U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

SEP 12 2014

Jason T. Lorenzon
Attorney at Law
DeCola & Lorenzon LLC
820 W. Superior Avenue
Suite 400
Cleveland, Ohio 44113

Dear Mr. Lorenzon:

This letter responds to your May 13, 2014 e-mail requesting a legal interpretation of various provisions of the Pilot Records Improvement Act of 1996, as amended, and codified at 49 USC 44703(h)-(j)(PRIA).[1] In particular, you requested an interpretation regarding:

a) The meaning of the phrase "other records pertaining to the individuals performance as a pilot..." in §44703(h)(1)(B)(ii); and,

b) The meaning of the phrase "other records...concerning...professional competence" in §44703(h)(1)(B)(ii)(I).

In addition, you provided a detailed example on behalf of your client, a pilot previously employed by a part 135 air ambulance operator, for purposes of our analysis and asked for an opinion regarding whether the disciplinary records at issue in the example are the type of records that must be furnished by an employer in response to a request for records initiated by an air carrier in accordance with PRIA.[2] *See* §44703(h)(1).

You also requested an interpretation of certain provisions of FAA advisory circular (AC) 120-68F, paragraphs 4-5(c). AC 120-68F is an agency guidance document that is intended to provide operators with non-exhaustive examples and methods for achieving compliance with the requirements of PRIA.[3] Although our office does not issue interpretations of guidance documents, we note that, in instances where guidance is inconsistent with a regulation or statutory provision, the regulation or statute controls.

---

[1] The agency notes that Section 203 of Public Law 111-216 include additional amendments to the requirements of PRIA by mandating the creation of a Pilot Records Database, which is codified at 44703(i)-(j). The FAA has initiated rulemaking to carry out the requirements of Section 203; in the interim, the requirements of PRIA remain in effect. Therefore, this interpretation focuses on the provisions of §44703(h).

[2] PRIA requires that certain pilot records must be requested and received by air carriers before allowing any individual to begin service as a pilot. *See* §44703(h)(1). The records that must be requested and received by air carriers include certain records kept by the FAA, certain records kept by air carriers and other persons that have employed the individual, and certain driving records of the individual kept by the chief driver licensing official of each State. *See* §44703(h)(1)(A)-(C).

[3] A copy of the current version of the advisory circular may be obtained at: http://www.faa.gov/pilots/lic_cert/pria/

## I. Relevant Provisions of PRIA

Among the records that must be furnished by air carriers and other persons, §44703(h)(1)(B)(i) sets forth a list of records kept pursuant to particular provisions of title 14 of the Code of Federal Regulations (14 CFR), which must be furnished in response to an air carrier's PRIA request.[4] In addition, PRIA includes the following catch-all provision requiring air carriers and other persons that employ pilots to furnish the following records in response to a PRIA request:

> (ii) other records *pertaining to the individual's performance as a pilot* that are maintained by the air carrier or person concerning—
>
> (I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman …;
> (II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and
> (III) any release from employment or resignation, termination, or disqualification with respect to employment.

*See* §44703(h)(1)(B)(ii) (emphasis added).[5]

## II. Summary of disciplinary record examples

You question the opinion of your client's former employer that "all duties as assigned in uniform on or off premises" by the employer pertain to an individual's performance as a pilot for purposes of complying with a PRIA request. You also assert that not all events leading to disciplinary action of a pilot are related to pilot performance. You presented two examples of incidents resulting in disciplinary actions imposed on your client and asked whether the disciplinary records (copies of which were provided for our consideration, redacted in part) created by the employer are among the type of disciplinary records (*i.e.* pertaining to an individual's performance as a pilot) that must be furnished in response to a PRIA request.

With regard to one disciplinary event, you indicated that during the week of July 20, 2010, one of the base-assigned aircraft became due for regular maintenance and inspection. Per company policy and procedures, your client was responsible to "make the appropriate write-up in the discrepancy section of the maintenance engineering logbook indicating maintenance is due and place the aircraft out of service." However, your client entered the Hobbs time in place of the airframe total time in the logbook entry, which kept the aircraft out of service longer than anticipated until the entry was corrected and further caused an extension of "the duty time for both pilots resulting in overshift pay." As a result of this incident, your client was subject to disciplinary action via a written warning for reasons of "failure to comply with other policies and/or procedures." This disciplinary action was memorialized in a written "corrective action plan" dated July 21, 2010, which was placed in the pilot's personnel file.

