

F.B.I. Counsel: No Records Available Revealing ID Process Of Recovered 9/11 Plane Wreckage

Contained within a March 14, 2008 "DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO AMENDED COMPLAINT" with the Nevada District U.S. Court, concerning a Freedom of Information Act lawsuit (Case #: 2:07-cv-01614-RCJ-GWF) to compel the production of Federal Bureau of Investigation records concerning the four aircraft involved in the terrorist attacks of September 11, 2001, Assistant U.S. Attorney Patrick A. Rose has indicated on behalf of the FBI, that records indicating the collection and positive identification of recovered wreckage created by these federally registered aircraft, were not located. Such wreckage includes the Flight Data Recorders (FDRs) of American Airlines flight 77 and United Airlines flight 93, for which no inventory control serial numbers were publically assigned.

Defendant's motion reads in part:

"Since being served with the Summons and Amended Complaint, Federal Defendant, with assistance of its attorneys, has analyzed Plaintiff's request and conducted a search for responsive records. **Federal Defendant has determined that there are no responsive records. The identities of the airplanes hijacked in the September 11 attacks was never in question, and, therefore, there were no records generated** "revealing the process by which wreckage recovered by defendant, from aircraft used during the terrorist attacks of September 11, 2001, was positively identified by defendant . . . as belonging to said aircraft . . ." (Amend Compl. Inj. Relief #15 at 1.)"

However, this claim conflicts with public comments offered by Carol Carmody, Vice-Chairman National Transportation Safety Board and Marion C. Blakey, Chairman National Transportation Safety Board, who both indicated in 2002 that FBI director Robert Mueller requested NTSB assistance with 9/11 aircraft wreckage identification and that the NTSB did perform 9/11 aircraft wreckage identification analysis.

"I ... assured FBI Director Mueller that we would assist in any way we could ... he called and said, **"Could you send us some people to help find the black boxes and help identify aircraft parts."**

<http://www.nts.gov/speeches/carmody/cc020227.htm>

"Over 60 Safety Board employees worked around the clock in Virginia, Pennsylvania, New York, and at our headquarters in Washington, D. C., **assisting with aircraft parts identification"**

<http://www.nts.gov/Speeches/blakey/mcb020625.htm>

By document labeled "Specialist's Factual Report of Investigation Digital Flight Data Recorder" (American Airlines flight 77 - N644AA), it is revealed that FDR

inventory control serial number identification information is absent.

http://www.911myths.com/AAL77_fdr.pdf

By document labeled "Specialist's Factual Report of Investigation Digital Flight Data Recorder" (United Airlines flight 93 - N591UA) it is revealed that FDR inventory control serial number identification information is absent.

<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB196/doc04.pdf>

The FBI's motion continues:

"As Federal Defendant has been focused on the search for records and the preparation of an explanatory letter to Plaintiff, it has not yet prepared a formal response to the Amended Complaint."

Documents for 2:07-cv-01614-RCJ-GWF can be accessed at The PACER Service Center.

"The PACER Service Center is the Federal Judiciary's centralized registration, billing, and technical support center for electronic access to U.S. District, Bankruptcy, and Appellate court records."

<http://pacer.psc.uscourts.gov/>

PLAINTIFF'S AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records, concerning documentation revealing the process by which wreckage recovered by defendant, from the aircraft used during the terrorist attacks of September 11, 2001, was positively identified by defendant (with the aid of the National Transportation Safety Board), as belonging to the said aircraft, presumably through the use of unique serial number identifying information contained by the said aircraft's wreckage, that was collected by defendant and which defendant has improperly withheld from plaintiff.

The data sought by plaintiff is the basis for the F.B.I.'s current public position, that the following 4 flights were those that were involved in the terrorist attacks of September 11, 2001:

- American Airlines flight 11, United Airlines flight 175, American Airlines flight 77 and United Airlines flight 93.

The data sought by plaintiff was obtained by the F.B.I., which publicly lists the following Federal Aviation Administration then registered aircraft, as those that were involved in the terrorist attacks of September 11, 2001:

- American Airlines flight 11 (N334AA), United Airlines flight 175 (N612UA), American Airlines flight 77 (N644AA) and United Airlines flight 93 (N591UA)

The data sought by plaintiff cannot "interfere with enforcement proceedings" (per Title 5, United States Code, Section 552, subsection (b) (7) (A)), as it is the basis

for the F.B.I.'s. already publicly known opinion regarding the identities of the said aircraft, the publication of which was not predicted by the F.B.I., to "interfere with enforcement proceedings", as alleged (per Title 5, United States Code, Section 552, subsection (b) (7) (A)).

