



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

Office of Inspector General  
Washington, DC 20590

October 9, 2009

Karen P. Gorman  
Deputy Chief, Disclosure Unit  
U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036-4505

**Re: OSC File No. DI-08-1734**

Dear Ms. Gorman:

As you requested in your email of September 9, 2009, please find our responses to the issues OSC identified in our investigative report.

- **Issue:** “Mr. Lambert noted that while Mr. Douglas did not specifically direct him to ‘destroy his notes,’ he did tell him to ‘take the information home or shred it, as long as he got it out of there,’ meaning the Southwest Flight Standards Regional Office. In the same conversation, Mr. Douglas explained to Mr. Lambert that he shredded his notes when they were included in a final report. The information seems to suggest that Mr. Douglas wanted the notes destroyed.”

**Response:** Mr. Lambert’s originally disclosed that, “in April 2007, he was directed to destroy notes of interviews” he took during the Southwest Airlines investigation. (OSC Referral, p. 1.) The alleged factual basis for his disclosure was Mr. Douglas’ instruction to him “to take the notes out and ‘stick to the facts,’ and to ‘get rid of them.’” (*Id.*, p. 2.) After reviewing our report, Mr. Lambert acknowledges Mr. Douglas’ alleged instruction was not the equivalent of a “direction” to “destroy” his notes. Instead, he now contends

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Mr. Douglas, during their conversation about what Mr. Lambert should do with his notes, *implied* that he “wanted” Mr. Lambert to destroy them.

After reviewing our report, Mr. Lambert contends that Mr. Douglas offered him two options regarding what to do with his notes: “take the information home or shred it.” Mr. Lambert claims it was at this time that Mr. Douglas told him that his practice is to shred his notes after he includes the information from them in his report. From this statement, Mr. Lambert apparently inferred that he should “destroy” his notes.<sup>1</sup>

During our interview with Mr. Lambert, however, he did not tell us that Mr. Douglas gave him the option of “shredding” his notes when he asked what he should do with them. Rather, he told us Mr. Douglas told him that he did not want the notes and to “get rid of that stuff.” Moreover, Mr. Lambert told us that he did not learn of Mr. Douglas’ practice of shredding his notes during that conversation, but from a prior conversation with Mr. Douglas. In fact, he told us that even before Mr. Douglas instructed him to “get rid of” his notes from the Southwest investigation, he already had shredded them after typing them into his computer. Therefore, based upon what Mr. Lambert told us during his interview, we cannot reasonably conclude that Mr. Douglas implied during their conversation that he wanted Mr. Lambert to destroy his notes.

Even if during the same conversation in which Mr. Douglas told Mr. Lambert to “take the information home or shred it,” Mr. Douglas also told Mr. Lambert that he shredded his notes, we are not able to conclude from this statement alone that Mr. Douglas implied he wanted Mr. Lambert to choose destruction. To conclude otherwise would be to ignore the other choice Mr. Douglas gave Mr. Lambert, i.e., “to take the information home.” And, although taking the information home would mean removing the notes from the office, doing so is not the same as destroying them. The notes would still exist and Mr. Lambert could produce them in response to a Congressional inquiry. Moreover, we believe that if Mr. Douglas wanted the notes destroyed, he would not have offered Mr. Lambert the option to take them home. Instead, he would have ordered their destruction and could have justified doing this as a standard operating procedure.

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<sup>1</sup> Mr. Lambert has not alleged, nor has any evidence been presented, that Mr. Douglas accompanied his statement with a threat or a promise that Mr. Lambert perceived as coercive.

Finally, even if Mr. Douglas implied he wanted Mr. Lambert to destroy his notes by shredding, given that the information in his notes was included in the Southwest report and Mr. Douglas knew this, we cannot reasonably conclude Mr. Douglas' motive was to conceal the information from Congress.

- **Issue:** "If Mr. Lambert was submitting updated executive summaries throughout June and July (as seems to be indicated in the Report), why did no one advise him to remove the personnel information earlier in the process?"

**Response:** Re-stated, the question appears to be that, if Mr. Douglas' explanation for instructing Mr. Lambert to omit information from the executive summary was reasonable, why didn't other DMT members also instruct him to omit the information? We found that, before Mr. Douglas, Mr. McGarry was the DMT member who supervised Mr. Lambert's production of his executive summary. In fact, it was Mr. McGarry who instructed Mr. Lambert to take notes during Agent LaFlair's witness interviews on statements made about management and personnel issues at the SWA CMO, which Mr. Lambert then incorporated into his summary.

