM on 19 April at 0844 -- Subj: "US Army Golden Knights Paratroop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)"</p>
<p><b>20 April (day of the Golden Knights flight; before the USCP CP inquires with the NCRCC about a suspicious aircraft)</b></p>		
1808L 2208Z	<p>Golden Knights flight (GKA264) departed Andrews Air Force Base (ADW)</p>	<p><u>Confirmed</u> per AADS Data</p>
1817L 2217Z	<ul style="list-style-type: none"> <li>NCRCC ATSC on duty logged the start of the Golden Knights flight into SkyWatch and paged "US Army Golden Knights Parachute Activity at National Park".</li> <li>At some point shortly thereafter, the NCRCC ATSC observed the NCRCC USCP Watch Officer monitoring the Golden Knights flight on their own air picture display.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li>The distribution of this page from the NCRCC ATSC included the Transportation Security Administration</li> </ol>	<p><u>Confirmed</u> per SkyWatch page out and NCRCC ATSC statement; and NCRCC ATSC statement provided at 0933L on 21 April; and further confirmed via in-person interview of NCRCC ATSC at 0900L on 23 April</p>



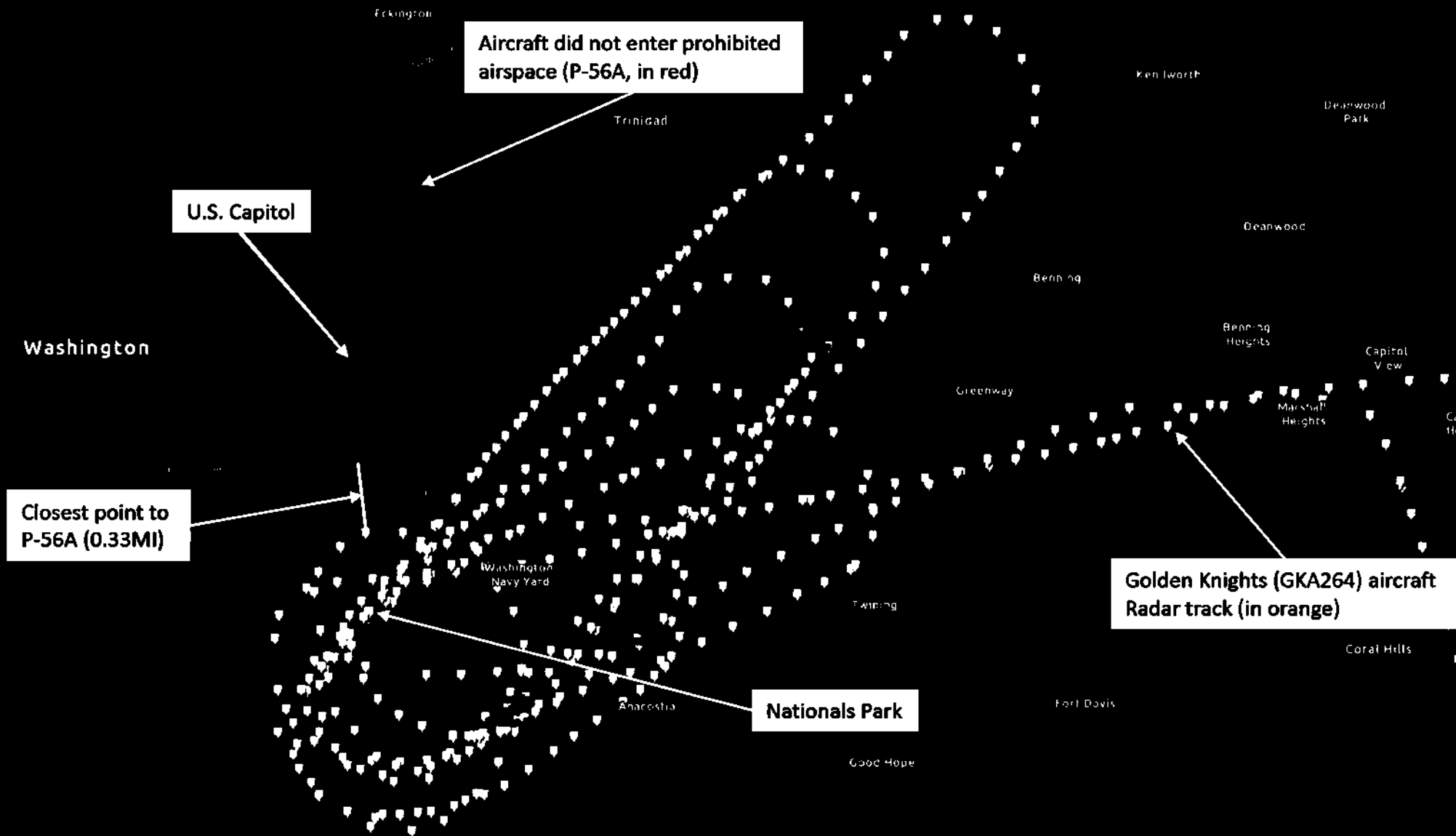
Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
	<p>(TSA) Command Duty Officer (CDO) at the Freedom Center and the TSA National Operations Center (NOC), but did not go to any other interagency partners, including the NCRCC USCP and United States Secret Service (USSS) positions</p> <p>2. <b>Regarding the pre-event, "day of" notification issue:</b> the NCRCC ATSC sometimes (but not routinely) provides a pre-event notification of a special event flight to the rest of the NCRCC on the day of that event. The NCRCC Team did not provide this pre-event, "day of" notification in the case of the 20 April Golden Knights flight.</p>	