2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff, Aidan Monaghan, is a private individual and is the requestor of the records which defendant is now withholding. Plaintiff has requested this information for non-commercial use and prompt release of the information is important because of the immediate public interest in this information.

4. Defendant Federal Bureau of Investigation (F.B.I.) is an agency of the United States and has possession of the documents that plaintiff seeks.

5. By undated attached letter facsimile, plaintiff requested access to documentation revealing the process by which recovered debris from the aircraft used during the terrorist attacks of September 11, 2001, was positively identified as belonging to the said aircraft. A copy of this letter is attached as Exhibit 1.

6. By letter facsimile dated September 24, 2007, plaintiff was denied access to the requested information on the grounds that it was exempt from disclosure under Title 5, United States Code, Section 552, subsection (b) (7) (A). A copy of this letter is attached as Exhibit 2.

7. By undated attached letter facsimile, plaintiff appealed the denial of this request. A copy of this letter is attached as Exhibit 3.

8. By letter facsimile dated November 26, 2007, plaintiffs appeal of request denial was denied. A copy of this letter is attached as Exhibit 4.

9. By document labeled "Remarks of Carol Carmody Vice-Chairman, National Transportation Safety Board Leadership in Times of Crisis Seminar", it is indicated that the director of the F.B.I. requested that the N.T.S.B. "help identify aircraft parts" belonging to the said aircraft. A copy of this letter is attached as Exhibit 5.

10. By document labeled "Testimony of Marion C. Blakey, Chairman National Transportation Safety Board before the Committee on Commerce, Science and Transportation United States Senate", it is indicated that the N.T.S.B. assisted the F.B.I. with the process of "aircraft parts identification" regarding the said aircraft. A copy of this letter is attached as Exhibit 6.

11. By document identified as "RE: serial number component", e-mail reply provided by N.T.S.B. to a public correspondence e-mail inquiry, it is indicated that the aircraft identification assistance provided by the N.T.S.B. to defendant F.B.I., involved documenting "serial numbers of major components" contained by wreckage recovered by defendant F.B.I.. Copies of these documents are attached as Exhibit 7.

12. By N.T.S.B. documents identified as DCA01MA060, DCA01MA063,

DCA01MA064 and DCA01MA065, it is indicated that the N.T.S.B. is of the opinion that the above noted aircraft that were federally registered as of September 11, 2001, were positively identified as those involved in the terrorist attacks of that day and did provide "requested technical assistance to the F.B.I.", as indicated above. Copies of these documents are attached as Exhibit 8.

13. By documents labeled U.S. Code of Federal Regulations (CFR), Title 14, Part 45, it is indicated that all U.S. commercial civil aircraft are required to contain numerous components (described within as "parts") indicating unique serial number data "secured in such a manner that it will not likely be ... lost or destroyed in an accident". Copies of these documents are attached as Exhibit 9.

14. By FAA documents identified as "Summary of Air Traffic Hijack Events", pages 4 and 13, it is indicated that American Airlines flight 11 (N334AA) and United Airlines flight 175 (N612UA) were not transmitting proper transponder identification data at the time of their respective destructions and that therefore, proper aircraft identification cannot have been obtained from this absent or erroneous data. Copies of these documents are attached as Exhibit 10.

15. By documents labeled "NOTES TO CHAPTER 1", page 456, of the "Final Report of the National Commission on Terrorist Attacks Upon the United States" (2004), it is indicated that "the CVRs and FDRs from American 11 and United 175 were not found" and that therefore, proper aircraft identification cannot have been obtained from this absent data. Copies of these documents are attached as Exhibit 11.

16. By photographs identified as "A"- "G", it is indicated that the above noted aircraft wreckage was:

- recovered by the FBI, with the assistance of the N.T.S.B..
- presented for public examination, the display of which was deemed by defendant as not harmful to "enforcement proceedings".

Copies of these documents are attached as Exhibit 12.

17. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for defendants denial of such access.

