

From: Buzzi, Jeffrey R.
Sent: Tuesday, May 24, 2016 9:47 AM
To: McCormick, Ryan M.
Subject: FAM Maclean

Ryan:

SFAM Bailey (VIPR B) stopped in yesterday with a concern re: FAM Maclean. As you will recall, he is assigned to VIPR but, as per FAMS HQ, in a non-deployable status. Evidently he is utilizing his time to contact our facilities contractors to address his personal concerns with the building. SFAM Bailey instructed him that all requests for facilities management need to be routed through the Admin SFAM. Whereas this is obviously a minor matter, I am concerned that the lack of substantive responsibilities is having a negative effect on both FAM Maclean and the WFO VIPR FAMS who see him sitting around all day with really nothing significant to do. Can you please advise how long he is expected to be assigned in this non-deployable status?

Thank you,

v/r,

Jeffrey R. Buzzi
ASAC – Washington Field Office
DHS/TSA/OLE-FAMS
(703) 488-9005 – DESK
(914) 672-1426 – CELL

Congress of the United States

Washington, DC 20515

August 12, 2016

The Honorable Peter V. Neffenger
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598-6020

Dear Administrator Neffenger:

On June 10, 2016, the Committee received the Transportation Security Administration's response to Chairman Meadows' inquiry regarding whistleblower retaliation against Federal Air Marshal (FAM) Robert J. MacLean during the May 12, 2016, House Committee on Oversight and Government Reform hearing.¹

Pursuant to a ruling by the Merit Systems Protection Board finding that TSA retaliated against Mr. MacLean when he was removed from the agency in 2006, TSA is required to "retroactively restore [Mr. MacLean] effective April 11, 2006."² In June 2015, TSA reinstated Mr. MacLean to the position that he had at the time of his removal in April 2006. In its response to the Committee, TSA suggests that it need not restore Mr. MacLean to a supervisory position because he did not occupy one at the time of his removal in 2006 and TSA's pay system did not include automatic promotions or step increases.

In addition, Mr. MacLean asserts that he has not received an annual TSA Core Compensation within band "In-Position Increase" (IPI) since 2002 despite his supervisor's testimony that his performance had been exemplary. Mr. MacLean reports that TSA has assigned him to an empty room with no duties since February 26, 2016. Before that, TSA had assigned Mr. MacLean, a publicly identifiable individual, to covert flying missions in the Middle East.

To help the Committee understand how TSA responds to cases of whistleblower retaliation, please provide documents and communications with the following information as soon as possible, but no later than 5:00 p.m. on August 26, 2016:

1. For each FAM who has worked for the agency since 2005, the number and percentage who have not received a promotion;
2. For each FAM who was working in the Los Angeles Field office in 2005, the number and percentage who have not received a promotion;
3. For each FAM who has worked for the agency since 2005:
 - a. the number and percentage who have received a promotion; and
 - b. the number and percentage who have received more than one promotion, along with the number of promotions that FAM has received;
4. For each FAM who was working in the Los Angeles Field office in 2005:
 - a. the number and percentage who have received a promotion; and

¹ *Examining Management Practices and Misconduct at TSA: Part II: Hearing Before the H. Comm. On Oversight and Gov't Reform*, 114th Cong., at 110-114 (May 12, 2016) (question and answer with Hon. Mark Meadows).

² Response from Transportation Security Administration, to Mark Meadows, H. Comm. on Oversight & Gov't Reform (June 10, 2016).

- b. the number and percentage who have received more than one promotion, along with the number of promotions that FAM has received;
- 5. The number and percentage of FAMs who have received an In-Position Increase since 2002; and
- 6. TSA's justification for assigning Mr. MacLean to an empty room with no duties.

Please produce all documents in electronic format and deliver your responses to the House Committee on Oversight and Government Reform Majority Staff in Room 2157 Rayburn House Office Building and the Minority Staff in Room 2471 Rayburn House Office Building, and to the Senate Committee on the Judiciary Majority Staff in Room 224 Dirksen Senate Office Building and the Minority Staff in Room 152 Dirksen Senate Office Building.

Please contact Michael Ding of the House Oversight Committee's Majority staff at (202) 225-5074, Courtney French of the House Oversight Committee's Minority staff at (202) 225-5051, or DeLisa Lay of the Senate Judiciary Committee staff at (202) 224-5225. Thank you for your prompt attention to this matter.