Because Mr. McGarry instructed Mr. Lambert to take the notes, we can conclude that he believed including the information from them in the executive summary was proper. Nonetheless, Mr. McGarry told us he did not object to Mr. Douglas' decision to have Mr. Lambert remove this information. Moreover, Mr. Lambert told us Mr. McGarry believed that Mr. Douglas often tried to undermine Mr. McGarry. Thus, it does not appear likely that Mr. McGarry would provide us a statement to protect Mr. Douglas. Yet, Mr. McGarry told us he did not think Mr. Douglas tried to hide the information from Congress.

- **Issue:** "If Ms. Ramsey needed the Southwest Airlines (SWA) overflight documents to organize FAA's response to Congress' request for information, why would she take them home where she did not have access to them?"

**Response:** Ms. Ramsey told us during her interview that, upon Mr. Lambert giving her the documents, she kept them in her office for three months; then, she took them home. Thus, for at least three months, she had access to them at work. Further, if she needed them for the response she could access them at home and return them to the office. In fact, the evidence indicates she brought them back when asked to by Mr. Lambert.

- **Issue:** “The Report indicates that Mr. Douglas’ alleged motive for hiding information is negated because the information from Mr. Lambert was also included in Agent LaFlair’s ROIs and was investigated by a Workplace Evaluation Assessment Team (WEAT).

First, had Mr. Douglas already reviewed Agent LaFlair’s ROIs when he directed Mr. Lambert to remove the information on his notes? If not, he would not have been aware that that information would be made public at the time of his request. Did Mr. Douglas have control over what was included in Agent LaFlair’s ROIs? Perhaps one reason the information was included was because Mr. Douglas was unable to request its removal.”

**Response:** The evidence indicates Mr. Douglas was aware of the contents of LaFlair’s ROIs when he instructed Mr. Lambert to remove information regarding SWA CMO management and personnel issues from the executive summary. Whether or not Mr. Douglas had editorial control over the contents of the ROIs, the evidence indicates he approved of including this information in them.

- **Issue:** “Second, when did the WEAT make its findings, and what were they? If the WEAT investigation had already occurred but no action had been taken based upon it, then the inclusion of Lambert’s information could further incriminate management based on a lack of oversight.”

**Response:** The WEAT visited the SWA CMO from June 26, 2006, through June 28, 2006. The WEAT identified a number of management and personnel issues, including conflict between management officials, and recommended, among other things, management officials participate in a team building exercise facilitated by a regional representative.

In response to the WEAT findings, in August 2006, the SWA CMO Manager instituted daily meetings with the management team. On September 15, 2006, SWA CMO management began implementing an “Action Plan” to address the WEAT findings. In September and October 2006, SWA CMO management officials completed the web-based training, “Dealing with Difficult People.” On November 15, 2006, they participated in an off-site team-building exercise. On December 22, 2006, they signed an agreement that outlined processes and behaviors that would be followed to improve relationships, team work and

efficiency of the office. And, on December 29, 2006, they completed the WEAT Action Plan.

From April 23, 2007, through April 27, 2007, the WEAT conducted a follow-up visit to the SWA CMO and, on April 27, 2007, found that, although SWA CMO management officials addressed their findings from their previous visit, “discord continues to exist among management.” Specifically, the WEAT found that, although the relationship between SWA PMI Douglas Gawadzinski and SWA CMO Manager Mike Mills initially improved, it had since deteriorated. The WEAT also found that “because of persistent conflicts between management team members ... [e]mployee morale is poor and trust is a significant issue among management employees.”

As shown above, SWA CMO officials acted upon the WEAT findings regarding the SWA CMO’s management and personnel issues. Therefore, even if Mr. Lambert’s July 17, 2007, executive summary, which came after the WEAT findings and the SWA CMO’s actions in response to the findings, had included information about the management and personnel issues, the summary would not have “further incriminated” SWA CMO management “based on a lack of oversight.” Although we recognize that the WEAT also found that the actions of the SWA CMO management officials failed to successfully address the “discord” among the officials, we do not believe that had Mr. Lambert been allowed to include this information in his executive summary, that this would have “incriminated” SWA CMO management officials any more than the WEAT report already had.

