

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jorge Alejandro Rojas,

Plaintiff,

v.

Federal Aviation Administration,

Defendant.

No. CV-16-03067-PHX-GMS

DECLARATION OF MICHELLE L. ROOT

I, Michelle L. Root, declare as follows:

1. I am currently employed as the Director of the Office of Investigations (AXI-1), for the Federal Aviation Administration (FAA), Department of Transportation in the Security and Hazardous Materials Safety Office (ASH) with a duty location in Washington, D.C. I have held this position since September 17, 2017. Prior to this, I was employed as the Manager, Investigation and Law Enforcement Assistance Program Division (AHW-300). I make the statements herein based on my personal knowledge as well as knowledge and information acquired in the performance of my official duties.

2. The Office of Investigations (AXI) protects the National Airspace System and the flying public by initiating and conducting administrative and regulatory investigations and special inquiries on FAA employees and contractors suspected of violating various FAA orders, regulations and policy. In addition, we research, coordinate and establish policy and standards for investigations, conduct technical investigations, and manage the Agency's Insider Threat, Defensive Counter-Intelligence, Cyber Counter-Intelligence, and Digital Forensics programs. (Note: Prior to October 2017, the FAA's Internal Investigations Program, currently AXI, was

managed by the Investigation Programs and Operations Division (AEO-500) within ASH, which reorganized on October 1, 2017.)

3. On September 25, 2015, Plaintiff filed a FOIA request (2015-009570) in which he sought the following information:

1. Documents, reports, summaries, emails, chats, files, briefing items, memoranda, etc., concerning an inquiry done by ASH concerning the allegations cited in media reports by Fox News and other sources, concerning changes to the FAA air traffic controller hiring process, allegations of cheating, and allegations of misconduct by Human Resources and other employees. This request includes notes and documents concerning interviews of 29 individuals, cited in an August 21, 2015 letter to Frank A. LoBiondo by Michael Huerta. This includes any notes taken during the interview, and any reports regarding the investigation sent forward.

2. All information related to inquiries regarding cheating allegations or other potential misconduct by Shelton Snow from June 2013 to the date of the request.

3. A complete "Avery" listing/record and any other similar listing of the concurrence pathway of the August 21, 2015 letter sent by Michael Huerta to Frank A. LoBiondo. Avery is an electronic program used by the agency to keep track of congressional correspondence. The letter was in response to the May 29th congressional letter. This request includes any concurrence sheets used to keep track of the signatures of the approving/reviewing individuals of the letter.

4. Documents used in the preparation of the August 21, 2015 letter sent by Michael Huerta to Frank A. LoBiondo.

4. In response to FOIA request 2015-009570, AEO-500 conducted a search for responsive records and determined there were records responsive to paragraphs 1, 2, and 4. In response to item (1) of the request, a copy of Mr. Rojas's statement, where he was a witness, was provided. The response letter did not identify any additional responsive records that were withheld from Mr. Rojas. In response to items (2) and (4) of the request, with regard to Mr. Shelton Snow and Congressional correspondence, documents were withheld under Exemption 6 of the FOIA. In response to item (3) of the request, Avery Program documents, AEO-500 responded that ASH was not responsible for that and referred Mr. Rojas to the FAA's Executive Secretariat.

5. It was AEO-500's policy and practice that, in response to any FOIA request where responsive records exist, AEO-500 would perform a search, collect responsive records, and review those records for all applicable exemptions. According to all records and notes available, this search was conducted by Elaine Stone-Arthur, AEO-500 Manager, in accordance with the ASH Policy Guidance established and in practice in 2015.

6. I have no information in the files to indicate if any additional records, that were considered non-responsive to FOIA 2015-009570, were fully reviewed for other FOIA exemptions, other than those cited in the initial release dated November 13, 2015. Other such FOIA exemptions might have included exemption (2), which protects records related solely to the internal personnel rules and practices of an agency and exemption (5), which protects the integrity of the deliberative or policy-making processes within the agency by exempting mandatory disclosure of opinion, conclusion, and recommendations included within inter-agency or intra-agency memoranda or letters.