---

[4] Section 44703(h)(1)(B)(i) requires records "maintained by an air carrier (other than records relating to flight time, duty time, or rest time)" to be furnished to potential employers, including records kept pursuant to: 14 CFR §121.683 of title 14; paragraph (A) of section VI, appendix I, part 121 of such title; paragraph (A) of section IV, appendix J, part 121 of such title; 14 CFR §125.401; and 14 CFR §135.63(a)(4).

[5] As explained in a Senate report accompanying PRIA, this title requires the production to prospective air carrier employers of not only training records maintained pursuant to federal aviation regulations by other air carriers employing the individual, but also records otherwise maintained by employers in the nature of training, proficiency, disciplinary and other personnel files…." *See* S.R. Rep. No. 104-333*[12-13] (1996).

With regard to a second disciplinary event, you indicated that in June 2010 your client, acting as pilot-in-command, flew one of the employer's helicopters to attend a public relations event on behalf of the part 135 air ambulance employer. From the employer's perspective, your client did not have permission to attend the event (in a company aircraft) on behalf of the employer. As a result, your client was subject to disciplinary action in the form of a written warning and three-day suspension for reasons of "insubordination (behavioral infraction)" and "failure to comply with other policies and/or procedures." This disciplinary action was memorialized in a written corrective action plan dated August 9, 2010, which was placed in the pilot's personnel file.

We recognize that your client disputes certain factual information contained in these disciplinary action records, specifically regarding whether your client, in fact, had permission from the Medical Program Director to attend the public relations event and whether the records of disciplinary action would be permanently removed from the company's personnel file after one year. However, for purposes of interpreting the relevant provisions of PRIA we will treat the information contained in the disciplinary records as true. Further, we note that if the pilot has an underlying dispute regarding the correctness of the information contained within the employer's disciplinary records, the pilot should resolve that dispute directly with the employer that created and maintains the record.[6]

## III. Analysis

### A. Records related to an individual's "performance as a pilot"

First, you requested an interpretation of the phrase "other records pertaining to the individual's performance as a pilot...," as that phrase is used in §44703(h)(1)(B)(ii) of PRIA. You also asked whether the disciplinary action records, as summarized above, constitute records related to the individual's "performance as a pilot," which must be furnished by an employer in response to a PRIA request initiated by an air carrier that is considering employing the individual as a pilot.

You contend that the disciplinary action record examples you provided on behalf of your client are unrelated to the pilot's performance of aeronautical duties and therefore are not subject to the disclosure requirements of PRIA. We agree with your contention in part.

In a 1997 committee report accompanying certain amendments to PRIA, Congress noted that questions had arisen involving "exactly which records must be requested, received, and maintained by air carriers." *See* H.R. Rep. No. 105–372, Clarifications to the Pilot Records Improvement Act of 1996, *[3]. The committee report explained that:

> [a]ll of these [statutory] requirements are directed toward the competency of the individual as a pilot. Indeed, the whole thrust of the 1996 Act was to ensure that the airline would have the information needed to determine whether the applicant was capable of flying the plane safely. While other information, such as how the pilot interacts with customers, may be important, it is not the focus of this legislation.

---

[6] We also note that §44703(h)(6) and (h)(9) entitle a pilot to notice and a copy of any records furnished by a current or former employer in response to a PRIA request made by an air carrier, and further requires air carriers that request and receive records under PRIA to give the pilot (who is the subject of the record) "a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual."

> Therefore, while airlines would be free to request and receive other information not directly related to the competency of the individual as a pilot, the Committee does not consider it to be required by the Pilot Records Improvement Act.

*Id.* Consistent with the statutory language and legislative history of PRIA, records related to pilot performance encompass those records of an activity or event specifically related to an individual's completion of the core duties and responsibilities of a pilot, as assigned by the employer and established by the FAA, to maintain safe aircraft operations. Records related to pilot performance are not limited solely to events arising out of the pilot's demonstration of proficient flying skills (i.e. when the pilot is seated at the controls of an aircraft) and the demonstration of compliance with FAA regulatory requirements. A pilot's duties and responsibilities to ensure safe aircraft operations includes demonstrating adherence to certain established company procedures during all aspects of an aircraft operation. Records of relevant events subject to the requirements of PRIA would also include certain events that occurred on the ground pre-flight or post-flight (e.g. conducting aircraft exterior pre-flight and post-flight inspections, visual icing inspections, etc.) in connection with a flight operation. Moreover, the duty to maintain safe aircraft operations includes ensuring the safety of crewmembers, passengers, cargo, the aircraft and the operating environment.