<b>20 April</b> (day of the Golden Knights flight; starting with when the USCP Command Post (CP) inquiries with the NCRCC about a suspicious aircraft)		
1826L 2226Z	<ul style="list-style-type: none"> <li>USCP field Law Enforcement Officers (LEO) reported to USCP Command Post (CP) at U.S. Capitol complex observations of a Cessna flying in the vicinity of the U.S. Capitol, John Adams Building, and Rayburn House Office Building.</li> </ul>	<p><u>Confirmed</u> by TSA representative in discussions with AJR-2 Review Team at NCRCC on 23 April</p>
1827.30L 2227.30Z	<ul style="list-style-type: none"> <li>(1min 38 sec conversation) -- USCP Command Post (CP) Watch Officer at the U.S. Capitol called the NCRCC USCP Watch Officer and asked if they had any information on a Cessna overflying John Adams Building, and Rayburn House Office Building.</li> <li>The NCRCC USCP Watch Officer stated that his air picture was only showing one aircraft.</li> <li>NCRCC USCP asked the NCRCC ATSC if the Golden Knights aircraft was being accompanied by a second aircraft, possibly a Cessna with red stripe.</li> <li>The NCRCC USCP Watch Officer advised the USCP CP at the U.S. Capitol the observed aircraft is an authorized Golden Knights flight and is not in P-56A, the prohibited area overlying the U.S. Capitol complex.</li> </ul>	<ul style="list-style-type: none"> <li><u>Confirmed</u> by AJR-2 Review Team's review of TSA audio recordings on 23 Apr 2022 at NCRCC, including a review of the telephone call between the USCP CP call and the NCRCC USCP Watch Officer at 1827.30L</li> <li><u>Confirmed</u> by NCRCC ATSC statement provided at 0934 on 21 April and in-person interview with NCRCC ATSC at 0900L on 23 April</li> <li><u>Confirmed</u> by AJR-2 Review Team's review of</li> </ul>