- **Issue:** “As noted by Mr. Lambert, FAA Order 1350.15C defines ‘working files’ as preliminary drafts, rough notes, and similar materials that were used to prepare final copies. Working files must be maintained if they were circulated and made available to employees other than the creator for official purposes such as approval, comment, action, recommendation, follow-up, or to communicate with agency staff about agency business. Mr. Lambert did distribute his notes to the Division Management Team and members of the Southwest Region Planning and Program Management Branch as communication about agency business. He stated that the notes contained unique information that was not included in the FAA’s Final Report of Investigation. Mr. Lambert also cited FAA Order 1350.14A, which states that all information received, created, or compiled by federal employees is an

official Government record and unlawful destruction of such records violates 18 U.S.C. 2071.”

**Response:** Although we found Mr. Lambert incorporated the information from his handwritten notes into his executive summary of Agent LaFlair’s Southwest investigation and attached a typewritten synopsis of those notes to the summary, we found no evidence that the handwritten notes themselves were “circulated or made available” to anyone else for any purpose, let alone an “official one.” Further, we are unaware of any evidence that Mr. Lambert’s handwritten notes included “unique information,” i.e., information that he did not incorporate into his executive summary or was not contained in his synopsis of his notes attached to the summary or, for that matter, was not also available in the WEAT reports. Thus, we found no violation of FAA Order 1350.15C. And, although Mr. Lambert’s handwritten notes may constitute an official Government record under FAA Order 1350.14A, because we found no violation of FAA Order 1350.15C, we do not find that destroying them was “unlawful” under 18 USC § 2071.

- **Issue:** “The Report states that there is no evidence that any Southwest Region officials were aware of an earlier request from Congress for information except Mr. Lambert, but does not give much detail on the issue.”

**Response:** On pages 7-8 of our report, we explained how the evidence indicated that neither Mr. Douglas, nor any other Southwest Region official, was aware of a Congressional inquiry into SWA’s overflight of an airworthiness directive at the time of Mr. Douglas’ instruction to Mr. Lambert to omit information from his executive summary.

- **Issue:** “Further, Mr. Lambert stated in his comments that the belief in the Regional Office was that the SWA overflight issue was going to draw national attention of some variety – not only Congressional – and possibly lead to an investigation. Therefore, whether or not the Congressional request had been received, there was some motive for hiding such information from the public, considering the gravity of the SWA overflight issue.”

**Response:** On pages 8-9 of our report, we explained that the evidence did not indicate that Mr. Douglas had a motive to conceal information, specifically, from Congress. Mr. Douglas’ lack of motive also applies to concealing information from the public. As we said at pages 8-9 of our report, Mr.

Lambert suspected Mr. Douglas instructed him to omit information from the executive summary in order to protect the subject of the FAA Security investigation, Mr. Gawadzinski, the SWA PMI. We previously found, however, that the evidence does not reflect that Mr. Douglas was trying to protect Mr. Gawadzinski.

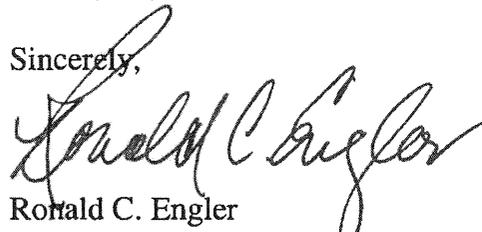
- **Issue:** “The Report states that it is not reasonable to assume that a Congressional subpoena would not be limited to documents on the premises.<sup>2</sup> Please state the basis for this assumption. Can it fairly be assumed that such a subpoena would include the homes of employees?”

**Response:** A warrant in a criminal matter would identify a specific location, e.g., the home of an employee, to be searched for documents. A Congressional subpoena requesting an agency’s documents would be sent to the agency’s custodian of records, whose obligation would be to produce the documents, no matter their location.

## Conclusion

If I can answer any questions or be of further assistance, please feel free to contact me at (202) 366-4189.

Sincerely,



Ronald C. Engler  
Director, Special Investigations

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<sup>2</sup> More precisely, our report states: “Mr. Lambert suspected that, by removing the documents from FAA premises, Ms. Ramsey intended to prevent them from being subject to Congressional subpoena. We do not believe this theory is reasonable. We cannot foresee a Congressional subpoena that would limit an information request to only those documents maintained on agency premises[.]”