

1 H. Ray Lahr
2 18254 Coastline Drive
3 Malibu, CA 90265-5702
4 Telephone: (310) 459-2232
5 Facsimile: (310) 454-1372
6 Plaintiff *in pro per*

7
8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 H. RAY LAHR,) CASE NO. . 03-08023 AHM(RZx)
13 18254 Coastline Drive)
14 Malibu, CA 90265-5702)
15)
16 Plaintiff,) **FIRST AMENDED**
17) **COMPLAINT**
18)
19 v.)
20)
21 NATIONAL TRANSPORTATION)
22 SAFETY BOARD,)
23 490 L'Efant Plaza East, S.W.)
24 Washington, DC 20594)
25)
26 and,)
27)
28 CENTRAL INTELLIGENCE AGENCY)
Washington, DC 20050,)
Defendants.)
)

27 **FIRST AMENDED COMPLAINT**
28 **(Freedom of Information Act)**

1 COMES NOW plaintiff H. Ray Lahr, *in pro per*, and respectfully submits:

2 **Jurisdiction & Venue**

3 1. This Court has jurisdiction under Freedom of Information Act, 5
4 U.S.C. § 552 et seq., as amended ("FOIA"), giving district courts exclusive
5 jurisdiction to “enjoin the agency [NTSB] from withholding agency records and to
6 order the production of any agency records improperly withheld from the
7 complainant.” See 5 U.S.C. § 552(a)(4)(B). This action seeks a mandatory
8 injunction under the FOIA against the defendants for withholding certain records
9 from plaintiff.

10 2. Venue of this action is properly laid in this Court.

11 **Parties**

12 3. Plaintiff Captain H. Ray Lahr is an individual, a resident of the State
13 of California, County of Los Angeles, and lives within the jurisdiction of the
14 United States District Court for the Central District of California. Plaintiff resides
15 at 18254 Coastline Drive, Malibu, California. Plaintiff is a former Navy pilot, a
16 graduate engineer, retired from his position as United Air Lines Captain, a lifetime
17 member of the *Air Line Pilots Association* (ALPA), and served as ALPA's southern
18 California safety representative for over fifteen years, having been a party to seven
19 major NTSB airline accident probes.

20 4. Defendant National Transportation Safety Board is an agency of the
21 United States subject to suit under the FOIA.

22 5. Defendant Central Intelligence Agency is an agency of the United
23 States subject to suit under the FOIA.

24 **FOIA Requests to NTSB**

25 6. On October 2, 2003, defendant NTSB filed a Vaughn index, in
26 accordance the Scheduling Order in Case No. CV 02-8708-AHM(RZx), entered on
27 September 15 by the Honorable A. Howard Matz.

28 7. The NTSB's October 2, 2003 Vaughn index did not produce nor
properly identify a single responsive record.

1 8. Regrettably, plaintiff must proceed by filing this action because the
2 government refuses to properly identify the records at issue

3 9. Five days after receipt of 530-page Vaughn index, October 8, 2003,
4 plaintiff hand-delivered to the NTSB FOIA requests regarding its probe into the
5 July 17, 1996 downing of TWA Flight 800. Plaintiff's letter states in part:

6 I make 145 FOIA requests. They are attached hereto in an Excel
7 chart. The FOIA Requests are numbered 4 through 149.

8 The FOIA Requests are for all records upon which all publicly
9 released aircraft flight path climb-conclusions are based, including,
10 but not limited to, the underlying data and basis of all written reports
11 and all video-animation-depictions. This includes but is not limited to
12 all computer simulation and animation programs, and the data entered
13 into all such programs, in each case correlating which data was
14 entered into which program.

15 The NTSB is steadfast in its refusal to identify these records. They all
16 regard the process, or course of action, by which the identified zoom-
17 climb-conclusions were based. All 145 requests fall under the same
18 eleven categories of records that I have been seeking since July 2002:

19 1: All records of formulas used by the NTSB in its
20 computations of the zoom-climb conclusions.

21 * * *

22 11: All records generated or received by the NTSB used in its
23 computations of its zoom-climb conclusions.