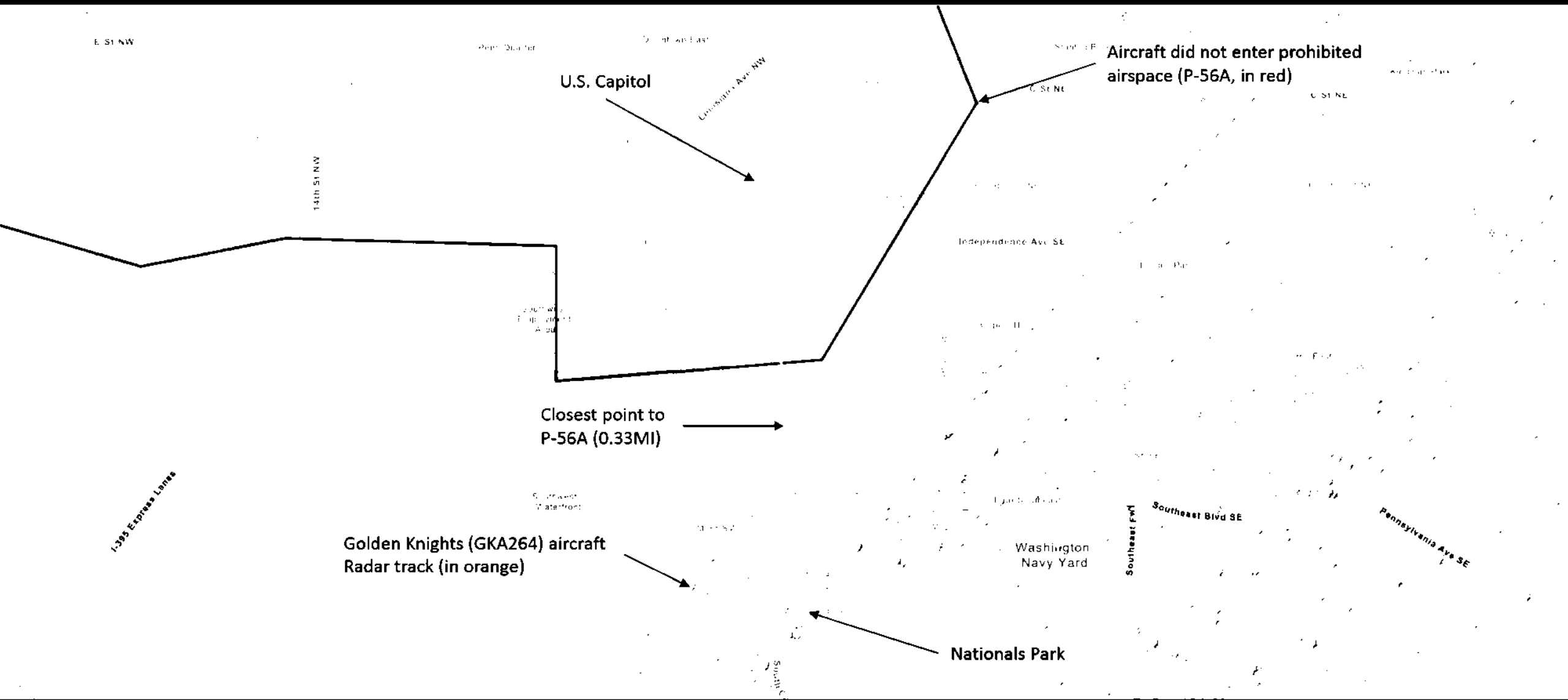
Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
	<ul style="list-style-type: none"> <li>The USCP CP Watch Officer at the U.S. Capitol advised the NCRCC USCP Watch Officer to call USCP CP Watch Commander at the U.S. Capitol.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li>The NCRCC USCP Watch Officer uses the Air Marine Operations Surveillance System (AMOSS), a Customs and Border Patrol (CBP) system separate from the Airspace Awareness Detection System (AADS) used by FAA and TSA.</li> <li>The USCP did not notify the Domestic Events Network (DEN) at this point or throughout the incident.</li> </ol>	<ul style="list-style-type: none"> <li>TSA audio recordings on 23 April at NCRCC</li> </ul>
1829L 2229Z	<ul style="list-style-type: none"> <li>FAA NCRCC ATSC coordinated with the PCT, the FAA ATC facility controlling the relevant airspace, and verified the Golden Knights flight was a solo flight.</li> <li>FAA NCRCC ATSC advised the NCRCC USCP Watch Officer that the Golden Knights operation only involved a single aircraft, and that the flight was an approved operation staying clear of P-56A.</li> </ul>	<ul style="list-style-type: none"> <li><u>Confirmed</u> via PCT transcripts, NCRCC ATSC statement and subject Review Team interviews</li> <li><u>Confirmed</u> via statement provided at 0934L on 21 April and in-person interview with NCRCC ATSC and AJR-2 Review Team representatives at ATSCC at 0900L on 23 April</li> </ul>
1829.20L 2229.20Z	<ul style="list-style-type: none"> <li>(1min 7 sec conversation) – the NCRCC USCP Watch Officer advised the USCP CP Watch Commander at the U.S. Capitol that the NCRCC was only observing a single aircraft in the area: a solo Golden Knight flight (GKA264), which was remaining outside P-56A and was orbiting down by the river.</li> <li>The NCRCC USCP Watch Officer and the USCP CP Watch Commander engaged in a brief discussion regarding the description (type and colors) and position of the aircraft being reported by LEOs on the ground at the U.S. Capitol. The reports to the USCP CP indicated a Cessna with a red strip was flying over the U.S. Capitol complex. The NCRCC was observing a solo U.S. Army De Havilland Canada DHC-6 aircraft</li> </ul>	<ul style="list-style-type: none"> <li><u>Confirmed</u> via in person meeting with AJR-24 and interagency team leads (USSS, USCP, TSA representatives) on 21 April at the NCRCC</li> <li><u>Confirmed</u> via audio recording review by ATO review team representatives at NCRCC on 23 April</li> </ul>

Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
	<p>conducting the Golden Knights flight (GKA264) clear of P-56A and down near the river.</p> <ul style="list-style-type: none"> <li>• (42 seconds into this conversation) -- the USCP CP Watch Commander at the U.S. Capitol advised the NCRCC USCP Watch Officer at 1830.02L that the USCP had initiated U.S. Capitol complex evacuation orders.</li> <li>• The USCP CP Watch Commander instructed the NCRCC USCP Watch Officer to continue to work to reconcile the difference in aircraft characteristics (between what was being reported by LEOs to the USCP CP versus what the NCRCC was seeing) and to call him back.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li>1. <i>NCRCC participants, including FAA, USSS, DOD, and USCP indicated confidence regarding the position (clear of P-56A and down by the river), solo status, and authorization of the Golden Knights flight at this point.</i></li> </ol>	
<p>Between 1830L- 1832.02L 2230Z- 2232Z</p>	<ul style="list-style-type: none"> <li>• (Approximate times) –The USSS Joint Operations Center (JOC) Watch Officer notified the NCRCC USSS Watch Officer that the Golden Knights aircraft was authorized.</li> <li>• The NCRCC USSS watch officer advised their counterpart NCRCC USCP watch officer and the FAA NCRCC ATSC that the flight being discussed was an aircraft carrying out a Golden Knights parachuting show at the Nationals Park, the baseball stadium, which was nearby but not within the P-56A area, and that the USSS was not taking any action.</li> <li>• USCP CP instructed the NCRCC USCP Watch Officer to “figure it out” since the USCP had just evacuated the U.S. Capitol complex.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li>1. <i>While the call between the NCRCC USCP Watch officer and USCP CP Watch Commander at the U.S. Capitol</i></li> </ol>	<ul style="list-style-type: none"> <li>• <u>Confirmed</u> by TSOC representative (based on audio recordings of NCRCC USSS Watch Officer telephone communications) and relayed to the ATO review team at the NCRCC on 23 April</li> <li>• <u>Confirmed</u> by the ATO review team analysis of TSA audio recordings on 23 April at NCRCC</li> </ul>

Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
	<p><i>time stamped above at 1829.20L was being conducted, the USSS JOC and NCRCC USSS Watch Officer was concurrently communicating. It is unknown exactly what triggered the USSS call.</i></p>	
<b>20 April (day of the Golden Knights flight; after the U.S. Capitol complex was evacuated)</b>		
<p>1832L 2232Z</p>	<ul style="list-style-type: none"> <li>• USCP CP at the U.S. Capitol and NCRCC USCP Watch Officer continued a telephone conversation during which the USCP CP stated LEOs on the ground were reporting to the CP a white and blue Cessna with a red stripe was flying directly over the Rayburn House Office Building</li> <li>• This conversation ended with NCRCC USCP Watch Officer stating the Golden Knights would be parachuting over Nationals Park, the baseball stadium situated next to the Anacostia River.</li> </ul> <p><u>Supplemental Notes:</u></p> <ol style="list-style-type: none"> <li>1. <b>Regarding the knowledge of the U.S. Capitol evacuation issue:</b> <i>The NCRCC ATSC was unaware that the U.S. Capitol complex had been evacuated by the USCP at this point.</i></li> </ol>	<ul style="list-style-type: none"> <li>• <u>Confirmed</u> by ATO review team analysis of two post-evacuation audio recordings of telephone conversations between the USCP CP and the NCRCC USCP (1832.13 and 1838.01 recordings) at NCRCC on 23 April</li> </ul>
<p>Between 1832- 1843L 2232-2243Z (approx. after 1832L)</p>	<ul style="list-style-type: none"> <li>• NCRCC ATSC observed a media report that the U.S. Capitol complex was being evacuated</li> <li>• NCRCC ATSC asked the NCRCC USCP Watch Officer twice if the USCP had evacuated the U.S. Capitol complex.</li> <li>• NCRCC USCP Watch Officer replied each time that “they didn’t push it out” or “didn’t send it out”. NCRCC ATSC believed this to mean the media reporting was erroneous and no evacuation had been ordered.</li> <li>• At approximately 1837L / 2237Z, the FAA ATO Director of System Operations Security (AJR-2),</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Confirmed</u> by ATO review team follow-up re-interview of NCRCC ATSC on 24 Apr 2022 and the NCRCC ATSC’s statement provided at 0934L on 21 April</li> <li>• <u>Confirmed</u> by ATO review team follow-up re-interview of NCRCC ATSC on 24 April and review of TSA audio recordings of FAA landlines on 25 April</li> </ul>

Time (All Times in Local (L) and Zulu (Z))	Description of Action	Validation / Source
	<p>promoted by third party inquiries, called the NCRCC ATSC to ask if the U.S. Capitol had been evacuated.</p> <ul style="list-style-type: none"> <li>• The NCRCC ATSC asked the NCRCC USCP Watch Officer for a third time if the U.S. Capitol had been evacuated. The NCRCC USCP Watch Officer confirmed the U.S. Capitol complex had been evacuated.</li> <li>• The NCRCC Watch Officer relayed this confirmation to the director of AJR-2.</li> </ul> <p><u>Supplemental Notes:</u></p> <p>1. <i>Regarding the knowledge of the U.S. Capitol evacuation issue: The NCRCC ATSC did not find out about the evacuation of the U.S. Capitol after the fact and after a call from the director of AJR-2, which prompted the ATSC to press the NCRCC USCP Watch Officer for confirmation.</i></p>	
1849L 2249Z	<ul style="list-style-type: none"> <li>• USCP reported the "All Clear."</li> </ul>	<u>Confirmed</u> by preliminary after-action summary provided by NCRCC TM at 1956 on 20 April
2255L 0255Z	<ul style="list-style-type: none"> <li>• NCRCC ATSC on duty logged in SkyWatch, "US Army parachute operations over Washington stadium. 2255 Operations complete."</li> </ul>	<u>Confirmed</u> via SkyWatch