Sincerely,



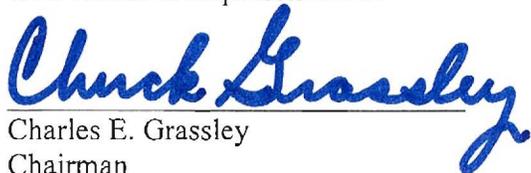
Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives



John L. Mica
Chairman
Subcommittee on Transportation
and Public Assets
U.S. House of Representatives



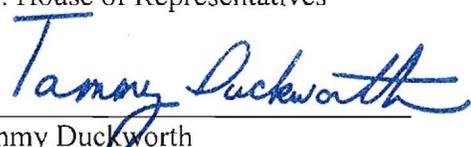
Mark Meadows
Chairman
Subcommittee on Government Operations
U.S. House of Representatives



Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate



Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives



Tammy Duckworth
Ranking Member
Subcommittee on Transportation
and Public Assets
U.S. House of Representatives



Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations
U.S. House of Representatives



Transportation
Security
Administration

SEP 12 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Chaffetz:

Thank you for your August 12, 2016 letter regarding Federal Air Marshal (FAM) Robert J. MacLean's assertions of whistleblower retaliation, cosigned by your congressional colleagues. Enclosed, please find responses to your request for information regarding documents and data relating to Transportation Security Administration (TSA) Office of Law Enforcement/Federal Air Marshal Service (OLE/FAMS) promotions, In-Position Increases (IPIs), and Mr. MacLean's work assignments.

While we provide complete answers to five of six questions, the Agency only has partial data to respond to Question 5 in your request and is therefore providing an interim response at this time. Specifically, TSA only has access to employee data dating back to August 2005. Due to the FAMS and TSA's movements from the U.S. Department of Transportation (DOT), and the FAMS transfer to U.S. Immigration and Customs Enforcement (ICE) from 2003 to 2005, the data must be obtained from (ICE) and the historical payroll system of DOT. TSA has made requests to obtain archival data from DOT and ICE. We are following up daily with those agencies, and will provide the pre-2005 requested data as soon as possible. However, if the August 2005 to the present data is sufficient, please let me know.

We appreciate that you took the time to share your concerns with TSA and hope this information is helpful. Identical letters will be provided to all co-signers of your letter. If we may be of further assistance on this matter prior to the completion of our research, please call the Office of Legislative Affairs at (571) 227-2717.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Peter V. Neffenger".

Peter V. Neffenger
Administrator

Enclosure

SENSITIVE SECURITY INFORMATION

**Transportation Security Administration (TSA) Interim Response
to August 12, 2016, Congressional Inquiry Regarding Robert J. MacLean**

1. For each FAM who has worked for the agency since 2005, the number and percentage who have not received a promotion:

(U//SSI) Table 1

	Aggregate Population
Headcount Since 2005	
Total Unique Receiving Promotions	
Number who have not received a Promotion	
Percentage who have not received a Promotion	*58.3%

*Standalone Percentages are unclassified and not SSI

(U) At the time he was removed in April 2006, Mr. MacLean was an I-Band Federal Air Marshal, which is the journeyman level for that position. In order to be promoted beyond the I-Band, all FAMs must apply and be selected via a vacancy announcement for placement into supervisory J-Band or K-Band positions. FAMs hired into lower banded positions whose performance meets expectations will be promoted annually through the FAM career ladder until those FAMs reach the I-Band. The figure 58.3% above includes FAMs who were in lower graded positions who, through the course of their career, received career ladder promotions up to the I-Band. Notably, only about one in 10 FAMs who were I-Bands as of April 2006 (like Mr. MacLean) have competed and been selected for promotions to date.

(U//SSI) Table 2

AUGUST 2005 I-BAND PROMOTIONS	
August 2005 I-Bands	
August 2005 I-Band Promotions (Aggregate 2005 - 2016)	
August 2005 I-Band Promotions Percentage (2005 - 2016)	*12.82%
APRIL 2006 I-BAND PROMOTIONS	
I-Band Promotions (Aggregate April 2006 - 2016)	
I-Band Promotions Percentage (April 2006 - 2016)	*11.91%

*Standalone Percentages are Unclassified and not SSI

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SENSITIVE SECURITY INFORMATION

2. For each FAM who has worked for the Los Angeles Field Office in 2005, the number and percentage who have not received a promotion:

(U//SSI) Table 3

	Aggregate Population
Headcount in 2005	
Total Unique Receiving Promotions	
Number who have not received a Promotion	
Percentage who have not received a Promotion	*98.2%

*Standalone Percentages are Unclassified and not SSI

3a. For each FAM who has worked for the agency since 2005, the number and percentage who received a promotion (one or more):

(U//SSI) Table 3a

	Aggregate Population
Headcount Since 2005	
Total Unique Receiving Promotions	
Percentage who have received a Promotion	*41.7%

*Standalone Percentages are Unclassified and not SSI

3b. For each FAM who has worked for the agency since 2005, the number and percentage who received more than one promotion:

(U//SSI) Table 3b

	Aggregate Population
Headcount Since 2005	
Total Employees Who Received More Than One Promotion	
Percentage who Received More Than One Promotion	*31%

*Standalone Percentages are Unclassified and not SSI

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SENSITIVE SECURITY INFORMATION

4a. For each FAM who was working at the LA Field Office in 2005, the number and percentage who have received a promotion (one or more):

(U//SSI) Table 4a

	Aggregate Population
Headcount in 2005	
Total Unique Receiving Promotions	
Percentage who have received a Promotion	*1.8%