WHEREFORE, plaintiff requests this Court:

- (1) Order defendant to provide access to the requested documents;
- (2) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (3) Award plaintiff costs and reasonable attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and
- (4) Grant such other and further relief as it may deem just and proper.

Respectfully submitted,

Aidan Monaghan

Dated: 2/1/2008

**DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO
RESPOND TO AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 6(b)(1) and LR 6-1, Federal Defendant respectfully requests that the Court provide Defendant with a thirty-day enlargement of time, to April 14, 2007, within which to file a response to Plaintiff's Amended Complaint for Injunctive Relief (#15). This motion is based on the Memorandum of Points and Authorities below and all papers and pleadings on file.

DATED: March 14, 2008.

Respectfully submitted,

GREGORY A. BROWER

United States Attorney

P A/TRs/I CKP AAT.R ICRKO SAE. ROSE

Assistant United States Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

This is an action under the Freedom of Information Act (the "FOIA"), 5 U.S.C. § 552, et seq. Plaintiff seeks records "revealing the process by which wreckage recovered by defendant, from aircraft used during the terrorist attacks of September 11, 2001, was positively identified by defendant . . . as belonging to said aircraft . . ." (Amend Compl. Inj. Relief #15 at 1.) Under the FOIA, the defendant has thirty days to respond to a complaint unless the Court directs otherwise for good cause shown. See 5 U.S.C. § 552(a)(4)(C). The Federal Defendant was served with the Summons and Amended Complaint on February 13, 2008, which would correspond to a responsive date of March 14, 2008. However, the Summons (#17) served on Federal Defendant by Plaintiff states that a response to the Amended Complaint is due in sixty days of service, which would correspond to a responsive date of April 14, 2008. With this motion, Federal Defendant seeks merely to establish a clear responsive deadline of April 14, 2008. To the extent an enlargement of time from March 14 to April 14, 2008 is necessary, Federal Defendant requests such enlargement pursuant to Fed. R. Civ. P. 6 and LR 6-1.

With Plaintiff's initial request, Federal Defendant believed that any potentially responsive documents would qualify under the investigative records exemption to production, 5 U.S.C. § 552(b)(7)(A). Since being served with the Summons and Amended Complaint, Federal Defendant, with assistance of its attorneys, has analyzed Plaintiff's request and conducted a searched for responsive records. Federal Defendant has determined that there are no responsive records. The identities of the airplanes hijacked in the September 11 attacks was never in question, and, therefore, there were no records generated "revealing the process

by which wreckage recovered by defendant, from aircraft used during the terrorist attacks of September 11, 2001, was positively identified by defendant . . . as belonging to said aircraft . . .” (Amend Compl. Inj. Relief #15 at 1.)

Federal Defendant has recently sent a letter to Plaintiff explaining all of this. Federal Defendant wishes to give Plaintiff time to consider its explanatory letter. Should Plaintiff wish to nevertheless pursue this action, then Federal Defendant will plan, with the Court’s approval, to file a formal response to the Amended Complaint by April 14, 2008. As Federal Defendant has been focused on the search for records and the preparation of an explanatory letter to Plaintiff, it has not yet prepared a formal response to the Amended Complaint. And again, there was some confusion created with the Summons (#17) calling for a response in sixty days, which would be April 14, 2008, rather than thirty days.

For these reasons, Federal Defendant seeks an extension and/or clarification such that Federal Defendant will have until April 14, 2008 to file, if necessary, a formal response to Plaintiff’s Amended Complaint.

DATED: March 14, 2008.

Respectfully submitted,

GREGORY A. BROWER

United States Attorney

/s/ PATRICK A. ROSE

PATRICK A. ROSE

Assistant United States Attorney

PROOF OF SERVICE

I, Patrick A. Rose, certify that the following individuals were served on this date by the below identified method of service:

FEDERAL EXPRESS

Aidan Monaghan

(REDACTED)

Las Vegas, NV (REDACTED)

DATED March 14, 2008.

/s/ PATRICK A. ROSE

Patrick A. Rose

AUSA

Plaintiff's Amended Complaint (Minus Exhibits)

Page 1:

<http://i224.photobucket.com/albums/dd121/88Badmachine88/PAGEA.jpg?t=1205742688>

Page 2:

<http://i224.photobucket.com/albums/dd121/88Badmachine88/PAGEB.jpg?t=1205742813>

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Defendant's Motion

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