Attachment 1

**9-ATO-NCRCC (FAA)**

---

**From:** Keenley, Ryan P (FAA)  
**Sent:** Tuesday, April 19, 2022 8:56 AM  
**To:** 9-ATO-NCRCC (FAA)  
**Subject:** FW: US Army Golden Knights Paradrop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)  
**Attachments:** 2022\_04\_20\_GKA PAJA NATS PARK.pdf

Ryan P Keenley  
Manager, FAA National Capital Region Coordination Center  
FAA System Operations Security  
National Tactical Security Operations  
703 563 3118 D

(b)(6)

**From:** Hall, John P (FAA) <john.p.hall@faa.gov>  
**Sent:** Tuesday, April 19, 2022 8:46 AM  
**To:** Keenley, Ryan P (FAA) <ryan.p.keenley@faa.gov>  
**Cc:** 9-ATO-NCRCC (FAA) <9-ato-ncrcc@faa.gov>  
**Subject:** RE: US Army Golden Knights Paradrop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)

Yes, briefing attached.

Respectfully,

John P. Hall  
Air Traffic Control Support Specialist  
Airspace and Procedures  
Potomac TRACON  
(b)(6) cell  
[John.P.Hall@faa.gov](mailto:John.P.Hall@faa.gov)  
[9-AEA-PCT530-Events@faa.gov](mailto:9-AEA-PCT530-Events@faa.gov)

**From:** Keenley, Ryan P (FAA) <ryan.p.keenley@faa.gov>  
**Sent:** Tuesday, April 19, 2022 8:44 AM  
**To:** Hall, John P (FAA) <john.p.hall@faa.gov>  
**Cc:** 9-AEA-PCT530-Events (FAA) <9-AEA-PCT530-Events@faa.gov>  
**Subject:** FW: US Army Golden Knights Paradrop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)

Good morning,

Have you all heard any more about this?

Ryan P Keenley  
Manager, FAA National Capital Region Coordination Center



FAA System Operations Security  
National Tactical Security Operations

703-563-3118 O

(b)(6)

**From:** (b)(6)

**Sent:** Thursday, March 24, 2022 3:56 PM

**To:** 7-AEA-DCA-FSDO (FAA) <7-AEA-DCA-FSDO@faa.gov>; Keenley, Ryan P (FAA) <ryan.p.keenley@faa.gov>; Hall, John P (FAA) <john.p.hall@faa.gov>

**Cc:** Dreikorn, Charlene (FAA) <charlene.dreikorn@faa.gov>; (b)(6) USARMY USAREC (USA)

(b)(6)

**Subject:** US Army Golden Knights Paradrop Washington Nationals 20 Apr 2022 (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Good Afternoon!

Please find our application for Certificate of Authorization for a parachute jump to be performed at the Nationals Ballpark on 20 Apr 2022. All the necessary forms are attached. If you have any questions, please don't hesitate to reach out! Have a great evening!

Blue Skies!

(b)(6)

US Army Parachute Team, Golden Knights  
Fort Bragg, NC

(b)(6)

910-432-9433 office

(b)(6)

CLASSIFICATION: UNCLASSIFIED

Attachment 2

CALLSIGN	ACFT TYPE	ACFT REG	DEPT	DEPT DOMESTIC	DEPT TIME	DEST	DEST DOMESTIC	DEST TIME	MODE 3	ALT	SPEED	FIX
GKA264	DHC6		KADW	Y	D202208	KADW	Y	202213	5330	VFR/20	110	KADW

Created By: bryant.s.vaughan | Incident Date: 22:17 04/20/2022 | POD: NCRCC



**NCR-COORDINATION Event**

Created By: bryant.s.vaughan  
 Incident Date: 22:17 04/20/2022  
 Status: Closed  
 POD: NCRCC  
 Primary Code: NCR-COORDINATION  
 Reporting Facility: NCRCC