7. At the time of the release, November 2015, ASH policy guidance on release of Reports of Investigation (ROIs) pursuant to FOIA and the Privacy Act (PA) stated, "When any person

requests access to records about himself or herself, both statutes become potentially applicable. When any person requests access to another individual's record through the FOIA, the PA may prohibit the disclosure of that record unless FOIA requires it.” Mr. Rojas was requesting information on another individual, which is considered a Third Party request. AEO-500 reviewed the records under the Third Party Requests section of ASH’s policy guidance. This section states, “A Third Party Request is any request made by an individual, group, or organization (including the media) requesting access to records not specifically about the requesting entity. For Third Party FOIA requests that result in the identification of an ROI, only those parts of the ROI that were generated using information provided by the requesting entity will be released to that entity.” It was standard procedure for AEO-500 to provide a redacted ROI to the subject of an investigation if the subject made a FOIA request for the ROI and the investigation was closed. It was also standard procedure for AEO-500 to provide any witnesses interviewed for the ROI who made a FOIA request with only their statement. The rest of the ROI was withheld to protect the privacy of both the subject of the investigation and any witnesses.

8. Currently AXI, as the new Office of Investigations for ASH, has re-examined its process and practices to ensure that our policy and guidance is in compliance with all applicable FOIA and PA rules, standard use practices, and new statutes. Our current Policy Guidance has been rewritten and is currently in draft and will be sent to FAA’s Office of Chief Counsel (AGC). Our goal is to ensure the following:

a. If acknowledgement of the fact that a record exists or does not exist could reasonably be expected to violate an individual’s privacy interest, AXI will respond by neither confirming nor denying the existence of responsive records.

b. If the request is unclear, overly broad and/or would result in the collection of a voluminous amount of information, engage in a scoping discussion with the requestor. In addition, discuss the need to engage in fee discussions before any search can commence.

c. Once the scope of the FOIA request is clear and the requestor has provided an agreement on fees (to the extent applicable), the relevant office would conduct a search, and collect the responsive information at the time of the search. In addition, those involved in the search will document the actions taken to conduct the search. For example, if personnel conduct a manual search of files, a notation would be created indicating who conducted the manual search, what locations were searched, and the rationale for searching in those locations. For electronic searches, any search terms used would be documented. If emails are found to be responsive, any attachments would likewise be reviewed for responsiveness.

d. Once the information is collected, under FOIA, ASH would release information unless, upon review of the information, ASH finds that one or more exemption applies to all and/or portions of the information. To the extent a determination is made that an exemption applies, ASH would likewise make the determination whether any portions of the record can be released with redactions.

e. As an investigative body, AXI receives information from various sources. Upon a review of the responsive records, to the extent information was provided by another FAA program office or line of business, ASH would coordinate with that FAA office to determine proper response.

f. To the extent it is determined, upon review of the request, that another office would have responsive information, the FOIA request would be assigned to that office for processing. If ASH takes the lead role in providing the response, ASH would document the

actions taken to coordinate with other offices.

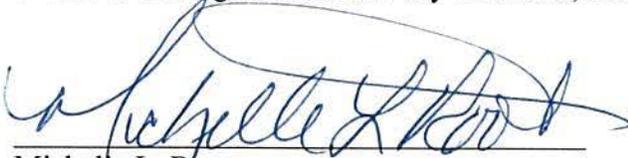
g. Once a review is complete, and there is a determination that records will be withheld in whole, the determination letter would indicate what exemption(s) are being used. The letter would indicate the number of records found to be responsive, the number of records withheld, and the exemption applicable to the records. If different exemptions are applied, based on the contents of the records, the determination letter would indicate the number of records withheld under each particular FOIA exemption. In addition, ASH would provide an explanation as to why ASH finds that the particular exemption(s) are applicable.

h. If upon review, there is a determination that records will be partially released, the determination letter would provide the same details identified in paragraph g.

i. ASH would keep a copy of the responsive records in accordance with applicable FOIA rules.

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

Sworn to and signed this 30th day of March, 2018

A handwritten signature in blue ink, appearing to read "Michelle L. Root", written over a horizontal line.

Michelle L. Root
Director, Office of Investigations, AXI-1
Office of Security & Hazardous Materials Safety (ASH)
Federal Aviation Administration
Washington, D.C.