ICAO Legal guidance for the protection of information from Safety Data Collection and Processing Systems (SDCPS)

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ICAO/ASPA Regional Seminar
(Mexico, 10-11 April 2007)
1. **INTRODUCTION**

- SDCPS: Investigation records; Incident reporting systems; Flight data analysis programmes

- Concern: protection vs. justice (Annex 13 - 5.12)

- *Legal guidance for the protection of information from Safety Data Collection and Processing Systems (SDCPS)*

- Historical/legal background

- Outline of Attachment E to Annex 13
2. BACKGROUND

2.1 25th Session Legal Committee (1983)

- privacy or no disclosure of investigations
- availability of evidence is public order issue
- restrictions not legally realistic
2. BACKGROUND (Cont’d)

2.2 AIG Divisional Meeting (1999)

- Rec. 1.2/3: protection from inappropriate use

- Rec. 1.2/5: new own paras 5.8 and 5.8.1

- Non-disclosure of CVRs and transcripts unless decided by authority of justice – cf. 5.12

- No exception clause? (IATA)
2. BACKGROUND (Cont’d)

2.3 Assembly Resolution A33-17 (2001)

- “non-disclosure of certain accident and incident records”
- Council to consider legal aspects of protection
- Council to examine Annex 13 to strengthen protection
- States to comply with 5.12
2. BACKGROUND (Cont’d)

2.4 Work on Resolution A33-17 (2001)

- Secretariat: single out + enhanced protection of aural recordings
- ANC: non-disclosure of aural recordings
- SL 02/86 dated 30 August 2002: negative feedback
- IFALPA: main concern is public disclosure
- ANC: proposal withdrawn in 2003
2. BACKGROUND (Cont’d)


- cf. A33-16 (GASP): guidance on protection of privileged safety information
- Rec. 2/4: “The protection of sources of safety information”
- ICAO to develop guidelines for States’ legislation
- to protect sources and free flow of safety information
- considering public interest in the proper administration of justice
2.6 Assembly Resolution A35-17 (2004)

- protect safety data collection systems and AIG
- Res. clause 1: Council to develop appropriate legal guidance
- balance: protect safety information and administer justice
2.7 Work on Resolution A35-17, clause 1

- SL 05/6 – samples of existing legislation
- analysis - draft
- Informal consultation
- ANC Jan. 06 (Drafting Group) Council 3 March 2006
- Legal guidance – Attachment E to Annex 13
3. ATTACHMENT E TO ANNEX 13

3.1 Objective

- prevent inappropriate use of info collected for safety
- flexibility set of principles (not model legislation)
- guidelines in Attachment = not binding
- SDCPS investigation records and reporting systems
- Outline of 6 series of principles
3. ATTACHMENT E TO ANNEX 13
(Cont’d)

3.2 General Principles

─ availability to improve safety
─ without interfering with justice
─ balance to be struck
─ to prevent inappropriate use
─ inherent to State’s safety responsibilities
3. ATTACHMENT E TO ANNEX 13

(Cont’d)

3.3 Principles of Protection

- qualification: safety aim and availability
- Specific as per nature
- Procedure and conditions
- no inappropriate use
- use for justice under safeguards
3. ATTACHMENT E TO ANNEX 13
(Cont’d)

3.4 Principles of Exception

— provided by law

— evidence of intent to cause damage, gross negligence, …

— indication as considered by appropriate authority

— release determined as necessary for justice, beyond safety perspective
3. ATTACHMENT E TO ANNEX 13
(Cont’d)

3.5 Public disclosure

- subject to principles of protection/exception
- justification: onus on those seeking disclosure
- criteria: corrections needed; privacy laws; de-identification; …
3. ATTACHMENT E TO ANNEX 13
(Cont’d)

3.6 Responsibility of the custodian of safety information

— designated guardian

— principle: protection from disclosure - safeguards

— unless exception for release

— unless consent of originator
3. ATTACHMENT E TO ANNEX 13 (Cont’d)

3.7 Protection of recorded information

- ambient workplace recordings (e.g. CVRs)
- privacy issues
- Enhanced protection by law
- specific measures for confidentiality/disclosure (gag orders)
4. CONCLUSIONS

4.1 Resolving Clause 2 of A35-17

- States to examine and adjust/enact their legislation as necessary
- policy decision
- Based on ICAO guidance to the extent possible: BALANCE
4. CONCLUSIONS

4.2 Draft Canadian Aeronautics Act

4.3 ICAO Journal Vol. 61, No.6-2006

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