**Other Information**

Paged: Yes

**Remarks**

US Army parachute operations over Washington Nationals stadium. 2255: Operations complete

EDIT

**CLOSE**

**DELETE**

22 Closed MEDICAL  
 22 Closed WAIVER-MD3  
 22 Closed MD3 requirements verified.

NCRCC N28QW P28A  
 OXB VIX

2W5  
 VFR  
 PTK  
 DCA  
 LAS  
 LAS  
 VFR LAS  
 PHL ORD  
 EWR HNL  
 OXB VIX

## Attachment 4

**From:** [Vaughan, Bryant S \(FAA\)](#)  
**To:** [Timm, Chad \(FAA\)](#)  
**Subject:** Vaughan Statement on 4/20/22  
**Date:** Thursday, April 21, 2022 9:34:13 AM

I was the FAA ATSC on position for the events that took place on 4/20/2022. I was aware of the parachute operations that was taking place before the Washington Nationals baseball game. The information was contained in the "binder" that we maintain for special events, as well as the Status Board. I was briefed by the day shift crew about the event.

When I noticed the Golden Knights aircraft on the RADAR display, I sent out a page on our SKYWATCH alert at 1817L, of the parachute operation. I'm not sure of the time, but I noticed Kyle Brown, from USCP, had a close up flight track of the aircraft, monitoring the situation of the US Army flight, holding east of the prohibited area. At 1827L, Officer Kyle Brown from the USCP asked me about a Cessna that was possibly with the Golden Knights aircraft, thinking maybe it was a photo aircraft involved with the event. He had just received the information from a phone call. He mentioned a Cessna with a red strip was reported by USCP over or near the Capitol.

Seeing the flight history trail of the aircraft and monitoring the situation myself, I only observed one aircraft. I called PCT to verify the status and it was confirmed that the jump plane was a single DH-6. Officer Brown relayed to someone on the phone of the approved event taking place over the stadium. After hanging up, I overheard him and USSS discussing about how personal at the Capitol have the same equipment and should notice that this is not an issue and the FAA has approved the operation. I called Ryan Keenley to notify him about the concerns of the event. Soon after, I heard mention of the Capitol being evacuated. I asked Kyle Brown of when that occurred, and he said something along the lines "they didn't push it out" or "didn't send it out". Gary Miller called asking about the evacuation. I double checked with Kyle Brown and he repeated the phrase. That's when I relayed to Kyle that our director is saying that the building did evacuate. Kyle then said that they did evacuate but the messaging system wasn't sent out, and the actual system inside the building alerted everyone. That's where I went heads down and started calling and answering phones. The conversations in front of me continued about the event. Kyle said that he wasn't sure why they didn't listen to him after he explained who the aircraft was and how it was an approved event. I continued to gather times from what I could. I looked at a replay to see where the Jump aircraft was when I sent the SKYWATCH entry. That was at 1817L and the aircraft just departed ADW and was north bound. The Jump aircraft entered the first turn over the stadium at 1821L to 1822L.

I talked to Kyle to find when the calls were made. The first call was 1827L then 1828L. The 1828L call was him telling the person again that there was no Cessna, just the Golden Knights aircraft. Well after the event, I walked up to Kyle and told him that I was writing a statement and explaining our interactions. He mentioned that he was doing the same thing. I explained how I was confused on why things went the way that they unfolded. He and the USSS officer explained how things like this happen but that's why we were here. And they should have listened to Kyle when he told them the flight was coordinated with the FAA before they evacuation took place.

Based on further conversations and observations, I understand that USCP knew of the Golden Knights jump several minutes before the 1828 call was made to evacuate the Capitol.

