



Aviation Technician Education Council

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June 29, 2015

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Assistant Administrator for Regions  
and Center Operations, ARC-1  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591

Re: Request for Reconsideration, Freedom of Information Act Request No. 201500316F6

Assistant Administrator:

This letter constitutes an appeal under the Freedom of Information Act ("FOIA") 5 U.S.C. §§ 552, *et seq.* and Department of Transportation ("DOT") regulations, 49 C.F.R. part 7, and is submitted to the Federal Aviation Administration ("FAA" or "the agency") by the Aviation Technician Education Council ("ATEC").

On January 30, 2015, ATEC requested, via certified mail, agency records related the aviation maintenance technician, general, airframe, and powerplant knowledge test ("A&P test"). Specifically, ATEC requested the following records:

1. A&P test questions;
2. A&P test answers;
3. Any material currently in use that is located in the FAA test bank.<sup>1</sup>

We requested this information because the FAA previously provided full access to the entire question and answer pool, and recent additions to the test bank have resulted in numerous reports of vague, inaccurate, or unanswerable questions. ATEC intends to conduct a comprehensive review and provide the agency with guidance and corrections to ensure that the A&P test satisfies 14 CFR part 65 and FAA objectives.

On June 1, 2015, the FAA summarily rejected our request on the ground that the information was exempt from disclosure under FOIA exemptions 7(E) and 7(F).<sup>2</sup> The agency's response not only fails to establish the threshold for invoking Exemption 7, but it also fails to satisfy its burden to articulate how these exemptions specifically protect the requested information from disclosure.<sup>3</sup>

### **Exemption 7 Threshold**

In order to properly invoke FOIA Exemption 7, an agency must first satisfy the "threshold requirement"

<sup>1</sup> Letter from Zach F. Brukenstein, Advocacy Manager, ATEC to Carrie LaFollette, FOIA Coordinator, Civil Aviation Registry, AFS-700 (January 30, 2015) (Enclosed).

<sup>2</sup> Letter from Van L Kerns, Manager, Regulatory Support Division, AFS-600 to Zach F. Brukenstein, Advocacy Manager, ATEC (May 20, 2015) (Enclosed).

<sup>3</sup> *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, No. 14-5013, slip op. at 6 (D.C. Cir., Feb. 10, 2015)

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that the requested information was “compiled for law enforcement purposes.”<sup>4</sup> Although the “ordinary understanding of law enforcement [purposes] includes ... proactive steps designed to prevent criminal activity and to maintain security,”<sup>5</sup> that understanding does not encompass “general agency oversight (including program monitoring).”<sup>6</sup> Where an agency with both administrative and enforcement duties—such as the FAA—claims certain information is not subject to disclosure under Exemption 7, courts will “scrutinize with some skepticism the particular purposed claimed” to ensure that the information is actually related to its law enforcement duties.

In this instance, the FAA fails to establish that the disclosure of the A&P test bank questions and related information is in any way related to even the most expansive interpretation of what constitutes a law enforcement purpose. Instead, the administration of the A&P exam is directly related to the agency’s general oversight of the certification of aviation mechanics under part 65. As noted above, general oversight functions do not qualify as a law enforcement purpose. Moreover, the requested information is in no way related to the agency’s law enforcement functions. Simply stating that the agency conducts an “investigation” to determine whether a mechanic obtained the required score on the A&P does convert a general oversight function into a law enforcement function. For these reasons, ATEC rejects the agency’s assertion of Exemption 7 to shield the requested information from disclosure.<sup>7</sup>

We renew our request for the disclosure of the requested information, or, in the alternative, for the agency to make this information publically available on its website. In addition, we ask that the agency provide the contact information for the persons responsible for overseeing the creation of the A&P exams and to provide the manner in which industry can participate in that process.

Thank you for your time,



Ryan M. Poteet, Esq.  
Regulatory Affairs Manager

*Enclosures*

cc: Carrie LaFollette, FOIA Coordinator  
Civil Aviation Registry, AFS-700

Van L. Kerns, Manager  
Regulatory Support Division, AFS-600

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<sup>4</sup>*Pub. Emps. for Env'tl. Responsibility v. U.S. Section, Int'l Boundary & Water Comm'n*, 740 F.3d 195 (D.C. Cir., 2014) (citing 5 U.S.C. § 552b(b)(7)).

<sup>5</sup>*Milner v. Department of the Navy*, — U.S. —, 131 S.Ct. 1259 1272, 179 L.Ed.2d 268 (2011) (Alito, J., concurring).

<sup>6</sup>*Pratt v. Webster*, 673 F.2d 408, (D.C. Cir., 1982) (citing *Rural Housing Alliance v. United States Dept. of Agr.*, 498 F.2d 73, 81-82 (D.C. Cir., 1974)).

<sup>7</sup>Because the agency fails to establish the threshold for asserting Exemption 7, ATEC does not address the merits of the agency’s claim that it satisfies the substantive requirements of Exemption 7(E) and Exemption 7(F). ATEC reserves the right to address the merits of such claims at a later date should this appeal continue.