Applying the meaning of "records related to pilot performance" in the context of disciplinary records maintained by an air carrier or other person employing an individual as a pilot, this definition encompasses records related to disciplinary action for incidents or events that occurred while an individual was working as a pilot and was thus responsible for safe aircraft operations. Records required to be reported would include records of any relevant disciplinary action as a result of any incident or event that occurs in an operation under any part of title 14 CFR, provided the operation is conducted by a pilot as part of the pilot's duties for that employer. All disciplinary records meeting this definition must be reported in accordance with the statutory requirements. However, records of disciplinary action arising out of the pilot's noncompliance with company policies unrelated to safe aircraft operations (e.g. attendance, company dress codes and other morality or behavior-based policies) are not the type contemplated by PRIA.

With regard to the example disciplinary records referenced in your inquiry, we conclude that the disciplinary action record regarding the pilot's use of a company aircraft to attend a public relations event, without the Medical Program Director's permission, is not covered by the statute and thus, the employer is not required to furnish this record in response to a PRIA request. The underlying event and nature of the resulting disciplinary action do not relate to pilot performance because there is no indication that the pilot's actions impacted the safe operation of the aircraft. Indeed, the crux of the pilot's dispute with the employer appears to be whether the pilot, in fact, had permission to attend the public relations event, not whether the pilot's actions indicated an error in judgment or performance during any part of the operation of the aircraft for purposes of the public relations event attended.

However, the disciplinary action record pertaining to the incorrect maintenance log entry is covered by the statute and therefore, the employer must furnish this record in accordance with PRIA. The underlying event relates to pilot performance because the record indicates the pilot failed to comply with post-flight procedures related to the condition of the aircraft for continued flight.

**B. Records concerning the "professional competence" of an individual**

As indicated previously, PRIA requires air carriers and certain other persons to furnish "records pertaining to the individual's performance as a pilot…concerning—the training, qualifications, proficiency, *or professional competence of the individual…*" *See* §44703(h)(1)(B)(ii)(I) (emphasis added). You requested an interpretation of the term "professional competence" as used in this context.

Competence is defined as "the quality of being competent; adequacy; possession of required skill, knowledge, qualification, or capacity."[7] As this term is used in PRIA and as it relates to the federal aviation regulations applicable to the aircraft pilot profession, the competency of a pilot to serve as a flightcrew member is dependent upon the sufficiency of the individual's knowledge, skills, judgment and flight experience. In addition, the competency of a pilot is dependent upon the individual's demonstration of compliance with the applicable operating standards. The plain meaning of professional competence, as this term is used in PRIA, is thus, an extension of the requirement to furnish records related to pilot training, qualifications and performance on checking and other testing events.

The term "professional competence" in the relevant excerpt of PRIA above does not modify the particular sub-paragraph requiring certain disciplinary records (such as those described in your examples) to be furnished in response to an air carrier's PRIA request. Therefore, the meaning of "professional competence" does not impact our analysis of whether the disciplinary action records in your examples must be furnished in response to an air carrier's PRIA request.

**C. Records of termination or other release from employment**

Lastly, you indicated that your client resigned from employment three years after the disciplinary events previously described for purposes of attending college full time. You thus question the furnishing of the disciplinary records (i.e. corrective action plans) described previously by your client's former employer because you assert the disciplinary records are unrelated to your client's termination or release from employment.

Whether a disciplinary action record or a record of employment termination must be furnished in response to a PRIA request for records from an air carrier are separate analyses. Both sub-categories of records must be furnished in accordance with the statutory language of PRIA (§44703(h)(1)(B)(ii)), subject to certain conditions. While the corrective action plans described above were not the basis for your client's resignation or release from employment, other records related to "any release from employment or resignation, termination, or disqualification with respect to employment" must be furnished in response to a PRIA request if that record "pertain[s] to the individual's performance as a pilot" (*see* §44703(h)(1)(B)(ii) at introductory text) and that record dates within the five years preceding the PRIA request. *See* §44703(h)(3).

We agree that since your client resigned in order to attend college full time, any record kept by the employer regarding your client's release from employment is not of the type that must be reported in response to a PRIA request because the release from employment was not related to "pilot performance" as we have interpreted that phrase herein. Whether the corrective action plan is of

[7] Dictionary.com. Unabridged. Random House, Inc. http://dictionary.reference.com/browse/competence (accessed: Aug. 1, 2014).

the type of a disciplinary record that must be furnished in response to a PRIA request is determined by our analysis in section III.A. above.

This response was prepared by Bonnie C. Dragotto, an attorney in the Operations Law Branch of the International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and coordinated with the Regulatory Support and Air Transportation Divisions of the Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for
International Law, Legislation and Regulations, AGC-200