**Bryant S. Vaughan**

Air Traffic Security Coordinator, FAA National Capital Region Coordination Center  
FAA System Operations Security  
National Tactical Security Operations

(P) (b)(6)  
(A)

## Attachment 5

**From:** [Kopp, Thomas E \(FAA\)](#)  
**To:** [Faig, Michelle L \(FAA\)](#)  
**Subject:** FW: Capital Evacuation time line  
**Date:** Sunday, April 24, 2022 12:51:35 PM

**From:** Keenley, Ryan P (FAA) <[ryan.p.keenley@faa.gov](mailto:ryan.p.keenley@faa.gov)>  
**Sent:** Wednesday, April 20, 2022 8:23 PM  
**To:** Timm, Chad (FAA) <[chad.timm@faa.gov](mailto:chad.timm@faa.gov)>  
**Subject:** FW: Capital Evacuation time line

Bryant is adding more clarity and I will outline standard chain of events.

Ryan P Keenley  
Manager, FAA National Capital Region Coordination Center  
FAA System Operations Security  
National Tactical Security Operations  
703-563-3118 O

(b)(6) C

**From:** 9-ATO-NCRCC (FAA) <[9-ato-ncrcc@faa.gov](mailto:9-ato-ncrcc@faa.gov)>  
**Sent:** Wednesday, April 20, 2022 7:56 PM  
**To:** Keenley, Ryan P (FAA) <[ryan.p.keenley@faa.gov](mailto:ryan.p.keenley@faa.gov)>  
**Subject:** Capital Evacuation time line

Quick timeline...

2217: Skywatch page: US Army parachute operations over Washington Nationals stadium.

2228: USCP received a phone call asking about a Cessna circling over the Capital. NCR FAA coordinated with PCT to verify the Golden Knights flight was a solo flight.

2229: NCR USCP relayed the information to the caller and confirmed it was the US Army parachute team.

2232: AIR CON RED (Evacuation notice) sent for the US Capitol.

2249: All clear issued.

Extra info: I noticed USCP was tracking the flight on their system before any of this conversation started. At no time did the flight enter P56A. Shortly after I paged the info on Skywatch, Gary called. I even mentioned to the POD about concerns of the circling jump aircraft.

**Bryant S. Vaughan**

Air Traffic Security Coordinator, FAA National Capital Region Coordination Center  
FAA System Operations Security  
National Tactical Security Operations

(P) (b)(6)  
(A)

**PRIMARY CODE: NCR-COORDINATION**

**Date:** 2022-04-20T22:17Z

**Status:** Closed

**POD:** NCRCC

**Reporting Facility:** NCRCC

**Created By:** bryant.s.vaughan

**REMARKS**

US Army parachute operations over Washington Nationals stadium. 2255: Operations complete





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

FOIA Program Management Division

800 Independence Avenue, SW  
Washington, DC 20591

September 13, 2022

Mr. Steven Smith

(b)(6)

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Washington, DC 20591  
Office Phone: 202.320.3412  
Email: michael.j.wolter@faa.gov

Subject: Freedom of Information Act (FOIA) Request 2021-002562,  
FAA FOIA Appeal A-FAA-2022-00044

Dear Mr. Smith:

The FAA has received your appeal, dated August 15, 2022, of the Agency's initial determination as to Request 1C, FOIA Request 2021-002562.<sup>1</sup>

The FOIA Program Management Division has been advised that FOIA Request 2021-002562 is the subject of current litigation. *Smith v. United States*, No. 22-732 (D. Or.). Accordingly, FAA FOIA Appeal A-FAA-2022-00044 is being administratively closed and the FAA is taking no action to address the issues raised in the appeal.

Sincerely,

**DEDRA L  
GOODMAN**  
Digitally signed by  
DEDRA L GOODMAN  
Date: 2022.09.13  
17:19:13 -04'00'

Dedra Goodman  
Manager, Freedom of Information Act  
Program Management Division

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<sup>1</sup> Logged as FAA FOIA Appeal A-FAA-2022-00044.