

## United States

### Accident Investigation

#### U.S. Code: Title 49 – Transportation § 1114 - Disclosure, availability, and use of information

##### **a) General.—**

(1) Except as provided in subsections (b), (c), (d), and (f) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section [552\(b\)](#) of title [5](#) or protected from disclosure by another law of the United States.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1) to be credited to the appropriation of the Board as offsetting collections.

##### **(b) Trade Secrets.—**

(1) The Board may disclose information related to a trade secret referred to in section [1905](#) of title [18](#) only—

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(3) **Protection of Voluntary Submission of Information.**— Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily provided safety-related information if that information is not related to the exercise of the Board's accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

##### **(c) Cockpit Recordings and Transcripts.—**

(1) The Board may not disclose publicly any part of a cockpit voice or video recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to cockpit voice or video recorder information in making safety recommendations.

##### **(d) Surface Vehicle Recordings and Transcripts.—**

(1) **Confidentiality of recordings.**— The Board may not disclose publicly any part of a surface vehicle voice or video recorder recording or transcript of oral communications by or among drivers, train employees, or other operating employees responsible for the movement and direction of the vehicle or vessel, or between such operating employees and company communication centers, related to an accident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information that the Board decides is relevant to the accident—

(A) if the Board holds a public hearing on the accident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident are placed in the public docket.

**(2) References to information in making safety recommendations.**— This subsection does not prevent the Board from referring at any time to voice or video recorder information in making safety recommendations.

**(e) Drug Tests.**—

**(1)**Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, [101 Stat. 471](#)), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

**(A)**any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

**(B)**any laboratory record documenting that the test is confirmed positive.

**(2)**Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section [552\(b\)\(3\)](#) of title 5—

**(A)**a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and

**(B)**medical information provided by the tested officer or employee related to the test or a review of the test.

**(3)**The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—

**(A)**the fitness of the tested officer or employee is at issue in the investigation; and

**(B)**the use of that record is necessary to develop the evidentiary record.

**(f) Foreign Investigations.**—

**(1) In general.**— Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose records or information relating to its participation in foreign aircraft accident investigations; except that—

**(A)**the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and

**(B)**the Board may disclose records and information when authorized to do so by the country conducting the investigation.

**(2) Safety recommendations.**— Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations.

## Safety Management

### [FAA Modernization and Reform Act of 2012](#)

FAA: United States have seen laws passed under FAA Modernization and Reform Act of 2012 preventing the disclosure of voluntarily submitted occurrences under ASAP, FOQA, LOSA and ASIAs in the context of Freedom of Information Act-type laws and exemptions, with de-identification a key.

#### § 44735. Limitation on disclosure of safety information

(a) IN GENERAL.—Except as provided by subsection (c), a report, data, or other information described in subsection (b) shall not be disclosed to the public by the Administrator of the Federal Aviation Administration pursuant to section 552(b)(3)(B) of title 5 if the report, data, or other information is submitted to the Federal Aviation Administration voluntarily and is not required to be submitted to the Administrator under any other provision of law.

(b) APPLICABILITY.—The limitation established by subsection (a) shall apply to the following:

(1) Reports, data, or other information developed under the Aviation Safety Action Program.

(2) Reports, data, or other information produced or collected under the Flight Operational Quality Assurance Program.

(3) Reports, data, or other information developed under the Line Operations Safety Audit Program.

(4) Reports, data, or other information produced or collected for purposes of developing and implementing a safety management system acceptable to the Administrator.

(5) Reports, analyses, and directed studies, based in whole or in part on reports, data, or other information described

in paragraphs (1) through (4), including those prepared under the Aviation Safety Information Analysis and Sharing Program (or any successor program).

(c) EXCEPTION FOR DE-IDENTIFIED INFORMATION. —

(1) IN GENERAL. —The limitation established by subsection (a) shall not apply to a report, data, or other information if the information contained in the report, data, or other information has been de-identified.

(2) DE-IDENTIFIED DEFINED. —In this subsection, the term ‘de-identified’ means the process by which all information that is likely to establish the identity of the specific persons or entities submitting reports, data, or other information is removed from the reports, data, or other information.

(b) CLERICAL AMENDMENT. —The analysis for such chapter (as amended by this Act) is further amended by adding at the end the following: “44735. Limitation on disclosure of safety information.”.

The NTSB and FAA have reached a landmark agreement to share occurrence reporting under ASIAs, but under strict guidelines to prevent public disclosure and misuse. The agreement does not allow any of the parties to use aggregate FOQA, ASAP, ATSAP or other non-publicly available data to measure an individual data contributor’s performance or safety, which represent important safeguards.

ASIAs began in 2007 and now has 44 members and receives voluntary data representing 95 percent of all commercial air carrier operations. It connects 131 data and information sources across the industry and is integrated into the Commercial Aviation Safety Team (CAST) process. Many of CAST’s safety enhancements have been derived from forward-looking data analysis in ASIAs.