



U.S. Department of Justice

Environment and Natural Resources Division

90-1-4-13425

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February 3, 2012

Matthew Adams
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Re: Honolulutraffic.com v. Federal Transit Administration, No. 11-00307 AWT

Dear Counsel,

We are writing in response to your letter dated January 27, 2012, regarding the draft index for the administrative record. This response addresses the concern identified in your letter and proposes to support a motion to amend the scheduling order to allow you additional time to file any motion regarding the sufficiency of the administrative record. It also requests that you provide us with notice of any documents or categories of documents you believe should be included in the administrative record. Additionally, it serves to correct inaccuracies stated in your letter regarding the production of the administrative index.

On January 20, 2012, we sent to you a draft index of the administrative record. This draft contained an itemized list of 377 individual documents. Additionally, the draft index identified four categories of documents that would also be included as part of the final administrative record: (1) Hawaii Revised Statutes Chapter 92F Requests and Responses, (2) Freedom of Information Act Requests and Responses, (3) Other Correspondence and Attachments, and (4) Miscellaneous Documents. Because documents falling under these four categories are still being reviewed by Defendants, a complete itemized list was not included in the draft index.

In your letter responding to the production of a draft index, you appear to identify only one concern — that not all documents were individually listed in the draft index. To address this concern, we are attaching with this letter an updated draft index listing the documents produced in response to Hawaii Revised Statutes Chapter 92F and Freedom of Information Act Requests that were not duplicative of other documents already listed in the draft index. In addition, we have added 21 subcategories to the Miscellaneous Documents. Documents within the subcategories, and email correspondence and attachments will be itemized in the final index.

In addition to the attached index, Defendants are willing to support a motion by Plaintiffs to provide for an additional two (2) weeks to review the record once it is formally produced.

This would extend the deadline to resolve any differences of opinion regarding the contents of the administrative record from February 24 to March 9, 2012. Please let us know if this proposal is acceptable to you.

Your letter does not indicate whether Plaintiffs are aware of any documents that they believe should be in the record that are not currently listed in the draft administrative index. For example, for the documents listed individually, you have not indicated whether you believe that Defendants have omitted documents you think are relevant. Likewise, you have not stated whether you believe Defendants should include any additional categories of documents in the administrative record apart from those listed in the draft index. If you are aware of any documents that you believe should be included as part of the administrative record that are not currently listed in the draft index, we would appreciate you bringing those documents to our attention sooner rather than later.

In reviewing your letter, Defendants identified a factual inaccuracy with regard to the volume of the administrative record. First, Defendants never stated that the administrative record would contain 500,000 documents. Defendants represented that a cursory view of the universe of documents Defendants needed to review in order to compile the record indicated that there were approximately 500,000 pages of documents for review, not 500,000 documents. During the review process, Defendants have reduced the universe of documents by removing, for example, irrelevant documents and duplicate documents. Accordingly, the final administrative index will contain significantly less than the 500,000 pages of documents identified for potential inclusion in the administrative record.

Defendants have worked diligently to review hundreds of thousands of pages of documents in order to determine whether they informed the decision-making process, and thus are appropriate to include in the administrative record. Defendants are committed to producing the final administrative record by the February 24 deadline. As stated in the joint status report, Defendants intend to produce the record in electronic searchable (.pdf) format. If you have any additional questions concerning the administrative record, please let us know.

Respectfully,

Peter Whitfield