24 10. The Excel Chart enclosed with plaintiff's letter lists 145 FOIA
25 requests by inclusion of a 48-page Excel printout, and a disk of the same. Its
26 preamble includes:

27 This FOIA Request is for all records upon which all publicly released
28 aircraft flight path climb conclusions are based, including, but not
 limited to, the underlying data and basis of all written reports and all

1 video-animation-depictions... The first column is the FOIA Request
2 number. The second column, A, is the description of the records
3 sought... These requests are to be read as to be made both
4 categorically and specifically... For your convenience, the floppy disc
5 is included...

6 **Exhaustion of Administrative Remedies**

7 11. On November 7, 2003, the NTSB sent to plaintiff a request for a ten-
8 working-day-extension within which to respond to the FOIA requests.

9 12. As of the day of this pleading, December 17, 2003, defendant NTSB
10 has failed to produce the records or respond to plaintiff's requests.

11 13. The NTSB's failure to respond within 30 working days constitutes
12 constructive exhaustion of plaintiff's administrative remedies under 5 U.S.C. §
13 552(C)(i).

14 **FOIA Requests to CIA**

15 14. On January 26, 2001, the CIA wrote plaintiff:

16 This acknowledges receipt of your 10 November 2000 letter
17 requesting records under the provisions of the Freedom of
18 Information Act (FOIA). Specifically, your request is for
19 records pertaining to the computer program and data used to
20 produce **the computer simulation of TWA Flight 800, 17**
21 **July 1996, losing its nose section, then climbing about 3,000**
22 **feet.** For identification purposes...

23 We understand your request to indicate your interest is focused
24 on the separation of the aircraft's nose from the fuse lodge, and
25 the related data and resulting conclusions. We have researched
26 this matter, and have learned that the pertinent data, and
27 resulting conclusions were provided by the National
28 Transportation Safety Board (NTSB). CIA simply incorporated
the NTSB conclusions into our videotape. Therefore, we are

1 unable to provide the information you seek inasmuch as the
2 agency that originated the information has the responsibility for
3 making decisions about the release of its information.

4 Accordingly, you may want to submit your request to the
5 NTSB...

6 (bolded in original)

7 15. The NTSB's October 2, 2003 Vaughn index indirectly denied having
8 the records upon which the November 17 CIA-produced video was based – in
9 violation of the NTSB's mandatory primary jurisdiction over the probe.

10 16. Should the NTSB persist in its position of being without the records
11 upon which the November 1997 CIA-produced video-animation was based – the
12 opposite of the CIA's response as reiterated above in paragraph 14, plaintiff must
13 seek the records from the CIA.

14 17. On October 8, 2003, plaintiff faxed and mailed FOIA requests to the
15 CIA, similar to the NTSB requests, stating in part:

16 These Requests are for all records upon which this publicly released
17 aircraft flight path climb conclusion was based, and the 105 FOIA
18 Requests are itemized in the enclosed Excel printout and disk.
19 Additional identification information appears at the beginning of the
20 Excel printout.

21 **Exhaustion of Administrative Remedies**

22 18. By October 20, 2003 letter the CIA acknowledged receipt of plaintiff's
23 October 8 request, assigning it Reference Number F-2004-00078.

24 19. The CIA's failure to properly respond within working 20 days, by
25 November 6, 2003, also constitutes constructive exhaustion of plaintiff's
26 administrative remedies under 5 U.S.C. § 552(C)(i).

27 **Cause of Action**

28 20. Plaintiff re-alleges paragraphs 1 through 19 as if fully repeated here.

1 **PROOF OF SERVICE – BY HAND**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3
4 I am and was at all times herein mentioned a resident of the State of California,
5 over the age of 18 years. My address is 18254 Coastline Drive, Malibu, CA
6 90265-5702.

7 On December 17, 2003, I served a true copy of plaintiff's **FIRST AMENDED**
8 **COMPLAINT** on the interested parties in this action by hand delivery in
9 envelopes addressed and delivered to:

10 Jan L. Luymes, Esquire
11 Assistant United States Attorney
12 300 North Los Angeles Street, Room 7516
13 Los Angeles, California 90012

14 Chung H. Han, Esquire
15 PERKINS COIE, LLP
16 1620 26th Street, Sixth Floor
17 Santa Monica, California 90404

18
19 I declare under penalty of perjury that the foregoing is correct and that this
20 Proof of Service was executed on December 17, 2003.

21
22 _____
23 H. Ray Lahr
24
25
26
27
28