*Standalone Percentages are Unclassified and not SSI

4b. For each FAM who working in the LA Field Office in 2005, the number and percentage who received more than one promotion along with the number of promotions that FAM has received:

(U//SSI) Table 4b

	Aggregate Population
Headcount in 2005	
Total Unique Receiving Two or more Promotions	
Percentage who have received more than one Promotion	*0.0%

*Standalone Percentages are Unclassified and not SSI

5. The number and percentage of FAMs who have received an In-Position Increase since 2005.

(U//SSI) Table 5

	Aggregate Population
Headcount in 2005	
Total Unique Receiving an IPI (one or more)	
Percentage who have received an IPI (one or more)	*73.4%

*Standalone Percentages are Unclassified and not SSI

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SENSITIVE SECURITY INFORMATION

4

6. TSA's justification for assigning MacLean to an empty room with no duties.

(U) In response to this question, TSA offers that Mr. MacLean's assertions that he has been assigned to an empty room with no duties since February 26, 2016 is inaccurate and does not correctly portray his assigned duties.

(U) Since Mr. MacLean returned to duty with the Transportation Security Administration (TSA) in 2015, he has been assigned to a variety of duties, including opportunities highly sought after by other FAMs. These have been temporary duty assignments based upon ongoing discussions among Mr. MacLean, his attorneys, the Office of Special Counsel, and TSA, which resulted from Mr. MacLean's assertion and request that he should not be assigned to perform FAM flight missions. TSA complied with removing Mr. MacLean from flight status, granting an exception to normal practice within FAMS. Following is a timeline of the duties assigned to Mr. MacLean from February 2016 to the present.

(U) February 26, 2016: Washington Field Office (WFO) Supervisory Air Marshal in Charge (SAC) Brian Belcher and Mr. MacLean both signed the *Terms and Conditions for Temporary Internal Assignment – Detail* form for a temporary duty assignment for Mr. MacLean with the TSA Emergency Preparedness Section. This assignment was selected by Mr. MacLean upon the organization agreeing to temporarily remove him from flight duties and the solicitation of his preference from the available temporary duty assignments.

(U) February 29, 2016 through April 13, 2016: Mr. MacLean performed a Temporary Duty Assignment at the TSA Emergency Preparedness Section, during this assignment Mr. MacLean was assigned to a cubicle in a large workspace containing numerous additional employees. Although Mr. MacLean was available for only 22 days during the assignment, he was assigned a number of significant duties, including:

- Participation on a group convened to update the TSA Special Events Management Directive and Standard Operating Procedures
- Creation of a TSA Special Events Planning Overview PowerPoint presentation
- Review of the TSA Record's Management Protocols and appropriate disposition of Special Events Operations Plans
- Assist with a National Special Security Event exercise
- Review of the Incident Management Framework, Critical Incident Management Group manual and Operations Response Plan

(U) April 18, 2016 through July 27, 2016: Mr. MacLean returned to his assignment at the Washington Field Office (WFO). Although there was not an existing vacancy for the WFO Visible Intermodal Prevention and Response (VIPR) program, on April 21, 2016, Mr. MacLean

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SENSITIVE SECURITY INFORMATION

5

accepted temporary duties with the WFO VIPR program. This assignment to non-flight duties was also a temporary accommodation of Mr. MacLean's request to be placed in an assignment which did not require him to fly. Mr. MacLean's assigned workspace is within the WFO VIPR Program office and includes members of the VIPR teams not actively deployed on a VIPR operation and a Transportation Security Inspector, with whom Mr. MacLean regularly worked with in completing his duties.

During the assignment, Mr. MacLean was assigned a number of significant duties, including:

- Assignment as the WFO VIPR Program Administrative Coordinator
- Drafting of Activity Summary Reports and Operation Tracking Reports
- Drafting and revising Deployment Operations Plans and After Action Reports.
- Assisting with VIPR operation scheduling to include the submission of changes to the Joint Coordination Center located at the TSA Freedom Center.

(U) July 27, 2016: Mr. MacLean requested and was approved for assignment to an operational WFO VIPR team, a position highly sought after by other FAMs assigned to the WFO. In this capacity, Mr. MacLean will represent the TSA by deploying to transportation venues across the WFO area of responsibility. To support the VIPR mission of protecting the traveling public, Mr. MacLean will be issued specialized equipment and receive 40 hours of specialized training, conducted at the TSA Training Center in Atlantic City, New Jersey. This training is limited exclusively to FAMs who are selected for the VIPR team. Mr. MacLean will receive an additional 24 hours of training in the utilization of Preventive Radiological Nuclear Detection equipment.

(U) Mr. MacLean will deploy in a uniformed, mission-critical position, interacting with the public, transportation stakeholders and law enforcement organizations to sustain relationships and coordinate operational planning. VIPR assignments are for up to three years in duration, at the conclusion of which the FAM returns to flight duties, performing domestic and international missions on U.S. civil aviation aircraft.

(U) As outlined above, Mr. MacLean has consistently been assigned to duties that involved substantive work. Assertions to the contrary are inaccurate.